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AGENDA

REGULAR MEETING OF THE CITY COUNCIL

NOVEMBER 28, 2006

7:30 P.M.

TOWN HALL

5300 BELT LINE ROAD

REGULAR SESSION

Item #R1 - Consideration of Old Business.

Item #R2 - Consent Agenda.

CONSENT AGENDA

#2a - Approval of the Minutes for the November 14, 2006, Council Meeting.

Item #R3 - Consideration and approval by the City Council authorizing the City Manager to enter into an agreement with ICMARC to establish an Integral Part Trust for administration of a Retirement Health Savings Plan.

Attachments:

1. Council Agenda Item Overview
2. Agreement
3. Savings Plan

Administrative Recommendation:

Administration recommends approval.

Item #R4 - Presentation of the Town of Addison financial report for the quarter ended September 30, 2006.

Item #R5 - Consideration and approval of an ordinance authorizing the Town to impose a 20% collection fee on delinquent personal property taxes 60 days after taxes are considered delinquent and authorizing a contract amendment with the Town's delinquent tax collection law firm of Linebarger, Goggan, Blair, and Sampson, LLP., to allow for the collection of the fee.

Attachments:

1. Council Agenda Item Overview
2. Letter from Linebarger, Goggan, Blair and Sampson, LLP
3. Ordinance
4. Contract

Administrative Recommendation:

Administration recommends approval.

Item #R6 - Consideration and approval of an ordinance approving amendments to the Town's financial policies.

Attachments:

1. Council Agenda Item Overview
2. Financial Policies
3. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R7 -

PUBLIC HEARING, regarding, and consideration of approval of, a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located in a lease space at 4135 Belt Line Road, on application from Which Wich? Sandwich Shop represented by Mr. Charles Isola.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on November 16, 2006, voted to recommend approval of the request on application from Which Wich?, subject to the following conditions:

-A C.O. will not be issued on this lease space until a Shell C.O. has been issued for the entire site.

-The doors from the restrooms appear to encroach into the exit corridor more than half the required width of the corridor. The required width of the corridor per the 2003 IBC is 44". Therefore during the course of the swing there would have to be a minimum of 22" between the door and the exit corridor wall.

Voting Aye: Bernstein, Chafin, Gaines, Wood

Voting Nay: None

Absent: Daseke, Jandura, Meier

Administrative Recommendation:

Administration recommends approval.

Item #R8 – Consideration and approval of Asberry Circle final plat for 73 lots in the Belt Line Zoning District, located on the south side of Belt Line Road, on the east and west sides of Commercial Drive, on application from Ashton Dallas Residential, LLC, represented by Mr. Casey Ross of Dowdey, Anderson & Associates, Inc.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on November 16, 2006, voted to recommend approval of the plat, on application from Ashton Dallas Residential, LLC., subject to the following conditions:

- Plat meets closure requirements.
- The existing 10-FT Sanitary Sewer Easement (Vol. 82060, Pg. 1624) located along the east side of the property is to remain and will NOT be abandoned.
- Provide the bearing and distance of the alley located between Everwood Lane and Amberwood Drive.
- Provide curve data for all the right-of-way curves on both Asberry Lane (adjacent to C45) and Amberwood Drive (adjacent to C42).
- Dimensions need to be provided for the 10-FT Water Easement in Block B.
- Dimension need to be provided for the north line of the Access & Utility Easement located in Block B.
- The lot designations for Lot 1X, Block B; Lots 2X & 3X, Block C; and Lot 1X, Block D do not match the lot designations shown on

Plates 10 & 11 of the construction plans for Asberry Circle. Need to have the plans meet the final plat designations.

-The 15-FT Drainage Easement shown between Lots 14 & 15 of Block C is not clearly defined.

-The applicant has indicated he wants to change the spelling of Asberry to Asbury.

Voting Aye: Bernstein, Chafin, Gaines, Wood

Voting Nay: None

Absent: Daseke, Jandura, Meier

Administrative Recommendation:

Administration recommends approval.

Item #R9 –

Consideration of approval of Addison West Industrial Park replat for two lots on 5.949 acres of land in a LR – Local Retail District, located at 4135 Belt Line Road, on application from Belt Line Realty Partners, Inc., represented by Mr. Ronny Klingbell of RLK Engineering.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on November 16, 2006, voted to recommend approval of the replat, on application from Belt Line Realty Partners, Inc., subject to the following conditions:

-Certificate of Approval needs to be revised to show approval by the City Council, not Planning and Zoning Commission. Signature blanks need to be provided for the Mayor and City Secretary. Notary of these signatures is not required.

Voting Aye: Bernstein, Chafin, Gaines, Wood

Voting Nay: None

Absent: Daseke, Jandura, Meier

Administrative Recommendation:

Administration recommends approval.

Item #R10 - Consideration and approval of the City Council authorizing the City Manager to enter into a contract for the purchase of three replacement cardiac monitors and related equipment and two new automatic external defibrillators in an amount not to exceed \$60,000 from Medtronic Emergency Response System.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Noel Padden
3. Quotes

Administrative Recommendation:

Administration recommends approval.

Item #R11 - Consideration and approval of a resolution authorizing the City Manager to accept and enter into a Grant Agreement for Non-Primary Entitlement Funds (NPE) from the Federal Aviation Administration administered by Texas Department of Transportation, for airport improvements to Addison Airport.

Attachments:

1. Council Agenda Item Overview
2. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R12 – Consideration and approval of the City Council authorizing the purchase of (2) 2007 Multi-Use Vehicles, under the Town's Inter-local Agreement with the Texas Local Government Purchasing Cooperative – known as BuyBoard.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R13 – Consideration and approval of the City Council authorizing the purchase of (1) 2007 Hybrid Electric SUV, (15) 2007 Police Package Sedans (3) 2007 1 Ton Trucks and (1) 2007 Zero Turn Mower, under the Town's Inter-local Agreement with the Houston-Galveston Area Council (HGAC).

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R14 - Discussion of an expanded volunteer program for the Town.

Item #R15 - Consideration and approval of an ordinance amending the Town's policy on employee drug and alcohol testing.

Attachments:

1. Council Agenda Item Overview
2. Policies

Administrative Recommendation:

Administration recommends approval.

Item #R16 – Consideration and approval of a resolution authorizing the contract amendments with Blue Cross/Blue Shield of Texas, Delta Dental Insurance Company, Hartford Life Insurance Company and Unumprovident, pending review and final approval of the City Attorney.

Attachments:

1. Council Agenda Item Overview
2. Summary of Benefits

Administrative Recommendation:

Administration recommends approval.

Item #R17 - Consideration and approval of a resolution authorizing the City Manager to enter into an agreement with Liz Oliphant & Associates to assist the Town with special projects as specified by the City Manager.

Attachments:

1. Council Agenda Item Overview
2. Contract

Administrative Recommendation:

Administration recommends approval.

Item #R18 - Consideration of approval of an Ordinance amending Chapter 14 (Aviation) of the Code of Ordinances of the Town by amending Division 3 (Off-Premise Access to Airport) of Article III (Municipal Airport) thereof relating to access from property adjacent to Addison Airport, and providing for, among other things, standards and fees for such access and the issuance of an access permit.

Attachments:

1. Council Agenda Item Overview
2. Ordinance
3. Public Area Cost Scenarios
4. June 4, 2003 FAA Letter
5. September 13, 2004 FAA Letter
6. February 17, 2004 FAA Letter
7. Airport Compliance Requirements
8. FAA Grant Assurances
9. Chapter 22, Subchapters A, B and C, Texas Transportation Code
10. Final Judgement
11. Findings of Fact and Conclusions of Law

Administration Recommendation:

Administration recommends approval.

Item #R19 - Discussion regarding the sale of off-premise consumption of alcoholic beverages.

Adjourn Meeting

Posted 5:00 p.m.
November 22, 2006
Mario Canizares
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

November 14, 2006
6:30 p.m. – Town Hall
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: Clay Barnett (Public Works), Dustin Davis (Fire), Pete Holland (Police).

Item #R2 - Consent Agenda.

#2a – Approval of the Minutes for the October 23, 2006, Council Meeting.
(Approved as written)

#2b – Consideration and approval of a resolution authorizing the City Manager to fund a \$50,000 sponsorship request for the Cavanaugh Flight Museum.
(Approved Resolution No. R06-085)

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

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

Item #R3 - Consideration and approval of an ordinance granting meritorious exception to Sec. 62-163, Area of Signs, for Innovative Mortgage Company, located at 5302 Belt Line Road.

No action taken. This item was withdrawn by applicant.

Item #R4 - Consideration and approval of the City Council authorizing the City Manager to enter into an agreement with the Hawkeye Group to provide sponsorship and media buying services to the Town from November 15, 2006 through September 30, 2009, subject to review by the City Attorney.

Councilmember Kraft duly moved to authorize the City Manager to enter into an agreement with the Hawkeye Group to provide sponsorship and media buying services to the Town from November 15, 2006 through September 30, 2009,

subject to changes and review by the City Attorney. Councilmember Mallory seconded. Motion carried.

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

Item #R5 - Consideration and approval of a resolution authorizing the City Manager to enter into an agreement with Hand & Associates Marketing Communications to advertise in the November 2006, March 2007 and August 2007 editions of the Addison/North Dallas Corridor Guide and discussion of a proposed new marketing concept.

Councilmember Niemann duly moved to approve Resolution No. R06-086 authorizing the City Manager to enter into an agreement with Hand & Associates Marketing Communications to advertise in the November 2006, March 2007 and August 2007 editions of the Addison/North Dallas Corridor Guide and discussion of a proposed new marketing concept. Councilmember Braun seconded. Motion carried.

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

Item #R6 - Consideration and approval of a resolution authorizing the City Manager to amend the advertising contract with Krause Advertising to provide an additional fee of \$30,000 for the creative development of a new newspaper ad campaign and to provide marketing consultation, creative ad production services, administrative and account oversight for the Town 2006-2007 marketing and special events initiatives for a monthly fee of \$18,000.

Councilmember Mallory duly moved to approve Resolution No. R06-087 authorizing the City Manager to amend the advertising contract with Krause Advertising to provide an additional fee of \$30,000 for the creative development of a new newspaper ad campaign and to provide marketing consultation, creative ad production services, administrative and account oversight for the Town 2006-2007 marketing and special events initiatives for a monthly fee of \$18,000. Councilmember Niemann seconded. Motion carried.

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

Item #R7 - Consideration and approval of a resolution authorizing the City Manager to enter into an agreement with Shiroma Southwest to provide public

relations and media publicity programs to promote certain special events in the Town of Addison.

Councilmember Kraft duly moved to approve Resolution No. R06-088 authorizing the City Manager to enter into an agreement with Shiroma Southwest to provide public relations and media publicity programs to promote certain special events in the Town of Addison. Councilmember Braun seconded. Motion carried.

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

Item #R8 – Consideration and approval of the City Council to enter into an agreement with The Margulies Communication Group to assist the Town with media communications.

Councilmember Niemann duly moved to authorize the City Manager to enter into an agreement with The Margulies Communication Group to assist the Town with media communications. Councilmember Mellow seconded. Motion carried.

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

Item #R9 – Consideration and approval of a resolution to encourage the Texas Legislature to enact legislation mandating the disclosure of real property sales prices.

Councilmember Niemann duly moved to approve Resolution No. R06-089 encouraging the Texas Legislature to enact legislation mandating the disclosure of real property sales prices. Councilmember Kraft seconded. Motion carried.

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

Item #R10 - Consideration and approval of a resolution approving the Belt Line Road Corridor Revitalization Strategy which includes the proposed Incentive Policy and Guidelines for qualifying projects.

Councilmember Mallory duly moved to approve Resolution No. R06-090 approving the Belt Line Road Corridor Revitalization Strategy which includes the proposed Incentive Policy and Guidelines for qualifying projects. Councilmember Niemann seconded. Motion carried.

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

Item #R11 - Consideration and approval for the City Manager to enter into contracts for services between the Town of Addison and Communities in Schools-Dallas, Senior Adult Services, Metrocrest Social Services, Metrocrest Family Medical Clinic, Metrocrest Chamber of Commerce, The Family Place, Special Care and Career Services and DFW International funded from the General Fund and WaterTower Theatre, Dance Council, and Richardson Symphony Orchestra from the Hotel Fund budgets.

Councilmember Mellow duly moved to approve contracts for services between the Town of Addison and Communities in Schools-Dallas, Senior Adult Services, Metrocrest Social Services, Metrocrest Family Medical Clinic, Metrocrest Chamber of Commerce, The Family Place, Special Care and Career Services and DFW International funded from the General Fund and WaterTower Theatre, Dance Council, and Richardson Symphony Orchestra from the Hotel Fund budgets. Councilmember Braun seconded. Motion carried.

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

EXECUTIVE SESSION. At 9:10 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 of the Texas Government Code, to conduct a private consultation with its attorney(s) to seek the advice of its attorney(s) regarding certain pending litigation, to wit: *The City of Addison, Texas v. Transcontinental Realty Investors, Inc., et al.*, No. 05-05-01554-CV, Fifth District Court of Appeals, Dallas, Texas, and on a matter in which the duty of the attorney(s) to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code, regarding matters concerning access to Addison Airport.

Item #ES2 - Closed (executive) session of the City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney(s) on a matter or matters in which the duty of the attorney(s) to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Texas Government Code, regarding and relating to sale of alcoholic beverages.

The Council came out of Executive Session at 10:33 p.m.

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

Mayor

Attest:

City Secretary

Council Agenda Item: #R3

SUMMARY:

Council authorization is requested for the city manager to enter into agreement with the International City Manager Association Retirement Corporation (ICMARC) to establish a trust for contributions to fund employee retiree medical expenses.

FINANCIAL IMPACT:

The retirement health plan as presented to Council will be comprised only of employee contributions, so there will be no financial impact to the Town's budget.

BACKGROUND:

There exists a growing national concern that employees of all professions and fields are not putting sufficient money aside to fund medical expenses they will incur following retirement. In response, ICMARC, the company that administers the Town's Sec. 457 deferred compensation plan, created a vehicle that allows employees to set aside pre-tax income in a trust that will accumulate funds until such time an employee retires. When used to pay for medical treatment, the employee's contributions, plus accumulated interest, can be withdrawn from the trust, tax free.

Town management met with a committee of employees representing all departments to determine the structure of the retirement health savings plan. The committee recommended, and management concurred, that the plan should not be mandatory but be made available to those employees interested in setting aside a portion of their income for this purpose. Under the proposed plan, an employee may elect to contribute a portion of their income, buy back of sick or vacation leave, longevity pay, and termination pay. Because of Internal Revenue Service regulations, once an employee makes a decision to put a portion of their income into the plan, the decision is irrevocable until such time the employee retires or terminates service.

RECOMMENDATION:

The retirement health savings plan represents an important benefit the Town can provide its employees at no cost to the Town. If approved by Council, the Human Resources department will conduct a number of training sessions with employees to inform them of the plan and the unique benefit that will allow them to save money for medical expenses, totally free of federal income taxes. It is recommended Council authorize the city manager to enter into an agreement with ICMARC to administer the Town's Retirement Health Savings Plan.

EMPLOYER VANTAGECARE RETIREMENT HEALTH SAVINGS (RHS) PLAN ADOPTION AGREEMENT

Plan Number: 801422

Employer Retirement Health Savings Plan Name: Town of Addison Retirement Health Savings Plan

I. Employer Name: Town of Addison State: TX

II. The Employer hereby attests that it is a unit of a state or local government or an agency or instrumentality of one or more units of a state or local government.

III. The Effective Date of the Plan: January 1, 2007

IV. The Employer intends to utilize the Trust to fund only welfare benefits pursuant to the following welfare benefit plan(s) established by the Employer: Town of Addison Retirement Health Savings Plan

V. Eligible Groups and Participant Eligibility Requirements

A. The following group or groups of Employees are eligible to participate in the VantageCare Retirement Health Savings Plan:

- Checkboxes for employee groups: All Employees, All Full-Time Employees (checked), Non-Union Employees, Public Safety Employees - Police, Public Safety Employees - Firefighters, General Employees, Collectively-Bargained Employees (Specify unit), Other (specify below)

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer.

Checkmark: If this box is checked, in lieu of mandatory participation, the Employer provides for a one-time irrevocable election by eligible Employees to participate in RHS. Until such time as the election is made, the Employee shall not participate in the Plan or receive contributions pursuant to Section VI.

Newly eligible Employees shall be provided an election window of 30 days (no more than 60 calendar days) from the date of initial eligibility during which they may make the election to participate. Participation may begin no earlier than the calendar month following the end of the election window.

If the Employee does not make the election in the year of initial eligibility, the election to participate may be made in a later year. An annual election window of 30 days (no more than 60 calendar days) shall be provided during which the election may be made. The election window shall run from 11/01/2007 to 11/30/2007 (insert your annual time frame for the election window, e.g. October 1 to November 29). Participation may begin no earlier than the calendar year following the year of the election.

Once made, the election is irrevocable and may not be revoked while the participant is a member of the group covered by the RHS plan.

If the Employer's underlying welfare benefit plan or funding under this VantageCare Retirement Health Savings Plan is in whole or part a non-collectively bargained, self-insured plan, the nondiscrimination requirements of Internal Revenue Code (IRC) Section 105(h) will apply. These rules may impose taxation on the benefits received

by highly compensated Employees if the Plan discriminates in favor of highly compensated Employees in terms of eligibility or benefits. The Employer should discuss these rules with appropriate counsel.

B. Participant Eligibility

- 1. Minimum period of service required for participation is 6 months (write N/A if an Employee is eligible to participate or to elect to participate immediately upon employment).
- 2. Minimum age required for eligibility to participate is N/A (write N/A if no minimum age is required).

VI. Contribution Sources and Amounts

A. Mandatory Contributions

- 1. Direct Employer Contributions

The Employer shall contribute on behalf of each Participant _____% of earnings or \$_____ for the Plan Year.

Definition of earnings:
Total Compensation

- 2. Mandatory Leave Contributions

The Employer will make mandatory contributions of leave as follows:

Accrued Sick Leave* Yes No

Accrued Vacation* Yes No

Other* (describe) _____ Yes No

*Please provide the formula for determining the Accrued Leave contribution:

An Employee shall not have the right to discontinue or vary the rate of annual leave contributions.

- 3. Mandatory Employee Compensation Contributions

The Employer will make mandatory contributions of Employee compensation as follows:

Reduction in Salary - _____% of earnings (as defined in VI.A.1.) or \$_____ will be contributed for the Plan Year.

Decreased Merit or Pay Plan Adjustment - All or a portion of the Employees' annual merit or pay plan adjustment will be contributed as follows:

An Employee shall not have the right to discontinue or vary the rate of mandatory contributions of Employee compensation.

B. Elective Contributions

1. Elective Pre-Tax Contributions

The Employer will permit each Employee to make the following elections to make pre-tax contributions to the Plan:

- a. Irrevocable Election for Pre-Tax Contributions from Compensation: A one-time, irrevocable election of the amount of Employer contributions of compensation made on his or her behalf.

The Employer limits the amount elected to either a fixed percentage or a range of percentages of an Employee's earnings

_____ % of earnings (as defined in VI.A.1.) or up to 50 % of earnings (as defined in VI.A.1) for the Plan Year. (Minimum 1%)

Newly eligible Employees shall be provided an election window of 30 days (no more than 60) from the date of initial eligibility during which they may make the election to contribute. Contributions may begin no earlier than the calendar month following the end of the election window.

If the Employee does not make the election in the year of initial eligibility, the election to contribute may be made in a later year. An annual election window of 30 days (no more than 60) shall be provided during which the election may be made. The election window shall run from November 1 to November 20 (insert your annual time frame for the election window). Contributions may begin no earlier than the calendar year following the year of the election.

Once made, the election is irrevocable and may not be revoked.

- b. Irrevocable Election for Pre-Tax Contributions of Accrued Leave: A one-time, irrevocable election of the amount of employer contributions of Employee accrued

sick vacation other Longevity (describe) leave made on his or her behalf.
 Yes No

The Employer limits the amount elected as shown below:
Pursuant to Annual Buy Back Rules

Newly eligible Employees shall be provided an election window of 30 days (no more than 60 calendar days) from the date of initial eligibility during which they may make the election to contribute. Contributions may begin no earlier than the calendar month following the end of the election window.

If the Employee does not make the election in the year of initial eligibility, the election to contribute may be made in a later year. An annual election window of 30 days (no more than 60 calendar days) shall be provided during which the election may be made. The election window shall run from November 1 to November 30 (insert your annual time frame for the election window). Contributions may begin no earlier than the calendar year following the year of the election.

Once made, the election is irrevocable and may not be revoked.

- c. Annual Prospective Election for Pre-Tax Contributions of Leave: An annual, irrevocable election to have his or her sick vacation other Longevity (describe) leave to be accrued in the next calendar year contributed to the Plan on his or her behalf .

The Employer limits the amount elected as shown below:

Vacation limited to accruals in excess or 40 hours annually

Contributions of future leave accruals will be remitted to the Plan

as earned at the end of the calendar year.

The election to contribute must be made in the calendar year before the year in which contributions are to begin. Once made, the election shall apply to succeeding calendar years unless otherwise revised or revoked by the Employee on an annual basis.

An annual election window of 30 days (no more than 60 calendar days) is provided during which eligible Employees may make the election to contribute. The election window shall run from November 1 to November 30 (insert your annual time frame for the election window).

In adopting section a, b, and/or c, the Employer acknowledges that the Internal Revenue Service has not ruled on irrevocable election contributions in an integral part trust. ICMA-RC has obtained the advice of counsel that such contributions are allowable under the conditions outlined in this Adoption Agreement. The Employer should discuss this issue with appropriate counsel.

2. Voluntary After-Tax Contributions

Each Employee may contribute up to _____% of earnings (as defined in VI.A.1.) or \$_____ for the Plan Year on a voluntary after-tax basis. In no event may aggregate Employee voluntary after-tax contributions exceed 25% of total contributions in any Plan Year.

An Employee shall have the right to discontinue or vary the rate of elective after-tax contributions of Employee earnings.

By adopting this section, the Employer acknowledges that the Internal Revenue Service has declined to rule on Employee after tax contributions in an integral part trust. ICMA-RC has obtained the advice of counsel that such contributions are allowable in an insubstantial amount (i.e. no more than 25% of total contributions in any Plan Year). The Employer should discuss this issue with appropriate counsel.

C. Limits on Total Contributions

The total contribution on behalf of each Participant (including both Mandatory and Elective Contributions) for each Plan Year shall not exceed the following limit(s):

- _____% of earnings (as defined in VI.A.1.).
- \$_____.
- There is no Plan-defined limit on the percentage or dollar amount of earnings that may be contributed.

Limits on individual contribution types are defined within the appropriate section above.

See Section V.A. for a discussion of nondiscrimination rules that may apply to non-collectively bargained self-insured Plans.

VII. Vesting Schedule

- A. The account is 100% vested at all times, unless specified otherwise in B. below.
- B. The following vesting schedule applies to Direct Employer Contributions outlined in VI.A.1:

Years of Service Completed	Specified Percent Vesting
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

C. The account will become 100% vested upon the death, disability, retirement, or attainment of benefit eligibility by a Participant.

Definition of retirement: As Defined by the primary pension plan. (TMRS)

D. Any period of service by a Participant prior to a rehire of the Participant by the Employer shall not count toward the vesting schedule outlined in B. above.

VIII. Forfeiture Provisions

Upon separation from the service of the Employer or upon reversion to the Trust of a Participant's account assets remaining upon the participant's death (as outlined in Section XI), a Participant's non-vested funds shall:

- Remain in the Trust to be reallocated among all Plan Participant's as Direct Employer Contributions for the next and succeeding contribution cycle(s).
- Remain in the Trust to be reallocated on an equal dollar basis among all Plan Participants.
- Remain in the Trust to be reallocated among all Plan Participants based upon Participant account balances.
- Revert to the Employer.

In the case of separation from service, the Participant's non-vested funds shall be applied as shown above. In the case of reversion due to the Participant's death under Section XI, the remaining account assets shall be applied as shown above.

IX. Eligibility Requirements to Receive Medical Benefit Payments from the VantageCare Retirement Health Savings Plan

A. A Participant is eligible to receive benefits:

- At retirement only (as defined in Section VII.C.)
- At separation from service with the following restrictions _____.
- At age _____ only
- At retirement and age _____.
- At retirement or age _____.

B. Termination prior to general benefit eligibility: A Participant who separates from the service of the Employer prior to attaining benefit eligibility as outlined in Section IX.A. or C. will be eligible to receive benefits:

- Immediately upon separation from service.
- At age _____.

C. A Participant who dies or becomes totally and permanently disabled (as defined by the Social Security Administration) will become immediately eligible to receive medical benefit payments from his/her VantageCare Retirement Health Savings Plan account.

X. Permissible Medical Benefit Payments

Benefits eligible for payment consist of:

- A. All Medical Expenses eligible under IRC Section 213* other than direct long-term care expenses, **OR**
- B. The following Medical Expenses (select only the expenses you wish to cover under the VantageCare Retirement Health Savings Plan):

- _____ Medical Insurance Premiums
- _____ Medical Out-of-Pocket Expenses*
- _____ Medicare Part B Insurance Premiums
- _____ Medicare Supplement Insurance Premiums
- _____ COBRA Premiums
- _____ Dental Insurance Premiums
- _____ Dental Out-of-Pocket Expenses*
- _____ Long Term Care Insurance Premiums
- _____ Other (Must be eligible under IRC Section 213)*

* See Section V.A. for a discussion of nondiscrimination rules which may apply to non-collectively bargained, self-insured Plans.

XI. Death Benefit

In the event of a Participant's death, the following shall apply:

Account Transfer: The surviving spouse and/or surviving eligible dependents (as defined in Section XIII.F.) of the deceased Participant are immediately eligible to maintain the account and utilize it to fund eligible medical benefits specified in Section X above.

Upon notification of a Participant's death, the Participant's account balance will be transferred into the Vantagepoint Money Market Fund*. The account balance may be reallocated by the surviving spouse or dependents.

** Please read the current prospectus carefully prior to investing. An investment in this fund is neither insured nor guaranteed and there can be no assurance that the Fund will be able to maintain a stable net asset value of \$1.00 per share. Vantagepoint Mutual Funds are distributed by ICMA-RC Services, LLC, a controlled affiliate of ICMA Retirement Corporation. Member NASD/SIPC.*

If a Participant's account balance has not been fully utilized upon the death of the eligible spouse, the account balance may continue to be utilized to pay benefits of eligible dependents. Upon the death of all eligible dependents, the balance will be available for medical benefits for the designated beneficiary of the last dependent or spouse to die. Assets remaining upon the death of a designated beneficiary shall be available for medical benefits of the beneficiary's designated beneficiary. If there is no living beneficiary(ies), the account will revert to the Plan to be applied as specified in Section VIII.

There will be no elective withholding of federal, state, or local taxes for medical benefit payments to the Participant's spouse's or dependent's designated beneficiary(ies).

If there are no living spouse or dependents at the time of death of the Participant, the account will be available for medical benefits for the designated beneficiary(ies) of the Participant. Assets remaining upon the death of all designated beneficiaries shall be available for medical benefits of the beneficiary's beneficiary. If there is no living beneficiary(ies), the account will revert to the Plan to be applied as specified in Section VIII.

There will be no elective withholding of federal, state, or local taxes for medical benefit payments to the Participant's beneficiary(ies) or any beneficiary's beneficiary.

XII. De Minimis Accounts

Upon separation from the service of the Employer prior to a Participant becoming eligible for medical benefits from a VantageCare Retirement Health Savings Plan account, Participant accounts that are considered de minimis as specified below will be paid to the Participant.

- The de minimis account value shall be \$5,000 or less.
- The de minimis account value shall be \$ _____ (insert dollar amount between \$0 and \$5,000) or less.
- The Plan shall not allow de minimis account distributions.

XIII. The Plan will operate according to the following provisions:

A. Employer Responsibilities

1. The Employer will submit all VantageCare Retirement Health Savings Plan contribution data via electronic submission.
2. Participant status updates and/or changes or personal information updates and/or changes (Participants' termination dates, Participants' benefit eligibility dates, etc.) will be provided via electronic submission.

B. Participant account administration fees will be paid through the redemption of Participant account shares, unless agreed upon otherwise in the Administrative Services Agreement.

C. Employer plan fees will be paid by the Employer as outlined in the Administrative Services Agreement.

D. Assignment of benefits is not permitted.

E. Payments to an alternate payee (payee other than a Participant) are not permitted with the exception of reimbursement of health insurance premiums to the Employer.

F. An eligible dependent is the Participant's lawful spouse and any other individual who is a person described in IRC Section 152(a).

G. The Employer will be responsible for withholding, reporting and remitting any applicable taxes, as outlined in the VantageCare Retirement Health Savings Plan Employer Manual.

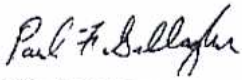
XIV. The Employer hereby acknowledges it understands that failure to properly fill out this Employer VantageCare Retirement Health Savings Plan Adoption Agreement may result in the loss of tax exemption of the Trust and/or loss of tax-deferred status for Employer contributions.

EMPLOYER By: _____

Title: _____

Attest: _____

Accepted Vantagepoint Transfer Agents, LLC

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

Corporate Secretary

DECLARATION OF TRUST OF THE

INTEGRAL PART TRUST

NAME OF EMPLOYER

DECLARATION OF TRUST OF THE

NAME OF EMPLOYER

INTEGRAL PART TRUST

Declaration of Trust made as of the _____ day of _____, 20____,
by and between the _____, _____ a _____
Name of Employer State Type of Entity
(hereinafter referred to as the "Employer") and _____ or its designee (hereinafter
Name of Trustee
referred to as the "Trustee").

RECITALS

WHEREAS, the Employer is a political subdivision of the State of _____
State
exempt from federal income tax under the Internal Revenue Code of 1986; and

WHEREAS, the Employer provides for the security and welfare of its eligible employees (hereinafter referred to as "Participants"), their Spouses, Dependents and Beneficiaries by the maintenance of one or more post-retirement welfare benefit plans, programs or arrangements which provide for life, sickness, medical, disability, severance and other similar benefits through insurance and self-funded reimbursement plans (collectively the "Plan"); and

WHEREAS, it is an essential function and integral part of the exempt activities of the Employer to assist Participants, their Spouses, Dependents and Beneficiaries by making contributions to and accumulating assets in the trust, a segregated fund, for post-retirement welfare benefits under the Plan; and

WHEREAS, the authority to conduct the general operation and administration of the Plan is vested in the Employer or its designee, who has the authority and shall be subject to the duties with respect to the trust specified in this Declaration of Trust; and

WHEREAS, the Employer wishes to establish this trust to hold assets and income of the Plan for the exclusive benefit of Plan Participants, their Spouses, Dependents and Beneficiaries;

NOW, THEREFORE, the parties hereto do hereby establish this trust, by executing the Declaration of Trust of the _____
Name of Employer
Integral Part Trust (hereinafter referred to as the "Trust"), and agree that the following constitute the Declaration of Trust (hereinafter referred to as the "Declaration"):

ARTICLE I

Definitions

1.1 *Definitions.* For the purposes of this Declaration, the following terms shall have the respective meanings set forth below unless otherwise expressly provided.

- (a) **"Account"** means the individual recordkeeping account maintained under the Plan to record the interest of a Participant in the Plan in accordance with Section 7.4.
- (b) **"Administrator"** means the Employer or the entity designated by the Employer to carry out administrative services as are necessary to implement the Plan.
- (c) **"Beneficiary"** means the Spouse and Dependents, or the person or persons designated by the Participant pursuant to the terms of the Plan, who will receive any benefits payable hereunder in the event of the Participant's death. A Beneficiary may also designate a beneficiary(ies) to receive any benefits payable hereunder in the event of the preceding Beneficiary's death, until the satisfaction of all liabilities under the Plan to provide benefits. In the case where there is no designated Beneficiary, any amount of contributions, plus accrued earnings thereon, remaining in the Account must, under the terms of the Plan, be returned to the Trust.
- (d) **"Code"** means the Internal Revenue Code of 1986, as amended from time to time.
- (e) **"Dependent"** means an individual who is a person described in Code Section 152(a).
- (f) **"Investment Fund"** means any separate investment option or vehicle selected by the Employer in which all or a portion of the Trust assets may be separately invested as herein provided. The Trustee shall not be required to select any Investment Fund.
- (g) **"Nonforfeitable Interest"** means the interest of the Participant or the Participant's Spouse, Dependent or Beneficiary (whichever is applicable) in the percentage of Participant's Employer's contribution which has vested pursuant to the vesting schedule specified in the Employer's Plan. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in the Participant's own contributions.
- (h) **"Spouse"** means the Participant's lawful spouse as determined under the laws of the state in which the Participant has his primary place of residence.
- (i) **"Trust"** means the trust established by this Declaration.
- (j) **"Trustee"** means the Employer or the person or persons appointed by the Employer to serve in that capacity.

ARTICLE II

Establishment of Trust

2.1 The Trust is hereby established as of the date set forth above for the exclusive benefit of Participants, their Spouses, Dependents and Beneficiaries.

ARTICLE III

Construction

3.1 This Trust and its validity, construction and effect shall be governed by the laws of the State of _____
State

3.2 Pronouns and other similar words used herein in the masculine gender shall be read as the feminine gender where appropriate, and the singular form of words shall be read as the plural where appropriate.

3.3 If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions, and such provisions shall be construed to effectuate the purpose of this Trust.

ARTICLE IV

Benefits

4.1 *Benefits.* This Trust may provide benefits to the Participant, the Participant's Spouse, Dependents and Beneficiary(ies) pursuant to the terms of the Plan.

4.2 *Form of Benefits.* This Trust may provide benefits by cash payment. This Trust may reimburse the Participant, his Spouse, Dependents or Beneficiary(ies) for insurance premiums or other payments expended for permissible benefits described under the Plan. This trust may reimburse the Employer, or the Administrator for insurance premiums.

ARTICLE V

General Duties

5.1 It shall be the duty of the Trustee to hold title to assets held in respect of the Plan in the Trustee's name as directed by the Employer or its designees in writing. The Trustee shall not be under any duty to compute the amount of contributions to be paid by the Employer or to take any steps to collect such amounts as may be due to be held in trust under the Plan. The Trustee shall not be responsible for the custody, investment, safekeeping or disposition of any assets comprising the Trust, to the extent such functions are performed by the Employer or the Administrator, or both.

5.2 It shall be the duty of the Employer, subject to the provisions of the Plan, to pay over to the Administrator or other person designated hereunder from time to time the Employer's contributions and Participants' contributions under the Plan and to inform the Trustee in writing as to the identity and value of the assets titled in the Trustee's name hereunder and to keep accurate books and records with respect to the Participants of the Plan.

ARTICLE VI

Investments

6.1 The Employer may appoint one or more investment managers to manage and control all or part of the assets of the Trust and the Employer shall notify the Trustee in writing of any such appointment.

6.2 The Trustee shall not have any discretion or authority with regard to the investment of the Trust and shall act solely as a directed Trustee of the assets of which it holds title. To the extent directed by the Employer (or Participants, their Spouses and Dependents, or Beneficiaries to the extent provided herein) the Trustee is authorized and empowered with the following powers, rights and duties, each of which the Trustee shall exercise in a nondiscretionary manner:

- (a) To cause stocks, bonds, securities, or other investments to be registered in its name as Trustee or in the name of a nominee, or to take and keep the same unregistered;
- (b) To employ such agents and legal counsel as it deems advisable or proper in connection with its duties and to pay such agents and legal counsel a reasonable fee. The Trustee shall not be liable for the acts of such agents and counsel or for the acts done in good faith and in reliance upon the advice of such agents and legal counsel, provided it has used reasonable care in selecting such agents and legal counsel;
- (c) To exercise where applicable and appropriate any rights of ownership in any contracts of insurance in which any part of the Trust may be invested and to pay the premiums thereon; and
- (d) At the direction of the Employer (or Participants, their Spouses, their Dependents, their Beneficiaries, or the investment manager, as the case may be) to sell, write options on, convey or transfer, invest and reinvest any part thereof in each and every kind of property, whether real, personal or mixed, tangible or intangible, whether income or non-income producing and wherever situated, including but not limited to, time deposits (including time deposits in the Trustee or its affiliates, or any successor thereto, if the deposits bear a reasonable rate of interest), shares of common and preferred stock, mortgages, bonds, leases, notes, debentures, equipment or collateral trust certificates, rights, warrants, convertible or exchangeable securities and other corporate, individual or government securities or obligations, annuity, retirement or other insurance contracts, mutual funds (including funds for which the Trustee or its affiliates serve as investment advisor, custodian or in a similar or related capacity), or in units of any other common, collective or commingled trust fund.

6.3 Notwithstanding anything to the contrary herein, the assets of the Plan shall be held by the Trustee as title holder only. Persons holding custody or possession of assets titled to the Trust shall include the Employer, the Administrator, the investment manager, and any agents and subagents, but not the Trustee. The Trustee shall not be responsible or liable for any loss or expense which may arise from or result from compliance with any direction from the Employer, the Administrator, the investment manager, or such agents to take title to any assets nor shall the Trustee be responsible or liable for any loss or expense which may result from the Trustee's refusal or failure to comply with any direction to hold title, except if the same shall involve or result from the Trustee's negligence or intentional misconduct. The Trustee may refuse to comply with any direction from the Employer, the Administrator, the investment manager, or such agents in the event that the Trustee, in its sole and absolute discretion, deems such direction illegal.

6.4 The Employer hereby indemnifies and holds the Trustee harmless from any and all actions, claims, demands, liabilities, losses, damages or reasonable expenses of whatsoever kind and nature in connection with or arising out of (i) any action taken or omitted in good faith by the Trustee in accordance with the directions of the Employer or its agents and subagents hereunder, or (ii) any disbursements of any part of the Trust made by the Trustee in accordance with the directions of the Employer, or (iii) any action taken by or omitted in good faith by the Trustee with respect to an investment managed by an investment manager in accordance with any direction of the investment manager or any inaction with respect to any

such investment in the absence of directions from the investment manager. Notwithstanding anything to the contrary herein, the Employer shall have no responsibility to the Trustee under the foregoing indemnification if the Trustee fails negligently, intentionally or recklessly to perform any of the duties undertaken by it under the provisions of this Trust.

6.5 Notwithstanding anything to the contrary herein, the Employer or, if so designated by the Employer, the Administrator and the investment manager or another agent of the Employer, will be responsible for valuing all assets so acquired for all purposes of the Trust and of holding, investing, trading and disposing of the same. The Employer will indemnify and hold the Trustee harmless against any and all claims, actions, demands, liabilities, losses, damages, or expenses of whatsoever kind and nature, which arise from or are related to any use of such valuation by the Trustee or holding, trading, or disposition of such assets.

6.6 The Trustee shall and hereby does indemnify and hold harmless the Employer from any and all actions, claims, demands, liabilities, losses, damages and reasonable expenses of whatsoever kind and nature in connection with or arising out of (a) the Trustee's failure to follow the directions of the Employer, the Administrator, the investment manager, or agents thereof, except as permitted by the last sentence of Section 6.3 above; (b) any disbursements made without the direction of the Employer, the Administrator, the investment manager or agents thereof; and (c) the Trustee's negligence, willful misconduct, or recklessness with respect to the Trustee's duties under this Declaration.

ARTICLE VII

Contributions

7.1 *Employer Contributions.* The Employer shall contribute to the Trust such amounts as specified in the Plan or by resolution.

7.2 *Participant Contributions.* If specified in the Plan, each Participant may make voluntary after-tax contributions. Under no circumstances shall Participant Contributions exceed an insubstantial amount. These contributions shall be collected by the Employer and remitted to the Trust for deposit at such time or times as required under the terms of the Plan.

7.3 *Accrued Leave.* Contributions up to an amount equal to the value of accrued sick leave, vacation leave, or other type of accrued leave, as permitted under the Plan. The Employer's Plan must provide a formula for determining the value of the Participant's contribution of accrued leave. The Employer's Plan must contain a forfeiture provision that will prevent Participants from receiving the accrued leave in cash in lieu of a contribution to the Trust.

7.4 *Accounts.* Employer contributions, Participant contributions, and contributions of accrued leave, all investment income and realized and unrealized gains and losses, and forfeitures allocable thereto will be deposited into an Account in the name of the Participant for the exclusive benefit of the Participant, his Spouse, Dependents and Beneficiaries. The assets in each Participant's Account may be invested in Investment Funds as directed by the Participant (or, after the Participant's death, by the Spouse, Dependents or Beneficiaries) from among the Investment Funds selected by the Employer.

7.5 *Receipt of Contributions.* The Employer or, if so designated by the Employer, the Administrator or investment manager or another agent of the Employer, shall receive all contributions paid or delivered to it hereunder and shall hold, invest, reinvest and administer such contributions pursuant to this Declaration, without distinction between principal and income. The Trustee shall not be responsible for the calculation or collection of any contribution under the Plan, but shall hold title to property received in respect of the Plan in the Trustee's name as directed by the Employer or its designee pursuant to this Declaration.

7.6 No amount in any Account maintained under this Trust shall be subject to transfer, assignment, or alienation, whether voluntary or involuntary, in favor of any creditor, transferee, or assignee of the Employer, the Trustee, any Participant, his Spouse, Dependent, or Beneficiaries.

7.7 Upon the satisfaction of all liabilities under the Plan to provide such benefits, any amount of Employer contributions, plus accrued earnings thereon, remaining in such separate Accounts must, under the terms of the Plan, be returned to the Employer.

ARTICLE VIII

Other Plans

If the Employer hereafter adopts one or more other plans providing life, sickness, accident, medical, disability, severance, or other benefits and designates the Trust hereby created as part of such other plan, the Employer or, if so designated by the Employer, the Administrator or an investment manager or another agent of the Employer shall, subject to the terms of this Declaration, accept and hold hereunder contributions to such other plans. In that event (a) the Employer or, if so designated by the Employer, the Administrator or an investment manager or another agent of the Employer, may commingle for investment purposes the contributions received under such other plan or plans with the contributions previously received by the Trust, but the books and records of the Employer or, if so designated by the Employer, the Administrator or an investment manager or another agent of the Employer, shall at all times show the portion of the Trust Fund allocable to each plan; (b) the term "Plan" as used herein shall be deemed to refer separately to each other plan; and (c) the term "Employer" as used herein shall be deemed to refer to the person or group of persons which have been designated by the terms of such other plans as having the authority to control and manage the operation and administration of such other plan.

ARTICLE IX

Disbursements and Expenses

9.1 The Employer or its designee shall make such payments from the Trust at such time to such persons and in such amounts as shall be authorized by the provisions of the Plan provided, however, that no payment shall be made, either during the existence of or upon the discontinuance of the Plan (subject to Section 7.7), which would cause any part of the Trust to be used for or diverted to purposes other than the exclusive benefit of the Participants, their Spouses and Dependents, and Beneficiaries pursuant to the provisions of the Plan.

9.2 All payments of benefits under the Plan shall be made exclusively from the assets of the Accounts of the Participants to whom or to whose Spouse, Dependents, or Beneficiaries such payments are to be made, and no person shall be entitled to look to any other source for such payments.

9.3 The Employer, Trustee and Administrator may be reimbursed for expenses reasonably incurred by them in the administration of the Trust. All such expenses, including, without limitation, reasonable fees of accountants and legal counsel to the extent not otherwise reimbursed, shall constitute a charge against and shall be paid from the Trust upon the direction of the Employer.

ARTICLE X

Accounting

10.1 The Trustee shall not be required to keep accounts of the investments, receipts, disbursements, and other transactions of the Trust, except as necessary to perform its title-holding function hereunder. All accounts, books, and records relating thereto shall be maintained by the Employer or its designee.

10.2 As promptly as possible following the close of each year, the Trustee shall file with the Employer a written account setting forth assets titled to the Trust as reported to the Trustee by the Employer or its designee.

ARTICLE XI

Miscellaneous Provisions

11.1 Neither the Trustee nor any affiliate thereof shall be required to give any bond or to qualify before, be appointed by, or account to any court of law in the exercise of its powers hereunder.

11.2 No person transferring title or receiving a transfer of title from the Trustee shall be obligated to look to the propriety of the acts of the Trustee in connection therewith.

11.3 The Employer may engage the Trustee as its agent in the performance of any duties required of the Employer under the Plan, but such agency shall not be deemed to increase the responsibility or liability of the Trustee under this Declaration.

11.4 The Employer shall have the right at all reasonable times during the term of this Declaration and for three (3) years after the termination of this Declaration to examine, audit, inspect, review, extract information from, and copy all books, records, accounts, and other documents of the Trustee relating to this Declaration and the Trustees' performance hereunder.

ARTICLE XII

Amendment and Termination

12.1 The Employer reserves the right to alter, amend, or (subject to Section 9.1) terminate this Declaration at any time for any reason without the consent of the Trustee or any other person, provided that no amendment affecting the rights, duties, or responsibilities of the Trustee shall be adopted without the execution of the Trustee to the amendment. Any such amendment shall become effective as of the date provided in the amendment, if requiring the Trustee's execution, or on delivery of the amendment to the Trustee, if the Trustee's execution is not required.

12.2 Upon termination of this Declaration and upon the satisfaction of all liabilities under the Plan to provide such benefits, any amount of Employer contributions, plus accrued earnings thereon, remaining in such separate Accounts must, under the terms of the Plan, be returned to the Employer.

ARTICLE XIII

Successor Trustees

13.1 The Employer reserves the right to discharge the Trustee for any or no reason, at any time by giving ninety (90) days' advance written notice.

13.2 The Trustee reserves the right to resign at any time by giving ninety (90) days' advance written notice to the Employer.

13.3 In the event of discharge or resignation of the Trustee, the Employer may appoint a successor Trustee who shall succeed to all rights, duties, and responsibilities of the former Trustee under this Declaration, and the terminated Trustee shall be deemed discharged of all duties under this Declaration and responsibilities for the Trust.

ARTICLE XIV

Limited Effect of Plan and Trust

Neither the establishment of the Plan and the Trust or any modification thereof, the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any person covered under the Plan or other person any legal or equitable right against the Trustee, the Administrator, the Employer or any officer or employee thereof, except as may otherwise be expressly provided in the Plan or in this Declaration.

ARTICLE XV

Protective Clause

Neither the Administrator, the Employer, nor the Trustee shall be responsible for the validity of any contract of insurance or other arrangement maintained in connection with the Plan, or for the failure on the part of the insurer or provider to make payments provided by such contract, or for the action of any person which may delay payment or render a contract void or unenforceable in whole or in part.

VANTAGECARE RETIREMENT HEALTH SAVINGS PLAN

IN WITNESS WHEREOF, the Employer and the Trustee have executed this Declaration by their respective duly authorized officers, as of the date first hereinabove mentioned.

EMPLOYER:

By: _____

Title: _____

TRUSTEES:

By: _____

Title: _____

By: _____

Title: _____

By: _____

Title: _____

Department of Financial & Strategic Services
Quarterly Review

For the Period and Year Ended September 30, 2006

*Town of Addison
September 2006*

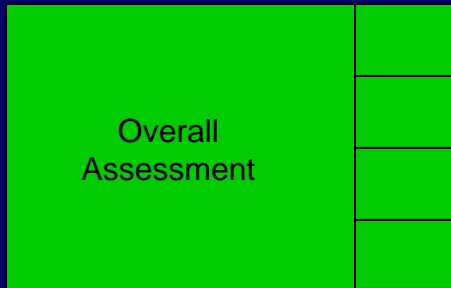
Quarter Ended 9/30/06

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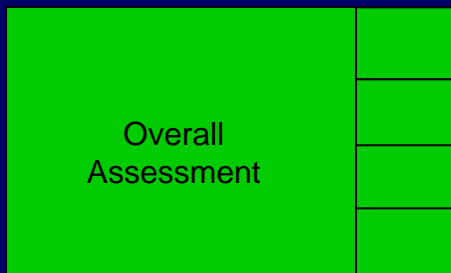


Revenues



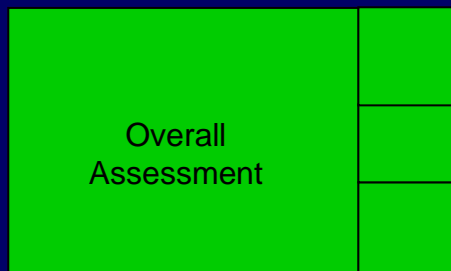
- Ad Valorem Taxes
- Sales Tax
- Franchise Fees
- Long Term Trend

Expenses



- YTD Expenditures vs. Relative Position in Year
- Relative Position Compared to Prior Year
- Compensation Issues
- Long Term Trend

Fund Balance



- Level Compared to FY 06 Budget Assumption
- Level Compared to 25% Requirement
- Long Term Trend

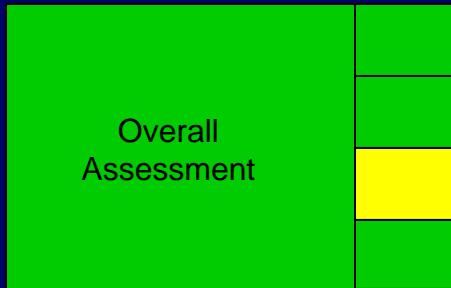
Legend

- Positive Outlook
- Area of Concern
- Negative Outlook



Hotel Fund

Revenues

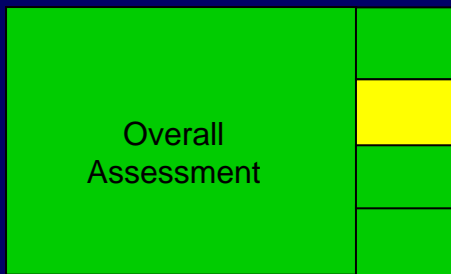


- Hotel Occupancy Taxes
- Special Event Fees
- Conference Centre Rental Fees
- Long Term Trend

Legend

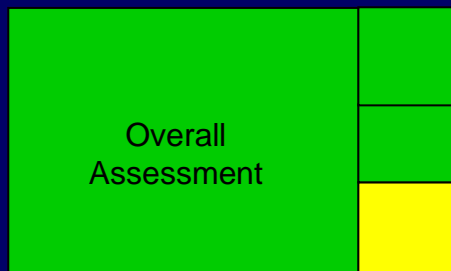
- Positive Outlook
- Area of Concern
- Negative Outlook

Expenses



- YTD Expenditures vs. Relative Position in Year
- Relative Position Compared to Prior Year
- Overtime/Outside Labor Costs
- Long Term Trend

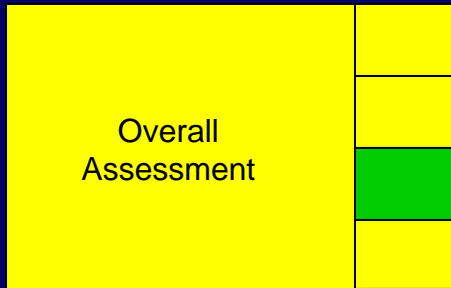
Fund Balance



- Level Compared to FY 06 Budget Assumption
- Level Compared to 25% Requirement
- Long Term Trend



Revenues

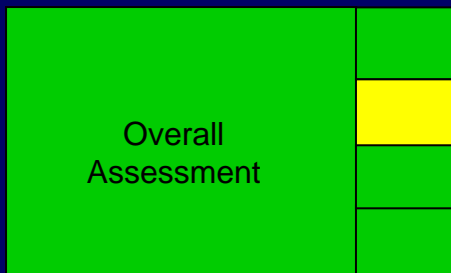


- Fuel Flowage Fees
- Rental Fees
- Grant and Other Revenue
- Long Term Trend

Legend

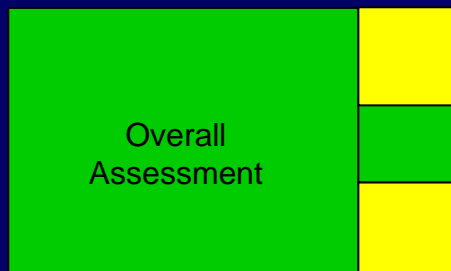
- Positive Outlook
- Area of Concern
- Negative Outlook

Expenses



- YTD Expenditures vs. Relative Position in Year
- Relative Position Compared to Prior Year
- Impact of Potential Capital Projects
- Long Term Trend

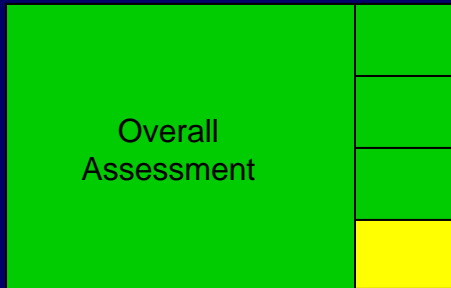
Working Capital Balance



- Level Compared to FY 06 Budget Assumption
- Level Compared to 25% Requirement
- Long Term Trend



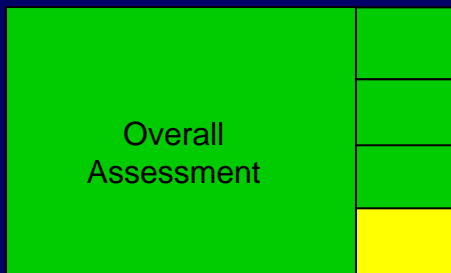
Revenues



Overall Assessment

- Water Sales
- Sewer Charges
- Penalties and Other Revenue
- Long Term Trend

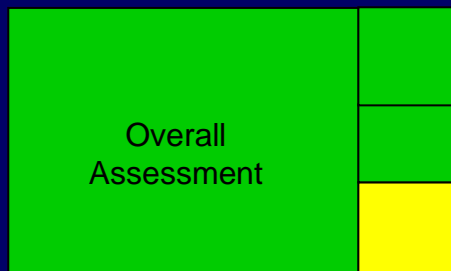
Expenses



Overall Assessment

- YTD Expenditures vs. Relative Position in Year
- Relative Position Compared to Prior Year
- Water Purchases and Treatment Costs
- Long Term Trend

Working Capital Balance



Overall Assessment

- Level Compared to FY 06 Budget Assumption
- Level Compared to 25% Requirement
- Long Term Trend

Legend

- Positive Outlook
- Area of Concern
- Negative Outlook

To: Ron Whitehead, City Manager

From: Randy Moravec, Director

**Re: Fourth Quarter and Year End
FY 2006 Financial Report**

Date: November 21, 2006

**Financial & Strategic
Services Department**

M E M O

GENERAL FUND

- Revenues for the year totaled \$25.6 million, which is \$525k more than the amended budget and 10.5% more than received last year.
- Property tax brought in over \$8.5 million, which is \$1.6 million more than last year. The increase is due shift of the tax rate from debt service to operations and maintenance.
- Sales tax is \$274k or 2.9% over last year and slightly over the amount budgeted for the year. Addison's experience continues to lag the increases enjoyed by Dallas County (up 9.4%) and State of Texas (up 13.8%).
- With the accrual of third quarter (calendar year) revenue collected after September 30, telecommunication fees came in 2.8% less than budget, but \$11k more than received last year. As has been noted in previous reports, this is one revenue source that will continue to decline due to the propensity of consumers to use cellular phones over landline phones.
- Most other revenue sources exceed budget for the year.
- For 2006, expenditures totaled \$24.7 million, which is 2.8% under budget. Excluding the transfer to the Parks capital project fund, expenditures are 4.5% more than spent last year.

HOTEL FUND

- Revenues for the year totaled \$6.4 million coming in 3.6% more than budget. Hotel occupancy tax was up a robust 14% over last year. All but two of the Town's hotels posted gains.
- Special event income came in over budget and is \$102k more than recorded last year. Conference Center rental was slightly less than budget but was marginally greater than the amount of the prior year.
- For the year, expenditures totaled \$6.5 million, which is 2.3% less than budget but 13.1% more than spent in 2005.

AIRPORT FUND

- Operating revenue for the year totals \$4.2 million, which is 6.1% less than budget and is \$68k less than recorded in FY2005. Although rental revenue is up slightly, the amount received is less than anticipated in the budget, which had assumed higher revenues generated by increased rental rates. As mentioned in last quarter's report, the shortfall is attributed various reasons, including concessions granted west-side T-Hangars inconvenienced by paving work and the default of Skytech and the termination of their lease.
- FY 2006 operating expenses of \$3.3 million contributed to net income of \$937k.
- Because final payment has yet to be made to the contractor for construction of the new fuel farm, working capital did not decline as much as budgeted. Although substantially completed, the Town and contractor are in the process of resolving final issues prior to authorizing final payment to the contractor.
- The long-term trend for airport working capital is one of caution due to the projection of revenues coming in less than budget.

UTILITY FUND

- Due to the increase in water and sewer rates adopted a year ago, and a 13% increase in the volume of water sold, operating revenues totaled \$9.8 million, 9.1% more than budget and 33% more than recorded last year.
- Operating expenses were 2.4% less than budget but \$509k more than spent last year.
- Net income of \$3.1 million is contributed to a \$1.2 million increase in fund working capital.
- The general outlook for this fund has improved to positive. However, this could quickly change if DWU requires its member cities to go to mandatory water rationing.

CASH AND INVESTMENT REPORT

- Cash for all funds as of September 30, 2006 totaled \$ 36.3 million, a net decline of \$425k from the beginning of the quarter. Most of the decline is attributed to the Town making scheduled debt service payments. The cash balance at the end of the year is \$565k less than at the beginning of the year due to construction of planned capital projects.
- The Town's average investment yield to maturity as of 9/30/06 was 5.0%, compared to 4.7% of the previous quarter and 3.1% same time last year. The average weighted maturity declined 20 days to 310 days.
- The Town's return is still below the Texpool return but the variance is now within 27 basis points. As the Town continues to lock-in higher rates with longer maturities, the Town's portfolio will begin to generate rates in excess of this benchmark.

TOWN OF ADDISON

EXECUTIVE SUMMARY OF MAJOR OPERATING FUNDS FOR THE QUARTER ENDED SEPTEMBER 30, 2006 UNAUDITED ACTUAL AMOUNTS COMPARED TO THE 2006 ADOPTED BUDGET AND PREVIOUS YEAR ACTUAL FOR SAME PERIOD

All Amounts Expressed in Thousands of Dollars

	General Fund			Hotel Fund			Airport Fund			Utility Fund			Total Major Operating Funds*		
	Budget	Actual	PY Actual	Budget	Actual	PY Actual	Budget	Actual	PY Actual	Budget	Actual	PY Actual	Budget	Actual	PY Actual
RESOURCES															
Ad Valorem Tax	\$ 8,465	\$ 8,547	\$ 6,938	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,465	\$ 8,547	\$ 6,938
Non-Property Tax	10,774	10,672	10,560	4,450	4,611	4,041	-	-	-	-	-	-	15,224	15,283	14,600
Franchise Fees	2,752	2,777	2,564	-	-	-	-	-	-	-	-	-	2,752	2,777	2,564
Service/Permitting/License Fees	1,633	1,926	1,658	1,049	1,066	964	1,112	1,056	1,109	9,013	9,834	7,389	12,808	13,881	11,119
Rental, Interest and Other Income	1,483	1,712	1,463	669	714	629	3,419	3,313	3,276	55	154	84	5,626	5,891	5,452
Transfers and Other Sources	-	-	-	-	-	-	-	-	4,400	-	-	-	-	-	4,400
Total Resources	25,107	25,632	23,182	6,168	6,390	5,634	4,531	4,368	8,784	9,069	9,988	7,473	44,874	46,379	45,073
APPLICATION OF RESOURCES															
Personal Services	17,232	16,625	15,767	1,427	1,462	1,318	281	255	199	1,227	1,080	1,013	20,167	19,422	18,296
Supplies and Materials	1,042	1,019	933	251	140	192	22	13	5	99	85	75	1,414	1,258	1,206
Maintenance	1,779	1,670	1,697	371	378	324	1,849	1,486	1,280	304	238	213	4,303	3,772	3,513
Contractual Services	3,933	3,952	3,692	3,746	3,650	3,160	1,716	1,508	1,535	4,762	4,836	4,425	14,158	13,945	12,812
Capital Equipment Amortization	1,077	1,071	1,152	17	17	21	-	-	-	17	17	22	1,112	1,106	1,195
Capital Equipment/Projects	65	85	124	150	161	39	3,168	1,663	3,057	589	227	586	3,972	2,135	3,805
Transfers and Other Uses**	263	263	-	706	706	705	384	384	131	2,350	2,350	2,487	3,703	3,703	3,322
Total Application of Resources	25,392	24,685	23,365	6,668	6,515	5,759	7,420	5,309	6,205	9,349	8,833	8,820	48,829	45,342	44,149
Net Change in Fund Balances	\$ (285)	\$ 947	(183)	\$ (500)	\$ (124)	\$ (125)	\$ (2,889)	\$ (941)	\$ 2,579	\$ (280)	\$ 1,155	(1,347)	\$ (3,955)	\$ 1,037	924

Notes:

* Totals may not exactly match due to rounding.

** Transfers and other uses includes interfund transfers and and retirement of debt in the Airport and Utility funds.

TOWN OF ADDISON

GENERAL FUND

FY 2006 QUARTERLY STATEMENT OF REVENUES COMPARED TO BUDGET

With Comparative Information from Prior Fiscal Year

Category	2005-06 FY				2004-05	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Advalorem taxes:						
Current taxes	\$ 8,419,500	\$ 17,407	\$ 8,484,634	100.8%	\$ 6,841,238	98.9%
Delinquent taxes	25,710	6,038	15,128	58.8%	45,642	835.9%
Penalty & interest	19,290	6,798	46,763	242.4%	51,014	467.6%
Non-property taxes:						
Sales tax	9,924,100	2,477,183	9,941,386	100.2%	9,667,400	99.1%
Alcoholic beverage tax	849,750	251,207	730,214	85.9%	892,196	113.5%
Franchise / right-of-way use fees:						
Electric franchise	1,619,430	1,555,280	1,563,239	96.5%	1,572,257	97.9%
Gas franchise	194,980	-	241,378	123.8%	189,298	88.8%
Telecommunication access fees*	742,940	359,195	722,195	97.2%	710,651	89.6%
Cable franchise	107,430	32,374	119,988	111.7%	85,588	82.1%
Street rental fees	7,000	8,271	25,711	367.3%	6,003	85.8%
Sanitation	80,000	56,033	104,501	130.6%	-	0.0%
Licenses and permits:						
Business licenses and permits	149,030	67,118	160,014	107.4%	142,116	99.0%
Building and construction permits	303,130	94,440	512,174	169.0%	337,123	132.5%
Intergovernmental revenue	-	-	-	0.0%	245,789	0.0%
Service fees:						
General government	960	211	432	45.0%	623	87.7%
Public safety	759,270	228,876	710,935	93.6%	753,507	104.8%
Urban development	4,450	1,219	8,840	198.7%	4,324	210.9%
Streets and sanitation	184,680	155,141	295,185	159.8%	182,823	102.7%
Recreation	65,150	20,477	71,628	109.9%	64,280	93.4%
Interfund	166,400	41,600	166,400	100.0%	172,740	100.3%
Court fines	944,970	104,326	1,073,450	113.6%	812,762	110.2%
Interest earnings	267,000	108,383	350,217	131.2%	180,883	159.2%
Rental income	119,000	46,789	122,622	103.0%	127,956	98.4%
Other	152,500	13,771	165,350	108.4%	95,339	423.7%
Total Revenues	\$ 25,106,670	\$ 5,652,137	\$ 25,632,384	102.1%	\$ 23,181,552	100.9%

NOTES:

1) N/A - Not Applicable

2) * Telecommunication fee revenue may be understated since these fees are due 45 days following the end of the quarter.

TOWN OF ADDISON

GENERAL FUND

FY 2006 QUARTERLY STATEMENT OF EXPENDITURES COMPARED TO BUDGET

With Comparative Information from Prior Fiscal Year

Category	2005-06 FY				2004-05	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
General Government:						
City manager	\$ 1,285,600	\$ 336,143	\$ 1,284,513	99.9%	\$ 1,215,841	97.1%
Financial & strategic services	1,014,140	287,309	1,007,182	99.3%	957,652	94.5%
General services	831,450	305,418	799,341	96.1%	661,278	99.3%
Municipal court	429,190	124,926	406,268	94.7%	393,245	95.3%
Human resources	371,570	100,059	360,172	96.9%	361,496	92.2%
Information technology	1,088,010	323,840	1,037,760	95.4%	914,143	87.4%
Combined services	902,120	241,210	819,620	90.9%	906,669	95.1%
Council projects	429,590	63,398	425,124	99.0%	389,008	98.9%
Public safety:						
Police	7,395,220	1,982,418	7,181,391	97.1%	6,892,224	94.4%
Fire	5,574,320	1,564,410	5,492,258	98.5%	5,349,848	98.1%
Development services	637,340	179,469	562,480	88.3%	553,651	97.6%
Streets	1,456,140	545,583	1,420,241	97.5%	1,276,489	90.8%
Parks and Recreation:						
Parks	2,428,830	-	2,372,148	97.7%	2,107,075	94.5%
Recreation	1,284,980	-	1,253,396	97.5%	1,386,360	97.8%
OTHER FINANCING USES						
Transfer to parks capital project fund	263,000	-	263,000	100.0%	-	0.0%
Total Expenditures	\$ 25,391,500	\$ 6,054,184	\$ 24,684,893	97.2%	\$ 23,364,979	95.3%

NOTES:

1) N/A - Not Applicable

TOWN OF ADDISON

HOTEL FUND

FY 2006 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET

With Comparative Information from Prior Fiscal Year

Category	2005-06 FY				2004-05	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues:						
Hotel/Motel occupancy taxes	\$ 4,450,000	1,200,483	\$ 4,610,974	103.6%	\$ 4,040,799	106.3%
Proceeds from special events	1,049,300	395,896	1,065,925	101.6%	963,970	91.5%
Conference centre rental	490,000	104,943	446,182	91.1%	441,766	98.2%
Theatre centre rental	84,000	21,063	72,764	86.6%	80,289	107.1%
Interest and miscellaneous	94,700	57,545	194,600	205.5%	107,213	186.8%
Total Revenues	6,168,000	1,779,930	6,390,445	103.6%	\$ 5,634,037	103.7%
Expenditures and other uses:						
Visitor services	799,810	205,026	718,927	89.9%	687,679	89.3%
Marketing	996,710	265,444	994,054	99.7%	941,906	105.7%
Special events	2,501,230	1,176,475	2,460,916	98.4%	2,055,450	97.2%
Conference centre	1,148,260	272,882	1,123,038	97.8%	850,041	100.0%
Performing arts	516,010	39,294	500,884	97.1%	480,394	95.0%
Capital projects	-	(87,653)	10,829	N/A	38,638	0.0%
Other financing uses:						
Transfer to debt service fund	705,890	176,472	705,890	100.0%	704,610	100.0%
Total Expenditures and Other	\$ 6,667,910	\$ 2,047,939	\$ 6,514,538	97.7%	\$ 5,758,718	96.9%

NOTES:

- 1) N/A - Not Applicable
- 2) Amounts spent by special project:

Public Relations	\$ 663,330	\$ 192,103	\$ 646,853	97.5%	\$ 652,744	107.0%
Oktoberfest	558,170	508,133	516,898	92.6%	558,738	100.3%
Kaboom Town	330,220	256,828	317,881	96.3%	175,422	104.6%
Calendar	44,480	-	39,656	89.2%	40,693	91.5%
Hotel Support Program	260,000	80,003	223,570	86.0%	215,151	107.6%
Taste Addison	613,470	53,247	584,449	95.3%	562,706	101.6%
Jazz Festival	251,400	47,895	200,188	79.6%	236,597	89.3%
Shakespeare Festival	31,000	15,500	32,028	103.3%	15,608	50.3%
Summer Jazz Festival	24,100	26,086	38,875	161.3%	-	0.0%
Book Fair	4,580	-	2,268	49.5%	-	0.0%
Texas to Tuscany	-	-	3,178	N/A	-	0.0%
Lone Star Drive In	-	222	10,110	N/A	-	0.0%
Weekend to Wipe Out Cancer	13,000	15,252	15,252	117.3%	13,000	100.0%
TOTAL	\$ 2,793,750	\$ 1,195,269	\$ 2,631,206	94.2%	\$ 2,470,659	101.1%

TOWN OF ADDISON
STREET CAPITAL PROJECT FUND
 FY 2006 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2005-06 FY				2004-05	
	Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues:						
DART Grants	\$ 752,000	\$ -	\$ -	0.0%	\$ -	0.0%
Interest income and other	85,000	51,968	167,732	197.3%	99,815	117.4%
Total Revenues	837,000	51,968	167,732	20.0%	99,815	12.1%
Expenditures:						
Personal services	50,000	7,356	21,145	42.3%	22,571	45.1%
Design and engineering	138,000	300	13,034	9.4%	369,071	189.7%
Construction and equipment:	1,298,000	-	-	0.0%	3,423,917	74.9%
Total Expenditures	1,486,000	7,656	34,179	2.3%	3,815,559	79.2%

NOTES:

1) N/A - Not Applicable

TOWN OF ADDISON
PARKS CAPITAL PROJECT FUND
 FY 2006 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2005-06 FY				2004-05	
	Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues:						
Interest income and other	\$ 12,000	\$ 8,670	\$ 25,471	212.3%	\$ 12,573	251.5%
Developer contributions	184,000	-	-	0.0%	-	0.0%
Transfer from street capital project fund	263,000	-	263,000	100.0%	-	0.0%
Total Revenues	459,000	8,670	288,471	62.8%	12,573	251.5%
Expenditures:						
Personal services	5,000	53	1,252	25.0%	8,831	N/A
Design and engineering	53,000	-	25,408	47.9%	37,333	N/A
Construction and equipment:	779,000	-	35,230	4.5%	256,168	73.2%
Total Expenditures	837,000	53	61,890	7.4%	302,332	86.4%

NOTES:

1) N/A - Not Applicable

TOWN OF ADDISON
2000 CAPITAL PROJECT FUND
FY 2006 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2005-06 FY				2004-05	
	Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues and other sources:						
Interest earnings and other	\$ 2,000	\$ 10	\$ 765	38.3%	\$ 4,970	248.5%
Total Revenues	2,000	10	765	38.3%	4,970	248.5%
Expenditures:						
Personal services	12,000	(1,126)	353	2.9%	7,538	75.4%
Design and engineering	122,000	(5,627)	68,185	55.9%	111,517	48.3%
Construction and equipment	-	-	-	0.0%	-	0.0%
Total Expenditures	134,000	(6,753)	68,538	51.1%	119,055	49.4%

NOTES:

- 1) N/A - Not Applicable

TOWN OF ADDISON
2002 CAPITAL PROJECT FUND
FY 2006 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2005-06 FY				2004-05	
	Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues:						
Intergovernmental income	\$ -	\$ -	\$ -		\$ 555,178	N/A
Interest earnings and other	40,000	28,384	89,524	223.8%	48,471	64.6%
Total Revenues	40,000	28,384	89,524	223.8%	603,649	95.3%
Expenditures and other uses:						
Personal services	-	1,967	27,309	N/A	88,318	176.6%
Design and engineering	250,000	59,346	236,374	94.5%	414,414	138.1%
Construction and equipment	1,205,280	-	-	0.0%	925,995	111.4%
Total Expenditures	1,455,280	61,313	263,683	18.1%	1,428,727	121.0%

NOTES:

- 1) N/A - Not Applicable

TOWN OF ADDISON
2004 CAPITAL PROJECT FUND
 FY 2006 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2005-06 FY				2004-05	
	Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues:						
Intergovernmental	\$ -	\$ -	\$ 1,373,045	N/A	\$ 1,422,812	N/A
Interest earnings and other	150,000	9,593	124,678	83.1%	216,118	144.1%
Total Revenues	150,000	9,593	1,497,723	998.5%	\$ 1,638,930	104.2%
Expenditures and other uses:						
Personal services	50,000	-	325	0.6%	12,678	25.4%
Design and engineering	450,000	-	89,311	19.8%	173,999	38.7%
Construction and equipment	8,100,000	-	3,597,286	44.4%	9,400,918	86.3%
Total Expenditures	\$ 8,600,000	\$ -	\$ 3,686,922	42.9%	\$ 9,587,595	84.2%

NOTES:

- 1) N/A - Not Applicable

TOWN OF ADDISON
2006 CAPITAL PROJECT FUND
 FY 2006 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2005-06 FY				2004-05	
	Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues:						
Bond proceeds	\$ 1,500,000	\$ -	\$ 1,500,000	100.0%	\$ -	0.0%
Interest earnings and other	5,000	12,184	38,878	777.6%	-	0.0%
Total Revenues	1,505,000	12,184	1,538,878	102.3%	\$ -	0.0%
Expenditures and other uses:						
Bond sale costs	12,000	-	-	0.0%	-	0.0%
Design and engineering	-	1,390	8,432	0.0%	-	0.0%
Construction and equipment	1,493,000	924,683	1,152,735	77.2%	-	0.0%
Total Expenditures	\$ 1,505,000	\$ 926,073	\$ 1,161,167	77.2%	\$ -	0.0%

NOTES:

- 1) N/A - Not Applicable

AIRPORT FUND
FY 2006 QUARTERLY STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES TO WORKING CAPITAL COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2005-06 FY				2004-05	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Operating revenues:						
Operating grants	\$ 30,000	\$ 30,000	\$ 30,000	100.0%	\$ 61,948	206.5%
Fuel flowage fees	1,065,000	308,627	1,025,291	96.3%	1,064,775	106.5%
Rental	3,330,000	1,000,388	3,113,841	93.5%	3,097,322	100.9%
User fees	47,000	8,237	30,416	64.7%	43,782	125.1%
Total operating revenues	<u>4,472,000</u>	<u>1,347,252</u>	<u>4,199,548</u>	93.9%	<u>4,267,827</u>	103.2%
Operating expenses:						
Town - Personal services	281,130	66,680	255,465	90.9%	198,624	69.9%
Town - Supplies	22,300	3,690	13,014	58.4%	5,320	35.5%
Town - Maintenance	26,250	5,321	22,051	84.0%	26,528	114.1%
Town - Contractual services	636,100	213,344	603,341	94.9%	475,443	116.7%
Grant - Maintenance	60,000	-	60,000	100.0%	68,537	114.2%
Operator operation & maintenance	1,762,660	543,625	1,403,989	79.7%	1,184,505	94.9%
Operator service contract	1,080,000	223,353	904,621	83.8%	1,059,209	101.7%
Total operating expenses	<u>3,868,440</u>	<u>1,056,013</u>	<u>3,262,481</u>	84.3%	<u>3,018,167</u>	98.0%
Net operating income	<u>603,560</u>	<u>291,239</u>	<u>937,067</u>	155.3%	<u>1,249,660</u>	118.4%
Non-Operating revenues (expenses):						
Interest earnings and other	59,000	47,288	168,738	286.0%	116,468	332.8%
Interest on debt, fiscal fees & other	(169,360)	(42,340)	(169,360)	100.0%	(130,686)	61.7%
Total non-operating revenues (expenses)	<u>(110,360)</u>	<u>4,948</u>	<u>(622)</u>	0.6%	<u>(14,218)</u>	8.0%
Net income (loss) (excluding depreciation)	<u>\$ 493,200</u>	<u>\$ 296,187</u>	<u>\$ 936,445</u>	189.9%	<u>\$ 1,235,442</u>	140.6%
CHANGES IN WORKING CAPITAL						
Net income (excluding depreciation)	<u>\$ 493,200</u>	<u>\$ 296,187</u>	<u>\$ 936,445</u>	189.9%	<u>1,235,442</u>	140.6%
Sources (uses) of working capital:						
Bond proceeds	-	-	-		4,400,000	100.0%
Retirement of long-term debt	(215,000)	(53,750)	(215,000)	100.0%	-	0.0%
Net additions to fixed assets with grants	(70,000)	-	(21,285)	30.4%	-	0.0%
Other net additions to fixed assets	(3,097,500)	(191,785)	(1,641,264)	53.0%	(3,056,535)	140.9%
Net sources (uses) of working capital	<u>(3,382,500)</u>	<u>(245,535)</u>	<u>(1,877,549)</u>	55.5%	<u>1,343,465</u>	61.3%
Net increase (decrease) in working capital	(2,889,300)	50,652	(941,104)	32.6%	2,578,907	84.0%
Beginning fund balance	<u>3,180,440</u>	<u>2,188,688</u>	<u>3,180,444</u>	100.0%	<u>1,573,835</u>	100.0%
Ending fund balance	<u>\$ 291,140</u>	<u>\$ 2,239,340</u>	<u>\$ 2,239,340</u>	769.2%	<u>\$ 4,152,742</u>	89.4%

NOTES:

- 1) N/A - Not Applicable
- 2) Operating income and portions of operating expenses are underreported by one month due to transactions being accounted for by operator one month and not reported to Town until following month.

TOWN OF ADDISON

UTILITY FUND

FY 2006 QUARTERLY STATEMENT OF REVENUES, EXPENDITURES AND CHANGES TO WORKING CAPITAL COMPARED TO BUDGET

With Comparative Information from Prior Fiscal Year

Category	2005-06 FY				2004-05	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Operating revenues:						
Water sales	\$ 4,210,800	\$ 2,006,114	\$ 5,163,547	122.6%	\$ 3,477,227	101.7%
Sewer charges	4,741,400	1,392,516	4,612,422	97.3%	3,858,320	105.6%
Tap fees	1,000	-	6,300	630.0%	3,185	318.5%
Penalties	60,000	9,749	51,752	86.3%	50,222	83.7%
Total operating revenues	9,013,200	3,408,379	9,834,021	109.1%	7,388,954	103.6%
Operating expenses:						
Water purchases	2,469,600	932,766	2,363,832	95.7%	2,234,209	98.2%
Wastewater treatment	1,814,800	670,866	1,884,622	103.8%	1,783,285	104.6%
Utility operations	2,125,260	680,424	2,007,442	94.5%	1,729,944	83.6%
Total operating expenses	6,409,660	2,284,056	6,255,896	97.6%	5,747,438	95.0%
Net operating income	2,603,540	1,124,323	3,578,125	137.4%	1,641,516	151.0%
Non-Operating revenues (expenses):						
Interest income and other	55,300	53,913	153,721	278.0%	83,938	74.0%
Interest on bonded debt and fiscal charges	(635,130)	(158,782)	(635,130)	100.0%	(826,780)	100.0%
Total non-operating revenues (expenses)	(579,830)	(104,869)	(481,409)	83.0%	(742,842)	104.1%
Net income (excluding depreciation)	\$ 2,023,710	\$ 1,019,454	\$ 3,096,716	153.0%	\$ 898,674	240.3%
CHANGES IN WORKING CAPITAL						
Net income (loss)	2,023,710	1,019,454	3,096,716	153.0%	898,674	240.3%
Sources (uses) of working capital:						
Retirement of long-term debt	(1,715,000)	(428,450)	(1,715,000)	100.0%	(1,660,000)	100.0%
Net additions to fixed assets	(589,200)	(184,658)	(226,835)	38.5%	(585,887)	165.3%
Net sources (uses) of working capital	(2,304,200)	(613,108)	(1,941,835)	84.3%	(2,245,887)	111.5%
Net increase (decrease) in working capital	(280,490)	406,346	1,154,881	-411.7%	(1,347,213)	82.1%
Beginning fund balance	1,869,470	2,618,001	1,869,466	100.0%	3,151,828	100.0%
Ending fund balance	\$ 1,588,980	\$ 3,024,347	\$ 3,024,347	190.3%	\$ 1,804,615	119.4%

NOTES:

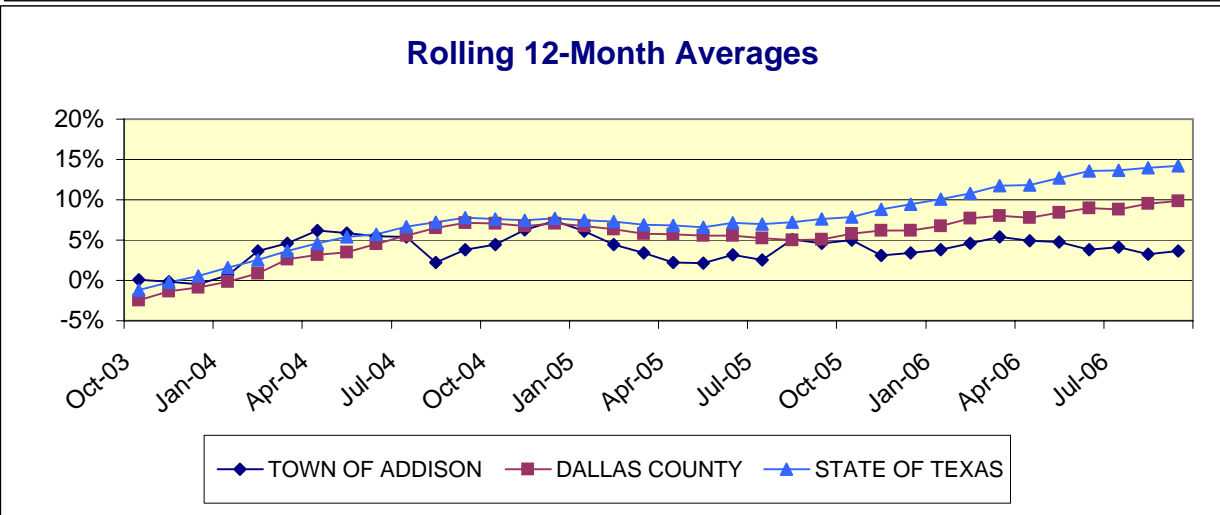
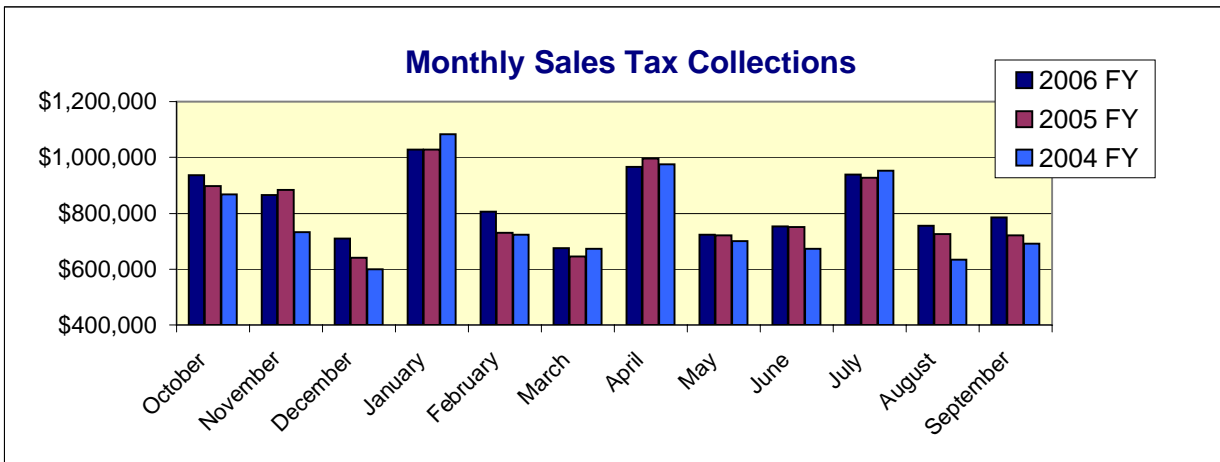
- 1) N/A - Not Applicable
- 2) Purchases of water and wastewater treatment services are underreported by one to two months due to prior year accruals and delay in receiving billings from Dallas Water Utilities.

TOWN OF ADDISON

Schedule of Sales Tax Collections and Related Analyses

For the fiscal year ending September 30, 2006

	TOWN OF ADDISON				DALLAS COUNTY		STATE OF TEXAS	
	2005-06 Collections		% Change from Prior Year		% Change from Prior Year		% Change from Prior Year	
	Monthly	Cumulative	Monthly	Cumulative	Monthly	Cumulative	Monthly	Cumulative
October	\$ 937,156	\$ 937,156	8.0%	4.4%	11.1%	11.1%	8.6%	8.6%
November	\$ 864,460	\$ 1,801,616	-2.1%	1.2%	8.4%	10.0%	15.8%	11.7%
December	\$ 709,412	\$ 2,511,028	10.6%	3.7%	8.4%	9.5%	16.6%	13.2%
January	\$ 1,027,739	\$ 3,538,767	0.1%	2.6%	8.3%	9.1%	13.4%	13.3%
February	\$ 805,255	\$ 4,344,022	10.4%	4.0%	15.0%	10.1%	15.3%	13.6%
March	\$ 675,147	\$ 5,019,169	4.7%	4.1%	10.3%	10.1%	17.8%	14.2%
April	\$ 966,862	\$ 5,986,031	-2.9%	2.9%	3.2%	8.8%	10.2%	13.5%
May	\$ 724,090	\$ 6,710,121	0.5%	2.6%	10.2%	9.0%	15.8%	13.8%
June	\$ 754,082	\$ 7,464,203	0.3%	2.4%	14.8%	9.6%	19.3%	14.4%
July	\$ 937,701	\$ 8,401,904	1.2%	2.2%	3.4%	8.8%	10.0%	13.8%
August	\$ 754,823	\$ 9,156,727	4.0%	2.4%	12.7%	9.1%	13.5%	13.8%
September	\$ 784,659	\$ 9,941,386	8.8%	2.9%	11.9%	9.4%	14.4%	13.8%
Budget 05-06:		\$ 9,924,100						



TOWN OF ADDISON HOTEL OCCUPANCY TAX COLLECTION
Hotels By Service Type for the Quarter and Year-To-Date Ended September 30, 2006
With Comparisons to Prior Year

	Rooms		4th Quarter FY 06		06 to 05	FY 06		06 to 05
	Number	Percentage	Amount	Percentage	% Diff.	Amount	Percentage	% Diff.
Full Service								
Marriott Quorum	535	14%	\$ 259,660	22%	7%	\$ 910,726	20%	5%
Intercontinental	532	13%	223,890	19%	5%	942,386	20%	18%
Crown Plaza	429	11%	107,668	9%	22%	455,655	10%	29%
	<u>1,496</u>	<u>38%</u>	<u>591,218</u>	<u>50%</u>	<u>8%</u>	<u>2,308,767</u>	<u>50%</u>	<u>14%</u>
Extended Stay								
Budget Suites	344	9%	18,283	2%	39%	60,848	1%	37%
Best Western	70	2%	13,687	1%	8%	50,808	1%	32%
Marriott Residence	150	4%	47,327	4%	20%	184,946	4%	23%
Summerfield Suites	132	3%	38,247	3%	-3%	138,062	3%	-8%
Homewood Suites	128	3%	43,598	4%	13%	151,601	3%	1%
Springhill Suites	159	4%	53,297	4%	14%	213,477	5%	16%
	<u>983</u>	<u>25%</u>	<u>214,438</u>	<u>18%</u>	<u>13%</u>	<u>799,742</u>	<u>17%</u>	<u>12%</u>
Business Moderate								
Marriott Courtyard Quorum	176	4%	67,526	6%	9%	296,003	6%	19%
LaQuinta Inn	152	4%	40,205	3%	15%	162,747	4%	22%
Marriott Courtyard Proton	145	4%	46,204	4%	9%	163,601	4%	19%
Quality Inn	102	3%	29,023	2%	31%	99,375	2%	13%
Hilton Garden Inn	96	2%	42,606	4%	15%	166,972	4%	19%
Holiday Inn - Arapaho	101	3%	30,059	3%	17%	122,025	3%	37%
Comfort Inn	86	2%	13,203	1%	-4%	55,670	1%	14%
	<u>858</u>	<u>22%</u>	<u>268,826</u>	<u>23%</u>	<u>16%</u>	<u>1,066,394</u>	<u>23%</u>	<u>19%</u>
Economy								
Motel 6	126	3%	19,793	2%	5%	74,392	2%	5%
Hampton Inn	159	4%	49,564	4%	36%	186,592	4%	34%
Quality Inn *	115	3%	11,635	1%	-49%	47,132	1%	-44%
Addison Comfort Suites	78	2%	17,879	2%	12%	78,449	2%	19%
Super 8	78	2%	9,901	1%	9%	34,537	1%	15%
Best Value Inn	60	2%	4,097	0%	28%	14,969	0%	27%
	<u>616</u>	<u>16%</u>	<u>112,869</u>	<u>10%</u>	<u>6%</u>	<u>436,071</u>	<u>9%</u>	<u>9%</u>
TOTAL	<u>3,953</u>	<u>100%</u>	<u>\$ 1,187,351</u>	<u>100%</u>	<u>11%</u>	<u>\$ 4,610,974</u>	<u>100%</u>	<u>14%</u>

NOTES:

* Property is experiencing change of ownership and is two months delayed in providing tax receipts.

TOWN OF ADDISON
INTERIM STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS
For the Quarter Ending September 30, 2006

Fund	Balance 6/30/2006	Quarter Receipts	Quarter Disbursements	Balance 9/30/2006
General Fund	\$ 8,704,981	\$ 6,443,793	\$ 7,041,215	\$ 8,107,559
Special Revenue Funds:				
Hotel	4,491,659	2,376,142	2,286,672	\$ 4,581,129
Public Safety	106,081	4,886	4,974	\$ 105,993
Municipal Court	329,915	197,295	234,184	\$ 293,026
Arbor	74,467	10,628	218	\$ 84,877
Debt Service Funds:				
G. O. Bonds	2,407,462	92,362	1,101,824	\$ 1,398,000
Hotel Revenue Bonds	742,842	186,108	117,695	\$ 811,255
Capital Projects Funds:				
Streets	3,953,720	51,838	14,244	\$ 3,991,314
Parks	657,746	9,911	414	\$ 667,243
2000 G. O. Bonds	(3,805)	7,355	3,550	\$ -
2002 G.O. Bonds	2,184,588	32,011	62,478	\$ 2,154,121
2004 G.O. Bonds	741,593	-	3,255	\$ 738,338
2006 G.O. Bonds	1,027,555	14,114	662,234	\$ 379,435
Enterprise Funds:				
Utility	3,896,325	3,032,156	2,143,956	\$ 4,784,525
Airport	3,422,949	1,493,706	1,734,175	\$ 3,182,480
Internal Service Funds:				
Capital Replacement	2,692,829	213,341	1,866	\$ 2,904,304
Information Services	2,029,172	133,046	2,464	\$ 2,159,754
TOTAL - ALL FUNDS	\$ 37,460,079	\$ 14,298,692	\$ 15,415,418	\$ 36,343,353

Note: Cash inflows and outflows represent revenues, expenditures, and investment transactions.

INVESTMENTS BY MATURITY AND TYPE				
For the Quarter Ending September 30, 2006				
	Type	% of Portfolio	Yield to Maturity	Amount
	Pools	31.53%	5.00%	\$ 11,812,306
	Agencies	68.47%	4.67%	25,651,658
	Treasuries	0.00%	0.00%	-
Total Investments		100.00%		37,463,964
	Accrued Interest Earnings			214,821
	Demand Deposits			(1,335,432)
TOTAL				\$ 36,343,353

COLLATERAL SUMMARY

The first and most important objective for public funds investments is safety of assets. Therefore, all non-government security investments and bank accounts in excess of FDIC coverage must be secured by collateral. The bank balances and investments are monitored on a regular basis for appropriate coverage by marking the collateral to market. Collateral levels are adjusted to secure the varying levels of receipts throughout the fiscal year.

Town of Addison Collateral Analysis Demand Deposit Cash September 30, 2006

Pledging Institution	Safekeeping Location	Account Title	Pledged Security Description	Security Par Value	Market Value	FDIC Insurance	Ending Bank Balance	Difference Over(Under)
Frost Bank	Federal Reserve	Operating	GNMA due:					
			20-Feb-28	\$ 772,916	\$ 795,973			
			15-Oct-35	<u>\$ 1,114,388</u>	<u>\$ 1,086,414</u>			
				<u>\$ 1,887,304</u>	<u>\$ 1,882,387</u>	<u>\$ 100,000</u>	<u>284,802</u>	<u>\$ 1,697,585</u>



Investment Portfolio Summary
For the Quarter Ended
September 30, 2006

Prepared By



**Third Quarter of Calendar Year 2006
Review**

The theme for the third quarter was consistent and largely expected. Most economic numbers reflected slower growth. Energy prices initially soared to new record highs and the consumer felt the pinch. Consumer spending stumbled. The housing sector was hit particularly hard and garnered much media attention as new and existing home sales plummeted from record highs. Fewer jobs were created as businesses grew cautious about future demand. Inflation, which began the summer as a problem, followed crude oil prices lower but the Fed wasn't quite ready to claim victory. Fed officials insisted, even as the market priced out any further rate hikes, that they were still concerned about inflation. Indeed, by some measurements, price pressures were alive and well – For instance, year-over-year core CPI had risen every month since March, resulting in the highest rate of increase since November 2001. Although they passed on opportunities to hike rates at both the August and September FOMC meetings, the Fed left the door open for future hikes if the need arose. Market yields simply moved lower and lower from week-to-week and month-to-month as investors focused less on Fed words than the hard data that was emerging. What this meant was that market forces were reversing recent rate hikes and perhaps setting the stage for an early rebound.

Key Economic Indicators:

➤ **MANUFACTURING**

The factory sector was fairly stable during quarter. The ISM manufacturing index fell slightly in August from 54.7 to 54.4, although August marked the 41st consecutive month above 50, indicating continued expansion. Industrial production has been solid rising by 0.8% and 0.4% in June and July.

➤ **EMPLOYMENT**

Non-farm payrolls, as measured by a broad survey of US businesses, generally fell short of forecasts, averaging only 127k new jobs per month during the quarter. Although the growth rate is on the positive side, it's well below the pace of 2004 and 2005 as well as the widely assumed Fed target of 200k. However, the unemployment rate, which is measured independently through a survey of US households, rose to 4.8% in July before falling to 4.7% in August. Most experts still believe that the labor market is tight and jobs are relatively plentiful.

➤ **RETAIL SALES**

Advance retail sales were mostly weak during the quarter, reflecting a reduction of disposable income resulting from higher gas prices. Although June sales fell by 0.5%, July and August rose by 1.4% and 0.2%. Auto sales have been on the low side in recent months but did surge from 16.2 million annualized units in June to 17.2 in July before easing back down to 16.0 in August. Obviously, the jump in July retail sales was bolstered by cars and light trucks.

➤ **HOUSING**

After five consecutive record years, home sales are finally receding due in large part to mortgage rates which rose to 6.78% in early July, a full point above the average for all of 2005. New home sales have dropped by 22% in the past 10 months while existing home sales have fallen by 12.5%. During the past year, inventories of unsold homes have risen by 39% to near record levels. The 6 ½ month overhang could hamper new home construction in future months. August housing starts fell by 6% to a 3½-year low while building permits hit a 4-year low. Housing has become the widely-acknowledged anchor on economic growth. However, the recent drop in lending rates promises a spark.

➤ **OIL**

Crude oil peaked at \$78.40 in July before gradually and significantly declining throughout the remainder of the quarter. There were several significant reasons for this, but all centered on ample current supply and ample anticipated supply. The hurricane season was merciful instead of mean and a gigantic oil deposit was found by Chevron 175 miles off shore in the Gulf of Mexico. By the end of September, crude was down 22% to \$61 per barrel. This price level will provide significant stimulus to the economy and help counter-balance the negative effects of the housing slide.

➤ **INFLATION**

Depending on the particular measure, inflation readings were either getting better or getting worse. Obviously, the retreat in oil prices brought month-over-month numbers lower, but trend numbers continued to advance. On a year-over-year basis, core inflation rose every month from March through September, resulting in a worrisome 2.8% 12-month increase, the highest since Nov 2001. Although market participants have focused on the receding monthly numbers, Fed officials are less optimistic and have stated repeatedly that they still view inflation as a problem. As a result, the door is still open for future Fed tightening.

➤ **FED MEETINGS**

- August 8th – Rates left *unchanged* – 5.25% target

By the date of the meeting, the outcome was fully expected by the market. The Fed, however, did not suggest that they had completed tightening monetary policy. In fact, they stated that readings on core inflation had been elevated and in their judgment, some inflation risk still existed.

- Sept 20th – Rates left *unchanged* – 5.25% target

As expected, the Fed continued its pause. The official statement was nearly identical. However, the Fed did acknowledge that energy prices had fallen, thereby contributing to moderating inflation.

Market Movement:

- Treasury markets were volatile from day to day as the market reacted strongly to conflicting economic data, and market sentiment shifted from expecting additional hikes to eventually expecting rate cuts. The six-month T-bill yield opened at 5.24% and climbed as high as 5.33% before closing near the low for the quarter at 5.00%. The two-year T-note yield opened the quarter at 5.16%, traded as high as 5.24% and as low as 4.64% before closing at 4.69%.
- Stock markets had a very strong quarter which kicked off a rally that would take the DOW and S&P to record highs in October. The S&P rose 5% and the NASDAQ climbed 4%, while the DOW was up 4.7%.
- The TexPool average rate during the third quarter was 5.24%, up 36 basis points from the second quarter's 4.88%. We expect the average rate to hold around 5.25% for the foreseeable future, until the Fed decides to adjust monetary policy.

INTEREST RATES

		Fed Funds	3 mo T-bill	6 mo T-bill	2 yr T-note	3 yr T-note	10 yr T-note
Last	6/30/06	5.25%	4.99%	5.24%	5.16%	5.13%	5.14%
High			5.14%	5.33%	5.24%	5.20%	5.22%
Low			4.87%	4.99%	4.64%	4.54%	4.54%
End	9/30/06	5.25%	4.88%	5.00%	4.69%	4.62%	4.63%

Portfolio Activity since June 30th:

- There were two maturities during August, the first for \$3 million and the second for \$1.5 million. The two maturities were reinvested at much higher yields.
- In early August \$3 million was invested in a FFCB 3.60% note maturing 3/16/09. This deep discount callable bond is unlikely to be called due to the very low coupon. The bond fit our strategy of extending maturities and came at a yield to maturity of 5.34%, beating the pool yields and locking it in for a long-term. In late August, \$1.5 million was invested in a FNMA 4.875% maturing 8/27/07 at a yield of 5.33%.
- During September, it was determined that the allocation to agency securities would exceed the policy maximum of 70%. As a result two agency issues were selected for sale. First we sold \$3 million of the FFCB 2.52% maturing 11/13/06. This sale resulted in a slight loss of \$593. We also sold \$3 million of the FHLMC 5.50% maturing 11/23/07. This bond was callable on 11/23/06 (Thanksgiving Day) and given the high coupon we expected it would be called. We were able to sell this bond at 100 and no gain or loss was realized. Selling this bond prevented the Town from losing one day's worth of interest as a result of the call being exercised on a holiday.

Outlook for the Fourth Quarter 2006:

The economy should stage a mini recovery in the final quarter of the year. The stimulus for this looks to be a combination of lower borrowing rates for consumers and businesses, a huge drop in energy costs, rising consumer confidence, a still favorable labor market and a recent rise in home affordability. The Fed has made no indication that they intend to cut rates anytime soon. In fact, just weeks ago, Fed officials were publicly voicing inflation concerns. Most experts agree that moderation in the economy is welcomed by the Fed. Thus the notion that the FOMC would quickly cut rates to reignite the economy doesn't make a whole lot of sense. In fact, a hair-trigger easing campaign could undermine the hard-fought inflation-fighting credibility that the new Bernanke Fed has instilled.

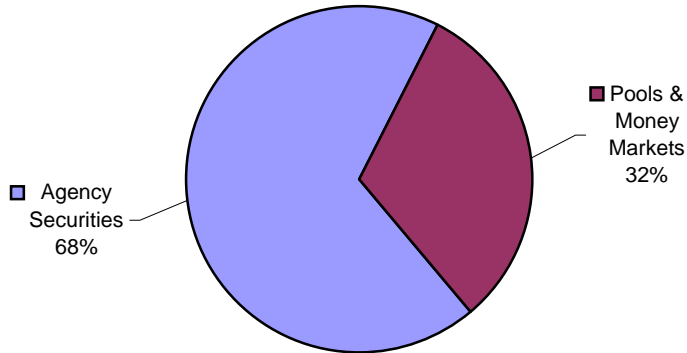
However, not all of the Wall Street firms are seeing eye-to-eye at the moment. Both Merrill Lynch and Goldman Sachs expect the US economy to sink and are forecasting 4% funds by the end of next year. JP Morgan, on the other hand, anticipates the Fed to resume rate hikes early in 2007 and expects a 6.00% funds rate at the end of 2007. Lehman also believes that the Fed isn't done tightening yet and is calling for a 25 bps rate hike in the first quarter of next year. There is a wide divergence amongst market participants with a prevailing (although not altogether rational) bias toward near-term easing. If gas prices and interest rates continue to trend lower, expectations will have to be tempered. All things considered, the most likely scenario seems to be for the Fed to stay at 5.25% for much of 2007 and for market yields to drift a bit higher as investors adjust to a more patient Fed.

Projected Strategy for the Fourth Quarter 2006:

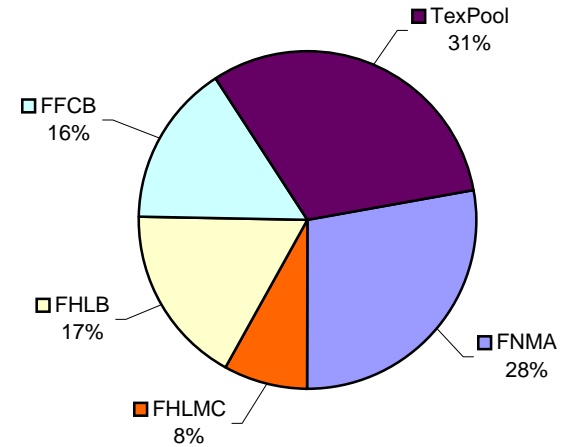
The Fed has clearly ended its two-year campaign of hiking rates and the markets have already begun to anticipate that the next move will be an ease. It is likely that we have already seen the peak in rates for this cycle. To the extent possible and as cash flows allow, investment maturities should be extended into the 24 to 36 month range. With the market pricing in rate cuts in mid-2007, these purchases will likely be at yields below the current overnight rates. While this may be difficult to accept, we need to position the portfolio for the possibility of rate cuts in the short term by locking in longer term yields where possible.

Town of Addison Portfolio Composition September 30, 2006

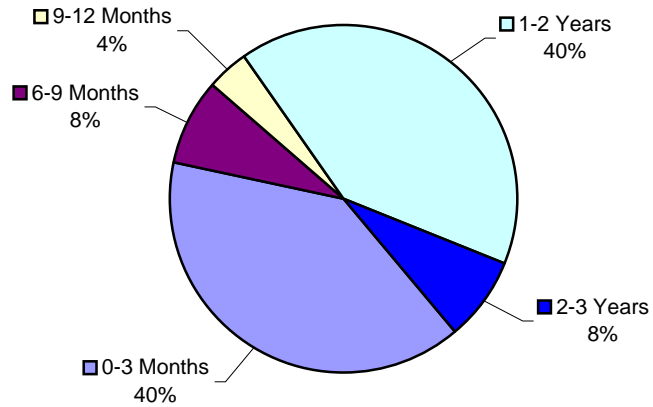
Portfolio Composition by Security Type



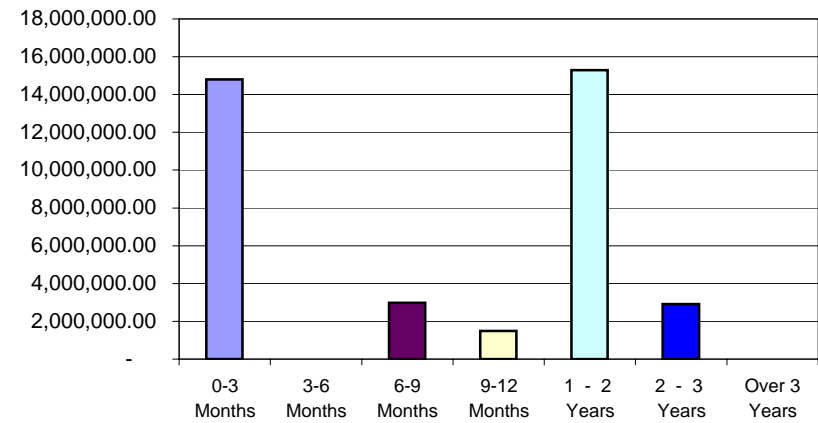
Portfolio Composition By Issuer



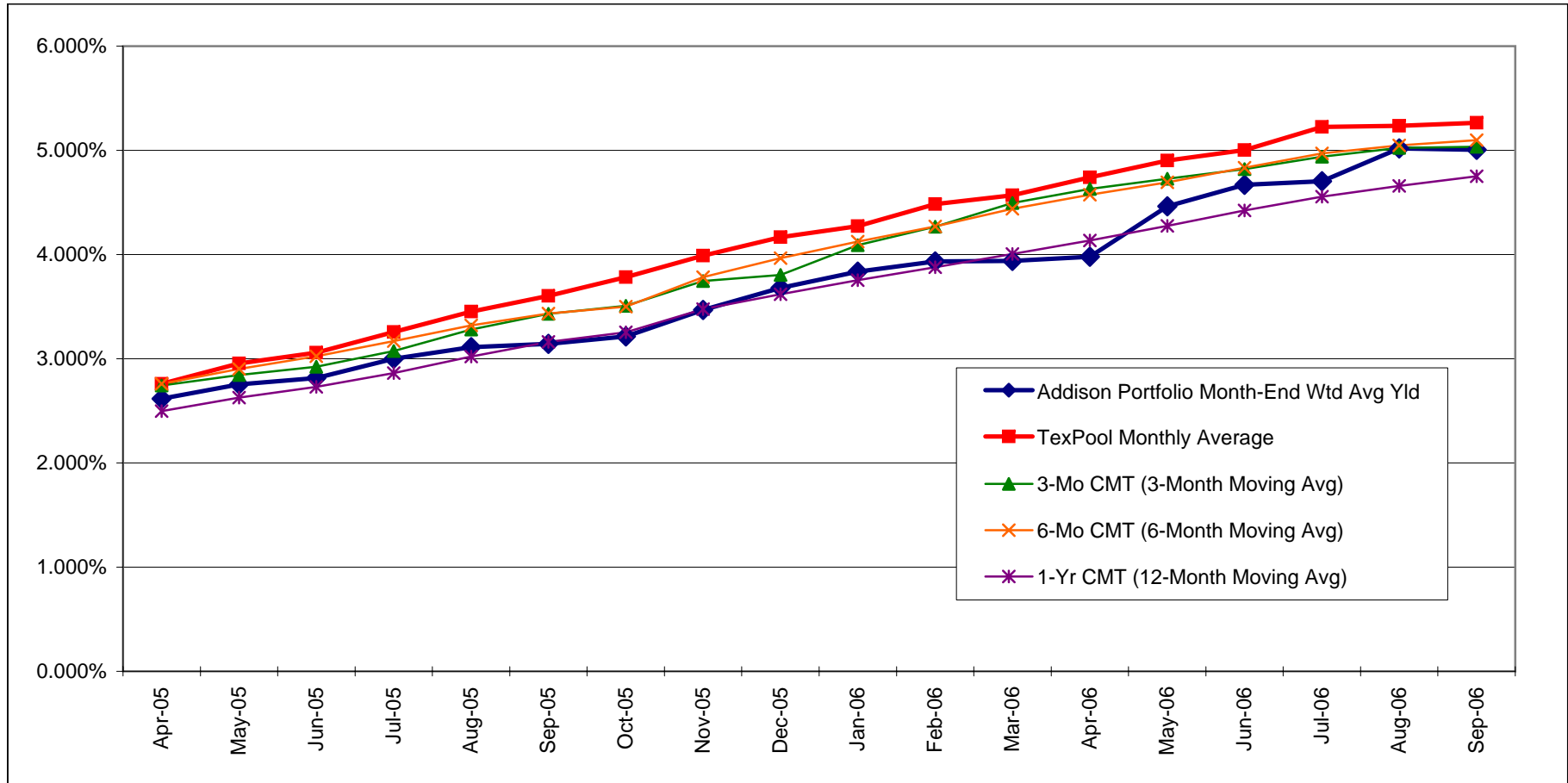
Portfolio Composition by Maturity (Percentage)



Portfolio Composition by Maturity (Amount)



**Town of Addison
Benchmark Comparison
September 30, 2006**



Notes:

- 1.) Benchmark data for TexPool is the monthly average yield.
- 2.) CMT stands for Constant Maturity Treasury. This data is published in Federal Reserve Statistical Release H.15 and represents an average of all actively traded Treasury securities having that time remaining until maturity. This is a standard industry benchmark for Treasury securities.
- 3.) The CMT benchmarks are moving averages. The 3-month CMT is the daily average for the previous 3 months, the 6-month CMT is the daily average for the previous 6 months, and the 1-year CMT is the daily average for the previous 12-months.

Town of Addison
Pooled Funds
FIXED INCOME DISTRIBUTION
September 30, 2006

Summary Information

	Totals		Weighted Averages	
Par Value	37,812,305.53	Average YTM		5.006
Market Value	37,483,619.01	Average Maturity (yrs)		0.9
Adjusted Cost	37,463,963.51	Average Coupon (%)		4.397
Net Gain/Loss	19,655.49	Average Duration		0.8
Annual Income	1,660,319.26			
Number of Issues	11			

Distribution by Maturity

Maturity	Number	Mkt Value	% Bond Holdings	Average Y T M	Average Coupon	Average Duration
0 - 3 Months	2	14,807,618.03	39.5	4.833	4.829%	0.015
6 - 9 Months	1	2,980,312.50	8.0	4.678	4.000%	0.491
9 - 12 Months	1	1,496,250.00	4.0	5.334	4.875%	0.874
1 - 2 Years	6	15,295,063.48	40.8	5.143	4.162%	1.345
2 - 3 Years	1	2,904,375.00	7.7	5.381	3.600%	2.315

Town of Addison
DETAIL OF SECURITY HOLDINGS
As of September 30, 2006

Security Description	Security CUSIP	Coupon	Settlement Date	Maturity Date	Next Call Date	Par Value	Purchase Price	Purchase Cost	Book Value	Market Price	Market Value	Accrued Interest	Days to Maturity	Days to Next Call	Yield to Maturity	Yield to Next Call
Pooled Funds																
TEXPOOL	texpool	5.265				11,812,305.53	100.000	11,812,305.53	11,812,305.53	100.000	11,812,305.53	0.00	1		5.265	
FNMA	3136F6GH6	3.110	10-27-04	10-27-06		3,000,000.00	99.950	2,998,500.00	2,999,946.58	99.844	2,995,312.50	39,911.67	27		3.136	
FHLB	3133XB6F7	4.000	01-19-06	04-05-07		3,000,000.00	99.188	2,975,628.00	2,989,672.45	99.344	2,980,312.50	58,666.67	187		4.693	
FNMA	31359MJ20	4.875	08-18-06	08-27-07		1,500,000.00	99.554	1,493,310.00	1,494,097.42	99.750	1,496,250.00	6,906.25	331		5.326	
FHLMC	3128X4WA5	5.000	12-28-05	12-28-07		3,000,000.00	100.000	3,000,000.00	3,000,000.00	99.742	2,992,250.98	38,750.00	454		5.000	
FNMA	3136F7TB3	4.960	02-13-06	02-08-08	02-08-07	3,000,000.00	99.784	2,993,534.20	2,995,585.15	99.781	2,993,437.50	21,906.67	496	131	5.075	5.186
FNMA	3136F6YB9	4.000	01-11-06	02-25-08	11-25-06	3,000,000.00	98.390	2,951,700.00	2,968,108.77	98.500	2,955,000.00	12,000.00	513	56	4.805	5.923
FHLB	3133X4E49	3.200	05-22-06	03-03-08		1,500,000.00	96.365	1,445,475.00	1,456,538.85	97.500	1,462,500.00	3,733.33	520		5.365	
FFCB	31331TWH0	3.240	04-17-06	03-17-08		3,000,000.00	96.336	2,890,080.00	2,916,319.39	97.500	2,925,000.00	3,780.00	534		5.273	
FHLB	3133X9L40	4.000	06-20-06	06-10-08	10-10-06	2,000,000.00	97.066	1,941,320.00	1,949,712.31	98.344	1,966,875.00	24,666.67	619	10	5.591	13.997
FFCB	31331TWM9	3.600	08-07-06	03-16-09	10-16-06	3,000,000.00	95.814	2,874,420.00	2,881,677.07	96.812	2,904,375.00	4,500.00	898	16	5.339	27.459
		4.398				37,812,305.53	98.867	37,376,272.73	37,463,963.51	99.145	37,483,619.01	214,821.25	310		5.006	
GRAND TOTAL		4.398				37,812,305.53	98.867	37,376,272.73	37,463,963.51	99.145	37,483,619.01	214,821.25	310		5.006	

Town of Addison
Pooled Funds
INVESTMENT TRANSACTIONS
From 07-01-06 To 09-30-06

Settle Date	Security	CUSIP	Coupon	Mature Date	Call Date	Quantity	Unit Price	Amount
PURCHASES								
08-07-06	FFCB	31331TWM9	3.600	03-16-09	10-16-06	3,000,000	95.814	2,874,420.00
	Accrued Interest							42,300.00
08-18-06	FNMA	31359MJ20	4.875	08-27-07		1,500,000	99.554	1,493,310.00
	Accrued Interest							34,734.38
								4,444,764.38
SALES								
09-07-06	FFCB	31331TQQ7	2.520	11-13-06		3,076,000	99.483	3,060,097.08
09-26-06	FHLMC	3128X46H9	5.500	11-23-07	11-23-06	3,000,000	100.000	3,000,000.00
	Accrued Interest							56,375.00
								6,116,472.08
MATURITIES								
08-18-06	FHLB	3133X07J2	2.570	08-18-06		3,000,000	100.000	3,000,000.00
	Accrued Interest							38,550.00
08-25-06	FHLB	3133X3U84	2.800	08-25-06		1,500,000	100.000	1,500,000.00
	Accrued Interest							21,000.00
								4,559,550.00

Council Agenda Item: #R5

SUMMARY:

Council approval is requested of 1) an ordinance authorizing the Town to impose a 20% collection fee on delinquent personal property taxes 60 days after the taxes are considered delinquent, and 2) a contract amendment with the Town's delinquent tax collection law firm of Linebarger, Goggan, Blair, and Sampson, LLP, to allow for the collection of the fee.

FINANCIAL IMPACT:

There is no direct financial impact related to this item since delinquent taxpayers will pay all attorney fees. However, it is expected that the additional collection efforts related to personal property taxes will provide the Town with higher overall collections and revenue.

BACKGROUND:

Ad valorem taxes are levied in October each year, and they are considered delinquent on February 1st. If delinquent taxes are not paid by July 1st, the Town will assess a cumulative 18% penalty and interest fee on the unpaid balance. In addition, the Town will also assess a 20% collection fee for attorney costs related to the collection of delinquent accounts as of July 1st. The total penalty for delinquent taxes, therefore, is 38% for any unpaid balance as of July 1st. An additional 1% penalty and interest fee is assessed each month thereafter for all unpaid taxes. In June 2006, the Town retained the law firm of Linebarger, Goggan, Blair, and Sampson, LLP (LGBS), to pursue the collection of our property tax accounts that are delinquent as of July 1st of each year.

During the 79th Session of the Texas Legislature, property tax bill HB 2491 was passed. The bill authorized taxing entities to turnover delinquent personal property tax accounts to their delinquent tax collection law firms in April rather than in July. Unlike real estate, business personal property is mobile and can disappear before tax collections can occur. As such, the purpose of the legislation is to give taxing entities an opportunity to collect business personal property taxes while it is still possible. LGBS believes this additional time will allow them to more effectively collect the Town's taxes. A more detailed discussion of the legislation can be found in the attached letter from LGBS.

To make these changes effective, Council must approve the attached ordinance and the delinquent tax collection contract amendment with LGBS.

RECOMMENDATION:

Staff recommends that Council approve 1) an ordinance authorizing the Town to impose a 20% collection fee on delinquent personal property taxes 60 days after the taxes are considered delinquent, and 2) a contract amendment with the Town's delinquent tax collection law firm of Linebarger, Goggan, Blair, and Sampson, LLP, to allow for the collection of the fee.

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

ATTORNEYS AT LAW
UNIVISION CENTER
SUITE 1600
2323 BRYAN STREET
DALLAS, TEXAS 75201

(214) 880-0089
(800) 441-0960
FAX (214) 754-7167

October 17, 2006

Mr. Ron Whitehead
City Manager
Town of Addison
5300 Beltline Road
Addison, TX 75254

Dear Mr. Whitehead:

This letter is to advise you of new legislation passed during the recent 79th Session of the Texas Legislature. The Legislature passed House Bill 2491, its omnibus property tax bill. Among the provisions is one which allows a taxing entity to turn over, to its delinquent tax law firm, delinquent personal property accounts as early as sixty (60) days after the February 1st delinquency date and to impose the delinquent collection penalty to defray the costs of collection. For purposes of the 2006 delinquent accounts (for bills that are sent out in October 2006), that 60-day turnover would be April 2, 2007.

This legislation is beneficial to taxing entities because it allows the collection process to start three months earlier on personal property. Unlike real estate, business personal property is mobile and often disappears. Many times, businesses close or move prior to our collection efforts. The April start, as opposed to the July start, will increase the opportunities to collect delinquent taxes from these businesses while they are still in business.

The law now allows the Town of Addison to impose the twenty percent (20%) delinquent collection penalty on the business personal property accounts turned over in April and thereby fund the early collection efforts. The delinquent taxpayer, and not the Town, will bear the cost of the collection effort.

To take advantage of the early turnover, three steps must be taken:

- (1) The taxing entity must take official action to impose the early penalty;
- (2) Notice of the penalty must be given to the delinquent taxpayer during the month of February 2007; and

- (3) The Town's delinquent tax collection contract with our law firm must be amended to provide for early turnover of personal property delinquencies.

Throughout the state, clients of Linebarger Goggan Blair & Sampson, LLP have been passing resolutions and amending their delinquent tax contracts to allow for this early turn-over of personal property. Attached is a list of LGB&S clients who have already adopted this new legislation.

We recommend that the Town of Addison adopt this legislative change and take advantage of this opportunity. From an operational standpoint, it will be more efficient and effective if our law firm is able to contact delinquent taxpayers through mailings, collection phone calls, and site visits in a coordinated fashion. I have included a **Resolution** and **Contract Amendment** for your review. If you have any questions or desire further information, please do not hesitate to contact me.

We look forward to discussing this legislative change and how it would impact your Town. If you have questions or desire further information, please do not hesitate to contact me.

Sincerely,



TRACY A. POUNDERS
Attorney

cc: Sally Stephens, LGB&S Client Liaison

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS APPROVING AN ADDITIONAL PENALTY ON DELINQUENT TAXES ON TANGIBLE PERSONAL PROPERTY FOR TAX YEARS 2006 AND SUBSEQUENT YEARS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Addison, Texas (the "Town") wishes to defray its costs of collection, as authorized by TEX. TAX CODE § 33.11, that it incurs under the contract and amendment thereto for collection of delinquent property taxes between the TOWN and LINEBARGER GOGGAN BLAIR & SAMPSON, LLP ("FIRM") entered into pursuant to TEX. TAX CODE § 6.30; and

WHEREAS, under said Section 33.11, the governing body of TOWN is empowered to authorize, in order to defray costs of collection, an additional penalty on taxes imposed on tangible personal property that become delinquent on or after February 1 in an amount that does not exceed the amount of the compensation specified in the contract with the FIRM;

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

Section 1. The recitals set forth in this Ordinance are true and correct.

Section 2. An additional penalty on delinquent taxes imposed by the Town on tangible personal property for tax years 2006 and subsequent years is hereby authorized and imposed, as provided by Section 33.11, Texas Property Tax Code, in the amount of 20% of the delinquent tax, penalty, and interest if the tax becomes delinquent on February 1st of a year and remains delinquent on the 60th day thereafter.

Section 3. This Ordinance shall become effective from and after its date of passage and publication as may be required by law.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 28th day of November, 2006.

Joe Chow, Mayor

ATTEST:

By: _____
Mario Canizares, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

STATE OF TEXAS)
)
)
COUNTY OF COLLIN)

**AMENDMENT NO. 1
TO THE CONTRACT BETWEEN
THE TOWN OF ADDISON AND
LINEBARGER GOGGAN BLAIR & SAMPSON, LLP**

WHEREAS, on JUNE 13, 2006, the Town of Addison (hereinafter "CITY") approved a Contract with the law firm of Linebarger Goggan Blair & Sampson, LLP (hereinafter "FIRM"); and

WHEREAS, CITY wishes to turnover delinquent personal property taxes at the earliest practicable date and wishes to defray its costs of collection as authorized by Texas Property Tax Code Section 33.11;

NOW THEREFORE, by execution of this Amendment No. 1, the Contract is amended hereby as set forth below.

I.

The following language is hereby substituted for Section I of the Contract:

CITY agrees to employ and does hereby employ FIRM to enforce by suit or otherwise the collection of all delinquent ad valorem property taxes ("taxes"), penalty and interest owing to and on behalf of CITY, provided current year taxes falling delinquent within the period of this Contract shall become subject to its terms on the first day of July of the year in which the said taxes shall become delinquent, except as otherwise provided herein. Lawsuits and bankruptcy cases filed before the first day of July shall include current year taxes as allowed by law. Such taxes and the collection thereof are also subject to the terms of this Contract and applicable State law, rules, and regulations and City ordinances, rules, and regulations. Further, in the case of delinquent tangible personal property, on the 60th day after the February 1 delinquency date, such taxes are subject to this Contract.

II.

EFFECT OF THE AMENDMENT

By execution of this Amendment No. 1, the Contract is amended. No other sections, provisions, clauses or conditions of the Contract are waived or changed hereby and they shall all remain in full force and effect throughout the term of the Contract and any duly authorized extensions.

IN WITNESS WHEREOF, by their signatures below, the duly authorized representatives of the Town of Addison and of Linebarger Goggan Blair & Sampson, LLP do hereby agree and append this Amendment No. 1 to the Contract dated June 13, 2006.

EXECUTED THIS the _____ day of _____, 2006.

TOWN OF ADDISON, TEXAS

**LINEBARGER GOGGAN BLAIR
& SAMPSON, LLP**

DeMetris Sampson, Partner

ATTEST:

Council Agenda Item: #R6

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 2006-07 annual budget document, staff determined that the Town's financial policies should be amended to reflect revised operations related to approving budget requests. Since the change is purely related to an internal administrative process, it does not have any direct impact on the core financial management policies of the Town.

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.
- 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 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.

FINANCIAL REPORTING

1. 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.
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 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 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.

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 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 Budget Adjustment Expanded Levels of Service (ELS) requests. The City Manager will recommend the adjustment ELS-requests to the Council, which will vote on the requests.

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 2-177 (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 2-177 (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 Budget Adjustment ~~Expanded Levels of Service (ELS)~~ requests. The City Manager will recommend the adjustment ~~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 _____, 2006.

Joe Chow, Mayor

ATTEST:

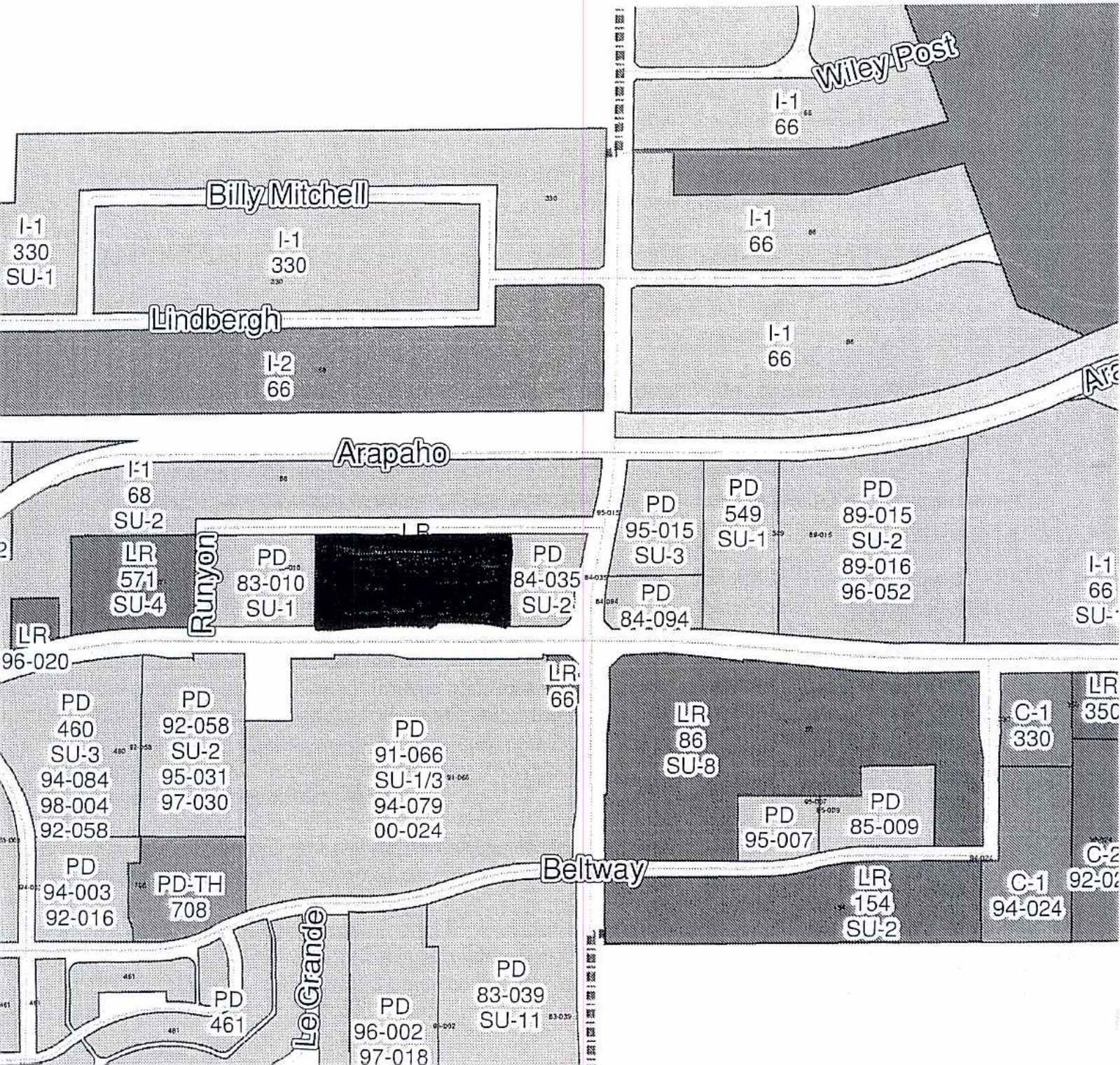
By: _____
Mario Canizares, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

1526-SUP

Case 1526-SUP Which Wich?. Requesting approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located in a lease space at 4135 Belt Line Road, on application from Mr. Charles Isola.



COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on November 16, 2006, voted to recommend approval of the request on application from Which Wich? subject to the following conditions:

-A C.O. will not be issued on this lease space until a Shell C.O. has been issued for the entire site.

-The doors from the restrooms appear to encroach into the exit corridor more than half the required width of the corridor. The required width of the corridor per the 2003 IBC is 44". Therefore during the course of the swing there would have to be a minimum of 22" between the door and the exit corridor wall.

Voting Aye: Bernstein, Chafin, Gaines, Wood

Voting Nay: None

Absent: Daseke, Jandura, Meier

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: November 1, 2006

Subject: Case 1526-SUP/Which Wich?

A C.O. will not be issued on this lease space until a Shell C.O. has been issued for the entire site.

The doors from the restrooms appear to encroach into the exit corridor more than half the required width of the corridor. The required width of the corridor per the 2003 IBC is 44". Therefore during the course of the swing there would have to be a minimum of 22" between the door and the exit corridor wall.

5. Dimensions need to be provided for the 10-FT Water Easement in Block B.
6. Dimensions need to be provided for the north line of the Access & Utility Easement located in Block B.
7. The lot designations for Lot 1X, Block B; Lots 2X & 3X, Block C; and Lot 1X, Block D do not match the lot designations shown on Plates 10 & 11 of the construction plans for Asberry Circle. Need to have the plans meet the final plat designations.
8. The 15-FT Drainage Easement shown between Lots 14 & 15 of Block C is not clearly defined.
9. The applicant has indicated he wants to change the spelling of Asberry to Asbury

Staff recommends approval of the proposed final plat, subject to the conditions listed above.

Respectfully submitted,

A handwritten signature in black ink that reads "C Moran". The signature is stylized with a large, looped "C" and a long horizontal stroke for the "M".

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on November 16, 2006, voted to recommend approval of the plat, on application from Ashton Dallas Residential, LLC., subject to the following conditions:

1. Plat meets closure requirements.
2. The existing 10-FT Sanitary Sewer Easement (Vol. 82060, Pg. 1624) located along the east side of the property is to remain and will NOT be abandoned.
3. Provide the bearing and distance of the alley located between Everwood Lane and Amberwood Drive.
4. Provide curve data for all the right-of-way curves on both Asberry Lane (adjacent to C45) and Amberwood Drive (adjacent to C42).
5. Dimensions need to be provided for the 10-FT Water Easement in Block B.
6. Dimensions need to be provided for the north line of the Access & Utility Easement located in Block B.
7. The lot designations for Lot 1X, Block B; Lots 2X & 3X, Block C; and Lot 1X, Block D do not match the lot designations shown on Plates 10 & 11 of the construction plans for Asberry Circle. Need to have the plans meet the final plat designations.
8. The 15-FT Drainage Easement shown between Lots 14 & 15 of Block C is not clearly defined.
9. The applicant has indicated he wants to change the spelling of Asberry to Asbury.

Voting Aye: Bernstein, Chafin, Gaines, Wood

Voting Nay: None

Absent: Daseke, Jandura, Meier

INTEROFFICE MEMORANDUM

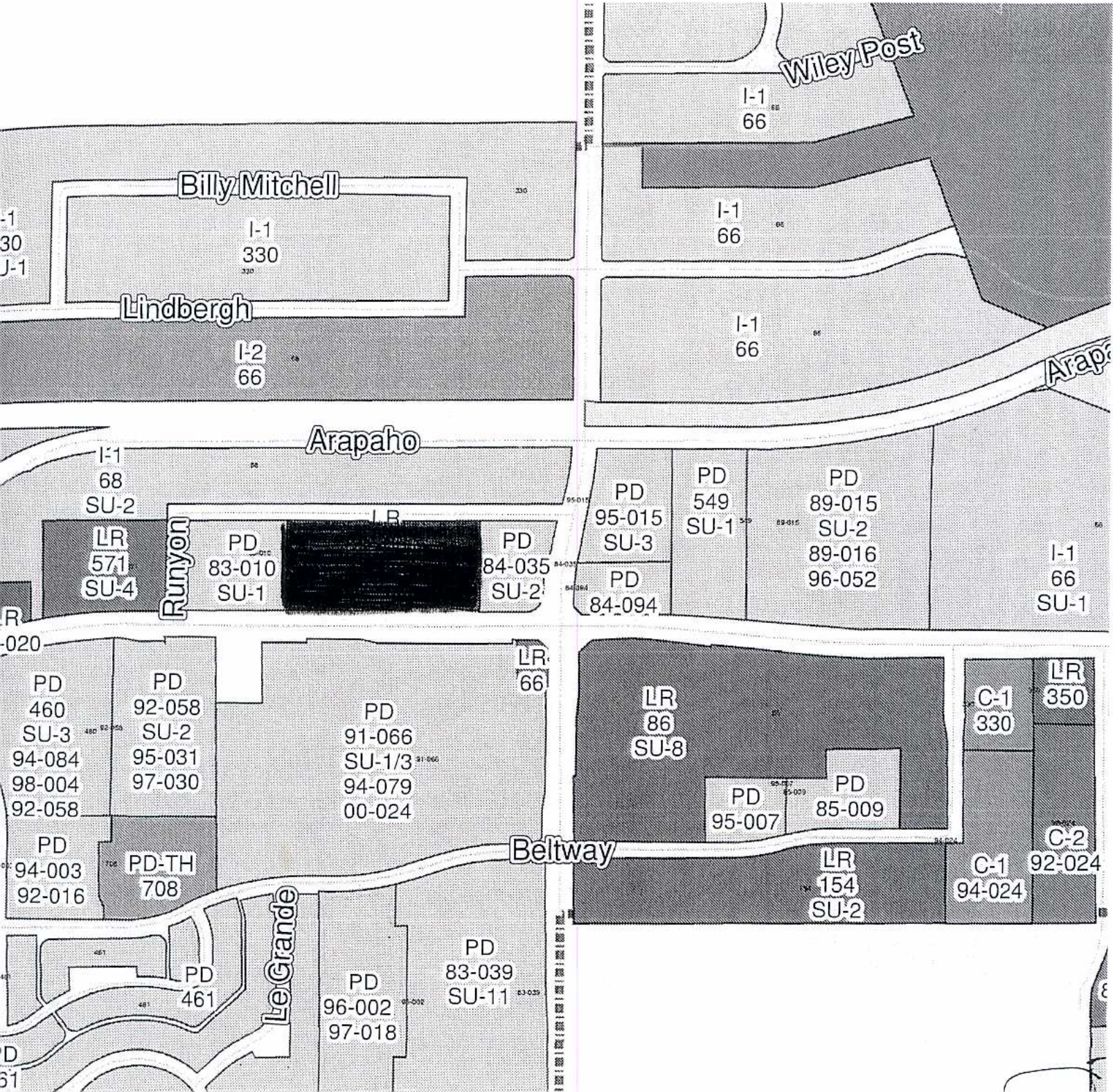
TO: NANCY S. CLINE, P.E.; DIRECTOR OF PUBLIC WORKS
FROM: FRANK DAVIS
SUBJECT: FINAL PLAT REVIEW - ASBERRY CIRCLE
DATE: 10/31/2006
CC: AARON RUSSELL, ASST. DIRECTOR OF PUBLIC WORKS

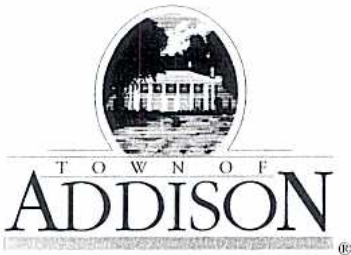
The following is a summary of my review of the referenced plans.

1. Plat meets closure requirements.
2. The existing 10-FT Sanitary Sewer Easement (Vol. 82060, Pg. 1624) located along the east side of the property is to remain and will NOT be abandoned.
3. Provide the bearing and distance of the alley located between Everwood Lane and Amberwood Drive.
4. Provide curve data for all the right-of-way curves on both Asberry Lane (adjacent to C45) and Amberwood Drive (adjacent to C42).
5. Dimensions need to be provided for the 10-FT Water Easement in Block B.
6. Dimensions need to be provided for the north line of the Access & Utility Easement located in Block B.
7. The lot designations for Lot 1X, Block B; Lots 2X & 3X, Block C; and Lot 1X, Block D do not match the lot designations shown on Plates 10 & 11 of the construction plans for Asberry Circle. Need to have the plans meet the final plat designations.
8. The 15-FT Drainage Easement shown between Lots 14 & 15 of Block C is not clearly defined.

REPLAT/Addison West Industrial Park, Lots 2 and 3A, Block A

REPLAT/Addison West Industrial Park, Lots 3 and 3A, Block A. Requesting plat approval for two lots on 5.949 acres of land in a LR – Local Retail District, located at 4135 Belt Line Road, on application from Belt Line Realty Partners, Inc., represented by Mr. Ronny Klingbeil of RLK Engineering.





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

November 10, 2006

STAFF REPORT

RE: REPLAT/Addison West Industrial Park, Lots 2 and 3A, Block A

LOCATION: Two lots on 5.949 acres of land in a LR – Local Retail District, located at 4135 Belt Line Road

REQUEST: Approval of a replat

APPLICANT: Belt Lie Realty Partners, Inc., represented by Mr. Ronny Klingbeil of RLK Engineering

DISCUSSION:

Background. This property is currently subdivided into two lots, but the lots are divided into east and west lots, as opposed to north and south lots. At this point, the owner wants to re-subdivide the lots into a north lot along Centurion and a south lot on Belt Line Road. The owner is currently developing a retail center on the south lot, and does not have a specific plan for the north lot. The staff has had some discussions with the developer about a townhome project on the north lot. The current zoning is Local Retail, which does not allow residential uses. Therefore, it would take a zoning change to develop town homes on the north lot. The staff has furnished the owner’s architect with a copy of the new Belt Line Road zoning district, and the architect is working on a plan.

Public Works Review. The Public Works Department has reviewed the proposed replat and recommends the following conditions:

1. Certificate of Approval needs to be revised to show approval by the City Council, not Planning and Zoning Commission. Signature blanks need to be provided for the Mayor and City Secretary. Notary of these signatures is not required.

REPLAT/Addison West Industrial Park
Lots 2 and 3A, Block A
November 10, 2006

Page 2

Staff recommends approval of the proposed replat, subject to the condition listed above.

Respectfully submitted,

A handwritten signature in black ink that reads "CMORAN". The letters are stylized and connected, with a large "C" and "M" at the beginning.

Carmen Moran
Director of Development Services

REPLAT/Addison West Industrial Park,
Lots 3 and 3A, Block A
November 16, 2006

Page 3

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on November 16, 2006, voted to recommend approval of the replat, on application from Belt Line Realty Partners, Inc., subject to the following conditions:

-Certificate of Approval needs to be revised to show approval by the City Council, not Planning and Zoning Commission. Signature blanks need to be provided for the Mayor and City Secretary. Notary of these signatures is not required.

Voting Aye: Bernstein, Chafin, Gaines, Wood
Voting Nay: None
Absent: Daseke, Jandura, Meier

INTEROFFICE MEMORANDUM

TO: NANCY S. CLINE, P.E.; DIRECTOR OF PUBLIC WORKS
FROM: FRANK DAVIS
SUBJECT: RE-PLAT OF ADDISON WEST INDUSTRIAL PARK
DATE: 10/11/2006
CC: AARON RUSSELL, ASST. DIRECTOR OF PUBLIC WORKS

The following is a summary of my review of the referenced re-plat.

1. Plat meets closure requirements.
2. Certificate of Approval needs to be revised to show approval by City Council, not Planning and Zoning Commission. Signature blanks needed for Mayor and City Secretary. Notary of these signatures not required.

Council Agenda Item: #R10

SUMMARY: The Addison Fire Department utilizes seven cardiac monitors. We are scheduled to replace three cardiac monitors within this year's budget. All seven of our monitors are manufactured by Medtronic Emergency Response Systems. The three cardiac monitors being replaced are now approaching eight years old. After the current maintenance agreement expires for these three monitors, they will not be eligible for another maintenance contract. Maintenance contracts are only available for eight years. We are also purchasing related equipment such as extra batteries, replacement cases, cables, etc.

We also are purchasing two automatic external defibrillators (AED's) for the two town facilities that currently do not have them (Finance and Town Hall). These AED's are also manufactured by Medtronic Emergency Response Systems and are compatible with our existing cardiac monitors.

FINANCIAL IMPACT:

Budgeted Amount: \$84,000.00

Cost: \$57,984.87

BACKGROUND: In the late 1990's, a competitive selection process was conducted to standardize cardiac monitors within the Addison Fire Department. Physio Control Corporation cardiac monitors were selected (now Medtronic). Since that time, all cardiac monitors, AED's and associated equipment have been purchased from Medtronic on a sole source basis. All these monitors are also compatible with our existing software documentation and billing systems.

Funding for this equipment has been budgeted within the Town's Capital Replacement Fund.

RECOMMENDATION: The Addison Fire Department recommends the approval of a contract for the purchase of three replacement cardiac monitors and related equipment and two new automatic external defibrillators in an amount not to exceed \$60,000.00 from Medtronic Emergency Response Systems.



MEMORANDUM

TO: Mayor and Town Council

FROM: Noel Padden
Fire Chief

DATE: November 20, 2006

SUBJECT: Replacement Cardiac Monitors and New Automatic External Defibrillators (AED's)

The Addison Fire Department currently utilizes seven cardiac monitors. They are assigned as follows:

- Medic 101
- Medic 102
- Engine 101
- Engine 102
- Truck 101
- Special Events
- Spare

These cardiac monitors are designed to monitor and document electric activity of a patient's heart, discharge an electric shock to a heart to convert life threatening arrhythmias, monitor both oxygen and carbon dioxide levels in the blood, pace a patient's heart, monitor a patient's blood pressure and other functions. These life saving functions are critical to diagnosing and treating a patient in the pre hospital emergency setting. These cardiac monitors are literally used on all patients.

These monitors are utilized in and around very challenging work environments such as auto accidents, structure fires, rain, heat, etc. As a result, these monitors take a real beating. The maintenance contracts that are offered for up to eight years are a critical component of these devices to assure that they are

working properly. Due to this work environment, you will also see replacement cases, extra batteries, cables, blood pressure cuffs, etc. as part of these bids.

This contract is a sole source bid for the following reasons. In the late 1990's, a competitive selection process was conducted to standardize cardiac monitors within the Addison Fire Department. Physio Control Corporation cardiac monitors were selected (now Medtronic). The three cardiac monitors recommended for purchase will operate the same and are interchangeable with our other cardiac monitors, related equipment such as batteries, cables, etc. and our AED's. The cardiac monitors are compatible with our existing software data collection systems and our third party billing software. To change vendors would result in significant costs involving the customization of existing software and changing our training and operational protocols. Other cardiac monitors would also not be compatible with our related equipment such as cables, batteries, etc. and AED's.

The Town also has three automatic external defibrillators (AED's). These are located at the following locations:

- Addison Conference Center
- Addison Athletic Center
- Addison Service Center.

A bid is also attached for the purchase of two additional AED's. They will be located at the Finance Building and Town Hall.

The Addison Fire Department recommends the City Manager enter into a contract with Medtronic Emergency Response Systems for the purchase of three replacement cardiac monitors and related equipment and two new AED's at a cost not to exceed \$60,000.00.



Q-Addison FD
101906.pdf



Q-Addison FD #1 -
102706.pdf



Medtronic

To: Chief Chris Kellen
 Addison Fire Department
 4798 Airport Pkwy
 Addison, TX 75001
 Phone: (972) 450-7206
 Fax: (972) 450-7208
 ckellen@ci.addison.tx.us

Medtronic Emergency Response Systems

11811 Willows Road NE
 P.O. Box 97023
 Redmond, WA 98073-9723 U.S.A
 www.medtronic-ers.com
 www.medtronic.com
 tel 800.442.1142
 fax 800.732.0956

Quote#: 1-85596845
Rev#: 1
Quote Date: 10/27/2006
Sales Consultant: Elizabeth Roberts
 800-442-1142 x 72438
FOB: Redmond, WA
Shipping: 60-90 Days
Terms: Net 30, all quotes subject to credit approval and the following terms & conditions

Contract: None

Exp Date: 12/26/2006

Line	Catalog # / Description	Qty	List Price	Unit Disc	Trade-In	Unit Price	Ext Total
1	80403-000149 - LIFEPAK CRPlus defibrillator, fully automatic operation. Energy: 200-300-360j - Includes 2005 AHA/ERC Guidelines compliant software. Includes: 2pr QUIK-PAK pacing/defibrillation/ECG electrodes with REDI-PAK preconnect system, 1 CHARGE PAK, AMBU Mask and 1 installed protocol card. Compatible with Infant/Child Reduced Energy Defibrillation Electrodes. 5yr warranty.	2	\$2,395.00	\$500.00	\$0.00	\$1,895.00	\$3,790.00
2	11998-000070 - Surface mount wall cabinet with siren Works with LIFEPAK 500 or CR Plus AEDs. Steel finish wall cabinet with white trim. Surface mounted trim style, with red labeling on door window.	2	\$246.00	\$24.60	\$0.00	\$221.40	\$442.80

SUB TOTAL \$4,232.80
 ESTIMATED TAX \$0.00
 ESTIMATED SHIPPING & HANDLING \$52.54
GRAND TOTAL \$4,285.34

Pricing Summary Totals

List Price: \$5,282.00
 Cash Discounts: - \$1,049.20
 Tax + S&H: + \$52.54

GRAND TOTAL FOR THIS QUOTE \$4,285.34

TO PLACE AND ORDER, PLEASE FAX A COPY OF THE QUOTE AND PURCHASE ORDER TO: # 800-732-0956, ATTN: REP SUPPORT

MEDTRONIC EMERGENCY RESPONSE SYSTEMS REQUIRES WRITTEN VERIFICATION OF THIS ORDER. A PURCHASE ORDER IS REQUIRED ON ALL ORDERS \$10,000 OR GREATER BEFORE APPLICABLE FREIGHT AND TAXES. THE UNDERSIGNED IS AUTHORIZED TO ACCEPT THIS ORDER IN ACCORDANCE TO THE TERMS AND PRICES DENOTED HEREIN. SIGN TO THE RIGHT:

CUSTOMER APPROVAL (AUTHORIZED SIGNATURE)

NAME

TITLE

DATE

Ref. Code: JE//1-1EYMW1

Notes:

TAXES, SHIPPING AND HANDLING FEES ARE ESTIMATES ONLY AND ARE SUBJECT TO CHANGE AT THE TIME OF ORDER. SHIPPING AND HANDLING ESTIMATE APPLIES TO GROUND TRANSPORT ONLY.

ABOVE PRICING VALID ONLY IF QUOTE IS PURCHASED IN ITS ENTIRETY. (OPTIONAL ITEMS NOT REQUIRED). IF QUOTE REFLECTS TRADE-IN VALUES, CUSTOMER ASSUMES RESPONSIBILITY FOR SHIPMENT OF TRADE-IN UNITS TO MEDTRONIC EMERGENCY RESPONSE SYSTEMS.

ITEMS LISTED ABOVE AT NO CHARGE ARE INCLUDED AS PART OF A PACKAGE DISCOUNT THAT INVOLVES THE PURCHASE OF A BUNDLE OF ITEMS. CUSTOMER IS SOLELY RESPONSIBLE FOR APPROPRIATELY ALLOCATING THE DISCOUNT EXTENDED ON THE BUNDLE WHEN FULFILLING ANY REPORTING OBLIGATIONS IT MIGHT HAVE.

FOR ADDITIONAL PRODUCT INFORMATION PLEASE VISIT US AT www.medtronic-ers.com/products/ AND www.biphasic.com

TERMS OF SALE

General Terms

Medtronic Emergency Response Systems ("Medtronic") acceptance of the Buyer's order is expressly conditioned on the Buyer's assent to the terms set forth in this document and its attachments. Medtronic agrees to furnish the goods and services ordered by the Buyer only on these terms, and the Buyer's acceptance of any portion of the goods and services covered by this document shall confirm their acceptance by the Buyer. These terms constitute the complete agreement between the parties and they shall govern any conflicting or ambiguous terms on the Buyer's purchase order or on other documents submitted to Medtronic by the Buyer. These terms may only be revised or amended by a written agreement signed by an authorized representative of both parties.

Pricing

Unless otherwise indicated in this document, prices of goods and services covered by this document shall be Medtronic standard prices in effect at the time of delivery. Prices do not include freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services covered by this document. Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services covered by this document unless Medtronic receives a copy of a valid exemption certificate prior to delivery. Please forward your tax exemption certificate to the Medtronic Tax Department P.O. Box 97006, Redmond, Washington 98073-9706.

Payment

Unless otherwise indicated in this document or otherwise confirmed by Medtronic in writing, payment for goods and services supplied by Medtronic shall be subject to the following terms:

Domestic (USA) Sales - Upon approval of credit by Medtronic, 100% of invoice due thirty (30) days after invoice date.

International Sales - Sight draft or acceptable (confirmed) irrevocable letter of credit.

Medtronic may change the terms of payment at any time prior to delivery by providing written notice to the Buyer. Medtronic reserves the right to charge a 15% restocking fee for returns.

Delivery

Unless otherwise indicated in this document, delivery shall be FOB Medtronic point of shipment and title and risk of loss shall pass to the Buyer at that point. Partial deliveries may be made and partial invoices shall be permitted and shall become due in accordance with the payment terms. In the absence of shipping instructions from the Buyer, Medtronic will obtain transportation on the Buyer's behalf and for the Buyer's account.

Delays

Delivery dates are approximate. Medtronic will not be liable for any loss or damage of any kind due to delays in delivery or non-delivery resulting from any cause beyond its reasonable control, including but not limited to, acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, and Medtronic inability to obtain goods from its usual sources. Any such delay shall not be considered a breach of Medtronic and the Buyer's agreement and the delivery dates shall be extended for the length of such delay.

Inspections

Claims by the Buyer for damage to or shortages of goods delivered shall be made within thirty (30) days after shipment by providing Medtronic with written notice of any deficiency. Payment is not contingent upon immediate correction of any deficiencies and Medtronic prior approval is required before the return of any goods to Medtronic.

Warranty

Medtronic warrants its products in accordance with the terms of the standard Medtronic product warranty applicable to the product to be supplied, and the remedies provided under such warranty shall be the Buyer's sole and exclusive remedies. Medtronic makes no other warranties, express or implied. Including, without limitation, NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL MEDTRONIC BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.

Patent & Indemnity

Upon receipt of prompt notice from the Buyer and with the Buyer's authority and assistance, Medtronic agrees to defend, indemnify and hold the Buyer harmless against any claim that the Medtronic products covered by this document directly infringe any United States of America patent.

Miscellaneous

- a) The Buyer agrees that products purchased hereunder will not be reshipped or resold to any persons or places prohibited by the laws of the United States of America.
- b) Through The purchase of Medtronic products, the Buyer does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products, and the Buyer expressly agrees not to reverse engineer or decompile such products or related software and information.
- c) The rights and obligations of Medtronic and the Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the State of Washington, United States of America. All costs and expenses incurred by the prevailing party related to enforcement of its rights under this document, including reasonable attorneys fees, shall be reimbursed by the other party.



Medtronic

To: Chief Chris Kellen
 Addison Fire Department
 4798 Airport Pkwy
 Addison, TX 75001
 Phone: (972) 450-7206
 Fax: (972) 450-7208
 ckellen@ci.addison.tx.us

Medtronic Emergency Response Systems

11811 Willows Road NE
 P.O. Box 97023
 Redmond, WA 98073-9723 U.S.A
 www.medtronic-ers.com
 www.medtronic.com
 tel 800.442.1142
 fax 800.732.0956

Quote#: 1-77679424

Rev#: 3

Quote Date: 10/19/2006

Sales Consultant: Elizabeth Roberts
800-442-1142 x 72438

FOB: Redmond, WA

Shipping: 30-45 Days

Terms: Net 30, all quotes subject to credit approval and the following terms & conditions

Contract: None

Exp Date: 12/18/2006

Line	Catalog # / Description	Qty	List Price	Unit Disc	Trade-In	Unit Price	Ext Total
1	99400-002505 - LP12 DEFIB/MON , ADAPTIV BIPHASIC, AED, EL SCREEN, PACING, SPO2, 12LEAD, FAX, NIBP, ETCO2, TRENDING, THE BIPHASIC LIFEPAK 12 IS AN ADAPTIV FULLY ESCALATING (TO 360 JOULES) BIPHASIC MULTI-PARAMETER DEFIBRILLATOR/MONITOR UNIT. SHIP KIT INCLUDED. HARD PADDLES, BATTERIES AND CARRYING CASE NOT INCLUDED.	3	\$24,995.00	\$9,500.00	\$1,000.00	\$14,495.00	\$43,485.00
2	41310-002432 - LIFEPAK 12 SHIPKIT USA, ENGLISH, BIPHASIC, C02, 12 LEAD, SHORT CABLE, NIBP, 100MM PRINTER	3	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3	11141-000026 - LIFEPAK NiCd battery, 2.4 amp hour capacity Rechargeable nickel-cadmium with fuel gage. Must be used with an AC or DC Power Adaptor that is compatible with 2.4 amp hour batteries. Same size and weight as 1.7 amp hour battery.	12	\$268.00	\$40.20	\$0.00	\$227.80	\$2,733.60
4	11171-000007 - Masimo SET SpO2 Sensor - Adult Reusable	7	\$320.00	\$48.00	\$0.00	\$272.00	\$1,904.00
5	11171-000006 - Masimo SET SpO2 Patient Cable - 4ft	3	\$147.00	\$22.05	\$0.00	\$124.95	\$374.85
6	11260-000028 - Basic Carrying Case Includes shoulder strap, left and right pouches and vinyl front cover.	7	\$250.00	\$37.50	\$0.00	\$212.50	\$1,487.50
7	11260-000029 - Back Pouch Pouch Ideal for accessory storage. Not recommended for use with SLA batteries.	7	\$69.00	\$10.35	\$0.00	\$58.65	\$410.55
8	11220-000028 - Top Pouch Storage for sensors and electrodes. Insert in place of standard paddles.	7	\$46.00	\$6.90	\$0.00	\$39.10	\$273.70
9	11998-000063 - Removable Acrylic Screen Shield Hard acrylic shield for display protection. Cannot be used with front cover.	3	\$42.00	\$6.30	\$0.00	\$35.70	\$107.10

Quote#: 1-77679424
 Rev#: 3
 Quote Date: 10/19/2006

Quote Products (continued)

Line	Catalog # / Description	Qty	List Price	Unit Disc	Trade-In	Unit Price	Ext Total
10	11996-000021 - Small Child Cuff, 7x21cm Reusable	7	\$21.00	\$3.15	\$0.00	\$17.85	\$124.95
11	11996-000022 - Child Cuff (Pediatric), 9x27cm Reusable	7	\$21.00	\$3.15	\$0.00	\$17.85	\$124.95
12	11996-000023 - Small Adult Cuff, 12x30cm Reusable	7	\$25.00	\$3.75	\$0.00	\$21.25	\$148.75
13	11996-000025 - Large Adult Cuff, 16x42cm Reusable	7	\$29.00	\$4.35	\$0.00	\$24.65	\$172.55
14	UPG12BLUE - LIFENET BLUE upgrade (BlueTooth capability) Wireless Data Transfer upgrade for LP12 with -06 (4 MB) memory.	3	\$649.00	\$0.00	\$0.00	\$649.00	\$1,947.00
15	11996-000163 - MICROSTREAM SMART CAPNOLINE PLUS O2 ADULT/INTERMEDIATE, BOX OF 25	1	\$295.00	\$35.40	\$0.00	\$259.60	\$259.60
16	11996-000017 - QUIK-COMBO w/REDI-PAK Electrodes Edge System electrode with REDI-PAK preconnect system. Price per pair.	1	\$42.00	\$5.04	\$0.00	\$36.96	\$36.96

SUB TOTAL \$53,591.06
 ESTIMATED TAX \$0.00
 ESTIMATED SHIPPING & HANDLING \$108.47
GRAND TOTAL \$53,699.53

Trade-in Detail			
Product	Qty	Unit Value	Total Value
Pricing Summary Totals			
List Price:			\$86,519.00
Trade-ins:			- \$3,000.00
Cash Discounts:			- \$29,927.94
Tax + S&H:			+ \$108.47

GRAND TOTAL FOR THIS QUOTE \$53,699.53

TO PLACE AND ORDER, PLEASE FAX A COPY OF THE QUOTE AND PURCHASE ORDER TO: # 800-732-0956, ATTN: REP SUPPORT

MEDTRONIC EMERGENCY RESPONSE SYSTEMS
 REQUIRES WRITTEN VERIFICATION OF THIS ORDER. A
 PURCHASE ORDER IS REQUIRED ON ALL ORDERS \$10,000
 OR GREATER BEFORE APPLICABLE FREIGHT AND
 TAXES. THE UNDERSIGNED IS AUTHORIZED TO ACCEPT
 THIS ORDER IN ACCORDANCE TO THE TERMS AND PRICES
 DENOTED HEREIN. SIGN TO THE RIGHT:

CUSTOMER APPROVAL (AUTHORIZED SIGNATURE)

 NAME

 TITLE

 DATE

Ref. Code: AW//1-1A8XB8

Notes:

TAXES, SHIPPING AND HANDLING FEES ARE ESTIMATES ONLY AND ARE SUBJECT TO CHANGE AT THE TIME OF ORDER. SHIPPING AND HANDLING ESTIMATE APPLIES TO GROUND TRANSPORT ONLY.

ABOVE PRICING VALID ONLY IF QUOTE IS PURCHASED IN ITS ENTIRETY. (OPTIONAL ITEMS NOT REQUIRED). IF QUOTE REFLECTS TRADE-IN VALUES, CUSTOMER ASSUMES RESPONSIBILITY FOR SHIPMENT OF TRADE-IN UNITS TO MEDTRONIC EMERGENCY RESPONSE SYSTEMS.

ITEMS LISTED ABOVE AT NO CHARGE ARE INCLUDED AS PART OF A PACKAGE DISCOUNT THAT INVOLVES THE PURCHASE OF A BUNDLE OF ITEMS. CUSTOMER IS SOLELY RESPONSIBLE FOR APPROPRIATELY ALLOCATING THE DISCOUNT EXTENDED ON THE BUNDLE WHEN FULFILLING ANY REPORTING OBLIGATIONS IT MIGHT HAVE.

FOR ADDITIONAL PRODUCT INFORMATION PLEASE VISIT US AT www.medtronic-ers.com/products/ AND www.biphasic.com

1 1/2% SERVICE FEE

TERMS OF SALE

General Terms

Medtronic Emergency Response Systems ("Medtronic") acceptance of the Buyer's order is expressly conditioned on the Buyer's assent to the terms set forth in this document and its attachments. Medtronic agrees to furnish the goods and services ordered by the Buyer only on these terms, and the Buyer's acceptance of any portion of the goods and services covered by this document shall confirm their acceptance by the Buyer. These terms constitute the complete agreement between the parties and they shall govern any conflicting or ambiguous terms on the Buyer's purchase order or on other documents submitted to Medtronic by the Buyer. These terms may only be revised or amended by a written agreement signed by an authorized representative of both parties.

Pricing

Unless otherwise indicated in this document, prices of goods and services covered by this document shall be Medtronic standard prices in effect at the time of delivery. Prices do not include freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services covered by this document. Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services covered by this document unless Medtronic receives a copy of a valid exemption certificate prior to delivery. Please forward your tax exemption certificate to the Medtronic Tax Department P.O. Box 97006, Redmond, Washington 98073-9706.

Payment

Unless otherwise indicated in this document or otherwise confirmed by Medtronic in writing, payment for goods and services supplied by Medtronic shall be subject to the following terms:

Domestic (USA) Sales - Upon approval of credit by Medtronic, 100% of invoice due thirty (30) days after invoice date.

International Sales - Sight draft or acceptable (confirmed) irrevocable letter of credit.

Medtronic may change the terms of payment at any time prior to delivery by providing written notice to the Buyer. Medtronic reserves the right to charge a 15% restocking fee for returns.

Delivery

Unless otherwise indicated in this document, delivery shall be FOB Medtronic point of shipment and title and risk of loss shall pass to the Buyer at that point. Partial deliveries may be made and partial invoices shall be permitted and shall become due in accordance with the payment terms. In the absence of shipping instructions from the Buyer, Medtronic will obtain transportation on the Buyer's behalf and for the Buyer's account.

Delays

Delivery dates are approximate. Medtronic will not be liable for any loss or damage of any kind due to delays in delivery or non-delivery resulting from any cause beyond its reasonable control, including but not limited to, acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, and Medtronic inability to obtain goods from its usual sources. Any such delay shall not be considered a breach of Medtronic and the Buyer's agreement and the delivery dates shall be extended for the length of such delay.

Inspections

Claims by the Buyer for damage to or shortages of goods delivered shall be made within thirty (30) days after shipment by providing Medtronic with written notice of any deficiency. Payment is not contingent upon immediate correction of any deficiencies and Medtronic prior approval is required before the return of any goods to Medtronic.

Warranty

Medtronic warrants its products in accordance with the terms of the standard Medtronic product warranty applicable to the product to be supplied, and the remedies provided under such warranty shall be the Buyer's sole and exclusive remedies. Medtronic makes no other warranties, express or implied, including, without limitation, NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL MEDTRONIC BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.

Patent & Indemnity

Upon receipt of prompt notice from the Buyer and with the Buyer's authority and assistance, Medtronic agrees to defend, indemnify and hold the Buyer harmless against any claim that the Medtronic products covered by this document directly infringe any United States of America patent.

Miscellaneous

- a) The Buyer agrees that products purchased hereunder will not be reshipped or resold to any persons or places prohibited by the laws of the United States of America.
- b) Through The purchase of Medtronic products, the Buyer does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products, and the Buyer expressly agrees not to reverse engineer or decompile such products or related software and information.
- c) The rights and obligations of Medtronic and the Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the State of Washington, United States of America. All costs and expenses incurred by the prevailing party related to enforcement of its rights under this document, including reasonable attorneys fees, shall be reimbursed by the other party.

Council Agenda Item: #R11

SUMMARY:

Consideration of a resolution authorizing the City Manager to accept and enter into a Grant Agreement for Non-Primary Entitlement Funds (NPE) from the Federal Aviation Administration administered by Texas Department of Transportation, for airport improvements to Addison Airport.

FINANCIAL IMPACT:

NPE Grant:	\$150,000
Airport Fund:	\$ 15,000

Funds were not budgeted for the local match but are available in fund balance. A mid-year budget amendment may be needed to recognize the additional expense.

BACKGROUND:

The Town of Addison (Addison Airport) is eligible to receive funding under the Non-Primary Entitlement program (NPE) from the Federal Aviation Administration administered through the Texas Department of Transportation (TxDOT). This grant is Addison Airport's share of the annual non-discretionary entitlements that comes from the Federal Airport Improvement Program (AIP). This past year, AIP funding was set at approximately \$3.2 billion. Each year certain airports are eligible to receive \$150,000 for eligible projects. These grant funds can be utilized for various airfield projects. This year, staff has identified needed pavement and drainage repairs. This is a 90/10 grant with \$150,000 of TxDOT funds and \$15,000 Town of Addison Airport Funds.

The funds will be added with those received earlier this year from the same source for the completion of the project.

Funds required for the Town's share are available in the Airport Fund.

RECOMMENDATION:

Staff recommends approval.

Grant Agreement for Non-Primary Entitlement Funds

RESOLUTION

WHEREAS, the Town of Addison , hereinafter referred to as Sponsor, intends to make certain improvement to the Addison Airport; and

WHEREAS, the general description of the project is described as: Pavement and Drainage Improvements; and

WHEREAS, the Sponsor is currently eligible for federal Non-Primary Entitlement Funds of \$150,000; and

WHEREAS, the Sponsor has available and will provide at least 10% of the project costs with local funds and understands that the above mentioned entitlement funds cannot be increased;

NOW, THEREFORE, BE IT RESOLVED, that the Sponsor hereby requests federal Non-Primary Entitlement funds from the Texas Department of Transportation for these improvements;

AND, BE IT FURTHER RESOLVED, that the Sponsor hereby directs Ron Whitehead, City Manager to execute on behalf of the Sponsor, at the appropriate time, and with the appropriate authorizations of this governing body, all contracts and agreements with the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the improvements to the Addison Airport.

Joe Chow, Mayor
Town of Addison

Date

Council Agenda Item: #R12

SUMMARY:

Council approval is requested for the purchase of (2) 2007 Multi-Use Vehicles, under the Town's Inter-local Agreement with the Texas Local Government Purchasing Cooperative - known as BuyBoard.

FINANCIAL IMPACT:

Capital Equipment Replacement Fund -	Budgeted Amount:	<u>\$ 17,800.00</u>
	Cost:	<u>\$ 16,224.00</u>

BACKGROUND:

The Town belongs to the Texas Local Government Purchasing Cooperative - better known as BuyBoard. BuyBoard issues request for bids for vehicles and equipment every year and receives extremely competitive prices because of the large volume of purchases they generate. This is a comparable purchasing method to those purchases done through the Houston Galveston Area Council (HGAC). By participating in a cooperative, we are able to receive better prices on items we need and in some cases without the effort of seeking formal quotes or bids.

State statute exempts the Town from formal bid requirements when purchasing through the Inter-local Agreement with BuyBoard.

The (2) Multi-Use vehicles will be used by the Parks Department and replace (1) Jacobson Utility vehicle that has reached the end of its useful life.

The replaced vehicle will be auctioned at the next Town auction.

RECOMMENDATION:

Staff recommends approval.

Council Agenda Item: #R13**SUMMARY:**

Council approval is requested for the purchase of (1) 2007 Hybrid Electric SUV, (15) 2007 Police Package Sedans, (3) 2007 1 Ton Trucks and (1) 2007 Zero Turn Mower, under the Town's Inter-local Agreement with the Houston-Galveston Area Council (HGAC).

FINANCIAL IMPACT:

Capital Equipment Replacement Fund - Budgeted Amount:	<u>\$518,000.00</u>
Police (Fifteen vehicles)	Cost: <u>\$434,850.00</u>
Capital Equipment Replacement Fund - Budgeted Amount:	<u>\$ 50,000.00</u>
Parks (Two vehicles)	Cost: <u>\$ 46,816.00</u>
Airport Fund -	Budgeted Amount: <u>\$ 15,000.00</u>
(One Mower)	Cost: <u>\$ 12,538.80</u>
Utilities Fund -	Budgeted Amount: <u>\$ 30,000.00</u>
(One Vehicle)	Cost: <u>\$ 26,495.00</u>
Streets Division Budget	Budgeted Amount <u>\$ 25,000.00</u>
(One Vehicle)	Cost: <u>\$ 23,146.00</u>

BACKGROUND:

HGAC issues request for bids for vehicles and equipment every year and receives extremely competitive prices because of the large volume of purchases the council generates. In the past, the prices received from HGAC have been 25% below the manufacturer's suggested prices. State statute exempts the Town from formal bid requirements when purchasing through the Inter-local Agreement with HGAC.

The one 2007 Hybrid Electric SUV is for the Utilities Division and replaces a 1998 ½ ton pick up truck. The (15) 2007 Police Package vehicles replace fourteen 2004 patrol vehicles and one 2001 K-9 vehicle. Of the fifteen police vehicles, twelve are Dodge Charger sedans and three are Dodge Magnum Wagons, which two are patrol supervisory vehicles and one for the K-9 vehicle. (2) 2007 1 ton Trucks are for the Parks Department and they replace (1) 1997 1 Ton Truck and (1) 1998 1 Ton Truck. The Streets Division is adding (1) 2007 1 Ton Truck to the fleet to be used by the new Traffic Signal Technician position. The Zero Turn Mower is an addition to the airports fleet and will be used for grounds maintenance.

The replaced vehicles will be auctioned at the next Town auction.

There are sufficient funds in the Capital Equipment Replacement Fund, Airport Fund, Utilities Fund and Streets Division Budget to cover the total recommended expenditure of \$543,845.00.

RECOMMENDATION:

Staff recommends approval.

Council Agenda Item: #R14

SUMMARY:

This item is to discuss an expanded volunteer program for the Town.

FINANCIAL IMPACT:

The increased use of volunteers in appropriate roles should result in cost savings to the Town.

BACKGROUND:

Over the past few years the Town has had the opportunity to use volunteers to assist with various projects and in ongoing assignments. Several have worked such regular schedules that they have become very integrated into our employee family. Overall, our experience with volunteers has been very positive so we are formalizing and adding structure to the program. Through the volunteer program, we hope to create new partnerships with the community and enhance existing ones.

The name selected for the program is “**advocates: THE ADDISON VOLUNTEER CORPS.**”

We will advertise and market the new program to solicit interested individuals who will be matched by the Human Resources Department with either a temporary or ongoing job task that best suits the volunteer’s skills, talents, interests and availability. A reference and background check will be conducted and a Volunteer Agreement will be signed. In conjunction with job specific training, volunteers will receive an orientation, with particular emphasis on the Town’s goals, Mission Statement, customer service expectations and confidentiality requirements.

In addition to assignments within the Town’s departments, volunteers will have opportunities to assist in welcoming new businesses, attend restaurant openings as a Town representative and serve as a greeter at Town meetings. Required activities for volunteers will include participation in the Citizen’s Academy, plus attendance at three or more City Council meetings and at least one Addison 101 function each year.

Volunteers will not be compensated in earned income but they will be recognized and rewarded in non-monetary ways for their contributions. Examples may include an annual luncheon in their honor, recognition at the Boards and Commissions reception, and special guest invitations to Town sponsored events, quarterly employee luncheons and the ABA picnic.

Volunteers, like employees of the Town, serve “at will,” meaning that either the volunteer or the Town may terminate the volunteer relationship at any time, without advance notice, for any reason or for no reason.

RECOMMENDATION:

This item is presented for information and discussion only.

Council Agenda Item: #R15

SUMMARY:

This item is a recommended revision to the Town's policy on employee drug and alcohol testing. Such testing is conducted to rule out the possibility of drug or alcohol use as a factor in work related accidents or injuries, or in cases of reasonable suspicion based on objective facts and/or observable on-duty behavior. Testing is required for drivers of commercial vehicles.

FINANCIAL IMPACT:

Estimated annual costs for alcohol and drug testing are less than \$5,000.

BACKGROUND:

The policy is being revised as part of an ongoing policy update. The most significant changes in the revised policy are clearer definitions for identifying the threshold for drug and alcohol testing.

A copy of the proposed policy, which has been approved by the Town's Safety Review Board and the City Attorney's office, is attached.

RECOMMENDATION:

Staff recommends that Council approve the revised policy regarding employee drug and alcohol testing.

SECTION 1.16

#R15-2

Drug and Alcohol Testing

1. Post-Accident/Injury Testing

All employees shall undergo drug and alcohol testing in the following circumstances to rule out the possibility of drug or alcohol related accidents or injuries:

- a. when the employee, acting in the course and scope of his employment, sustains personal injuries requiring medical attention from a medical treatment facility, or
- b. when the employee is involved in a moving vehicular accident with Town owned equipment or vehicles, or in a personal or rented vehicle while acting in the course and scope of his employment, where there is:
 - 1) a fatality, or
 - 2) an injury resulting from the accident in which either party requires medical attention from a medical treatment facility, or
 - 3) damage to either vehicle resulting in a damage rating of 4 or greater, as determined by the investigating officer at the scene of the accident.

Drug and alcohol testing shall occur as soon as reasonably possible following the accident or injury, or in concert with any medical treatment administered at the time of the accident. Supervisors are responsible for ensuring that employees are transported to the testing facility.

Controlled substances for which an employee will be tested in a drug screening include, but are not limited to, drugs from the following drug classes: Amphetamines/Ecstasy, Barbiturates, Benzodiazepines, Cannabinoids (Marijuana), Cocaine, Methadone, Methaqualone, Opiates, Phencyclidine (PC) and Propoxyphene.

An employee who is subject to post-accident testing is considered to have refused to submit to testing and will be subject to disciplinary action if he unnecessarily leaves the scene of an accident or injury before a required test is administered or fails to remain readily available for testing. *This policy is not intended to delay necessary medical attention for injured persons following an accident or injury or to prohibit a Town driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident.*

An employee who is required to undergo post-accident/injury drug and/or alcohol testing will either be assigned to a non-safety sensitive function or be placed on non-disciplinary leave with pay while awaiting the test results.

If the employee's test is confirmed to be positive for drugs and/or alcohol, an investigation will be conducted by the employee's department. The outcome of the investigation may result in a recommendation for disciplinary action, up to and including termination of employment.

2. Reasonable Suspicion Testing

All employees are subject to reasonable suspicion testing for drugs and alcohol abuse based on objective facts and/or observable on-duty behavior. These facts or behaviors should be sufficient to lead a prudent supervisor to suspect that the employee is under the influence of drugs and/or alcohol and is impaired in his ability to perform the functions of the job or his ability to safely perform the job is reduced. Examples of observable changes may include, but are not limited to, appearance, behavior, job performance, speech or other warning signs or indications.

All drug and/or alcohol screening based on reasonable suspicion must be approved in advance by the Department Director or his designee, who must notify the Human Resources Director.

An employee shall not report for duty or remain on duty while having an alcohol concentration of 0.04 or greater. There will be no tolerance for the use of illegal drugs or abuse of controlled substances. Employees with test results showing any traceable amount of illegal drugs, abuse of controlled substances or an alcohol concentration of 0.04 or greater will be considered unfit for duty and placed on administrative leave pending disciplinary action, up to and including termination.

Should the employee be permitted to return to work, he will be required to contact the Town's Employee Assistance Program (EAP) and will be subject to periodic random screening for a period of time to be determined by the Department Director and the Human Resources Director.

Drug and alcohol test results and records will be maintained under strict confidentiality by the Town and the drug testing laboratory.

3. Testing for Drivers of Commercial Vehicles

A commercial driver's license (CDL) is required for drivers operating a vehicle which is in excess of 26,000 pounds, designed to carry 16 or more passengers (including the driver) or used in the transportation of hazardous materials. Such drivers are considered safety sensitive transportation employees. The Texas Administrative Code specifically exempts drivers of Fire vehicles from CDL requirements.

- a. The Federal Highway Administration (FHWA) rules govern safety sensitive transportation employees. The rules prohibit any unauthorized or illicit use of controlled substances. They also prohibit the performance of safety sensitive functions for drivers under the following conditions:
 - 1) while having a breath alcohol concentration of 0.04 or greater, or
 - 2) while using alcohol, or
 - 3) within four hours after using alcohol, or
 - 4) when the employee has refused to submit to an alcohol test, or
 - 5) within eight hours after an accident or until tested

b. Alcohol and drug tests are required for drivers of commercial vehicles in the following situations:

- 1) Pre-employment
Pre-employment tests for alcohol and drugs are required before any new or newly promoted employee can be allowed to operate a commercial motor vehicle.
- 2) Post-accident
Post-accident testing will follow the procedures described above in 1.16.1.
- 3) Reasonable suspicion
Reasonable suspicion testing will follow the procedures described above in 1.16.2.
- 4) Random
This testing is conducted on an indiscriminate, unannounced basis immediately before, during or immediately after performing safety sensitive functions.
- 5) Return-to-duty and follow-up
This testing is conducted when an employee who has violated alcohol or controlled substance related conduct standards returns to performing safety sensitive duties. Follow-up tests are unannounced, and at least six tests must be conducted during the first 12 months after a driver returns to duty.

Council Agenda Item: #R16

SUMMARY:

This item is for the award of contracts for employee medical, dental and life insurance and long term disability for the year beginning January 1, 2007 and ending December 31, 2007.

FINANCIAL IMPACT:

Budgeted Amount: \$2,409,607

Cost: \$2,160,477

BACKGROUND:

The Town currently contracts with Blue Cross/Blue Shield of Texas for employee medical insurance, with Delta Dental for employee dental insurance, with Hartford Life Insurance for life insurance and accidental death/dismemberment, and with Unumprovident for long term disability and an Employee Assistance Program. We request renewal of the contracts for plan year 2007. For employee medical insurance there will be a 7% increase to continue the current benefits plan. All other contracts will be renewed, with the current benefits, at 2006 rates.

Please see attachments for medical and dental plan descriptions.

RECOMMENDATION:

Staff recommends approval of contract amendments with Blue Cross/Blue Shield of Texas, Delta Dental Insurance Company, Hartford Life Insurance Company and Unumprovident, pending review and final approval by the City Attorney.

Blue Cross and Blue Shield of Texas*
Summary of Benefits Prepared for Town of Addison

PPO 2007

 BlueChoice BlueChoice Solutions

TYPE OF SERVICE	NETWORK	OUT-OF-NETWORK
GENERAL PROVISIONS		
Calendar Year Deductible (Applies to Non-Inpatient Hospital Services)	\$500 Individual/\$1500 Family	\$1000 Individual/\$3000 Family
4 th Quarter Carryover Applies	Yes	Yes
Deductible Credit from Prior Carrier	Yes	Yes
Coinsurance Stoploss Maximum	\$1,500 Indiv/\$4,500 Family per cal. yr.	\$3,000 Indiv/\$9,000 Family per cal. yr.
Coinsurance Stoploss Credit from Prior Carrier	Yes	Yes
Lifetime Maximum per Participant	\$2,000,000	
INPATIENT HOSPITAL SERVICES (must be Preauthorized)	80%	60% after per adm. deductible
Per Admission Deductible	None	\$250
Penalty for Failure to Preauthorize	None	\$250
EMERGENCY ROOM/TREATMENT ROOM		
Accident & Medical Emergency Situation within 48 Hours	80% after \$50 copay, waived if admitted 80% after cal. yr. deductible	
Facility Charges		
Physician Charges		
Non-Emergency Situations		
Facility Charges	80% after \$50 copay, waived if admitted	60% after \$50 copay & cal. yr. deductible, waived if admitted
Physician Charges	80% after cal. yr. deductible	60% after cal. yr. deductible
MEDICAL-SURGICAL SERVICES		
Services Performed in Physician Office (non-surgical), Including Lab & X-ray (excluding Certain Diagnostic Procedures)	100% after \$20 copay per visit	70% after cal. yr. deductible
Immunizations (birth to the day of the 6 th birthdate)	100%	100%
Physician Surgical Services in any Setting	80% after cal. yr. deductible	60% after cal. yr. deductible
Lab & X-Ray in Other Outpatient Facilities (excluding Certain Diagnostic Procedures):	100%	00% after cal. yr. deductible
• Certain Diagnostic Procedures: Bone Scan, Cardiac Stress Test, CT Scan (with or without contrast), Ultrasound, MRI, Myelogram, PET Scan	80% after cal. yr. deductible	60% after cal. yr. deductible
Home Infusion Therapy (must be Preauthorized)	80% after cal. yr. deductible	60% after cal. yr. deductible
In-Vitro Fertilization	Declined	
Physical Medicine Services (Physical, Occupational, and Manipulative Therapy)	80% after cal. yr. deductible	60% after cal. yr. deductible
Speech and Hearing Services with Hearing Aids	\$1,500 cal. yr. max.	
	Covered as any other sickness \$1,000 maximum benefit per 36-month period for Hearing Aids	Covered as any other sickness
All Other Outpatient Services and Supplies	80% after cal. yr. deductible	60% after cal. yr. deductible

Town of Addison

PPO

TYPE OF SERVICE	NETWORK	OUT-OF-NETWORK
PREVENTIVE CARE Routine Physicals, Well Baby Care, Immunizations (after 6 th birthdate), Vision & Hearing Exams	100% after \$20 copay per visit	70% after cal. yr. deductible
EXTENDED CARE SERVICES (must be Preauthorized) Home Health Care Calendar Year Maximum Skilled Nursing Facility Hospice Care	100% \$10,000 per cal. yr. \$10,000 per cal. yr. \$20,000 lifetime max.	70% after cal. yr. deductible
MENTAL HEALTH (must be Preauthorized) Inpatient Services Hospital Services (Facility) Physician Services Calendar Year Limitations Outpatient Services Services Performed in Physician Office (non-surgical) Emergency Room/Treatment Room/Facility Charges (non-emergency only) Professional Provider Visits Allowed	80% 80% after cal. yr. deductible 30 inpatient days/30 physician visits <i>Days and Visits used in Network or Out-of-Network apply towards satisfying both maximums.</i>	60% after per adm. deductible 60% after cal. yr. deductible
	100% after \$20 copay 80% after \$50 copay, waived if admitted 80% after cal. yr. deductible 30 visits per cal. yr.	70% after cal. yr. deductible 60% after \$50 copay & cal. yr. deductible, waived if admitted 60% after cal. yr. deductible
CHEMICAL DEPENDENCY in a Substance Abuse Facility (must be Preauthorized) All Other Outpatient Treatment	Three separate series of treatments for each covered individual/Covered as any other sickness Covered as any other sickness	
SERIOUS MENTAL ILLNESS (must be Preauthorized) Inpatient Services Hospital Services (Facility) Physician Services Calendar Year Limitations Outpatient Services Services Performed in Physician Office (non-surgical) Emergency Room/Treatment Room/Facility Charges (non-emergency only) Professional Provider Number of Outpatient Visits	80% 80% after cal. yr. deductible 45 inpatient days/45 physician visits	60% after per adm. deductible 60% after cal. yr. deductible
	100% after \$20 copay 80% after \$50 copay, waived if admitted 80% after cal. yr. deductible 60 visits per cal. yr.	70% after cal. yr. deductible 60% after \$50 copay & cal. yr. deductible, waived if admitted 60% after cal. yr. deductible

Town of Addison

PPO

TYPE OF SERVICE	PARTICIPATING PHARMACY	NON-PARTICIPATING PHARMACY (member files claim)
PRESCRIPTION DRUG PROGRAM*		
Retail Prescription (all copays are per 30-day supply and will not apply to coinsurance stoploss maximum)		
Non-Preferred Brand Name	\$45 copay	80% of Allowable Amount minus copay
Preferred Brand Name	\$30 copay	80% of Allowable Amount minus copay
Generic	\$15 copay	80% of Allowable Amount minus copay
Mail Service Prescription (all copays are per 30-day supply and will not apply to coinsurance stoploss maximum)		
	Yes	
Non-Preferred Brand Name	\$45 copay	
Preferred Brand Name	\$30 copay	
Generic	\$15 copay	
<p>Generic Incentive - Members electing to purchase preferred/non-preferred brand name drugs when a generic equivalent is available, will be required to pay the difference between the cost of the generic and preferred/non-preferred brand name drug, plus the preferred brand name copay.</p> <p>**4th quarter carryover does not apply to prescription drug deductible.</p> <p>Copay amounts and pricing differences, if applicable, apply after Pharmacy Deductible has been met.</p>		

Town of Addison

PPO

EMPLOYEE INFORMATION

- This is a general Summary of your benefit design. Please refer to your benefit booklet for other details and for limitations and exclusions.
- The following benefits apply to dependent coverage:
 - Dependent children covered for maternity benefits.
 - Dependent children are covered to age 25. Disabled dependent children can be covered beyond age 25.
 - Automatic coverage for newborns for the first 31 days following birth. Infants not enrolled for coverage within the first 31 days after birth will not be eligible for coverage until the following open enrollment period or special enrollment event.
- Provider charges are paid according to BCBSTX determined Allowable Amount and negotiated prices.
- Preexisting conditions are defined in the benefit booklet and are excluded for 12 months. Appropriate credit will be given for time served under another health benefit plan as defined under the law.
- Replacement of Medical Coverage: In compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State law, the following provisions apply to each eligible participant who has health coverage under the employer's plan immediately prior to the effective date of the health contract between the employer and BCBSTX (the contract date):
 - Benefits for eligible expenses incurred for any service or supplies prior to the contract date, are not covered under the contract.
 - Eligible expenses for services or supplies incurred on or after the effective date will be considered for benefits subject to all applicable contract provisions.
- Traditional benefits are not provided under this Plan unless you have employees or dependents residing in State(s) with no network or in locations in states where there is not a network services area. State(s) with no network: Montana. States with limited service: Kansas: Statewide network, except Johnson and Wyandotte counties; Oklahoma: Metropolitan areas of Oklahoma City, Tulsa, Lawton, Edmond, Shawnee, Hugo, Tahlequah, Cushing, Poteau, Pryor and some other communities; Virginia: Statewide network, except Amherst, Appomattox, Campbell, Culpepper counties and the City of Lynchburg; Wisconsin: Statewide, except some rural areas; Wyoming: Laramie County only. Please notify your service representative if you acquire employees or their dependents in these locations after the effective date of the Plan.



The following chart summarizes the coverage available under the offered HMO Plan. All covered services (except in emergencies) must be provided by or through your participating Primary Care Physician, who may refer you for further treatment by providers in the applicable network of participating specialists and hospitals. Female members may visit a participating OB/GYN physician in their Primary Care Physician's provider network for diagnosis and treatment without a referral from their Primary Care Physician. This summary should be reviewed together with the Limitations and Exclusions at the end of this document.

PHYSICIAN SERVICES	
• Primary Care Physician Office Visit	\$20 copayment per visit
• Specialist Office Visit	\$20 copayment per visit
• Primary Care Physician Home Visits	\$20 copayment per visit
• Specialist Home Visits	\$20 copayment per visit
• Other Participating Provider Home Visit (other than Rehabilitation Services)	\$20 copayment per visit
• Rehabilitation Services - Participating Primary Care Physician Office or Home Visits	\$20 copayment per visit
• Rehabilitation Services - Participating Specialist Office or Home Visits	\$20 copayment per visit
PREVENTIVE SERVICES	
• Periodic Health Assessments (age 18 and over)	
• Participating Primary Care Physician	\$20 copayment per visit
• Participating Specialist	\$20 copayment per visit
• Childhood Immunizations (birth to age 6)	100% coverage
• Immunizations for all Members (age 6 and over)	100% coverage
• Well Child Care (through age 17)	
• Participating Primary Care Physician	100% coverage
• Participating Specialist	100% coverage
• Annual Well Woman Examination	
• Participating Primary Care Physician	100% coverage
• Participating Specialist	100% coverage
ALLERGY CARE SERVICES	
• Testing and Evaluations	50% copayment
• Injections and Serum	50% copayment
MATERNITY AND FAMILY PLANNING SERVICES	
• Outpatient Diagnostic Counseling, Consultations and Planning Services	
• Participating Primary Care Physician	\$20 copayment per visit
• Participating Specialist	\$20 copayment per visit
• Prenatal and Postnatal Visits	
• Participating Primary Care Physician	100% coverage after \$20 copayment for 1st visit
• Participating Specialist	100% coverage after \$20 copayment for 1st visit
• Delivery in Hospital	100% coverage after \$500 copayment
• Newborn Care in Hospital	100% coverage

A Division of Health Care Service Corporation, a Mutual Legal Reserve Company,
an Independent Licensee of the Blue Cross and Blue Shield Association

OUTPATIENT HOSPITAL SERVICES	
<ul style="list-style-type: none"> • Outpatient Surgery (including all related surgical services) • Lab & x-rays, Radiation, Chemotherapy, Dialysis • Rehabilitation Services and Therapy 	<p>\$200 copayment</p> <p>100% coverage</p> <p>\$20 copayment per visit</p>
INPATIENT HOSPITAL SERVICES	
<ul style="list-style-type: none"> • Inpatient Care (semiprivate room & board, medications, surgery, lab & x-ray, anesthesia and therapy) 	<p>100% coverage after \$500 copayment</p>
EMERGENCY MEDICAL SERVICES	
<ul style="list-style-type: none"> • Emergency Room Services (includes out-of-area) • Urgent Care Center • Ambulance Services 	<p>\$75 copayment per visit (waived if admitted)</p> <p>\$40 copayment per visit</p> <p>\$100 copayment per service</p>
BEHAVIORAL HEALTH SERVICES	
<ul style="list-style-type: none"> • Outpatient Visits • Inpatient Hospital Days • Serious Mental Illness <ul style="list-style-type: none"> - Outpatient - 60 visits per calendar year <ul style="list-style-type: none"> • Participating Primary Care Physician • Participating Specialist - Inpatient • Chemical Dependency (covered as any physical illness) 	<p>\$25 copayment per visit (20 visits per calendar year)</p> <p>Coverage provided with purchase of Rider</p> <p>\$20 copayment per visit</p> <p>\$20 copayment per visit</p> <p>100% coverage after \$500 copayment (45 days per calendar year)</p> <p>Subject to inpatient/outpatient copayments (limited to 3 separate series of treatments)</p>
SKILLED NURSING, HOME HEALTH & HOSPICE SERVICES	
<ul style="list-style-type: none"> • Skilled Nursing Facility • Home Health Care by Physician • Hospice 	<p>\$25 copayment per day (60 days per calendar year)</p> <p>\$20 copayment per visit</p> <p>100% coverage (calendar year maximum of \$20,000)</p>
OTHER SERVICES	
<ul style="list-style-type: none"> • Diabetic Self-Management Training • Diabetic Equipment • Diabetic Supplies • Durable Medical Equipment • Prosthetic & Orthotic Devices 	<p>100% coverage</p> <p>20% copayment</p> <p>20% copayment</p> <p>Coverage provided with purchase of Rider</p> <p>20% copayment (\$10,000 limit on replacements except those due to maturation)</p>
MAXIMUM OUT-OF-POCKET	
<ul style="list-style-type: none"> • Per calendar year - per individual • Per calendar year - per family 	<p>\$1,500</p> <p>\$3,000</p>
LIFETIME MAXIMUM	
	Unlimited

PERCENTAGES SHOWN ARE PERCENTS OF THE HMO BLUE TEXAS ALLOWABLE AMOUNT. REFER TO THE CERTIFICATE OF COVERAGE FOR SPECIFIC PROVISIONS AND LIMITATIONS. INFORMATION ON ADDITIONAL BENEFITS MAY BE ATTACHED.

LIMITATIONS AND EXCLUSIONS

- Services or supplies of non-Plan Providers, except as specifically authorized by HMO.
- Cosmetic, Reconstructive or Plastic Surgery, except as specifically provided for by HMO.
- Elective or non-therapeutic abortions; sterilization reversal (male or female); transsexual surgery; treatment of sexual dysfunction, including medications for the treatment of sexual dysfunction, as well as penile prostheses and other surgery, and vascular or plethysmographic studies that are used only for diagnosing impotence, in vitro fertilization unless covered by a Rider; promotion of fertility through extra-coital reproductive technologies, other than artificial insemination.
- Services or supplies for dental care, except as specifically provided for by HMO or covered by Dental Services Rider.
- Services or supplies for Custodial Care.
- Services or supplies furnished by an institution, which is primarily a place of rest, a place for the aged, or any similar institution.
- Educational testing and therapy, including the treatment of learning disabilities, developmental delays in speech, motor or language skills, behavioral disorders including adolescent behavior disorders such as conduct or oppositional disorders or services that are educational in nature or are for vocational testing or training. This exclusion does not apply to developmental delays if the delay is related to a treatable medical condition.
- Personal or comfort items.
- Private duty nursing, except when determined to be Medically Necessary and ordered or authorized by the Primary Care Physician.
- Hearing aids, contact or corrective lenses and eyeglass frames, routine eye exams and eye refractions, visual orthoptics or visual training, unless otherwise covered by a Rider; services or supplies for radial keratotomy or surgical procedures for refractive treatment.
- Experimental/Investigational services and supplies.
- Prescription drugs and medications of any kind, except as provided while confined as an inpatient, or as otherwise covered by a Rider; any over-the-counter supplies or medicines.
- Fertility drugs, unless otherwise covered by a Rider.
- Services or supplies incident to in vitro fertilization, organ and tissue transplant, or other procedures when the Member acts as the donor and the recipient is not a Member.
- Transportation services, except as provided for by HMO, or when otherwise approved by HMO.
- Care for conditions that federal, state, or local law requires to be treated in a public facility.
- Services or supplies which in the judgment of the Primary Care Physician are not Medically Necessary.
- Breast reduction or augmentation surgery, even when Medically Necessary, except as provided for by HMO.
- Private rooms unless Medically Necessary and authorized by HMO. If a semi-private room is not available, HMO covers a private room until a semi-private room is available.
- Services or supplies for routine foot care such as hygienic care, treatment for flat feet or fallen arches, removal of corns or calluses and toenail trimming or non-surgical treatment of bunions or ingrown toenails.
- Services or supplies provided as, or in conjunction with chelation therapy, except for treatment of acute metal poisoning.
- Services or supplies provided primarily for Environmental Sensitivity, Clinical Ecology or any similar treatment not recognized as safe and effective by the American Academy of Allergists and Immunologists or Inpatient allergy testing or treatment.
- Services or supplies provided for obesity or weight reduction, including surgical procedures and prescription drugs.
- Medical Social Services, any outpatient family counseling and/or therapy, bereavement counseling (except as provided as Hospice Care), vocational counseling, pastoral counseling, or Marriage and Family Therapy and/or counseling.

- Services or supplies provided for orthognathic surgery after the Members 19th birthday, except as specifically provided for by HMO.
- Services or supplies provided for Dietary and Nutritional Services, except for a nutritional assessment program provided in and by a Hospital and approved in advance by HMO.
- Charges resulting from the failure to keep a scheduled visit with a Plan Physician or other Plan Provider or for acquisition of medical records.
- Services or supplies provided for injuries sustained as a result of war, declared or undeclared, or any act of war or while on active or reserve duty in the armed forces of any country or international authority.
- Any benefits for which the Member is eligible through entitlement programs of the federal, state, or local government, including but not limited to Medicare, Medicaid, or their successors.
- Services relating to judicial or administrative proceedings or conducted as part of medical research.
- Services or supplies provided for treatment or related services to the temporomandibular joint (TMJ), except for Medically Necessary diagnostic/surgical treatment of conditions affecting the TMJ as a result of an accident, trauma, congenital or developmental defect or a pathology.
- Alternative treatments such as acupuncture, acupressure, hypnotism, massage therapy and aroma therapy.
- Services and supplies for smoking cessation programs and the treatment of nicotine addiction.
- Galvanic stimulators.
- Biofeedback or other behavior modification services.
- Examinations, testing, vaccinations or other services required by employers, insurers, schools, camps, courts, licensing authorities, other third parties or for personal travel. Special medical reports not directly related to treatment. Appearances at court hearings and other legal proceedings.
- Videofluoroscopy, intersegmental traction, surface EMGs, manipulation under anesthesia, and muscle testing through computerized kinesiology machines such as Isostation, Digital Myograph and Dynatron.
- If a service is not covered, HMO will not cover any services that are related to it. Related services are: (i) services provided in preparation for the non-covered service; (ii) services provided in connection with providing the non-covered service; (iii) hospitalization required to perform the non-covered service; or (iv) services that are usually provided following the non-covered service, such as follow-up care or therapy after surgery.
- Mental health services unless otherwise covered by a Rider or Amendment.
- Disposable or consumable outpatient supplies, such as (i) syringes, needles, blood or urine testing supplies (except as used in the treatment of diabetes) and (ii) sheaths, bags, elastic garments and bandages, ostomy bags, home testing kits, vitamins, dietary supplements and replacements, and special food-items.
- Any and all transplants of organs, cells, and other tissues, except those specifically provided for in Schedule of Benefits.
- Durable Medical Equipment unless otherwise covered by a Rider.
- Any services or supplies provided in connection with an occupational sickness or an injury sustained in the scope of and in the course of any employment whether or not benefits are, or could upon proper claim be provided under Workers Compensation law.
- Residential treatment centers for Mental Health Services other than for treatment for adolescents.
- Residential treatment centers for chemical dependency other than facilities: (i) affiliated with a hospital under a contractual agreement with an established system for patient referral; (ii) accredited as such a facility by the Joint Commission on Accreditation of Hospitals; (iii) licensed as a chemical dependency treatment program or center by any other state agency having legal authority to so license, certify, or approve.
- Trauma or wilderness programs for behavioral health or chemical dependency treatment.
- Services provided to Members by individual related by blood or marriage.

Refer to the certificate of coverage for specific provisions and limitations.

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(O2) Vision Exam Rider: Routine eye examinations for either eyeglasses or for contact lenses, limited to one such examination per member in any 12-month period. \$10 copayment for eyeglass vision examination or \$20 copayment for contact lens vision examination.

Exclusions

- Eyeglass lenses, eyeglass frames or contact lenses, to include fitting services;
- Treatment of the eyes or any special procedures, therapeutic or diagnostic procedures, eye examinations required by an employer, or services for which no charge is made;
- Vision examinations performed more frequently than every twelve (12) months; and
- Vision examinations performed by a non-Participating Vision Provider.

(DM2) Durable Medical Equipment Rider: Members are entitled to rental or purchase of Durable Medical Equipment (initial placement only and standard replacements needed because of physical growth by Members who are under 18 years of age) with a copayment of 20% of the allowable amount, when Medically Necessary. Services and devices may be obtained through a Participating DME Provider, and may require authorization in advance by HMO.

Coverage is provided for 1 audiometric examination to determine type and extent of hearing loss once every 36 months. HMO covers Medically Necessary fitting and purchase of hearing aid device(s) limited to 1 per ear every 36 months. The total benefit for purchase of hearing aid device(s) is \$1,000 every 36 months. The HMO will not cover replacement for loss, damage or function defects.

Exclusions

- The following items are among those excluded within the Durable Medical Equipment Rider: deluxe equipment such as motor driven wheelchairs and beds, unless determined to be Medically Necessary; comfort items; bedboards; bathtub lifts; over bed tables; air purifiers; elastic stockings; sauna baths; replacement, repairs or maintenance of Durable Medical Equipment; exercise equipment; stethoscopes and sphygmomanometers; orthopedic shoes; arch supports; dentures; disposable supplies; experimental and/or research items. In no event will prosthetic devices or artificial limbs be covered under this Rider.
- Batteries are not covered except if necessary at the time of the initial placement of the hearing aid device(s)

(IM2) Inpatient Mental Health Rider: Members are entitled to inpatient mental health services from Participating Mental Health Providers which are based on an Individual Treatment Plan. Participating Mental Health Providers must be licensed by the appropriate state agency or board to provide services. The copayment for inpatient mental health services is 50% of the allowable amount.

The total benefit for services is limited to 30 treatment days per calendar year.

Exclusions

- Mental health services for the following diagnosed conditions are excluded: Alzheimer's disease, intractable personality disorders, mental retardation, educational testing or any other testing required by school system, psychiatric therapy on court order or as a condition of parole or probation, and chronic organic brain syndrome.
- Benefits for services in a Residential Treatment Center for Children and Adolescents or a Crisis Stabilization Unit are available only for Acute Conditions which would otherwise necessitate confinement in Participating Mental Health Treatment Facility.
- Benefits will not be allowed under the Rider if treatment is provided by a non-Participating provider; or by a non-Participating Mental Health Treatment Facility, Crisis Stabilization Unit or Residential Treatment Center for Children and Adolescents.
- Benefits for services in a residential treatment center for adults are excluded.

(PD11) \$15/\$30/\$45 RX Generic Incentive Prescription Drug Rider: Your health plan benefits include a prescription drug rider. You can check your provider directory or search online at www.bcbstx.com for a participating provider near you.

HMO Blue Texas offers a three-tier copayment plan design. A \$15 copayment per prescription for generic equivalents, \$30 copayment per prescription for preferred name brand drugs or \$45 copayment per prescription for non-preferred name brand drugs. If the brand name drug is selected when a generic drug is available, the member pays the generic copayment plus the difference between the cost of the generic and brand name drugs. Prescription drugs are also available by mail order. Mail order represents an effective, convenient option for obtaining maintenance medications. Drugs and medicine must be approved by the FDA and dispensable upon written prescription. Prescriptions limited to a maximum 90-day supply. All copayments per 30-day supply.

Prescription drugs purchased out of the area are subject to \$45 copayment. A receipt must be submitted within 90 days of the date of purchase for reimbursement.

A listing of the most commonly prescribed preferred drugs is available online; however, not all preferred drugs are listed. Call Customer Service to find out if your prescription medication is on the preferred drug list.

Exclusions

- Drugs which do not by law require a prescription order (except insulin, insulin analogs, insulin pens, and prescriptive and nonprescriptive oral agents for controlling blood sugar levels); drugs, insulin or devices for which no valid prescription order is obtained. Also, we do not cover prescription drugs if there is an over-the counter product available with the same active ingredient(s).
- Devices or Durable Medical Equipment of any type (even though such devices may require a prescription order), such as, but not limited to, therapeutic devices, artificial appliances, or similar devices (except disposable hypodermic needles, syringes for self-administered injections, and contraceptive devices).
- Administration or injection of any drugs.
- Vitamins (except those vitamins which by law require a prescription and for which there is no non-prescription alternative).
- Drugs dispensed in a participating physician's office or during confinement while a patient in a

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hospital, or other acute care institution or facility, including take-home drugs, and drugs dispensed by a nursing home or custodial or chronic care institution or facility.

- Any special services provided by participating pharmacy, including but not limited to counseling and delivery.
- Drugs for which the participating pharmacy's usual and customary charge to the general public is less than or equal to the copayment required by HMO.
- Drugs labeled for investigational use or experimental drugs.
- Refills in excess of the number of refills specified by the participating physician or by law, or any drugs dispensed more than one year following the prescription order date.
- Legend drugs which are not approved by the U.S. Food and Drug Administration or used for a purpose other than the purpose for which FDA approval is given, except as required by law or regulation.
- Fluids, solutions, nutrients or medications used or intended to be used by intravenous, intramuscular, intrathecal, intraarticular injection or gastrointestinal (enteral) infusion in the home setting.
- Drugs for the treatment of obesity or any weight reduction, weight loss, or dietary control.
- Drugs for the treatment of infertility (oral and injectable).
- Drugs where use or intended use would be illegal, unethical, imprudent, abusive, not Medically Necessary, or otherwise improper.
- Drugs obtained by unauthorized or improper use of the ID card.
- Drugs used or intended to be used in the treatment of a condition, sickness, disease, injury, or bodily malfunction which is not covered under the HMO, or for which benefits have been exhausted.
- Rogaine, minoxidil or other drugs used in the treatment of hair loss or any related condition, whether to facilitate or promote hair growth, to replace lost hair, or otherwise.
- Cosmetic drugs used primarily to enhance appearance, including, but not limited to, correction of skin wrinkles and skin aging.
- Services and supplies for smoking cessation programs and the treatment of nicotine addiction.
- Antiseptic or fluoride mouthwashes, mouth rinses or topical oral solutions or preparations.
- Retin A or pharmacologically similar topical drugs.
- Drugs purchased from a non-participating pharmacy in the service area.
- Allergy serum and allergy testing materials.
- Athletic performance enhancement drugs.
- Drugs to treat sexual dysfunction including but not limited to sildenafil citrate, phentolamine, apomorphine, and alprostadil in oral and topical form.
- Compounded drugs which do not meet the definition in Prescription Drug Rider.
- Injectable drugs except those self-administered subcutaneously.



Delta Dental Insurance Company

ABOUT DELTA'S ACCESS

The Delta's Access program allows you to:

- ◆ Save on out-of-pocket expense when you visit a network dental office
- ◆ Visit any dentist of your choice — select a different dentist for each member of your family
- ◆ Change dentists at any time
- ◆ Go to a dental specialist of your choice
- ◆ Receive dental care anywhere in the world

Under the Delta's Access program, you may visit any licensed dentist you wish.

If you choose a non-Delta's Access dentist, you will benefit by selecting a Delta Premier Dentist. More than 100,000 dentists in the US are Delta dentists, including Delta's Access dentists. Delta dentists agree to abide by Delta's fee and quality guidelines.

DELTA'S ACCESS DENTISTS	PREMIER DENTISTS	NON-DELTA DENTISTS
Your out-of-pocket expense will probably be less because Access dentists have agreed to charge Preferred patients reduced fees.	You will be charged no more than the fees approved by Delta as customary and reasonable.	You will be responsible for the dentist's fees, which may be higher than those allowed by Delta.
Claim forms will be completed and submitted for you at no charge.	Claim forms will be completed and submitted for you at no charge.	You may have to complete and submit your own claim forms or pay a service fee.
You may be charged only the patient share* at the time of treatment, not Delta's portion.	You may be charged only the patient share* at the time of treatment, not Delta's portion.	You may have to pay the entire amount in advance and wait for reimbursement.

* Patient share* is the copayment, any deductible and any amount over the annual maximum. Some services may not be covered, please refer to your Evidence of Coverage. Some examples of services not covered are cosmetic dentistry, experimental procedure and services to correct congenital malformations.

DELTA'S ACCESS IS EASY TO USE

Delta's Access is Delta's reduced-fee program. The program provides the maximum benefit when you visit a Delta's Access dentist. Delta's Access dentists are Delta dentists who have agreed to charge Delta's Access patients reduced fees.

To use your Delta's Access program, just call the dental office and verify that the dentist is a Delta's Access dentist. During your first appointment, give your dentist your group number, and the primary enrollee's social security number.

For a list of dentists in your area, search the dentist directory on our web site at www.deltadentalins.com.

Delta Dental offers you what no other dental plan can — the Delta Difference. Here's what makes us unique:

- ◆ Delta dentists agree to charge you no more than the amount approved by Delta.
- ◆ Copayments are guaranteed. Delta dentists charge you only what Delta determines to be your share of the treatment cost. If your share is 20 percent, you pay 20 percent of the Delta-approved fee — and no more.
- ◆ We require professional treatment standards. Delta dentists must meet professional standards for hygiene, radiation safety and other areas of quality care.

THIS IS NOT A POLICY OF WORKERS' COMPENSATION INSURANCE. THE EMPLOYER DOES NOT BECOME A SUBSCRIBER TO THE WORKERS' COMPENSATION SYSTEM BY PURCHASING THIS POLICY, AND IF THE EMPLOYER IS A NON-SUBSCRIBER, THE EMPLOYER LOSES THOSE BENEFITS WHICH WOULD OTHERWISE ACCRUE UNDER THE WORKERS' COMPENSATION LAWS. THE EMPLOYER MUST COMPLY WITH THE WORKERS' COMPENSATION LAW AS IT PERTAINS TO NON-SUBSCRIBERS AND THE REQUIRED NOTIFICATIONS THAT MUST BE FILED AND POSTED.

PRINCIPAL BENEFITS AND COVERED SERVICES*

WHO'S COVERED	In-Network	Out-of-Network
DEDUCTIBLES AND BENEFITS MAXIMUM	The deductible \$50 per person, \$150 per family, per calendar year. The maximum benefit paid per plan year is \$1,500 per person	The deductible \$50 per person, \$150 per family, per calendar year. The maximum benefit paid per plan year is \$1,500 per person
DIAGNOSTIC AND PREVENTIVE BENEFITS* - oral examinations, cleanings, x-rays, fluoride treatment, space maintainers	100% of Access fee schedule (no deductible applies to these services)	100% of UCR (Usual, Customary and Reasonable) (no deductible applies to these services)
BASIC BENEFITS* - simple extractions, fillings, denture repairs, sealants, endodontics (root canals); periodontics (gum treatment)	80% of Access fee schedule	80% of UCR (Usual, Customary and Reasonable)
CROWNS, JACKETS AND CAST RESTORATIONS* - for treatment of carious lesions (visible destruction of hard tooth structure resulting from dental decay) which cannot be restored with amalgam, synthetic or plastic	50% of Access fee schedule	50% of UCR (Usual, Customary and Reasonable)
PROSTHODONTIC BENEFITS* - bridges, partial dentures, full dentures	50% of Access fee schedule	50% of UCR (Usual, Customary and Reasonable)
ORTHODONTIC BENEFITS* - (for dependent children only to age 25)	50% of Access fee schedule Lifetime maximum is \$1,500 per [dependent child] enrollee.	50% of UCR (Usual, Customary and Reasonable) Lifetime maximum is \$1,500 per [dependent child] enrollee.

SERVICES THAT ARE NOT COVERED

Although your program covers many of the most commonly needed services, some services are not covered. If you are unsure whether a particular procedure is covered, or how much of it is paid for by your program, check with Delta before proceeding.

- The following are not covered by the program:
- ◆ Services for injuries or conditions covered under Workers' Compensation or Employer's Liability Laws
 - ◆ Cosmetic surgery or dentistry or services to correct congenital malformation
 - ◆ Experimental procedures
 - ◆ Therapeutic drugs, premedication or pain relievers
 - ◆ Hospital costs or extra charges for hospital treatment
 - ◆ Anesthesia (except for general anesthesia for oral surgery)
 - ◆ Extra-oral grafts, implants and implant removal
 - ◆ Teeth extracted prior to effective date are not a covered benefit

The preceding information is not intended for use as a summary plan description, nor is it designed to serve as an Evidence of Coverage for the program.

This program is administered by Delta Dental Insurance Company. If you have specific questions regarding benefit structure, limitations or exclusions, consult the Evidence of Coverage or contact Delta's Customer Services department



Delta Dental Insurance Company

Delta Dental Insurance Company
P.O. Box 1809
Alpharetta, GA 30023-1809
1-800-521-2651

Access Delta Dental's National Dentist Directory on the Internet.

Our Internet address is: www.deltadentalins.com

*Please refer to your Evidence of Coverage for limitations on these benefits. Some examples of limitations on services are the number of cleanings and oral exams covered in a calendar year, and time limitations on filling and crown replacements. All services are subject to calendar year maximums.

Council Agenda Item: #R17

SUMMARY:

Staff is requesting approval to enter into an agreement with Liz Oliphant & Associates, Inc. to assist with special projects as determined by the City Manager.

FINANCIAL IMPACT:

Principal (Liz Oliphant)	\$150.00 per hour
Production Coordinator	\$50.00 per hour
Clerical/Detail Service Fee	\$20.00 per hour

Attendance at Council Meetings/staff meetings \$40.00 per hour

BACKGROUND:

For the last several years, the Town has utilized the services of Liz Oliphant & Associates for a variety of special projects and to promote certain stories to the local/regional press. Staff is very pleased with the results that Liz Oliphant consistently provides.

RECOMMENDATION:

Staff recommends approval.

AGREEMENT FOR PUBLIC RELATIONS SERVICES

THIS AGREEMENT is between the Town of Addison, a municipal corporation, of Dallas County, Texas (herein referred to as "TOWN") (acting through its City Manager with approval of the City Council) and Liz Oliphant & Associates, Inc. (herein referred to as "AGENCY"), a Texas corporation with its principal place of business in the City of Dallas, Dallas County, Texas.

WHEREAS, the TOWN requires the assistance of a public relations firm to assist with special projects; and

WHEREAS, the TOWN desires to retain the services of Liz Oliphant & Associates, Inc. to provide such assistance;

NOW, THEREFORE, in consideration of the mutual covenants set out herein and for other good and valuable consideration, the TOWN and AGENCY hereby agree as follows:

SECTION I DUTIES

(a) TOWN hereby retains AGENCY to assist in the development and maintenance of a communications program for the TOWN.

(b) During the term of this Agreement, the TOWN may assign additional duties to AGENCY from time to time, subject to AGENCY's desire to handle same. If additional duties are assigned to AGENCY and AGENCY agrees to handle the same, all terms and conditions hereof shall apply in the same manner as with respect to the originally assigned duties.

SECTION II SCOPE OF SERVICES

At the TOWN's request, AGENCY shall assist in the development of a plan for communications and public relations for the community. AGENCY'S services shall include the following:

(a) AGENCY shall be responsible for assisting TOWN Staff in meeting the needs of the Mayor, Council Members and senior Staff.

(b) AGENCY shall develop plans and assist with other special projects as determined and directed by the City Manager or his designated representative.

SECTION III COST ESTIMATES

AGENCY agrees to provide to the TOWN cost estimates of all work it is asked to perform on the TOWN's behalf, to the best of AGENCY's ability, based upon the items and services described in Section II, Scope of Services.

SECTION IV COMPENSATION

(a) The TOWN agrees to compensate AGENCY for the services rendered under this Agreement on an hourly basis according to the following schedule:

Principal (Liz Oliphant)	\$150.00 per hour
Production Coordinator	\$ 50.00 per hour
Clerical/Detail Service Fee	\$ 20.00 per hour

Attendance at Council meetings or Staff meetings, upon the request of, or with the prior approval of the City Manager, shall be at a rate of \$40.00 per hour.

(i) Outside Art and Production Cost — Copies of invoices for outside art and production costs incurred by AGENCY on behalf of the TOWN must be accompanied by invoices to receive reimbursement.

(ii) Out-of-Pocket Costs — The TOWN will reimburse AGENCY at cost for AGENCY's expenditures for copies, telegrams, telephone, freight express, local deliveries, and postage incurred by AGENCY on behalf of the TOWN. Such costs will be contained in the billing provided to the TOWN.

(b) AGENCY agrees to provide to the TOWN a time frame or "number of days to complete" on the cost estimate for each project.

SECTION V BILLING AND PAYMENT

(a) Detailed invoices for all work related to the services performed hereunder and for printed collateral material, and other projects shall be provided to the TOWN on a monthly basis. The invoice shall include a detailed listing of hourly charges for each service rendered including meetings, etc. as well as references as to the projects to which the hourly charge applies. In addition, attachments of all related receipts, shipping receipts for any and all items related to a project including but not limited to materials, out-of-pocket expenses, printed materials, etc. should be included. Should AGENCY fail to substantiate the costs contained in the invoice, then the TOWN reserves the right to request clarification prior to payment. The TOWN agrees to use reasonable efforts to inform AGENCY of any questions concerning an invoice within seven working days. All invoices not in question shall be payable within thirty (30) days of the date of the TOWN's receipt of the statement and shall be past due after that date.

(b) AGENCY reserves the right to charge interest to the TOWN and the TOWN hereby agrees to pay AGENCY interest at the rate of prime plus 1% per annum for charges not in question that are delinquent for more than sixty (60) days from receipt of such ; provided, however, that such amount shall not exceed the maximum amount of interest permitted to be paid by the TOWN under any law or regulation.

(c) In the event of any question on a statement, AGENCY agrees to provide the TOWN with a revised invoice containing those items for payment not in question. The TOWN agrees to pay such within thirty (30) days of receipt.

SECTION VI RELATIONSHIP BETWEEN AGENCY AND THE TOWN

(a) Title to all materials which AGENCY purchases on the TOWN's behalf passes to the TOWN as principal. AGENCY agrees to defend and indemnify the TOWN and its employees and officials from claims made against the TOWN by a supplier in connection with any purchase to the extent the TOWN has made payment to AGENCY for such purchase.

(b) Nothing herein contained shall be deemed to require that AGENCY undertake any campaign, prepare any advertising material or publicity, or cause publication of any advertisement or article, which, in AGENCY's judgment, would be misleading, indecent, libelous, unlawful or otherwise prejudicial to the TOWN's or AGENCY's interest.

(c) AGENCY assumes no responsibility and TOWN assumes all responsibility relative to the validity of claims made by the TOWN in its marketing efforts.

(d) AGENCY shall not contract with any persons employed by the TOWN or its officials or employees during the course of this Agreement.

(e) AGENCY is under a duty not to disseminate, or use for its own purposes, both during and after the termination of this contract, any "confidential information" imparted to AGENCY by the TOWN. "Confidential information" in regard to this contractual obligation shall mean any information imparted to AGENCY by the TOWN in either verbal or written form so designated as "confidential information."

(f) Ideas, plans, musical themes, slogans and any other creative products that have not been adopted by the TOWN in campaigns conducted by AGENCY or reserved by the TOWN for possible future use are to be considered the sole property of AGENCY to the untrammled use of which AGENCY shall solely be entitled. Those adopted by the TOWN (or reserved by the TOWN for possible future use) are the sole property of the TOWN to the untrammled use of the TOWN.

(g) AGENCY AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (EACH AN "INDEMNITEE") FROM AND AGAINST (I) ANY AND ALL CLAIMS ARISING FROM CONTRACTS BETWEEN the AGENCY AND THIRD PARTIES MADE PURSUANT TO THIS AGREEMENT, AND (II) ANY AND ALL SUITS, CLAIMS, ACTIONS, JUDGMENTS, LIABILITIES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH AGENCY'S PERFORMANCE OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY NEGLIGENT ACT OR OMISSION OF AGENCY, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND CONTRACTORS UNDER, RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY AN INDEMNITEE'S OWN NEGLIGENCE.. With respect to AGENCY's indemnity obligation, AGENCY shall have no duty to indemnify an Indemnatee for any Damages caused by the sole negligence of an Indemnatee. If an Indemnatee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence of both AGENCY and the Indemnatee, AGENCY's indemnity obligation will be limited to a fraction of the total Damages equivalent to the AGENCY's own percentage of responsibility. This indemnity, hold harmless, and defense obligation shall survive the expiration or earlier termination of this Agreement.

(h) AGENCY shall coordinate all its activities and efforts through and with the office of the City Manager for the TOWN. All materials prepared for publication or released to news media shall be approved by the City Manager or his designated representative, prior to publication or release. All AGENCY'S billing under this Agreement will be sent to the City Manager and any other special projects or assignments from the TOWN will be received only from the City Manager.

(i) AGENCY is an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise relationship, or to allow the TOWN to exercise discretion or control over the professional manner in which AGENCY performs the services which are the subject matter of this Agreement; provided always however that the services to be provided by AGENCY shall be provided in a manner consistent with all applicable standards and regulations governing such services.

SECTION VII ACCOUNTING

AGENCY shall keep complete and accurate books and records. AGENCY, upon receiving reasonable notice from the TOWN, shall provide the TOWN and/or the TOWN's designated

accountants with full and reasonable disclosure of its accounting practices, procedures, receipts and disbursements related to the TOWN's account, and an opportunity to examine all supporting documentation.

SECTION VIII TERM OF AGREEMENT; TERMINATION

(a) The term of this Agreement shall be from _____, 2006 to _____, 2007; provided, however, that unless otherwise terminated as provided for herein, this Agreement shall automatically renew for a period of one year following the said date of termination, subject to annual appropriation. During the term of this Agreement, should either AGENCY or the TOWN wish to terminate this Agreement, each shall have that right upon giving the other a sixty (60) day written notice of termination. During the sixty (60) day period, the compensation and service arrangements stated herein apply. All notices under this Agreement shall be provided in writing to the following:

To Agency:

Liz Oliphant
Liz Oliphant and Associates, Inc.
16400 Ledgemont Lane @ 1211
Addison, TX 75001

To the Town:

Ron Whitehead
Town of Addison
P.O. Box 9010
Addison, Texas 75001

(b) At the date of termination, any advertising, merchandising, package and similar plans and ideas prepared by AGENCY and submitted to the TOWN but not used by TOWN shall remain AGENCY's property unless it was either mutually agreed in writing that any such plan or idea became the TOWN's property or specific payment of the cost of its development was agreed upon and made by the TOWN.

(c) Upon termination of this Agreement, AGENCY shall transfer, assign and make available to the TOWN all property and materials in AGENCY's possession or control belonging to and paid for by the TOWN.

(d) At the termination of this Agreement, AGENCY shall give all reasonable cooperation toward transferring, with the approval of third parties in interest, all contracts and other arrangements with advertising media or others, for advertising space, facilities and talent, and other materials yet to be used, and all rights and claims thereto and therein, pertaining to the TOWN's account, upon being duly released from the obligations thereof.

(e) Upon termination of this Agreement, any non-cancelable contracts made on the TOWN's authorization and still existing at termination hereof, which contracts were not or could not be assigned by AGENCY to the TOWN, shall be carried to completion by AGENCY and paid for by the TOWN in the manner described herein.

SECTION IX MISCELLANEOUS

(a) Principals of the AGENCY agree to adhere to the Code of Professional Standards established by the Public Relations Society of America.

(b) AGENCY and the TOWN hereby agree that should any dispute arise out of this contract, then venue of any litigation arising therefrom shall be in Dallas County, Texas. This Agreement shall be interpreted in accordance with the laws of the State of Texas without regard to its conflict of laws provisions.

(c) Any amendments, modifications, deletions or other changes from the terms of this Agreement shall be valid only if made by subsequent written instrument signed by the duly authorized representatives of both AGENCY and TOWN.

(d) The failure of either party to this Agreement to object or to take affirmative action with respect to any conduct of the other party which is in violation of this Agreement shall not be construed as a waiver thereof, or of any future breach of subsequent wrongful conduct.

(e) The captions used herein are for convenience of reference only and shall not be deemed neither to impart substance of meaning nor modify the content of the text of this Agreement.

(f) Except as provided herein, neither party may assign any rights or delegate any duties under this Agreement without the prior written consent of the other party.

EXECUTED TO BE EFFECTIVE as of _____, 2006.

TOWN OF ADDISON, TEXAS

LIZ OLIPHANT & ASSOCIATES, INC.

By: _____
Ron Whitehead, City Manager

By: _____

ATTEST:

Printed Name: _____

By: _____
Mario Canizares, City Secretary

Title: _____

COUNCIL AGENDA ITEM: #R18

SUMMARY: Consideration of Approval of an Ordinance amending Chapter 14 (Aviation) of the Code of Ordinances of the Town by amending Division 3 (Off-Premise Access to Airport) of Article III (Municipal Airport) therefor in its entirety relating to access from property adjacent to Addison Airport, and providing for, among other things, standards and fees for such access and the issuance of an access permit.

FINANCIAL IMPACT: If adopted, the ordinance will establish a fee for access to Addison Airport from properties located outside of and adjacent to the Airport (so called through-the-fence access). The proposed ordinance distinguishes between a fee for adjacent properties which have as their primary aviation use a commercial aviation use, and those which have as their primary aviation use a recreational/incidental business use. If property owners currently accessing the Airport elect to obtain an access permit under the new ordinance and fee structure, it is anticipated that the Town will collect in 2007 approximately \$58,000.00 in access fees.

BACKGROUND: Town Staff has reviewed the portion of the Code of Ordinances regarding through-the-fence access to the Airport in light of recent litigation. As drafted, the proposed provides for, among other things, a term for an access permit (10 years, with two 10 year automatic renewals, for a total of 30 years), standards for access from off-Airport property to the Airport, and a fee for Airport access. The amount of the fee depends upon whether or not the primary use of the off-Airport property is a commercial aviation use or a recreational/incidental business use. The fee is calculated generally as follows:

Determine *Airport Public Area Maintenance Rate* (this is determined by December 1 of an applicable year)

Adjust the Public Area Maintenance Rate Adjusted Airport Public Area Maintenance Rate (effective on January 1 of the following year)

Determine Access Fee *Commercial Aviation Use*

Adjusted Airport Public Area Maintenance Rate (then applicable)

x

Off-Airport Property (in square

feet)

=

Access Fee for Commercial Aviation Use

Recreational/Incidental Business Use

Calculated at a rate and/or set in an amount which is smaller than the rate and/or amount of the fee for a Commercial Aviation Use

Adjustment to Access Fee

Consumer price index adjustment every two years

With each renewal term, recalculate the Access Fee

Initial Access Fees

Airport Public Area Maintenance Rate: \$0.29/square foot

Adjusted Airport Public Area Maintenance Rate: \$0.08/square foot

Recreational/Incidental Business Use Fee: \$750.00

RECOMMENDATION: Staff recommends approval.

ATTACHMENTS: Proposed Ordinance

Public Area Cost Scenarios Based Upon 2005 Actual Expenses; Map of Airport showing common/public areas and potential revenue area; Through-the-Fence Rate Analysis

June 4, 2003 FAA letter (to Ron Whitehead, to Mitchell Madden)

September 13, 2004 FAA letter

February 17, 2004 FAA letter

Airport Compliance Requirements (FAA Order 5190.6A) (portion)

FAA Grant Assurances

Chapter 22, Subchapters A, B and C, Texas Transportation Code

Final Judgment, *Transcontinental Realty, et al. v. The City of Addison*

Findings of Fact and Conclusions of Law, *Transcontinental Realty, et al. v. The City of Addison*

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 14 (AVIATION) OF THE CODE OF ORDINANCES OF THE CITY BY AMENDING DIVISION 3 OF ARTICLE III (MUNICIPAL AIRPORT) THEREOF IN ITS ENTIRETY RELATING TO ACCESS FROM PROPERTY ADJACENT TO ADDISON AIRPORT AND PROVIDING FOR FEES AND CHARGES FOR SUCH ACCESS; ESTABLISHING A PROCESS FOR THE ISSUANCE OF AN ACCESS PERMIT; PROVIDING THAT THE UNLAWFUL ACCESS TO OR FROM THE AIRPORT FROM AN OFF-AIRPORT PROPERTY SHALL BE A MISDEMEANOR PUNISHABLE BY FINE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

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

Section 1. Amendment. Chapter 14 (Aviation) of the Code of Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended by amending Division 3 to Article III (Municipal Airport) of Chapter 14 in its entirety to read as set forth in Exhibit A attached hereto and incorporated herein for all purposes.

Section 2. Savings. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance. Notwithstanding the amendment to Division 3, Article III, Chapter 14 of the Code as provided for in this Ordinance, Division 3, Article III, Chapter 14 of the Code as it existed prior to the adoption and the effective date of this Ordinance shall continue in effect for purposes of matters concerning access to Addison Airport prior to effective date of this Ordinance, including, without limitation, matters concerning payment of fees for access to Addison Airport and matters concerning any complaint, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen.

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 may be required by law.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 28th day of November, 2006.

Joe Chow, Mayor

ATTEST:

By: _____
Mario Canizares, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

EXHIBIT A

DIVISION 3. OFF-AIRPORT ACCESS TO AIRPORT

Section 14-100. Definitions.

The following words, terms and phrases, when used in this Division 3 shall have the meanings ascribed to them in this Division, except where the context clearly indicates a different meaning:

Access Permit means a permit issued by the Town of Addison to an Off-Airport User permitting the Off-Airport User the unique privilege of using the Airport Public Area directly from the Off-Airport Property for either a Recreational/Incidental Business Use or Commercial Aviation Use.

Access Taxiway means an aircraft taxiway located on Off-Airport Property that connects or feeds into a taxiway on the Airport and that is constructed for or intended to be used for the principal purpose of allowing aircraft to taxi between the Airport and one or more Off-Airport Properties and is approved as an access taxiway by the City as evidenced by plat approval, easement dedication or as reflected in the Airport Layout Plan.

Airport Public Area Expenses means an amount of money equal to all known expenses and costs incurred or expended by the City to operate the Airport Public Area for the benefit, use and privilege of the general aviation public during the most recently completed fiscal year as accounted for by the City, and being an amount equal to Total Airport Expenses adjusted by (i) a reduction for any expenses and costs directly attributed to the operation and maintenance of Non-Public Airport Facilities, (ii) a reduction using a commercially reasonable allocation of Airport related expenses and costs that cannot be specifically attributed to either the expense and cost of operating the Airport Public Area or Non-Public Airport Facilities of the Airport (e.g., without limitation, the pro-rated costs of City staff overhead related to Airport operation and maintenance, Airport management fee, and certain maintenance tools and material used while maintaining the Airport without distinction to its public and non-public use), (iii) a reduction as a result of Public Revenue actually collected, and (iv) an allowance for the City's five (5) year Airport capital improvements plan reserve.

Airport Public Area Maintenance Rate means a dollar amount calculated on a per square foot basis of the Airport Public Area Expenses by dividing the Airport Public Area Expenses by the total land area (in gross square feet) of all Non-Public Airport Facilities and Total Off-Airport Properties.

Affiliate means a person or entity owning a majority interest in an Off-Airport Property or a family member of an owner of an Off-Airport Property.

Aircraft Owner means anyone who owns or leases a specific aircraft and holds the exclusive right to fly or sell the aircraft (including but not limited to an individual, corporation, chief pilot, leasing company, or aircraft manager).

Airport means the area known as the Addison Airport which is now or hereafter designated and set aside for the landing and taking off of aircraft, and accessory or appurtenant uses, facilities and improvements thereto, and used or to be used in the interest of the public for such purposes.

Airport Director means the director or manager of the Airport (whether designated pursuant to a contract between the City and a third party or otherwise).

Air Navigation Facility means: (a) a facility, other than one owned and operated by the United States, used in or available or designed for use in aid of air navigation, including a structure, mechanism, light, beacon, marker, communications system, or other instrumentality; (b) a device used or useful as an aid in the safe landing, navigation, or takeoff of aircraft or the safe and efficient operation or maintenance of an airport; or (c) a combination of those facilities or devices.

Airport Public Area means that portion of the Airport, which is now or hereafter considered by the FAA, TxDOT, the City, or any other regulatory agency with oversight of the Airport to be the obligation and responsibility of the City to operate and maintain for the common use and benefit of the general aviation public. The Airport Public Area includes, without limitation, any Air Navigation Facility or structure designed and intended to serve the general public not specifically subject to a lease agreement; all runways, taxiways and other common-use paved, graveled or turfed areas and their respective protection zones, safety areas and/or object free areas; any other facility or facilities at the Airport that are eligible for federal or state grants or subsidies awarded on the basis of their serving the benefit of the public (including runways, taxiways, vehicle streets and alleys, public aircraft aprons/tarmac, vehicle parking areas, and drainage structures); field lighting and associated beacon and lighted wind and landing direction indicators; security, fire, and emergency medical protection; protection of aerial approaches to the Airport; directional signs; and perimeter or restricted access fences. Generally, the Airport Public Area is the total area and facilities of the Airport exclusive of all Non-Public Airport Facilities, and may vary from time to time depending on the total land comprising the Airport and the change of land use at the Airport. (the Airport less Non-Public Airport Facilities equals the Airport Public Area).

Access Fee means the fee to be paid annually to the City for access to the Airport from an Off-Airport Property as described in this Division.

City means the Town of Addison, Texas, a home-rule municipality.

City Manager means the City Manager of the City or the City Manager's designee.

Commercial Aviation Use means the operation of a business enterprise providing aviation-related goods, services, or facilities for a commercial purpose (including, without limitation, any activity by the operator securing earnings, income, compensation (including exchange or barter of goods and services), and/or profit from said activities, whether or not such objectives are accomplished) to users of the Airport.

FAA means the Federal Aviation Administration or its successor entity.

Non-Public Airport Facilities means generally any land, building, or other facility or improvement on the Airport that is subject to or otherwise intended to be subject to an arrangement that prohibits or restricts access or use by the general aviation public. By way of example, a portion of Airport land leased to a third person, together with any improvements thereon constructed by the third person pursuant to the lease, would be Non-Public Airport Facilities.

Off-Airport Access means access to the Airport for aviation purposes from Off-Airport Property in accordance with this Division, an Access Permit, and applicable law, rule, or regulation. Off-Airport Access is frequently referred to as a "through-the-fence" operation, even though an airport's perimeter fence may be imaginary.

Off-Airport Property means the gross land area of a lot or tract of land which abuts the Airport or an Airport Taxiway and may be used or intended to be used in whole or in part for aviation-related purposes.

Off-Airport User means an owner of the fee simple title of an Off-Airport Property who is issued and holds an Access Permit to conduct Off-Airport Access operations as either a Recreational/Incidental Business User or as a Commercial Aeronautical User directly between the Off-Airport Property and the Airport in accordance with the Access Permit issued by the City.

Public Revenue means a sum of revenue collected (or a commercially reasonable allocation thereof) by the City available for the offset of the cost to operate and provide airport services and benefits used by the general aviation public. Examples of Public Revenue include, but are not necessarily limited to, an allocated portion of fuel flowage revenue, fund account interest income, U. S. Department of Agriculture trash disposal revenue, and revenue received from the processing and clearing of U. S. Customs operations.

Recreational/Incidental Business Use means the use of an Off-Airport Property for aviation operations which is either recreational in nature or is incidental to a non-aviation business conducted on the Off-Airport Property (i.e. a business that uses an aircraft as an incidental use in support of the business, such as, for example, an architect, technology company, or an oil company using an aircraft to transport people, not product).

Total Airport Expenses means an amount of money equal to the all known expenses and costs incurred and expended by the City to operate the Airport during the most recently completed fiscal year.

Total Off-Airport Properties means the aggregate of all properties, each of which is or may become an Off-Airport Property, as determined by the City.

TxDOT means the Texas Department of Transportation or its successor entity.

Section 14-101. Findings.

In enacting this Division, the Town finds that:

(a) Off-Airport Access is a unique class of aviation operation at Addison Airport, which is neither itinerant in nature nor based from any aviation facility located within the Airport. Within this class there are two distinct sub-classes: (i) the Recreational/Incidental Business Use, and (ii) the Commercial Aviation Use.

(b) The Airport Public Area constitutes the property and improvements on and within the Airport that are maintained by the City for the public's common use and are available to and used by Off-Airport Users.

(c) The Airport Public Area Expenses constitute the expenses and costs of operation to the City of the Airport Public Area.

(d) Where the aviation use of an Off-Airport Property is a Commercial Aviation Use, such use may compete directly with the operation of commercial aviation enterprises located within the Airport. Accordingly, it is fair, reasonable, and equitable, for the purpose of setting a fee for access to the Airport from an Off-Airport Property, to distinguish between those Off-Airport Users who use their Off-Airport Property primarily for a Commercial Aviation Use, and those who use their Off-Airport Property primarily for a Recreation/Incidental Business Use.

(e) The fees set forth in this Division for access to the Airport from an Off-Airport Property are reasonable and uniform for the same class of privilege or service, and are established with due regard to the property and improvements used and the expenses of operation to the City.

(f) The terms of this Division satisfy and comply with both Federal law, rules and regulations and State law, including, without limitation, FAA grants and assurances and the Texas Transportation Code.

Section 14-102. Access to Airport by Off-Airport User; Lien.

(a) Any unauthorized access to the Airport Property either by foot, vehicle or aircraft is expressly prohibited. Except for authorized access, including authorized access from an Off-Airport Property as set forth in this Division, the City Manager is charged with the responsibility to safeguard the Airport by constructing and maintaining at all times a fence or other form of barrier sufficient to restrict unauthorized pedestrian, vehicle or aircraft access to and from the Airport Property. If access to the Airport from an Off-Airport Property is not authorized by the City for any reason (including, without limitation, for breach by an Off-Airport User of an Access Permit) and the City constructs or places a fence or other barrier to prevent access to the Airport from an Off-Airport Property, the Off-Airport User shall, as a condition precedent to obtaining access to the Airport, reimburse the City for all costs incurred by the City in constructing or placing and in removing the fence or other barrier.

(b) Use and access to the Airport from an Off-Airport Property may be permitted to an Off-Airport User subject to the terms and conditions of an Access Permit issued by the City as provided for in Section 14-105 of this Division (the "Access Permit"). The Access Permit allows an Off-Airport User the unique privilege of accessing the Airport from an Off-Airport Property for either ca Recreational/Incidental Business Use or a Commercial Aviation Use. Such privilege is granted for the term specified in and is subject to all of the terms and conditions of this Division, the Access Permit, and all other applicable laws, ordinances, rules, codes, standards, policies, regulations, grant assurances, and grant agreements, whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded, and subject to the use of the Airport for airport purposes and the Off-Airport User's compliance with and fulfillment of all of the terms, conditions, provisions and regulations of this Division, all other applicable laws, rules, and regulations, and the Access Permit.

(c) Any Access Permit, if issued in the Town's sole discretion, is subject to the initial and ongoing approval and consent by the FAA and by TxDOT, and is subject to the terms, conditions and requirements of any existing or future grant agreement(s) or grant assurance(s) at or in connection with the Airport (and may be revoked, terminated or canceled immediately if any such Access Permit(s) is in violation of any such grant agreement(s) or grant assurance(s) or any FAA or TxDOT policy, rule, permit, standard, or regulation, or any local, state or federal law, policy, rule, permit, standard, or regulation, whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded).

(d) The City, by and through the City Manager, may issue an Access Permit in the form approved by the City Manager, provided that such form shall comply with the terms of this Division (but may include additional terms and conditions as approved by the City Manager).

(e) An Off-Airport User shall comply at all times with and abide by all environmental laws, rules, regulations, standards, and policies of any governmental authority (whether federal, state or local, and including, without limitation, the Environmental Protection Agency (or its successor entity), the Texas Commission on Environmental Quality (or its successor entity) and the City), and shall file any and all reports and provide any such information as may be required by any such governmental authority in connection therewith.

(f) An Off-Airport User shall annually submit (on a date set by the Airport Director) an property security plan in form and content acceptable to the Airport Director.

(g) An Off-Airport User shall register and periodically affirm the appropriate contact information of the Off-Airport User as required by the Airport Director. The Off-Airport User shall also register or periodically affirm with the Airport Director all aircraft stored or based at the Off-Airport Property by providing the Airport Director each aircraft's registration number ("N" number), make, model, and the Aircraft owner's name and contact information.

(h) Access gates placed by an Off-Airport User which restrict access from the Off-Airport Property to the Airport shall include a sign stating no-trespassing, emergency contact information, the building address for City emergency personnel, and such other information as the City may require. The form and content of such sign shall be subject to the approval of the City.

(i)(1) *Lien.* The City shall have a continuing lien against each Off-Airport Property to secure payment of any delinquent annual Off-Airport Access fee (or portion thereof), as well as interest thereon, late fees, and costs of collection, including, without limitation, court costs and attorneys' fees. Although no further action is required to create or perfect the lien, the City may, as further evidence and notice of the lien, execute and record a document setting forth as to any Off-Airport Property, the amount of delinquent sums due the City at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the City to execute and record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

(2) *Enforcement of Lien.* The lien may be enforced by judicial or non-judicial foreclosure. Each owner of an Off-Airport Property, by accepting an Access Permit, grants to the City, whether or not it is so expressed in the Access Permit, a private power of non-judicial sale to be exercised in accordance with Chapter 51, Texas Property Code, as amended. The City may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee or attorney, to exercise the City's lien rights on behalf of the City, including the power of sale.

(3) *Subordination of Lien.* The lien provided for herein is subordinate to the lien of any recorded mortgage or deed of trust against an Off-Airport Property.

(4) *Effect of Conveyance.* An owner that conveys title to an Off-Airport Property shall not be liable for any delinquent annual Off-Airport Access fee that is attributable to the period after the conveyance of the Off-Airport Property. However, a conveyance of title to an Off-Airport Property shall not affect the lien or relieve the owner that conveys the Off-Airport Property from personal liability for any delinquent annual Off-Airport Access fee attributable to the period prior to the date of the conveyance.

(5) *Effect of Foreclosure.* The foreclosure of a mortgage, trustee's sale of a deed of trust or a deed in lieu thereof will extinguish the lien described herein as to annual Off-Airport Access fee payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof; such foreclosure shall also cause the immediate termination of the Access Permit. However, a foreclosure of a mortgage, trustee's sale of a deed of trust or a deed in lieu thereof will not relieve such Off-Airport Property or owner thereof from liability for any annual Off-Airport Access fee payment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a mortgage deed of trust or a deed in lieu thereof shall not release the owner whose Off-Airport Property is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the owner's obligation to pay annual Off-Airport Access fees attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof.

(vi) *Cumulative Remedies.* This subsection is cumulative of any other remedies, methods of collection or security available to the City under this Division, the City Charter, or any other ordinances, laws, rules, regulations, standards, or permits of the City, the State, or the United States. This subsection does not affect the City's authority to refuse to furnish access to the Airport, to terminate an Access Permit, or to take any other action, when any delinquent annual Off-Airport Access fees exist.

Section 14-103. Security.

(a) The City Manager may at any time require all pedestrian, vehicular and aviation access between the Off-Airport Property and the Airport to be controlled at all times using automated controlled-access devices, gate operators, closers with automatic locks or other such reliable devices, or any other means of affirmative control acceptable to the City Manager, that serves to continually safeguard the Airport from unauthorized access from the Off-Airport Property. The City Manager, the Airport Director, or any other authority responsible for operation and safety of the Airport shall have the right to inspect the Off-Airport Property from time to time for conformance with this Division and/or the Access Permit.

(b) The City Manager, the Airport Director, or any other authority responsible for operation and safety of the Airport is authorized by this Division to take appropriate action to ensure the Airport is safeguarded at all times, including the temporary override of gates, closers and locks of damaged or otherwise found inoperable gates and/or doors, or the placement of blockades or other types of barriers or fencing material as needed. Such safeguards, when taken, shall be clearly posted and not removed except as authorized by the City Manager or Airport Director.

(c) All safety and operational rules and regulations established by the FAA or TxDOT, by any City ordinance, rule, regulation, policy, standard, or permit, or by any other regulatory authority with jurisdiction over the Airport (whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded), shall be applicable to each Off-Airport Property.

Section 14-104. Access Taxiways.

(a) An Off-Airport User may, with the City Manager's approval and with any approval as may be required of the FAA, TxDOT or any other regulatory authority having jurisdiction over the Airport and subject to any and all laws, ordinances, rules, codes, regulations, policies, and standards of the City (whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded), construct, at the sole cost and expense of the Off-Airport User, an Access Taxiway to connect the Off-Airport Property to a nearby taxiway located within the Airport Public Area. The number, exact location and design specification of an Access Taxiway requested or constructed by an Off-Airport User shall be subject to the prior review and approval of the City Manager (and the FAA, TxDOT, and any other regulatory authority having jurisdiction over the Airport if so required), taking into consideration, among other things, operational safety and efficiency considerations and compatibility with the Addison Airport Master Plan as finally approved by the City from time to time. Plans and specifications for Access Taxiways shall be approved by the City Manager prior to construction, and Access Taxiways shall be designed and constructed to meet or exceed the requirements of the projected use for said Access Taxiways. An Off-Airport User may be required by the City to plat an Access Taxiway within the Off-Airport Property in accordance with law.

(b) Once constructed, inspected and accepted by the City, that portion of the Access Taxiway that lies within the Airport shall become the sole property of the City and shall

immediately become a part of the Airport Public Area unless, at the sole discretion of the City Manager or Airport Director, public use and access is restricted for safety or operational reasons. Upon acceptance by the City, that portion of the Access Taxiway that lies within the Airport shall thereafter be policed, maintained and repaired by the City at the City's sole cost and expense, save and except any abnormal wear and tear or abuse of the Access Taxiway on the Airport evidenced by one or more Off-Airport Access Users who may, under said circumstances, be assessed by the City for all or a reasonable portion of the City's actual cost of repair(s).

(c) It shall be the responsibility of the Off-Airport User to maintain, repair or replace any portion of the Access Taxiway situated within the legal boundary of the respective Off-Airport Property including but not limited to the taxiway surface and subsurface, storm drainage, directional signs, lighting or other navigational aids, fencing, gates/doors and locking devices. If in the opinion of the City Manager or Airport Director, the portion of the Access Taxiway situated on the Off-Airport Property is unsafe or presents an operational or safety hazard to the Airport or any user of the Airport, the City Manager or Airport Director may, at their respective sole discretion, (i) take whatever commercially reasonable actions deems necessary to remedy the unsafe condition, and any and all costs thereof shall be reimbursed to the City by the Off-Airport User, or (ii) after giving written notice to the Off-Airport User of not less than fifteen (15) days, the City Manager may suspend Off-Airport Access from the Off-Airport Property until the unsafe condition is corrected to the satisfaction of the City.

Section 14-105. Prohibited Uses.

(a) The sale of fuel for aviation or other purposes and activities in connection therewith on, from or in connection with the use of an Off-Airport Property is strictly prohibited unless conducted directly by a licensed fueler holding a valid and current Addison Airport fuel-dispensing license issued by the City. No person, including, without limitation, an Off-Airport User, any person or entity related thereto, and any tenant, subtenant, or licensee thereof, shall be permitted or allowed to self-fuel or sell fuel (whether on or off the Airport) for aviation or any other purpose at or in connection with any Off-Airport Property.

(b) The use of an Off-Airport Property is subject to applicable zoning regulations and all other applicable laws, ordinances, codes, rules, regulations, and standards of the City and any other governmental entity having jurisdiction over the Off-Airport Property.

Section 14-106. Access Permit.

(a) *Application.* An Off-Airport User who desires access to the Airport from an Off-Airport Property shall make application (the "Application") to the Airport Director. In connection with the Application, an applicant shall provide to the Airport Director all such information regarding the Off-Airport Property as may be required by the Airport Director including, without limitation:

(1) a legal description of the Off-Airport Property and the total area of the Off-Airport Property calculated in square feet;

(2) a description of the desired or intended use of the Access Area (being either Recreational/Incidental Business Use or Commercial Aviation Use);

(3) if for Commercial Aviation Use, the applicant shall provide a description of the business services to be offered and details of any FAA certifications it will be operating under;

(4) a schedule of all aircraft to be stored or based at the Off-Airport Property by providing Airport Director each aircraft's registration number ("N" number), make, model and the Aircraft Owner's name and contact information (or any other information required by the Airport Director time from time);

(5) the names of all Affiliates and other individuals to be authorized under the Access Permit;

(6) evidence of financial responsibility as required under the Access Permit; and

(7) a security plan in form and content acceptable to the Airport Director.

(b) *Application Review and Approval.* The Airport Director shall review each Application for Off-Airport Access for its sufficiency under this Division. If the Application is complete (as determined by the Airport Director) and is consistent with this Division, the Airport Director shall deliver to the City Manager: (i) a copy of the Application, (ii) an Access Permit signed by the proposed Off-Airport User, (iii) acknowledgement of receipt of any fees due to the City in accordance with this Division or an Access Permit, and (iv) the Airport Director's written recommendation for the City Manager's consideration. The City Manager shall either approve or disapprove the Application.

(c) *Conditions for Issuing; Issuance.* If the Application for an Access Permit is complete and if the applicant has provided all information or materials as may be required by an Access Permit, and if the applicant is current on any and all City taxes, fees, charges, assessments, or fines and in compliance with all laws, ordinances, codes, rules, policies, and regulations of the City, then the City Manager may issue and execute an Access Permit on behalf of the City.

(d) *Contents of Access Permit; Periodic Recertification; Amendment.* The Access Permit shall identify the use and/or intended use of the Off-Airport Property (i.e., either a Recreational/Incidental Business Use or a Commercial Aeronautical Use), specify the size of the Off-Airport Property (for a Commercial Aviation Use only) and the fee to be paid in connection with any Off-Airport Access, and shall contain such other terms, conditions, and requirements as the City Manager or Airport Director may deem appropriate (including, without limitation, insurance and indemnity requirements, no assignment or other transfer without the City's prior consent, default, termination and remedies therefor, standards regarding environmental matters, authorized uses, standards and requirements regarding Addison special events, late charges and interest, and compliance with the terms and conditions of this Division). An Access Permit may not be sold, assigned, sublet, pledged, conveyed, or otherwise transferred without the prior written consent of the City. Periodically, the Airport Director may request an Off-Airport User to recertify the Off-Airport User's Access Permit by affirming the authorized users, registered aircraft, contact information, updated emergency and security plan, size of Off-Airport Property

(for a Commercial Aviation Use only), permitted use or other terms and conditions of this Division.

(e) *Revocation; Access Prevented; Reinstatement.*

(i) The City Manager may revoke, cancel or terminate the Access Permit and access from an Off-Airport Property of any Off-Airport User who either (1) fails to pay the applicable fee, or fails to comply with any provision of the Access Permit, this Division, and any applicable laws, rules, codes, standards, regulations, policies, or permits, or (2) fails to pay prior to delinquency the lawfully assessed and levied City ad valorem taxes on the applicable Off-Airport Property, or (3) as otherwise set forth in the Access Permit.

(ii) If access from an Off-Airport Property to the Airport is revoked, canceled, or terminated, the City shall secure the Airport by erecting a fence or other barrier to prevent access to the Airport from the Off-Airport Property. If a fence or other barrier is erected, the affected Off-Airport Owner shall, prior to and as a condition of reinstatement of access from the Off-Airport Property to the Airport, reimburse the City for all costs (including, without limitation, attorney's fees) incurred by or on behalf of the City to collect any amounts due for access, to erect and/or remove a fence or other barrier, and other applicable costs.

(iii) Any revoked, canceled, or terminated Access Permit and access to the Airport from an Off-Airport Property may be reinstated only after the City Manager has determined that sufficient extenuating circumstances exist to merit consideration for reinstatement, and upon payment of any outstanding fees or costs plus interest as may be required, the correction of any non-compliance, and/or the payment of any such taxes plus all penalties and interest, as applicable. Access to the Airport shall be reinstated within 72 hours following the City Manager's determination of the same.

(f) *Term.* Subject to the provisions, terms and conditions of this Division and an Access Permit, an Access Permit shall be issued for a term of ten (10) years (the "Initial Term"). At the end of the Initial Term, an Access Permit shall be automatically renewed for an additional period of ten (10) years, and at the end of the second ten (10) year period shall be automatically renewed for an additional period of ten (10) years (each such renewal term of ten (10) years is a "Renewal Term"), for a total term of thirty (30) years. Thereafter, an Access Permit may be renewed in accordance with then applicable laws, ordinances, rules, standards and regulations.

(g) *Renewals/Extensions of Access Permit.* A renewal and/or extension of an Access Permit may be considered (but not necessarily authorized or granted, which shall be in the City's sole discretion) by the City as long as: (i) the City will still own and control the Airport during the modified term; (ii) the continuation of the Off-Airport Access is, in the City's sole discretion, desirable for the City or the Airport; (ii.) is consistent with the City's and/or Airport purposes and objectives; (iii) no more than fifteen (15) years remain under the prevailing term and such renewal or extension does not exceed any duration of term authorized by law; (iv) is in compliance and accordance with the terms, conditions, and standards set forth in this Division. All renewals and/or extensions shall be subject to the

same conditions provided herein for issuance of an Access Permit, as the same may be amended or modified in whole or in part from time to time.

(h) *Prohibition Against Unpermitted Access; Penalty.* It shall be unlawful for any person to access the Airport Property from an Off-Airport Property unless such person holds and is a party to a valid Access Permit or is accessing the Airport or the Off-Airport Property for a purpose which is authorized by the Access Permit for the said Off-Airport Property. A violation of this provision or any other provision of this Division constitutes a misdemeanor punishable by fine or State or Federal law, and/or may result in revocation, cancellation or termination of the Access Permit.

Section 14-107. Fee Calculation; Time of Payment; Penalty for Late Payment.

(a) *Determination of Airport Public Area Maintenance Rate.* On or before December 1, 2006 and on or before December 1 of every other year thereafter (e.g., 2008, 2010, etc.), the Airport Director shall determine the Airport Public Area Maintenance Rate.:

(b) *Adjustment to the Airport Public Area Maintenance Rate.* In order to, among other things, promote the economic development and use of the Airport and the development of aeronautical properties adjacent to the Airport and for other proper and beneficial purposes, in the discretion of the City the then applicable Airport Public Area Maintenance Rate may be adjusted by reducing the same in an amount determined appropriate by the City (the "Adjusted Airport Public Area Maintenance Rate"). The Adjusted Airport Public Area Maintenance Rate shall become effective on January 1 of the year next following such determination, and shall be used to establish the Access Fee for any new or extended Access Permit issued while it is in effect.

(c) *Access Fee.*

(i) *Commercial Aviation Use.* For each Off-Airport Property where the stated aviation use is a Commercial Aviation Use, the Access Fee shall be calculated as follows (the "Commercial Aviation Use Access Fee Formula"):

Adjusted Airport Public Area Maintenance Rate (then applicable)

x (times)

Off-Airport Property (gross land area in square feet)

=

Access Fee for Commercial Aviation Use

(ii) *Recreational/Incidental Business Use.* For each Off-Airport Property where the stated use is a Recreational/Incidental Business Use, giving due regard and consideration to the Airport Public Area and the Airport Public Area Expenses, the Access Fee shall be calculated at a rate and/or set in an amount which is smaller than the rate and/or amount of the fee for a Commercial Aviation Use.

Example (Commercial Aviation Use):

Total Airport Expenses (Airport Enterprise Fund)	\$3,851,878
Less Non-Public Airport Facilities Expenses (including cost allocations provided for in sub-paragraph (ii) of the definition of Airport Public Area Expenses set forth in this Division)	(\$1,273,527)
Less Public Revenue offset	(\$ 746,293)
Plus 5 year CIP Reserve Allowance	<u>\$ 871,808</u>
<i>Airport Public Area Expenses</i>	\$2,703,866
Square Footage of all Non-Public Airport Facilities and Total Off-Airport Properties	9,232,967 Sq. Ft.
<i>Airport Public Area Maintenance Rate (Airport Public Area Expenses ÷ square footage of all Non-Public Airport Facilities and Total Off-Airport Properties)</i>	\$0.29/Sq. Ft.
<i>Adjusted Airport Public Area Maintenance Rate</i>	\$.08/Sq. Ft.
<i>Square footage of specific Off-Airport Property (stated aviation use is a Commercial Aviation Use)</i>	20,000 square feet
<i>Access Fee for Off-Airport Property (paid annually, subject to adjustment)</i>	20,000 square feet x \$0.08 = \$1,600.00

(d) *Payment.* The initial Access Fee shall be due and payable in accordance with Section 14-106(b), above (but in any event, not later than the time of issuance of an Access Permit); Airport access shall not be permitted prior to the issuance of the Access Permit and until the said fee is paid. Thereafter, the Access Fee shall be paid in advance on or before the following payment date(s): if an Access Fee is less than \$5,000.00 annually, payment of the Access Fee shall be made on or before January 1 of each year; if an Access Fee is \$5,000 or more annually, payment may be made in not fewer than two equal installments, each installment being due on or before January 1 and July 1 of each year. A penalty may be assessed for a late payment in addition to the City's cost of collecting any such delinquent sum.

(e) *Modification of Size of Off-Airport Property.* If the total square footage of an Off-Airport Property (having as its stated aviation use a Commercial Aviation Use) is legally modified (including any platting or re-platting as may required) (i.e.. the legal description has been changed or altered)), the Off-Airport User owning the Off-Airport Property shall promptly report in writing such modification to the City. Upon such notice, the Access Permit shall be amended to reflect the modified land area and applicable Access Fee, and a pro-rata adjustment to the Access Fee shall be made as appropriate.

(f) *Modification of Off-Airport Use.* If an Access Permit is issued for an Off-Airport Property having a Commercial Aviation Use as its stated aviation use, and the stated aviation use is subsequently changed to a Recreational/Incidental Business Use, the Off-Airport User owning the Off-Airport Property shall report the same in writing to the Airport Director, and the Airport Director shall investigate the report and if the Airport Director concludes that such use has in fact changed, the Access Permit shall be amended to reflect the change in use and the modification of the Access Fee, if any, and a pro-rata adjustment to the Access Fee shall be made as appropriate.

If an Off-Airport User desires to change its Recreational/Incidental Business Use Access Permit to a Commercial Aviation Use, the Off-Airport User shall submit a written request to the Airport Director, which request shall be considered and processed in accordance with and as provided for in Section 14-106. If the City approves the requested change, the Access Permit shall be amended to reflect the change in use and an adjustment to the Access Fee, and a pro-rata adjustment to the Access Fee shall be made as appropriate

(g) *Adjustment to Access Fee.*

(i) Commencing on January 1 of the second year next following the year of the effective date of an Access Permit and every two (2) years thereafter (hereinafter referred to as the "Adjustment Date"), the Access Fee shall be adjusted as follows (a "CPI Adjustment"):

(A) The Access Fee shall be adjusted to reflect changes in the Consumers' Price Index - All Items for Dallas, Texas Metropolitan Area (hereinafter referred to as the "Consumer Price Index"), as quoted in the publication *Consumer Price Index for All Urban Consumers (CPI-U)* for the Dallas-Fort Worth Consolidated Metropolitan Statistical Area which is issued by the U.S. Department of Labor, Bureau of Labor Statistics. The basic index ("Basic Index") is the Consumer Price Index existing on January 1 of the year in which an Access Permit is effective. The current index ("Current Index") is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.

(B) Beginning with the calendar year of the then applicable Adjustment Date, the Access Fee shall be adjusted so that it equals the product of the Access Fee multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index, but in no event shall such monthly rent ever be decreased below the initial amount of the Access Fee.

(C) In the event that the Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Price Index

as closely as feasible (as reasonably determined by the City) shall be substituted therefor.

(ii) An Access Fee shall be further adjusted as follows: At or about the beginning of each Renewal Term (as defined in Section 14-106(f), above) the Access Fee shall be determined by recalculating the same in accordance with the provisions of this Division (e.g., for a Commercial Aviation Use, the Access Fee shall be recalculated pursuant to the Commercial Aviation Use Access Fee Formula). Such Access Fee shall then be subject thereafter to CPI Adjustment.

(h) *Initial Access Fees.* Initial Access Fees are as follows:

(i) For December 1, 2006, the Airport Director has determined the Airport Public Area Maintenance Rate to be \$0.29 per square foot. The Adjusted Airport Public Area Maintenance Rate for the first two year period, commencing January 1, 2007 is hereby set at \$0.08 per square foot. Access Fees for Commercial Aviation Uses for such period shall be determined in accordance with the Commercial Aviation Use Access Fee Formula.

(ii) For each Off-Airport Property where the aviation use is a Recreation/Incidental Business Use, the Access Fee shall be Seven Hundred Fifty and No/100 Dollars (\$750.00).

Public Area Costs Scenarios Based Upon 2005 Actual Expenses

	Public Area Costs
Airport Fund Expenses (Adjusted) (Note 1)	\$3,851,878
Plus CIP or Reserve Component (Note 2)	\$871,807
equals Total Airport Expenses	\$4,723,685
less Non-Common Area Allocation (Note 3)	(\$1,359,546)
equals Public Area Costs as allocated (Note 4)	\$3,364,139
less non Real Estate Income Allocation (Note 5)	(\$717,623)
equals Allocatable Public Costs	\$2,646,516
Divided By Total Potential Airport Revenue Area	9,232,967
Addison Airport Public Area Full Funding Rate	\$0.29

Airport Information

Area Totals	Acres	Square Feet	% of Total Airport
Total Airport Acreage	378.62	16,492,687	100%
Public Area (magenta - safety/object free areas)	207.34	9,031,730	54.76%
Common Area (orange - apron & taxi lane)	15.10	657,756	3.99%
Out-parcels (yellow - non-leaseable public areas)	21.36	930,442	5.64%
Total Public Area	243.80	10,619,928	64.39%
Total On Airport Leaseable Area	134.82	5,872,760	35.61%
Feasible Off-Airport Land Area (Note 6)	77.14	3,360,207	
Total Potential Revenue Area	211.96	9,232,966.60	

Note 1 Airport Fund Expense	
Total Airport Fund Expenses	\$4,275,678 **
minus TTF refund reserve	(\$423,800)
Airport Fund Expenses (Adjusted)	\$3,851,878
**Total Airport Operating Costs of \$1,160,750 from Financials included in Airport Fund Expenses Total	
**Total Management Fee of \$873,829 from Financials included in Airport Fund Expenses Total	

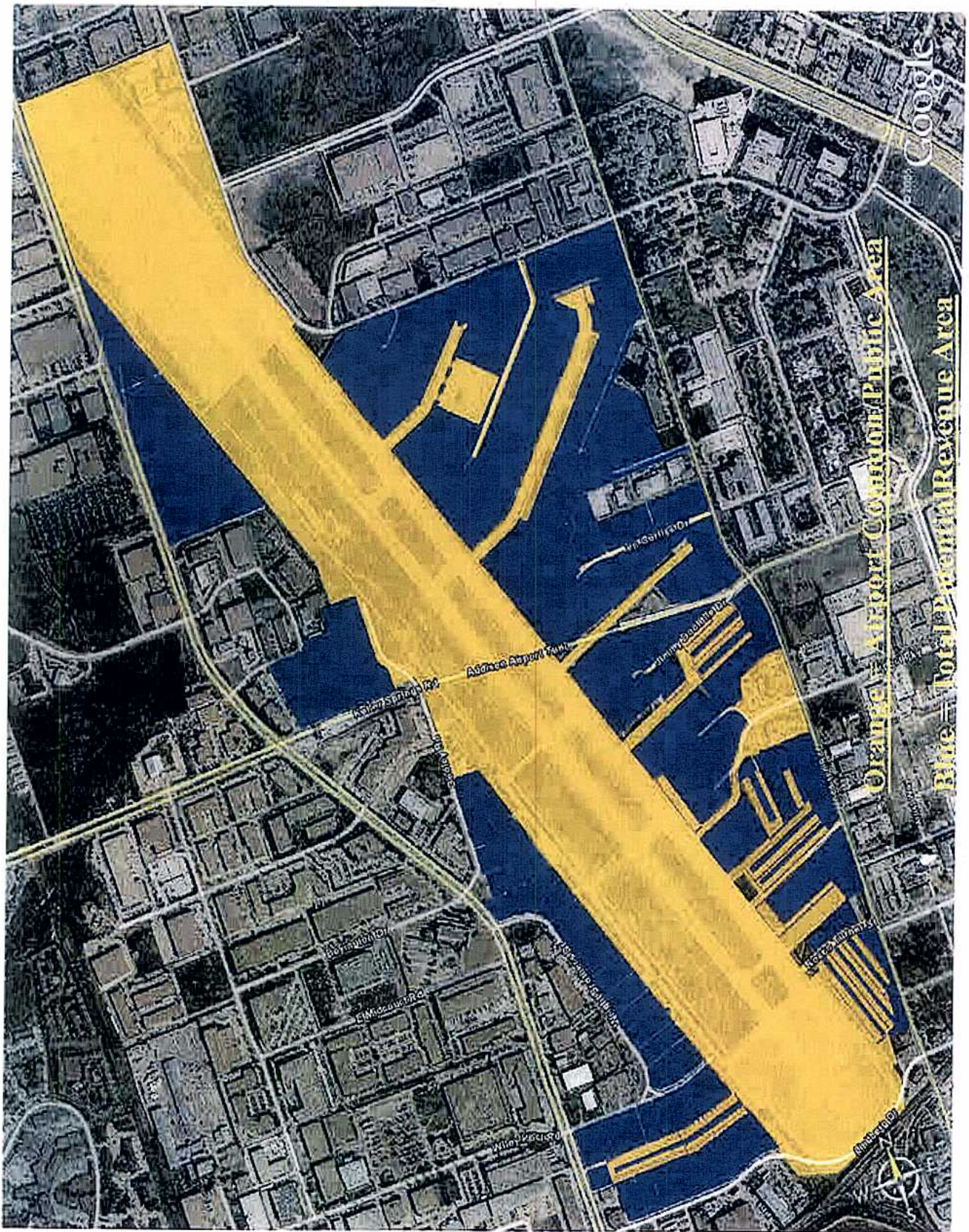
Note 2 CIP/Reserve Component	
CIP Annual Requirement	\$871,807 from attached worksheets
Reserve Annual Requirement	\$2,916,856 from attached worksheets

Note 3 Non Public Area Costs as allocated	
From attached worksheets	\$1,359,546

Note 4 Public Area Costs as allocated	
Allocated Expenses wo CIP or Reserve	\$2,492,332 Public Costs + Public Area Allocated Costs per attached worksheets
Allocated Expenses with CIP	\$3,364,139 Public Costs + Public Area Allocated Costs per attached worksheets
Allocated Expenses with Reserve	\$5,409,188 Public Costs + Public Area Allocated Costs per attached worksheets

Note 5 Non Real Estate Income	
FY2005 Fuel Flowage Revenue	\$1,064,775
Interest Income	\$5,908
USDA Income	\$5,265
Customs Income	\$38,517
Total Non Real Estate Income	\$1,114,465
Non Real Estate Income Allocation (66.96%)	\$717,623

Note 6	
57 Properties Adjacent To Airport	4,226,158 SF
8 Properties w/ No Feasible Access	865,951 SF
Feasible Off-Airport Land Area	3,360,207 SF



Addison Airport Through-The-Fence Rate Analysis

							Rate Assumptions	
					Addison Airport Public Area Full Funding Rate (FFR)		\$0.29	
					Addison Airport Economic Impact Factor Applied		27.91%	
			Commercial		Commercial Aeronautical Off-Airport User Rate		\$0.08	
			Non-Commercial		Recreational/Incidental Business User Annual Flat Rate		\$750.00	
Property Description							\$0.2428	
Property Description							\$0.2273	
User	Off-Airport	Off-Airport	2005	At Full	Full Funding Rate	Change In Fee		
Type	Parcel Area	Access Fee		Funding Rate (FFR)	Less Economic Impact	Compared To		
1	2	3	4	(Parcel Area * FFR)	6	2005 Access Fee	7	
Non-Comm.	15500 Wright Brothers Dr. (Stockton)	69,360	\$0	\$0	\$0	\$0	\$0	
Non-Comm.	15502 Wright Brothers Dr. (Stockton)	51,792	\$0	\$0	\$0	\$0	\$0	
Non-Comm.	15504 Wright Brothers Dr. (Twitchell)	42,514	\$1,000	\$12,186	\$750	(\$2,500)	\$0	
Non-Comm.	15506 Wright Brothers (Thompson)	38,724	\$0	\$0	\$0	\$0	\$0	
Non-Comm.	15508 Wright Brothers Dr. (Westerman)	45,280	\$4,104	\$12,979	\$750	(\$3,354)	\$0	
Non-Comm.	15510 Wright Brothers Dr. (AudioTel)	43,603	\$2,055	\$12,498	\$750	(\$1,305)	\$0	
Non-Comm.	15610 Wright Brothers Dr. (Clark)	37,317	\$1,459	\$10,696	\$750	(\$709)	\$0	
Non-Comm.	15770 Midway Road #1 (Culwell)	17,923	\$2,691	\$5,137	\$750	(\$1,941)	\$750	
Non-Comm.	15770 Midway Road #2 (McIntosh)	11,946	\$0	\$0	\$750	\$750	\$750	
Non-Comm.	15770 Midway Road #3 (Johnson Chev.)	11,946	\$1,691	\$3,429	\$750	(\$941)	\$750	
Non-Comm.	15770 Midway Road #4 (Stevenson)	11,946	\$1,744	\$3,424	\$750	(\$994)	\$750	
Non-Comm.	15770 Midway Road #5 (Kuhn)	11,946	\$1,847	\$3,424	\$750	(\$1,097)	\$750	
Non-Comm.	15770 Midway Road #6 (Craig)	8,538	\$1,245	\$2,447	\$750	(\$495)	\$750	
Non-Comm.	15809 Dooley Road, Suite 150 (Buzzell)	49,536	\$2,273	\$14,199	\$750	(\$1,523)	\$0	
Non-Comm.	16445 Addison Road (SLJ)	56,737	\$0	\$0	\$0	\$0	\$0	
Non-Comm.	4300 Wiley Post (LaTaste)	40,946	\$0	\$0	\$0	\$0	\$0	
Non-Comm.	4304 Wiley Post (LaTaste)	35,719	\$0	\$0	\$0	\$0	\$0	
Non-Comm.	4308 Wiley Post (Buce)	62,726	\$0	\$0	\$0	\$0	\$0	
Non-Comm.	4363 Lindberg (JMJ)	39,073	\$0	\$0	\$0	\$0	\$0	
Non-Comm.	4375 Lindberg (Johnson Lindberg)	39,429	\$1,000	\$11,302	\$750	(\$2,500)	\$0	
Non-Comm.	4553 Glean Curtiss Dr. (Hangin Out Lot)	48,438	\$0	\$0	\$0	\$0	\$0	
Non-Comm.	4740 Frank Luke (Best Parking)	29,159	\$3,347	\$8,358	\$750	(\$2,597)	\$0	
Non-Comm.	4757 Frank Luke Dr. (Carter)	52,272	\$3,892	\$14,983	\$750	(\$3,142)	\$0	
Non-Comm.	4761 Frank Luke Dr. (Carter)	45,424	\$0	\$0	\$0	\$0	\$0	
Sub-Total		902,294	\$28,348	\$115,059	\$10,500	(\$17,848)		
Comm.	15790 Midway Road (Jon-Mac)	68,999	\$8,908	\$19,778	\$5,520	(\$3,388)	\$0	
Comm.	16321 Addison Road - Hangar #1 (Trans Con.)	99,330	\$8,597	\$28,472	\$7,946	(\$5,500)	\$0	
Comm.	4551 Glean Curtiss Dr. (Hangin Out)	81,065	\$8,332	\$23,236	\$6,485	(\$1,846)	\$0	
Comm.	4745 Frank Luke (Trans. Con.)	59,208	\$7,420	\$17,172	\$4,793	(\$2,628)	\$0	
Comm.	4750 Frank Luke Dr. (Eddins)	51,124	\$8,046	\$14,654	\$4,090	(\$3,956)	\$0	
Comm.	4754 Frank Luke Dr. (Eddins)	51,124	\$13,308	\$14,654	\$4,090	(\$9,218)	\$0	
Comm.	4756 Frank Luke Dr. (Eddins)	51,124	\$12,115	\$14,654	\$4,090	(\$8,025)	\$0	
Comm.	4758 Frank Luke Dr. (Eddins)	51,124	\$7,954	\$14,654	\$4,090	(\$3,864)	\$0	
Comm.	4300 Wiley Post (LaTaste)	40,946	\$2,394	\$11,737	\$3,276	\$882	\$0	
Comm.	4765 Frank Luke Dr. (Eddins)	46,278	\$2,812	\$13,265	\$3,702	\$891	\$0	
Sub-Total		601,023	\$79,885	\$172,276	\$48,482	(\$31,803)		
Grand Total		1,503,317	\$108,233	\$287,335	\$58,982	(\$19,651)		
			Per Parcel Sq. F	\$0.0720	\$0.1911	\$0.0390		
Net Amount For Multi-property Owners								
Transcontinental	159,238	\$16,017	\$45,644	\$12,719	(\$3,278)			
Carter	97,696	\$3,892	\$14,983	\$750	(\$3,142)			
Eddins	250,775	\$44,234	\$71,882	\$20,062	(\$24,172)			
Hangin Out	129,503	\$8,332	\$23,236	\$6,485	(\$1,846)			



U.S. Department
of Transportation
Federal Aviation
Administration

Southwest Region
Arkansas, Louisiana,
New Mexico, Oklahoma,
Texas

Fort Worth, Texas 75193-0000

June 4, 2003

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

Dear Mr. Whitehead:

The Federal Aviation Administration (FAA) has completed a review and determination on an informal complaint received from Mr. Mitchell Madden, Attorney (previously provided) for alleged noncompliance issues at the Addison Municipal Airport. The following is my response back to the Town of Addison on this matter.

The FAA position, in regard to "thru-the-fence" operations as a general principle is to discourage them. In those case-by-case situations where the airport requests "thru-the-fence" agreements, the FAA will review those requests to ensure full compliance with Federal requirements, such as enacted in Grant Assurances, Agreements and FAA Order 5190.6A Airport Compliance Requirements. Part of the FAA's review of the proposed agreement is to ensure fair and equitable competitive operation and access between the "on-airport" and the "thru-the-fence" operators.

The intent of Grant Assurance 22, Economic Nondiscrimination, the Sponsor shall; *In any agreement, contract, lease, or other arrangement... (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service...* The fact that a Sponsor has not received fees for services rendered (aeronautical use of the airport) from the "thru-the-fence" operators, infers that the "on-airport" operators are being unjustly discriminated against and forced to solely fund the operation and maintenance of the Addison Municipal Airport. This practice would be a clear violation of Grant Assurance 22.

The FAA requires airport sponsors, under Grant Assurance 24, Fee and Rental Structure, to *...maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining a possible...* This federal mandate, ensures that the sponsors are charging users and tenants an adequate fee and rental structure that will lessen its' reliance on federal assistance for maintaining the airport. In example, the Addison Municipal Airport, due to the preliminary core sample analysis, is facing a potential full reconstruction of Runway 15/33 in the near future. A project of this magnitude could cost up to \$20,000,000.00. While the Sponsor may be anticipating

Celebrating 100 Years of Powered Flight

federal and state assistance, no commitments can be made at this time as to what level of participation may or may not be available. The sponsor is ultimately responsible, for the costs of such a project and must plan accordingly, to ensure that the operational needs of the airport are being met in accordance with Grant Assurance 19, Operations and Maintenance.

The FAA does not dictate a particular method for the calculation of a fee and rental structure. The FAA's oversight is to ensure that a fair and equitable approach has been used and implemented to achieve a balance between the "on-airport" and "thru-the-fence" operators. Ultimately the Sponsor may enact a fee structure that is considerable higher than other surrounding airports, but is acceptable from the standpoint that it is what the market will support for that airport. The Sponsors' chosen "Fair Market" method appears to have been developed carefully and equitably in accordance with Grant Assurance 22, Economic Discrimination.

In regard to the Town's process of developing and implementing the ordinance, my research shows that the Town made an acceptable effort to involve the public on several occasions as additionally indicated in Section 5 of Mr. Maddens' submission.

In reviewing the Fee and Rental Structure between the "on-airport" and "thru-the-fence" operators, it appears that the Town has made several adjustments to the fee calculation to provide credit to the tenants by reducing the comparable "on-airport" rate of \$0.40 per square foot to the "thru-the-fence" rate \$0.26 per square foot, by giving credit for debt incurred for acquisition and improvements. Additionally, the Sponsor, in an effort to fine-tune the square footage to be assessed, solicited input (as delineated in the Addison Access Permit Agreement, Appendix 4, Page 2, 2.A.(2) City Estimate) from the tenants in regard to the square footage assigned to aviation use within their tenant area, that would be used in the final assessment for fee calculations.

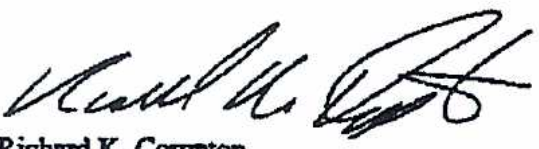
It is my understanding, at the present time, that none of the current "thru-the-fence" operators have neither signed the "thru-the-fence" Access Agreement nor made their current year payments. If the "thru-the-fence" operators are being allowed to operate on the airport, the FAA could find the Addison Municipal Airport and the Town of Addison in noncompliance with Grant Assurance 22 and 24, suspend all federal funding and require the "thru-the-fence" access to the airport terminated, until federal compliance is met. The federal regulations are very clear and strict about these types of operations and access. The FAA sincerely hopes that these punitive measures will not be required!

In summary, it is my determination, from my detailed research, the input provided by both parties, and my on-site review, that the Addison Municipal Airport and the Town of Addison, are in full compliance with the intent of the federal requirements in this matter.

I have additionally requested our Airports Compliance Officer to perform an on-site review in a few weeks on the status of this issue, to determine if the Addison Municipal Airport and the Town of Addison are in compliance with the intent of the federal grant assurances and agreements. In the event that the conditions still exist, the FAA must, at that time, either find the Addison Municipal Airport and the Town of Addison in noncompliance or require the Sponsor to immediately restrict access to the airport from those "thru-the-fence" operators not current with the mandates of the Addison Airport Access Permit Agreement.

Should further information be required, please contact me at 817-222-5608.

Sincerely,



Richard K. Compton
Senior Program Manager
Texas Airports Development Office

Enclosure



U.S. Department
of Transportation
Federal Aviation
Administration

Southwest Region
Arkansas, Louisiana,
New Mexico, Oklahoma,
Texas

Fort Worth, Texas 78193-0000

June 4, 2003

Mr. Mitchell Madden
1800 Valley View Lane
Suite 150
Dallas, Texas 75234

Dear Mr. Madden,

Per your request in the letter dated April 3, 2003, for an informal complaint of noncompliance issues at the Addison Municipal Airport, located in the Town of Addison, I am provide the following response.

The Federal Aviation Administration (FAA) position, in regard to "thru-the-fence" operations as a general principle is to discouraged them. In those case-by-case situations where the airport requests "thru-the-fence" agreements, the FAA will review those requests to ensure full compliance with Federal requirements, such as enacted in Grant Assurances, Agreements and FAA Order 5190.6A Airport Compliance Requirements. Part of the FAA review of the proposed agreement is to ensure fair and equitable competitive operation and access between the "on-airport" and the "thru-the-fence" operators.

The intent of Grant Assurance 22, Economic Nondiscrimination, the Sponsor shall; *In any agreement, contract, lease, or other arrangement... (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service...* The fact that a Sponsor has not received fees for services rendered (aeronautical use of the airport) from the "thru-the-fence" operators, infers that the "on-airport" operators are being unjustly discriminated against and forced to solely fund the operation and maintenance of the Addison Municipal Airport. This practice would be a clear violation of Grant Assurance 22.

The FAA requires airport sponsors, under Grant Assurance 24, Fee and Rental Structure, to *...maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining a possible...* This federal mandate, ensures that the sponsors are charging users and tenants an adequate fee and rental structure that will lessen its' reliance on federal assistance for maintaining the airport. In example, the Addison Municipal Airport, due to the preliminary core sample analysis, is facing a potential full reconstruction of Runway 15/33 in the near future. A project of this magnitude could cost up to \$20,000,000.00. While the sponsor may be anticipating

Celebrating 100 Years of Powered Flight

federal and state assistance, no commitments can be made at this time as to what level of participation may or may not be available. The sponsor is ultimately responsible, for the costs of such a project and must plan accordingly, to ensure that the operational needs of the airport are being met in accordance with Grant Assurance 19, Operations and Maintenance.

The FAA does not dictate a particular method for the calculation of a fee and rental structure. The FAA's oversight is to ensure that a fair and equitable approach has been used and implemented to achieve a balance between the "on-airport" and "thru-the-fence" operators. Ultimately the Sponsor may enact a fee structure that is considerably higher than other surrounding airports, but is acceptable from the standpoint that it is what the market will support for that airport. The Sponsors' chosen "Fair Market" method appears to have been developed carefully and equitably in accordance with Grant Assurance 22, Economic Discrimination.

In regard to the Town's process of developing and implementing the ordinance, my research shows that the Town made an acceptable effort to involve the public on several occasions as additionally indicated in Section 5 of your submission.

In reviewing the Fee and Rental Structure between the "on-airport" and "thru-the-fence" operators, it appears that the Town has made several adjustments to the fee calculation to provide credit to the tenants by reducing the comparable "on-airport" rate of \$0.40 per square foot to the "thru-the-fence" rate \$0.26 per square foot, by giving credit for debt incurred for acquisition and improvements. Additionally, the Sponsor, in an effort to fine-tune the square footage to be assessed, solicited input (as delineated in the Addison Access Permit Agreement, Appendix 4, Page 2, 2.A.(2) City Estimate) from the tenants in regard to the square footage assigned to aviation use within their tenant area, that would be used in the final assessment for fee calculations.

It is my understanding, at the present time, that none of the current "thru-the-fence" operators have neither signed the "thru-the-fence" Access Agreement nor made their current year payments. If the "thru-the-fence" operators are being allowed to operate on the airport, the FAA could find the Addison Municipal Airport and the Town of Addison in noncompliance with Grant Assurance 22 and 24. The federal regulations are very clear and strict about these types of operations and access. The FAA sincerely hopes that these punitive measures will not be required!

In summary, it is my determination, from my detailed research, the input provided by both parties, and my on-site review, that the Addison Municipal Airport and the Town of Addison, are in full compliance with the intent of the federal requirements in this matter.

I have additionally requested our Airports Compliance Officer to perform an on-site review in a few weeks on the status of this issue, to determine if the Addison Municipal Airport and the Town of Addison are in compliance with the intent of the federal grant assurances and agreements.

Should further information be required, please contact me at 817-222-5608.

Sincerely,



Richard K. Compton
Senior Program Manager
Texas Airports Development Office, ASW-651

cc:
Mr. Ron Whitehead
City Manager, Town of Addison
P.O. Box 9010
Addison, Texas 75001-9010



U.S. Department
of Transportation
**Federal Aviation
Administration**

Southwest Region
Arkansas, Louisiana,
New Mexico, Oklahoma,
Texas

Fort Worth, Texas 76193-0000

September 13, 2004

RECEIVED

Mr. Ron Whitehead
City Manager
Addison Town Hall
5300 Belt Line Road
Dallas, TX 75254-7606

CITY MANAGER

Dear Mr. Whitehead:

The Federal Aviation Administration (FAA), Southwest Region, Airports Division has conducted an evaluation of the town of Addison's compliance with its obligations associated with Federal funding received through the Airport Improvement Program (AIP) for development at the Addison Airport.

Airport sponsors have a responsibility under the grant obligations to make the airport available for public use on reasonable terms and without unjust discrimination and to maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the airport.

During the week of June 7, 2004, the FAA reviewed airport land use and revenue collection to determine whether the town is meeting these obligations. The audit found that through-the-fence or off airport operators were \$263,673 in arrears for airport access payments. Only one of the through-the-fence operators is current on their airport access payment and has signed the new airport access agreement.

This matter requires the town of Addison's immediate attention. This practice does not allow the town to fully meet these grant obligations. Please provide a report to this office within 30 days on the manner in which you have resolved this situation.

If you should have any questions or require additional information, please contact our office.

Sincerely,

Mike Nicely
Manager, Texas Airports
Development Office

cc:
Mr. David S. Fulton
Director
Texas Department of Transportation, Aviation Division
125 East 11th Street
Austin, TX 78701-2483

Ms. Lisa Pyles
Airport Director
Addison Airport
4651 Airport Parkway
Addison, TX 75001

RECEIVED
FEB 19 2004

CITY MANAGER

Fort Worth, Texas 76193-0000



U.S. Department
of Transportation
Federal Aviation
Administration

Southwest Region
Arkansas, Louisiana,
New Mexico, Oklahoma,
Texas

February 17, 2004

Mr. Mitchell Madden
1800 Valley View Lane
Suite 150
Dallas, TX 75234

Dear Mr. Madden:

This is in response to the informal compliance complaint filed under Federal Aviation Regulation (FAR) Part 13 (14 Code of Federal Regulations, Part 13), with Mr. David Fulton, Director, Aviation Division, Texas Department of Transportation, on April 3, 2003, about the Addison Airport (Airport), Addison, Texas. Under the terms of the State Block Grant Program between the Texas Department of Transportation, Aviation Division (TXDOT) and the Federal Aviation Administration (FAA) such informal compliance complaints at general aviation reliever airports are reviewed and investigated by the FAA, Southwest Region, Texas Airports Development Office.

The complaint you have filed on behalf of individuals and/or entities listed in Appendix 1, who are property owners located adjacent to the Airport and who access the Airport for use of the aeronautical facilities, relates to the manner in which the Town of Addison (Town) is complying with Federal grant obligations. The primary concern is the manner in which the Town is regulating and assessing fees for access to the Airport by adjacent property owners, through-the-fence access. Your complaint alleges the Town, in setting the regulation and access fee, has established economic discrimination practices against off-airport property owners in violation of Federal grant obligations.

We have reviewed the complaint and supporting documentation. We have also provided the Town an opportunity to respond to the complaint. Based on our review and investigation, we do not find the Town has violated any grant assurances.

The Town has a responsibility under the grant assurances to make the Airport as self sustaining as possible based on the condition in which it operates (Grant Assurance 24) and to make the airport available for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities (Grant Assurance 22a).

We will respond to the compliance issues you raised in Appendix 2 to your letter.

(1) "Failure to Consider local interest"

The Town has been working to resolve the issue of access to the Airport by adjacent property owners for a number of years. The Town recognizes its obligations to ensure that all who use the Airport are paying for its use consistent with the grant assurances. The Town consulted with citizens, airport users, tenants as well as the off-airport operators as it was developing the regulations and access fee structure. Although not all may agree with the regulations and fee structure, the Town has considered local interests. The FAA does not find the Town in violation of the grant assurances.

(2) "The Town's 'market-based' calculation of a fee" and (3) "The Town's formula results in unjust economic discrimination against off-airport operators".

The FAA grant obligation to make the Airport available for the use and benefit of the public does not establish a requirement for the Town to permit access by aircraft from adjacent property. We understand there is a dispute between the Town and adjacent property owners (*LaTaste Enterprises, E. Allan Stockton and Mary Lois Buse v. Addison Airport of Texas, Inc. and the City of Addison*) regarding rights to access the Airport. The 116th Judicial District Court issued a Summary Judgment on July 12, 2002, in favor of the Town. We also understand the Plaintiffs have appealed the ruling in the Court of Appeals.

FAA's policy on through-the-fence access is set forth in FAA Order 5190.6A, Airports Compliance Manual. The FAA recommends that airport owners refrain from entering into any agreement, which grants access to the airport by aircraft normally stored and serviced on adjacent property. The FAA provides for exceptions to be granted on a case-by-case basis where operating restrictions ensure safety and equitable compensation for the use of the airport. The Town adopted Ordinance No. 001-043 (Ordinance), on December 11, 2001, to allow adjacent property owners through-the-fence access to the Airport. The Ordinance set forth the regulations and a fee structure. The establishment of the Ordinance by the Town is consistent with FAA's policy for regulating through-the-fence access.

The complaint calls into question the manner in which the Town has established the access fee. The Department of Transportation (DOT), FAA published the "Policy Regarding the Establishment of Airport Rates and Charges" on June 21, 1996, in the Federal Register (61 Federal Register 32017, 32022). The FAA does not prescribe the use of any specific approach to establishing airport fees. The Town developed a methodology that established the access fee for through-the-fence operators at \$0.26/square foot for calendar year 2002. This rate applied to that portion of the off-airport property associated with aeronautical services or use. It is our understanding the Town provided the opportunity for the through-the-fence operators to determine the amount and size of the property devoted to aeronautical use. The Town has reported that the rate for "on" Airport leases in 2002 was approximately \$0.45/square foot. The rate varies depending on the location of the property, and as a result, not all rates are the same. The FAA does not find the manner in which the Town determined the access fee or the formula to be in violation of the grant obligations.

(4) "Any Escalation any of Access Fee should be tied to Consumer Price Index"

The Town has also established a means for escalating the access fee. The FAA does not prescribe a specific method for determining the escalation of lease rates. The FAA requires the inclusion of escalation clause for leases with terms in excess of five years. The method the Town has chosen for determining the escalation rate is not in violation of grant obligations.

(5) "Base year 'fair market value' rate is excessive"

The Town has expressed a willingness to consider a reduction in the fair market value on the calculation of the access fee. As of May 2, 3003, the date of the Town's response to our request for a review of the issues you have raised, none of the off-airport property owners had presented information on the reduced market value. The FAA does not prescribe the manner in which the Town is to establish the access fee. We do not find the Town in violation of the grant obligations for the manner in which it has established the access fee for the through-the fence operators.

(6) "Objective determinations regarding calculation of the fee"

The fee structure and escalation clause in the Ordinance was adopted by the City Council of the Town of Addison not the Airport Manager. The Town is the owner of the Airport and the entity responsible for regulating access to the Airport and establishing the access fee for through-the-fence operators. The FAA does not find there to be a conflict of interest or a violation of the grant obligations.

(7) "Non-aeronautical uses of the airport should be limited"

Grant Assurance 19 requires sponsors to operate the Airport and facilities at all times in a safe and serviceable condition. Any proposal to temporarily close the airport for non-aeronautical uses must first be approved by the FAA. The Town is aware of this responsibility.

(8) "Existing Property Rights Impacted by the Ordinance and Access Fee"

Any access right that may be held by the adjacent property owners is matter being resolved in the courts. It is not within FAA's purview to comment on, or resolve this issue.

(9) "The Ordinance Fails to Distinguish Between Commercial Use and Private Incidental Use of Abutting Residences or Businesses"

In granting access to the Airport by off-airport property owners, the Town is not required to establish specific regulations or fee structure for differing uses of off-airport property. The Town is not in violation of the grant obligation for establishing an Ordinance that applies to all the through-the-fence operators regardless whether the off-airport use is for commercial purposes or private use. The Town can establish different rules, regulations, and rate structures for on-airport entities depending on airport location or the type of aeronautical activity in which the entity is engaged.

The through-the-fence access fee established by the Town is not unreasonable or discriminatory. The Town has a responsibility to make the Airport self-sustaining by generating sufficient revenue through the fee and rental structure to offset the cost of operations and maintenance as well as future capital improvements. The Town has put in place regulations and an access fee structure consistent with FAA policy and the grant obligations.

The DOT Policy, Section 1.1.6, Local Negotiations and Resolutions, requires any newly established fee or fee increase that is the subject of a complaint under 49 CFR § 47129 that is not dismissed by the Secretary must be paid to the airport proprietor under protest by the complainant. The complainant may pursue additional review under 14 CFR PART 16.

Sincerely:

ORIGINAL SIGNED By:

Mike Nicely
Manager, Texas Airports
Development Office

cc:
Mr. David Fulton
Director, Aviation Division
Texas Department of Transportation
125 E. 11th Street
Austin, TX 78701-2483

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

Ms. Lisa Pyles
Airport Director
4651 Airport Parkway
Addison, TX 75001

ORDER

5190.6A

AIRPORT COMPLIANCE REQUIREMENTS



OCTOBER 2, 1989

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

6-6. AGREEMENTS GRANTING ACCESS TO LANDING AREA FROM ADJACENT PROPERTY (THROUGH-THE-FENCE OPERATOR). There are times when the owner of an airport will enter into an agreement which permits access to the public landing area by aircraft based on land adjacent to, but not a part of, the airport property. In some cases, special taxiways have been built for this purpose. This type of an arrangement has frequently been referred to as a "through-the-fence" operation even though the perimeter fence may be imaginary. In reviewing a lease or contract which proposes this type of arrangement, the following guidance should be followed:

a. **Rights and Duties of Airport Owner.** The obligation to make an airport available for the use and benefit of the public does not impose any requirement to permit access by aircraft from adjacent property. The existence of such an arrangement could place an encumbrance upon the airport property unless the airport owner retains the legal right to, and in fact does, require the off-site property owner or occupant to conform in all respects to the requirements of any existing or proposed grant agreement.

b. **Practical Considerations.** The owner of an airport is entitled to seek recovery of initial and continuing costs of providing a public use landing area. The development of aeronautical enterprises on land uncontrolled by the owner of the public airport can result in a competitive advantage for the "through the fence" operator to the detriment of on airport operators. To equalize this imbalance the airport owner should obtain from any off-base enterprise a fair return for its use of the landing area.

c. **Safety Considerations.** Arrangements that permit aircraft to gain access to a public landing area from off-site properties complicate the control of vehicular and aircraft traffic. Special safety operational requirements may need to be incorporated in the "through-the-fence" agreement.

d. **Agency Position.** As a general principle, FAA will recommend that airport owners refrain from entering into any agreement which grants access to the public landing area by aircraft normally stored and serviced on adjacent property. Exceptions can be granted on a case-by-case basis where operating restrictions ensure safety and equitable compensation for use of the airport. Examples include:

(1) Where a bonafide airport tenant has already leased a site from the airport owner and has negotiated airfield use privileges, but also desires to move aircraft to and from a hangar or manufacturing plant on adjacent, off-airport property. In this case

actual access will be gained through the area provided by the airport owner.

(2) Where an individual or corporation, actually residing or doing business on an adjacent tract of land, proposes to gain access to the landing area solely for aircraft use incidental to such residence or business without offering any aeronautical services to the public. This situation is commonly encountered where an industrial airpark is developed in conjunction with the airport.

e. **Determinations.** The existence of arrangements granting access to a public landing area from off-site locations contrary to FAA recommendations shall be reported to regional Airports divisions with a full statement of the circumstances. If the regional Airports division determines that the existence of such an agreement circumvents the attainment of the public benefit for which the airport was developed, the owner of the airport will be notified that the airport may be in violation of his agreement with the Government.

6-7. AIR CARRIER AGREEMENTS AND LEASES. Unless a complaint has been made, the FAA will not attempt to judge or evaluate the fairness of any rental rate or fee structure under consideration for air carriers. However, the rights and privileges granted by contract to air carriers as distinct from the rental rate or fee structure, may involve the compliance obligations of the airport owner. When discussing these agreements, particularly in connection with their impact on other aeronautical tenants, the following considerations should be borne in mind.

a. **Use in Common of Aeronautical Facilities.** While the actual rates for use of the landing area are a matter of negotiation, there should be no discrimination in use rates between air carrier and general aviation using aircraft of the same type and weight.

b. **Discrimination Between Carriers.** Where several air carriers serve the same airport they usually cooperate in developing a consolidated position with respect to negotiations with the airport owner. For this reason, compliance violations by the owner arising from preferential treatment of one carrier are rare. On occasion, however, small local service carriers have complained that the imposition of uniform user charges or landing fees equally applicable to long-haul and short-haul operators is inequitable. Such complaints usually arise when the level of fees has been increased concurrently with the expansion of runways and other airport facilities to accommodate larger aircraft not needed in the short-haul operation. It is the position of the FAA that the requirement for user fees, under a standard schedule uniformly applied to all users, does not violate the owner's obligation to make

10/2/89

Order 5190.6A

the airport available on fair and reasonable terms without discrimination. However, there is no violation if the owner elects to offer each carrier the choice between two or more fee schedules designed to minimize the inequities of such a situation. For example, each carrier may be given the choice of paying a specific

amount per 1,000 pounds per take-off weight or a specified percentage of ticket sales to enplaning passengers. (See paragraph 4-14 for additional information.)

6-8.-6-20. RESERVED.

SECTION 2. ENFORCEMENT.

This Section is reserved and will be issued separately for inclusion at a later date. Until then, continue to use the enforcement procedures outlined in Order 5190.6.

ASSURANCES
Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.
3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), *et seq.*¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, *et seq.*
- d. Hatch Act - 5 U.S.C. 1501, *et seq.*²

- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1,2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- q. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.¹
- r. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- t. Copeland Anti kickback Act - 18 U.S.C. 874.¹
- u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

Executive Orders

- Executive Order 11246 - Equal Employment Opportunity¹
- Executive Order 11990 - Protection of Wetlands
- Executive Order 11988 - Flood Plain Management
- Executive Order 12372 - Intergovernmental Review of Federal Programs.
- Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
- b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- c. 14 CFR Part 150 - Airport noise compatibility planning.
- d. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹

- h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- i. 49 CFR Part 20 - New restrictions on lobbying.
- j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- k. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
- l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.^{1 2}
- m. 49 CFR Part 26 - Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
- n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.¹
- o. 49 CFR Part 29 - Government wide debarment and suspension (non-procurement) and government wide requirements for drug-free workplace (grants).
- p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.¹

Office of Management and Budget Circulars

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

2. Responsibility and Authority of the Sponsor.

- a. **Public Agency Sponsor:** It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
- b. **Private Sponsor:** It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person

to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

- 3. Sponsor Fund Availability.** It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that

property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
 - f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.
6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.
 7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.
 8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.
 9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.
 10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.
 11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such

reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.
13. **Accounting System, Audit, and Record Keeping Requirements.**
 - a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
 - b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.
14. **Minimum Wage Rates.** It shall include, in all contracts in excess of \$2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.
15. **Veteran's Preference.** It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.
16. **Conformity to Plans and Specifications.** It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved

plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.

17. **Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.
18. **Planning Projects.** In carrying out planning projects:
- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
 - b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
 - c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
 - d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
 - e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
 - f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
 - g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
 - h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.
19. **Operation and Maintenance.**
- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably

operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary.

In furtherance of this assurance, the sponsor will have in effect arrangements for-

- (1) Operating the airport's aeronautical facilities whenever required;
- (2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
- (3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.
20. **Hazard Removal and Mitigation.** It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
 21. **Compatible Land Use.** It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.
 22. **Economic Nondiscrimination.**
 - a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
 - b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
 - (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
 - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
 - e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
 - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
 - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
 - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
 - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.
23. **Exclusive Rights.** It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:
- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
 - b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.
- It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations,

aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure. It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections. It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use

agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
 - d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - (i) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - (ii) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.
27. **Use by Government Aircraft.** It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that-
- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
 - b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.
28. **Land for Federal Facilities.** It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.
29. **Airport Layout Plan.**
- a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall

be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.
30. **Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.
31. **Disposal of Land.**
- a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.
 - b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (2) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
 - d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.
- 32. Engineering and Design Services.** It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement **prescribed** for or by the sponsor of the airport.
- 33. Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
- 34. Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.
- 35. Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.
- 36. Access By Intercity Buses.** The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.
- 37. Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure

non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

38. Hangar Construction. If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 1. Describes the requests;
 2. Provides an explanation as to why the requests could not be accommodated; and
 3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date

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CHAPTER 22. COUNTY AND MUNICIPAL AIRPORTS

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- 22.081. Taxicab Licensing.
- 22.082. Rules.
- 22.083. Joint Fund.

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- 22.084. Airport Revenue and Revenue Bond Proceeds; Contracting Opportunities for Minority- and Women-Owned Businesses.
- 22.085. Insurance.
- 22.086. Acceptance of Credit Cards.
- 22.087. Use of Terminal Facilities by Manufacturers and Concessionaires.
- 22.088. Expenditure of Bond Revenue by Joint Board Without Competitive Bidding.
[Sections 22.089 to 22.150 reserved for expansion]

SUBCHAPTER E. NONPROFIT AIRPORT FACILITY FINANCING CORPORATIONS

- 22.151. Definitions.
- 22.152. Nonprofit Airport Facility Financing Corporations.
- 22.153. Approval of Articles of Incorporation; Appointment of Board of Directors.
- 22.154. Incorporation.
- 22.155. Bylaws.
- 22.156. Applicable Laws.
- 22.157. Bonds.
- 22.158. Earnings.
- 22.159. Alteration or Termination of Corporation.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

- 22.901. Disposal of Abandoned Aircraft.

Cross References

Airport authorities, see Vernon's Ann.Const. Art. 9, § 12.

SUBCHAPTER A. GENERAL PROVISIONS

§ 22.001. Definitions

In this chapter:

- (1) "Air navigation facility" means:

(A) a facility, other than one owned and operated by the United States, used in or available or designed for use in aid of air navigation, including a structure, mechanism, light, beacon, marker, communications system, or other instrumentality;

(B) a device used or useful as an aid in the safe landing, navigation, or takeoff of aircraft or the safe and efficient operation or maintenance of an airport; or

(C) a combination of those facilities or devices.

- (2) "Airport" means:

(A) an area used or intended for use for the landing and takeoff of aircraft;

(B) an appurtenant area used or intended for use for an airport building or other airport facility or right-of-way; and

(C) an airport building or facility located on an appurtenant area.

- (3) "Airport hazard" means a structure, object of natural growth, or use of land that:

- (A) obstructing or taking
- (B) is hazardous
- (4) "Airport" exist,
- (5) "Area
- (6) "Local

Acts 1995, 74th

(1) V.A.C given "unless revised law the context

(2) V.A.C incorporate "local government properly in revised law the term used" be incorporated

(3) The contained the context

(d) ... "

(4) The Article 46c by Section law reads:

(e) "Per association receiver, a

(5) The nience and definition.

Prior Laws:
Acts 1947, 50th
14.
Acts 1981, 67th

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(d) A person who proposes to construct a wireless communication facility that is at least 100 feet but not more than 200 feet in height above ground level shall mark the highest guy wires on the facility, if any, with two warning spheres each.

Added by Acts 2003, 78th Leg., ch. 1222, § 3, eff. June 20, 2003.

Historical and Statutory Notes

2003 Legislation

Section 4(a) of Acts 2003, 78th Leg., ch. 1222 provides:

"(a) The changes in law made by this Act apply only to a wireless communication facility constructed on or after the effective date of this Act."

CHAPTER 22. COUNTY AND MUNICIPAL AIRPORTS

SUBCHAPTER B. ESTABLISHMENT, ACQUISITION, OPERATION, MAINTENANCE, AND DISPOSAL OF AIRPORTS AND AIR NAVIGATION FACILITIES

- Section 22.024. Disposal of Airport Property by Local Government.
- 22.026. Noise Abatement.
- 22.027. Municipal Permission for Ground Transportation; Offense.

SUBCHAPTER C. AIRPORT FINANCING

- 22.052. Bonds.
- 22.053. Time Warrants.

Section
SUBCHAPTER D. JOINT OPERATIONS

- 22.074. Joint Board.
- 22.0745. Nonconstituent Municipality Representation on Joint Board.
- 22.0781. Revenue Sharing Agreement With Municipality.
- 22.0815. [Ground Transportation Business; Elements of Offense].
- 22.089. Airport Revenue of Nonconstituent Municipalities.
- 22.090. Retail Development Within Airport Boundaries in Nonconstituent Municipality.

SUBCHAPTER A. GENERAL PROVISIONS

§ 22.001. Definitions

Research References

Forms

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 41:2, Preemption Issues.

Treatises and Practice Aids

Brooks, 35 Tex. Prac. Series § 17.23, Revenue Bonds.

Brooks, 36A Tex. Prac. Series § 41.5, Airports-Municipal Airports Act.

§ 22.002. Public Purpose; County or Municipal Purpose

Research References

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.17, Airport-Tort Liability.

§ 22.003. Interpretation and Construction

Research References

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.17, Airport-Tort Liability.

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SUBCHAPTER B. ESTABLISHMENT, MAINTENANCE, AND NAVIGATION

§ 22.011. General Powers Regulated

R

Forms

Texas Jurisprudence Pleading & Practice 2d Ed § 92:1, Introductory Comments

Treatises and Practice Aids

Brooks, 35 Tex. Prac. Series § 9.30, Domain/Condemnation.

§ 22.014. Rules and Jurisdiction

R

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.10, Management.

§ 22.015. Enforcement of Rule

R

Encyclopedias

TX Jur. 8d Criminal Law § 2215, Peace Officer's Power to Arrest With

§ 22.016. Relationship to Zoning

F

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.16, Airport Zoning Act.

§ 22.017. Delegation of Authority

F

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.10, Management.

§ 22.020. Operation of Airport

I

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.12, Lease.

1. In general

Local Government Code chapter 263 county commissioners court to lease cou

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Section

- 22.084. Airport Revenue and Revenue Bond Proceeds; Contracting Opportunities for Minority- and Women-Owned Businesses.
- 22.085. Insurance.
- 22.086. Acceptance of Credit Cards.
- 22.087. Use of Terminal Facilities by Manufacturers and Concessionaires.
- 22.088. Expenditure of Bond Revenue by Joint Board Without Competitive Bidding.
[Sections 22.089 to 22.150 reserved for expansion]

SUBCHAPTER E. NONPROFIT AIRPORT FACILITY FINANCING CORPORATIONS

- 22.151. Definitions.
- 22.152. Nonprofit Airport Facility Financing Corporations.
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- 22.154. Incorporation.
- 22.155. Bylaws.
- 22.156. Applicable Laws.
- 22.157. Bonds.
- 22.158. Earnings.
- 22.159. Alteration or Termination of Corporation.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

- 22.901. Disposal of Abandoned Aircraft.

Cross References

Airport authorities, see Vernon's Ann.Const. Art. 9, § 12.

SUBCHAPTER A. GENERAL PROVISIONS

§ 22.001. Definitions

In this chapter:

- (1) "Air navigation facility" means:

- (A) a facility, other than one owned and operated by the United States, used in or available or designed for use in aid of air navigation, including a structure, mechanism, light, beacon, marker, communications system, or other instrumentality;

- (B) a device used or useful as an aid in the safe landing, navigation, or takeoff of aircraft or the safe and efficient operation or maintenance of an airport; or

- (C) a combination of those facilities or devices.

- (2) "Airport" means:

- (A) an area used or intended for use for the landing and takeoff of aircraft;

- (B) an appurtenant area used or intended for use for an airport building or other airport facility or right-of-way; and

- (C) an airport building or facility located on an appurtenant area.

- (3) "Airport hazard" means a structure, object of natural growth, or use of land that:

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Acts 1995, 74th

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Prior Laws:
Acts 1947, 50
14.
Acts 1981, 67

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- (A) obstructs the airspace required for the flight of aircraft in landing at or taking off from an airport; or
- (B) is hazardous to the landing or takeoff of aircraft at an airport.
- (4) "Airport hazard area" means an area on which an airport hazard could exist.
- (5) "Area" includes land or water.
- (6) "Local government" means a county or municipality in this state.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Revisor's Note

(1) V.A.C.S. Article 46d-1 states that the defined terms have the meanings given "unless the text otherwise requires." This limitation is omitted from the revised law because the defined terms are used consistently in the revision in the context to which the definition applies.

(2) V.A.C.S. Article 46d-1(d) defines "municipality" as "any county, or any incorporated city, village or town of this State." The revised law substitutes "local government" for "municipality" because the term "local government" properly includes a county, whereas the term "municipality" does not. The revised law substitutes "municipality" for "city, village or town" because that is the term used in the Local Government Code. The revised law omits "incorporated" because under the Local Government Code all municipalities must be incorporated.

(3) The revised law omits as unnecessary the definition of "municipal" contained in V.A.C.S. Article 46d-1(d) because the meaning is apparent from the context. The omitted law reads:

(d) ... "Municipal" means pertaining to a municipality as herein defined.

(4) The revised law omits the definition of "person" contained in V.A.C.S. Article 46d-1(e) because it is substantively identical to the definition provided by Section 311.005, Government Code (Code Construction Act). The omitted law reads:

(e) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee or other similar representative thereof.

(5) The definition of "area" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Historical and Statutory Notes

Prior Laws:

Acts 1947, 50th Leg., p. 184, ch. 114, §§ 1, 7, 14.
Acts 1981, 67th Leg., p. 851, ch. 300, §§ 1, 2.

Acts 1993, 73rd Leg., ch. 94, § 1.
Vernon's Ann.Civ.St. arts. 46d-1(a) to (d); 46d-7(a); 46d-14(a)(3).

Library References

Aviation ☞ 211 to 252.
WESTLAW Topic No. 48B.

C.J.S. Aeronautics and Aerospace §§ 5, 19, 21, 57 to 90, 100 to 101, 103, 110 to 124, 139, 179, 282.

for torts arising out of governmental functions. N.D.Tex.1975, 393

Texas, as operator of airport, is immune from liability for torts committed by person who was riding his motorcycle on taxiway when he was struck by aircraft. *Atkinson v. City of Dallas*, 83 S.Ct. 18, 371 U.S. 854, 9 L.Ed.2d 92.

Plaintiff, who was struck by aircraft, attempted to cross street separating terminal building and metered parking area, and by husband supported jury finding that the sidewalk was an area appurtenant to the airport facility or right-of-way within meaning of this article relating to tort immunity of airport. *Tompkins v. City of El Paso*, C.A.5 (Tex.)1971, 449 F.2d 842.

and oil to persons and which charged for use of hangar was negligent and negligent destruction of airport grounds by city. *Atkinson v. City of Dallas*, 83 S.Ct. 18, 371 U.S. 854, 9 L.Ed.2d 92.

l airport is a governmental entity. *Flippin v. City of Beaumont*, 525 S.W.2d 285.

Municipal Airports Act provides that a city loses its immunity from liability for torts committed by its agents while operating the same. *Op.Atty.Gen.*1949, No. 763.

Municipal Airports Act (art. 1669a, V.C.S.) provides that a city loses its immunity from liability for torts committed by its agents while operating the same. *Op.Atty.Gen.*1949, No. 763.

of this article that airport is a governmental entity. *Flippin v. City of Beaumont*, 525 S.W.2d 285.

effective on January 1, 1970. *Flippin v. City of Beaumont* (Civ.App. 1975) 525 S.W.2d 285.

This article was effective to establish city's governmental immunity to tort liability for damages resulting from unsafe condition of airport taxiway, which allegedly damaged plaintiff's airplane. *Bragg v. City of Dallas* (Civ.App. 1980) 605 S.W.2d 669, motion overruled 608 S.W.2d 696.

The county while acting in a governmental capacity in the operation of an airport is not liable for the torts committed by its agents while operating the same. *Op.Atty.Gen.*1949, No. 763.

The commissioners' court has no authority to carry insurance covering bodily injury, property damage, or any other damages for which the county would be liable. *Op.Atty.Gen.*1949, No. 763.

5. Damages to abutting property

Owners of property located 2200 feet or more from proposed runway to be constructed within boundaries of municipal airport and on municipally owned land did not have a cause of action for "taking" of their property for alleged noises, vibrations and disturbances or damage to property by increased insurance rates, reduced rental value, etc., and any cause of action they might have would be for damages to their property. *Atkinson v. City of Dallas* (Civ.App. 1961) 353 S.W.2d 275, ref. n.r.e., certiorari denied 82 S.Ct. 1587, 370 U.S. 939, 8 L.Ed.2d 808, rehearing denied 83 S.Ct. 18, 371 U.S. 854, 9 L.Ed.2d 92.

6. Nuisance

Proposed runway to be constructed by city on municipal airport for public use pursuant to legislative authority was not legally a nuisance but even if it were, cause of action by protesting property owners, if any, would be for damages and not for injunction against construction of

runway. *Atkinson v. City of Dallas* (Civ.App. 1961) 353 S.W.2d 275, ref. n.r.e., certiorari denied 82 S.Ct. 1587, 370 U.S. 939, 8 L.Ed.2d 808, rehearing denied 83 S.Ct. 18, 371 U.S. 854, 9 L.Ed.2d 92.

7. Evidence

Evidence in actions by person, who was waiting to meet plane of arriving relative at city airport when she fell on sidewalk after crossing street separating terminal building and metered parking area, and by husband supported jury finding that the sidewalk was an area appurtenant to the airport facility or right-of-way within meaning of this article relating to tort immunity of airport. *Tompkins v. City of El Paso*, C.A.5 (Tex.)1971, 449 F.2d 842.

8. Instructions

Instruction, which asked jury to determine whether the location on sidewalk where plaintiff fell was within the zone of property to be maintained for the accommodation of air travelers within meaning of this article providing immunity from tort liability for injuries at airport facilities was proper and inclusion in charge of statement that a right-of-way includes areas for use by pedestrians and traffic, a term not used in art. 46d-1(a) did not render instruction wrong. *Tompkins v. City of El Paso*, C.A.5 (Tex.)1971, 449 F.2d 842.

9. Review

Courts may not review decisions of proper municipal authorities concerning necessity for public improvements of municipal airports unless such decisions are arbitrary and without reason. *Atkinson v. City of Dallas* (Civ.App. 1961) 353 S.W.2d 275, ref. n.r.e., certiorari denied 82 S.Ct. 1587, 370 U.S. 939, 8 L.Ed.2d 808, rehearing denied 83 S.Ct. 18, 371 U.S. 854, 9 L.Ed.2d 92.

§ 22.003. Interpretation and Construction

This chapter shall be interpreted to make uniform as far as possible the laws and regulations of this state, other states, and the United States relating to local governmental airports.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Historical and Statutory Notes

Prior Laws:

Acts 1947, 50th Leg., p. 190, ch. 114, § 19.
Vernon's Ann.Civ.St. art. 46d-19.

Sec. 3.... and no city or county shall be liable for injuries to persons resulting from or caused by any defective, unsound or unsafe condition of any such Air Port, or any part thereof, or thing of any character therein or resulting from or caused by any negligence, want of skill, or lack of care on the part of any governing Board or Commissioners Court, officer, agent, servant or employee or other person with reference to the construction, improvement, management, conduct, or maintenance of any such Air Port or any structure, improvement, or thing of any character whatever, located therein or connected therewith.

[Sections 22.004 to 22.010 reserved for expansion]

SUBCHAPTER B. ESTABLISHMENT, ACQUISITION, OPERATION,
MAINTENANCE, AND DISPOSAL OF AIRPORTS AND AIR
NAVIGATION FACILITIES

§ 22.011. General Powers Regarding Airports and Air Navigation Facilities

(a) A local government may plan, establish, construct, improve, equip, maintain, operate, regulate, protect, and police an airport or air navigation facility in or outside:

- (1) the territory of the local government; or
- (2) the territory of this state.

(b) The power granted under Subsection (a) includes:

(1) constructing, installing, equipping, maintaining, and operating at an airport a building or other facility, including a building or other facility for:

- (A) the landing and takeoff of aircraft;
- (B) cargo, freight, and mail handling, storage, and processing;
- (C) the servicing or retrofitting of aircraft, aerospace aircraft, and other equipment and vehicles related to air transportation or aerospace flight; and
- (D) the comfort and accommodation of air travelers, including a facility commonly found and provided at an airport; and

(2) buying and selling goods as an incident to the operation of the local government's airport.

(c) A local government, by eminent domain or any other method, may acquire an interest in property, including an easement in an airport hazard or land outside the boundaries of an airport or airport site:

- (1) for a purpose described by Subsection (a); and
- (2) as necessary to permit the safe and efficient operation of the airport or to prevent, eliminate, or mark an airport hazard.

(d) A local government may acquire an existing airport or air navigation facility but may not acquire or take over an airport or air navigation facility owned or controlled by another local government or public agency of this state

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or another state without the consent of the other local government or the public agency.

Acts 1941, 47th Leg
Acts 1941, 47th Leg
Acts 1947, 50th Leg

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Revisor's Note

Name
Brazos County
Grayson County
Howard County
Kerr County
North Central Texas
Tarrant Counties
Orange County

(1) V.A.C.S. Article 46d-2(a) provides that a municipality, "out of any appropriations or other moneys made available for such purposes," may perform certain tasks. The revised law omits the quoted language as unnecessary because by implication a municipality may perform a task only with money available for that purpose.

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(2) V.A.C.S. Article 46d-2(a) refers to "enlarge" and "improve." The reference to "enlarge" is omitted from the revised law because "enlarge" is included within the meaning of "improve."

Taking of property;
L.Rev. 344 (1968).

(3) V.A.C.S. Article 46d-2(a)(1) contains the phrase "including but not limited to." "[B]ut not limited to" is omitted from the revised law because Section 311.005(13), Government Code (Code Construction Act), and Section 312.011(19), Government Code, provide that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

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(4) V.A.C.S. Article 46d-2(a)(2) refers to "supplies, goods and commodities." The references to "supplies" and "commodities" are omitted from the revised law because "supplies" and "commodities" are included within the meaning of "goods."

See WESTLAW El.

(5) V.A.C.S. Article 46d-2(a)(2) provides that a municipality may acquire "property, real or personal." "[R]eal or personal" is omitted from the revised law because Section 311.005(4), Government Code (Code Construction Act), provides that "property" means real and personal property.

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Disposition of prope
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Nuisance 11
Operation 6-8
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Insurance 7
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Sufficiency of evide
Warrants, operatio

(6) V.A.C.S. Article 46d-2(a)(2) provides that a municipality may use or acquire property as necessary "to permit the removal, elimination, obstruction—marking of obstruction—lighting of airport hazards or to prevent the establishment of airport hazards." "[R]emoval" is omitted from the revised law because it is included within the meaning of "elimination." "[L]ighting" is omitted from the revised law because it is included within the meaning of "marking."

(7) Subsection B, Section 1, V.A.C.S. Article 1269h, enacted in 1929, authorizes a municipality to acquire land outside the county in which the municipality is located for use as an airport if the land is not within five miles of a municipality with a population of more than 1,500. The revised law omits this limitation because it was impliedly repealed by the 1947 enactment of V.A.C.S. Article 46d-2, which permits a local government to acquire land for an airport in or outside the territory of the local government. The omitted law reads:

B— . . . , provided said tracts are not within five (5) miles of another incorporated city that has a population of more than fifteen hundred (1500) people, according to the last preceding Federal Census.

Historical and Statutory Notes

Prior Laws:

Acts 1929, 41st Leg., 1st C.S., p. 209, ch. 83.

Acts 1941, 47th Leg., p. 65, ch. 51, § 1.

1. In general
Property owners
against construction
nicipal airport on g

Airports are considered and retain cloak of sovereign immunity sounding in tort and contract. Article 11, § 10, an airport in fee simple appurtenant to airport property. *Tompkins v. City of Dallas*, 449 F.2d 842.

City is proprietary and liable for negligence of its employees the same as other proprietary entities. *City of El Paso v. Williams*, 399 S.W.2d 394, error dismissed.

Line and oil to persons and which charged airplane hangar was essential function under article 11, § 10. Burning of grass on the airport by employee was performance of essential function and plain hangar and equipment destroyed by fire, were not compensable. *City of Corsicana v. City of Dallas*, 159 Tex. 202, 317 S.W.2d 622.

Title residential owner to nuisance based on unreasonable interference by airplanes from a nearby airport established his home on the flying field had been used for no testimony that the flights were the direct cause with the use and enjoyment of his property, which had not resulted in substantial injury or damage. *American Air Lines, Inc. v. City of Dallas*, 370 U.S. 421, 62 S.Ct. 233.

Be constructed by city on public use pursuant to statute is not legally a nuisance. Use of action by protesting citizens would be for damages against construction of airport. *City of Dallas* (Civ.App. 1973), 496 S.W.2d 662, ref. n.r.e., certiorari denied, 370 U.S. 939, 8 L.Ed.2d 133, 83 S.Ct. 18, 371 U.S. 854.

Generally

Review decisions of proper authority concerning necessity for construction of municipal airports under article 11, § 10, is arbitrary and without legal basis. *City of Dallas* (Civ.App. 1973), 496 S.W.2d 662, ref. n.r.e., certiorari denied, 370 U.S. 939, 8 L.Ed.2d

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808, rehearing denied 83 S.Ct. 18, 371 U.S. 854, 9 L.Ed.2d 92.

County court in which county commenced proceeding to condemn clear zone easement at airport did not have discretion to refuse to proceed to trial and to postpone trial until conclusion of district court actions in which a number of plaintiffs, including condemnees, sought recovery for alleged damage from low flying aircraft, despite contention that clear zone easement sought in county court would necessarily include navigation easement involved in district court. *Jefferson County v. Farris* (Civ.App. 1972) 476 S.W.2d 457.

Action of city in determining to take fee title to property rather than an easement is subject to judicial review for palpable abuse of city's eminent domain power. *City of Houston v. Hamons* (Civ.App. 1973) 496 S.W.2d 662, ref. n.r.e..

13. Admissibility of evidence

Where grantors brought action for specific performance of city's agreement to reconvey land which was not needed for airport purposes, court's refusal to admit into evidence resolution passed by city council which in effect said that city did not mean what it said in prior resolution stating that part of land conveyed was not necessary for airport was not error. *City of Arlington v. Bardin* (Civ.App. 1972) 478 S.W.2d 182, ref. n.r.e..

Where there were many items in evidence showing requirement by FAA that property in question be closed as an airport and letter from city to owners by which city first initiated acquisition process recited that fact and there was oral testimony showing it, the excluded letters written by FAA showing the requirement could merely have been cumulative evidence and their exclusion, if error, was harmless. *City of Houston v. Hamons* (Civ.App. 1973) 496 S.W.2d 662, ref. n.r.e..

§ 22.012. Financing of Airport Facilities

Under Section 52-a, Article III, Texas Constitution, a local government may finance facilities to be located on airport property, other than those described by Section 22.011(b)(1), that the local government determines to be:

- (1) beneficial to the operation or economic development of an airport; and
- (2) for the public purpose of development and diversification of the economy.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

14. Sufficiency of evidence

Award in amount of \$23,000 for condemned property consisting of 23,030 square feet of land which was contiguous to airport and upon which was a wooden frame structure built for residential purposes was not against preponderance of evidence. *City of Houston v. Raborn* (Civ.App. 1966) 409 S.W.2d 480, ref. n.r.e..

Where agreement between grantors and city provided that if during eight-year period after conveyance any part of land became unnecessary for operation of airport grantors could reacquire such unnecessary portion on payment of \$400 per acre and city within eight-year period passed resolution that certain part of land was not necessary for airport and same could and should be leased to third party, which was engaged in aviation industry, trial court's refusal to hold as matter of law that land in question was being used for municipal airport purposes was not error. *City of Arlington v. Bardin* (Civ.App. 1972) 478 S.W.2d 182, ref. n.r.e..

Evidence would support finding that the 25.266-acre tract of land in question had market value of \$130,930. *City of Houston v. Hamons* (Civ.App. 1973) 496 S.W.2d 662, ref. n.r.e..

Evidence showing that city in taking surface rights of defendants' property rather than exclusive air rights over it took property which city did not need and had no intention to use for municipal airport purposes supported finding that city acted arbitrarily or capriciously in taking fee simple title to tract of land. *City of Houston v. Hamons* (Civ.App. 1973) 496 S.W.2d 662, ref. n.r.e..

Evidence showing that city in taking surface rights of defendants' property rather than exclusive air rights over it took property which city did not need and had no intention to use for municipal airport purposes supported finding that city acted arbitrarily or capriciously in taking fee simple title to tract of land. *City of Houston v. Hamons* (Civ.App. 1973) 496 S.W.2d 662, ref. n.r.e..

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Historical and Statutory Notes

Prior Laws:

Acts 1947, 50th Leg., p. 184, ch. 114, § 2.

Acts 1989, 71st Leg., ch. 713, § 1.
Vernon's Ann.Civ.St. art. 46d-2(a).

Library References

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C.J.S. Aeronautics and Aerospace §§ 5, 19,
21, 57 to 90, 100 to 101, 103, 110 to 124,
139, 179, 282.

§ 22.013. Establishment of Airports on Public Waters

For the purposes of this chapter, a local government may:

(1) establish, acquire, or maintain, in or bordering the territory of the local government, an airport in, over, and on the public water of this state, submerged land under the public water of this state, or artificial or reclaimed land that before the artificial making or reclamation of that land was submerged under the public water of this state; and

(2) construct and maintain a terminal building, landing float, causeway, roadway, or bridge for an approach to or connection with an airport described by Subdivision (1) or a landing float or breakwater for the protection of an airport described by Subdivision (1).

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Historical and Statutory Notes

Prior Laws:

Acts 1947, 50th Leg., p. 184, ch. 114, § 2.
Vernon's Ann.Civ.St. art. 46d-2(c).

Law Review and Journal Commentaries

Taking of property; air easements. 20 Baylor
L.Rev. 344 (1968).

Library References

Aviation §211 to 252.
WESTLAW Topic No. 48B.

C.J.S. Aeronautics and Aerospace §§ 5, 19,
21, 57 to 90, 100 to 101, 103, 110 to 124,
139, 179, 282.

§ 22.014. Rules and Jurisdiction

(a) A local government may adopt ordinances, resolutions, rules, and orders necessary to manage, govern, and use an airport or air navigation facility under its control or an airport hazard area relating to the airport. This authority applies to an airport, air navigation facility, or airport hazard area in or outside the territory of the local government.

(b) An airport, air navigation facility, or airport hazard area that is controlled and operated by a local government and that is located outside the territory of the local government is, subject to federal and state law, under the jurisdiction and control of that local government. Another local government may not

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impose a license
navigation facility

Acts 1995, 74th Leg

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Prior Laws:

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Acts 1947, 50th Le
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Aviation §211 to
WESTLAW Topic

In general 1
Liability 3
Preemption 2

1. In general

Property owners
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in violation of Mur
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and city had receiv
of federal aviation
by aircraft. Atkins
1961) 353 S.W.2c
denied 82 S.Ct. 15

impose a license fee or occupation tax for operations on the airport, air navigation facility, or airport hazard area.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Revisor's Note

(1) V.A.C.S. Article 46d-7(b) authorizes a municipality to adopt, amend, and repeal ordinances, resolutions, rules, regulations, and orders. A municipality's power to amend or repeal ordinances or other laws is contained in its power to adopt those laws. This revision omits as unnecessary the language authorizing a municipality to amend or repeal ordinances or other laws. The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule includes a regulation. That definition applies to the revised law.

(2) V.A.C.S. Article 46d-7(b) refers to "Federal and State laws, rules and regulations." The reference to "rules and regulations" is omitted from the revised law because in this context "rules and regulations" are included within the meaning of "laws."

(3) Sections 1 and 3, V.A.C.S. Article 1269h, authorize the governing body of a county or municipality to adopt "rules and regulations." The references to "regulations" are omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule includes a regulation. That definition applies to the revised law.

Historical and Statutory Notes

Prior Laws:

Acts 1941, 47th Leg., p. 196, ch. 142, § 1.
Acts 1947, 50th Leg., p. 186, ch. 114, § 7.
Acts 1947, 50th Leg., p. 473, ch. 273, § 1.

Acts 1981, 67th Leg., p. 851, ch. 300, § 1.
Acts 1983, 68th Leg., p. 5369, ch. 985, § 1.
Vernon's Ann.Civ.St. arts. 46d-7(b); 1269h,
§ 1, subsec. E; § 3.

Library References

Aviation 211 to 252.
WESTLAW Topic No. 48B:

C.J.S. Aeronautics and Aerospace §§ 5, 19,
21, 57 to 90, 100 to 101, 103, 110 to 124,
139, 179, 282.

Notes of Decisions

In general 1
Liability 3
Preemption 2

808, rehearing denied 83 S.Ct. 18, 371 U.S. 854,
9 L.Ed.2d 92.

Airport police officer was without lawful authority or power to make warrantless arrest of driver outside of city airport for speeding and running red light; conducting arrests for traffic offenses committed off, and in no way connected to, city airport was clearly not within actual course and scope of employment of airport police officer. Perkins v. State (Cr.App. 1991) 812 S.W.2d 326.

1. In general

Property owners had no basis for protesting against construction of runway by city on municipal airport on ground that construction was in violation of Municipal Airport Act when federal government was not contributing any funds and city had received approval of administrator of federal aviation agency as to use of air space by aircraft. Atkinson v. City of Dallas (Civ.App. 1961) 353 S.W.2d 275, ref. n.r.e., certiorari denied 82 S.Ct. 1587, 370 U.S. 939, 8 L.Ed.2d

2. Preemption

Where airline had been certificated by the Texas Aeronautics Commission into Love Field and directed to continue service there until told otherwise, such action constituted, at a minimum, the exercise by Texas of its power to

§ 22.014

Note 2

determine that the airline's use of Love Field was not improper, and the city of Dallas, being a creature of Texas, therefore could not declare otherwise by ordinances seeking to compel the airline to vacate Love Field. *City of Dallas, Tex. v. Southwest Airlines Co.*, C.A.5 (Tex.)1974, 494 F.2d 773, rehearing denied 496 F.2d 1407, certiorari denied 95 S.Ct. 668, 419 U.S. 1079, 42 L.Ed.2d 674, rehearing denied 95 S.Ct. 837, 420 U.S. 913, 42 L.Ed.2d 845.

Cities and regional airport board created by them were prohibited by Texas law from excluding from city airport, in order to compel it to use regional airport, intrastate air carrier regulated by the Texas Aeronautics Commission. *City of Dallas, Tex. v. Southwest Airlines Co.*, N.D.Tex.1973, 371 F.Supp. 1015, affirmed 494 F.2d 773, rehearing denied 496 F.2d 1407, certiorari denied 95 S.Ct. 668, 419 U.S. 1079, 42 L.Ed.2d 674, rehearing denied 95 S.Ct. 837, 420 U.S. 913, 42 L.Ed.2d 845.

Any effort by cities or by regional airport board created by them to regulate the service of a carrier regulated by the Texas Aeronautics Commission would impinge on the jurisdiction of the Commission and thus be invalid under Const. Art. 11, § 5, art. 1165 and subsec. (b) of this article. *City of Dallas, Tex. v. Southwest Airlines Co.*, N.D.Tex.1973, 371 F.Supp. 1015, affirmed 494 F.2d 773, rehearing denied 496

§ 22.015. Enforcement of Rules

To enforce an ordinance, resolution, rule, or order adopted under Section 22.014(a), a local government, by ordinance or resolution as appropriate, may appoint airport guards or police, with full police powers, and establish a penalty for a violation of an ordinance, resolution, rule, or order, within the limits prescribed by law. A penalty is enforced in the same manner in which a penalty prescribed by other ordinances or resolutions of the local government is enforced.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Historical and Statutory Notes

Prior Laws:

Acts 1947, 50th Leg., p. 186, ch. 114, § 7.
Acts 1981, 67th Leg., p. 851, ch. 300, § 1.

Acts 1983, 68th Leg., p. 5369, ch. 985, § 1.
Vernon's Ann.Civ.St. art. 46d-7(b).

Library References

Aviation §211 to 252.
WESTLAW Topic No. 48B.

C.J.S. Aeronautics and Aerospace §§ 5, 19, 21, 57, to 90, 100 to 101, 103, 110 to 124, 139, 179, 282.

§ 22.016. Relationship to Zoning

This chapter does not:

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F.2d 1407, certiorari denied 95 S.Ct. 668, 419 U.S. 1079, 42 L.Ed.2d 674, rehearing denied 95 S.Ct. 837, 420 U.S. 913, 42 L.Ed.2d 845.

3. Liability

Defendant cities, which had granted a monopoly to one firm for privilege of picking up taxicab passengers at airport, were not entitled to state action immunity in an antitrust action, absent showing that establishment and enforcement of taxicab service at airport was pursuant to state policy to replace competition with regulation or monopoly public service, and such a showing was not made on basis of provisions of Municipal Airport Act (art. 46d-1 et seq.) or upon provisions of art. 1175 and Constitution concerning powers of home rule cities. *Woolen v. Surtran Taxicabs, Inc.*, N.D.Tex.1978, 461 F.Supp. 1025.

Provisions of the Texas Municipal Airports Act [Articles 46d-2(a), 46d-7], authorizing municipalities to own and operate airports, do not contain clear articulation and affirmative expression of state policy to displace competition and, hence, state action immunity from federal anticompetition challenge concerning provision of aviation-related services at airport was unavailable. *Pumpkin Air, Inc. v. City of Addison*, N.D.Tex.1985, 608 F.Supp. 787.

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(1) authorize order that estab natural growth 241, Local Go

(2) limit th zoning.

Acts 1995, 74th L

(1) V.A.C.S. seq., Vernon Chapter 241,

(2) V.A.C.S. not authorizations, rules, an ordinance revision omi laws.

(3) V.A.C.S. ence to reg 311.005(5), C tion. That de

(4) V.A.C.S. ity to regul omitted from within the m

Prior Laws: Acts 1947, 50th 18.

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§ 22.017. I

(a) The gove an officer, boar chapter to the ing, construct protecting, and or controlled ment. The re board, or othe

(b) Notwith: the expenses:

(1) authorize a local government to adopt an ordinance, resolution, rule, or order that establishes zones or otherwise regulates the height of structures or natural growths in an area or in a manner other than as provided by Chapter 241, Local Government Code; or

(2) limit the power of a local government to regulate airport hazards by zoning.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Revisor's Note

(1) V.A.C.S. Article 46d-7(b) refers to the Airport Zoning Act (Article 46e-1 et seq., Vernon's Texas Civil Statutes). That statute was codified in 1987 as Chapter 241, Local Government Code. The revised law reflects that change.

(2) V.A.C.S. Article 46d-7(b) provides that the municipal airports statute does not authorize a municipality to "adopt or amend" certain ordinances, resolutions, rules, regulations, or orders. A municipality's power to amend or repeal an ordinance or other law is contained in its power to adopt that law. This revision omits as unnecessary the reference to amending ordinances or other laws.

(3) V.A.C.S. Article 46d-7(b) refers to "rules" and "regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule includes a regulation. That definition applies to the revised law.

(4) V.A.C.S. Article 46d-18 refers to a municipality's "right, power or authority" to regulate airport hazards. The references to "right" and "authority" are omitted from the revised law because "right" and "authority" are included within the meaning of "power."

Historical and Statutory Notes

Prior Laws:

Acts 1947, 50th Leg., p. 186, ch. 114, §§ 7, 18.

Acts 1981, 67th Leg., p. 851, ch. 500, § 1.

Acts 1983, 68th Leg., p. 5369, ch. 985, § 1.

Vernon's Ann.Civ.St. arts. 46d-7(b); 46d-18.

Library References

Aviation ¶211 to 252.
WESTLAW Topic No. 48B.

C.J.S. Aeronautics and Aerospace §§ 5, 19, 21, 57 to 90, 100 to 101, 103, 110 to 124, 139, 179, 282.

§ 22.017. Delegation of Authority to Officer, Board, or Agency

(a) The governing body of a local government by resolution may delegate to an officer, board, or other local governmental agency any power granted by this chapter to the local government or the governing body for planning, establishing, constructing, improving, equipping, maintaining, operating, regulating, protecting, and policing an airport or air navigation facility established, owned, or controlled or to be established, owned, or controlled by the local government. The resolution must prescribe the powers and duties of the officer, board, or other local governmental agency.

(b) Notwithstanding Subsection (a), the local government is responsible for the expenses of planning, establishing, constructing, improving, equipping,

§ 22.017

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maintaining, operating, regulating, protecting, and policing the airport or other air navigation facility.

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Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Revisor's Note

(1) V.A.C.S. Article 46d-6 refers to "development" and "planning [and] establishment." The reference to "development" is omitted from the revised law because "development" is included within the meaning of "planning [and] establishment."

(2) V.A.C.S. Article 46d-6 refers to "enlargement" and "improvement." The reference to "enlargement" is omitted from the revised law because "enlargement" is included within the meaning of "improvement."

Prior Laws:
Acts 1947, 50th Leg.

Aviation §211 to :
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Historical and Statutory Notes

Prior Laws:

Acts 1947, 50th Leg., p. 186, ch. 114, § 6.
Vernon's Ann.Civ.St. art. 46d-6.

Library References

Aviation §211 to 252.
WESTLAW Topic No. 48B.

C.J.S. Aeronautics and Aerospace §§ 5, 19,
21, 57 to 90, 100 to 101, 103, 110 to 124,
139, 179, 282.

§ 22.019. Co

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Acts 1995, 74th Le

Prior Laws:
Acts 1947, 50th L
Vernon's Ann.Civ.

Aviation §211 to
WESTLAW Topic

§ 22.018. Designation of Texas Department of Transportation as Agent in Contracting and Supervising

(a) A local government may designate the Texas Department of Transportation as its agent in contracting for and supervising the planning, acquiring, constructing, improving, equipping, maintaining, or operating of an airport or air navigation facility.

(b) A local government may enter into an agreement with the department prescribing the terms of the agency relationship in accordance with the terms prescribed by the United States, if federal money is involved, and in accordance with the laws of this state.

(c) The department, in acting as the agent of a local government under this section, shall make each contract in accordance with the law governing the making of contracts by or on behalf of the state.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Revisor's Note

(1) V.A.C.S. Article 46d-12(b) refers to the Texas Department of Aviation. Under Section 1.16, Chapter 7, Acts of the 72nd Legislature, 1st Called Session, 1991 (Article 46c-8B, Vernon's Texas Civil Statutes), a reference in law to the Texas Department of Aviation means the Texas Department of Transportation. Accordingly, the revised law refers to the Texas Department of Transportation.

(2) V.A.C.S. Article 46d-12(b) refers to an agreement prescribing the "terms and conditions" of the agency in accordance with the "terms and conditions"

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§ 22.019
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prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. The reference to "conditions" is omitted from the revised law because "conditions" is included within the meaning of "terms."

(3) V.A.C.S. Article 46d-12(b) refers to "development" and "planning [and] establishment." The reference to "development" is omitted from the revised law because "development" is included within the meaning of "planning [and] establishment."

Historical and Statutory Notes

Prior Laws:

Acts 1947, 50th Leg., p. 188, ch. 114, § 12.

Acts 1989, 71st Leg., 1st C.S., ch. 39, § 4.
Vernon's Ann.Civ.St. art. 46d-12(b).

Library References

Aviation Ⓒ211 to 252.
WESTLAW Topic No. 48B.

C.J.S. Aeronautics and Aerospace §§ 5, 19,
21, 57 to 90, 100 to 101, 103, 110 to 124,
139, 179, 282.

§ 22.019. Contracts

A local government may enter into a contract necessary to the execution of a power granted the local government and for a purpose provided by this chapter.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Historical and Statutory Notes

Prior Laws:

Acts 1947, 50th Leg., p. 188, ch. 114, § 13.
Vernon's Ann.Civ.St. art. 46d-13.

Library References

Aviation Ⓒ211 to 252.
WESTLAW Topic No. 48B.

C.J.S. Aeronautics and Aerospace §§ 5, 19,
21, 57 to 90, 100 to 101, 103, 110 to 124,
139, 179, 282.

Notes of Decisions

In general 1

1. In general

Whether plaintiff failed to pay any amount due defendant city under minimum payment provisions of concession agreement with respect to operation of certain public parking facilities at airport, after deducting profits realized by defendant city subsequent to its take-over of operation, was question for jury. *Earl Hayes Rents Cars and Trucks v. City of Houston* (Civ. App. 1977) 557 S.W.2d 316, ref. n.r.e..

Provision of concession agreement giving defendant city the right immediately and without notice to suspend plaintiff's rights as a conces-

sionaire under agreement and to take over operation of all public parking facilities operated by plaintiff at airport did not require that city give written notice of termination prior to taking over operation from plaintiff. *Earl Hayes Rents Cars and Trucks v. City of Houston* (Civ. App. 1977) 557 S.W.2d 316, ref. n.r.e..

Evidence supported implied finding that city acted in accordance with terms of concession agreement with plaintiff in respect to operation of certain public parking facilities at airport by taking over operation of those facilities when plaintiff failed to make required payments. *Earl Hayes Rents Cars and Trucks v. City of Houston* (Civ. App. 1977) 557 S.W.2d 316, ref. n.r.e..

§ 22.019

Note 1

Nature and value of properties which were taken from plaintiff upon suspension of its concession agreement with defendant city to operate certain public parking facilities at airport were matters which were factually in dispute and, hence, were for jury to resolve in determining amount to which plaintiff was entitled upon defendant's take-over of properties. Earl Hayes Rents Cars and Trucks v. City of Houston (Civ. App. 1977) 557 S.W.2d 316, ref. n.r.e..

Where failure of defendant city to perform its obligations under concession agreement with plaintiff to operate certain public parking facilities at airport by furnishing a required number of parking spaces, office facilities and signs did not render performance by plaintiff impossible, and plaintiff continued to operate facilities under agreement, conclusion was warranted that plaintiff had elected to continue agreement in

effect and that defendant's breach did not excuse plaintiff's failure to perform by making guaranteed minimum payments under agreement. Earl Hayes Rents Cars and Trucks v. City of Houston (Civ.App. 1977) 557 S.W.2d 316, ref. n.r.e..

Arrearages were not owed defendant city under minimum payment provisions of concession agreement with plaintiff to operate public parking facilities at airport where, instead of electing to terminate agreement, city elected to take over operation of facilities without terminating plaintiff's continuing obligation under agreement and, after crediting such profits as city received from its operation of facilities, plaintiff fulfilled its minimum payment obligation for the entire contract term. Earl Hayes Rents Cars and Trucks v. City of Houston (Civ.App. 1977) 557 S.W.2d 316, ref. n.r.e..

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Title 3

AVIATION

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Vernon's Ann.Civ § 1, subsec. D.

Aviation § 211 to WESTLAW Topic

In general 1

1. In general

City was not liable for injuries at airport

§ 22.021. U

(a) In operation controls, a local government for a term

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arrangement in United States,

Acts 1995, 74th ch. 557 § 1, eff.

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loan, or agreement law because

§ 22.020. Operation of Airport by Another

(a) A local government, by contract, lease, or other arrangement, on a consideration fixed by the local government and for a term not to exceed 40 years, may authorize a qualified person to operate, as the agent of the local government or otherwise, an airport owned or controlled by the local government.

(b) A local government may not authorize a person to:

(1) operate the airport except as a public airport; or

(2) enter into a contract, lease, or other agreement in connection with the operation of the airport that the local government may not have made under Section 22.021.

(c) An arrangement made under this section must be made subject to the terms of a grant, loan, or agreement under Section 22.055.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Revisor's Note

(1) V.A.C.S. Article 46d-4(b) refers to the "terms and conditions" of a grant, loan, or agreement. The reference to, "conditions" is omitted from the revised law because "conditions" is included within the meaning of "terms."

(2) V.A.C.S. Article 46d-4(b) refers to V.A.C.S. Article 46d-4(a). That statute is codified in this code as Section 22.021, and the revised law reflects that change.

(3) V.A.C.S. Article 46d-4(b) refers to V.A.C.S. Article 46d-12. The relevant portion of that statute is codified in this code as Section 22.055, and the revised law reflects that change.

Historical and Statutory Notes

Prior Laws:

Acts 1941, 47th Leg., p. 196, ch. 142, § 1.

Acts 1947, 50th Leg., p. 185, ch. 114, § 4.

Acts 1947, 50th Leg., p. 473, ch. 273, § 1.

Vernon's Ann.Civ.St. arts. 46d-4(b); 1269h,
§ 1, subsec. D.

Library References

Aviation ¶211 to 252.
WESTLAW Topic No. 48B.

C.J.S. Aeronautics and Aerospace §§ 5, 19,
21, 57 to 90, 100 to 101, 103, 110 to 124,
139, 179, 282.

Notes of Decisions

In general 1

1. In general

City was not liable as owner of municipal
airport for injuries to spectator at exhibition

after lease of airport to third party, where dan-
gerous condition did not exist at time of lease
and establishment of such condition was not
shown to have been contemplated by contract.
Christopher v. City of El Paso (Civ.App. 1936)
98 S.W.2d 394, error dismissed.

§ 22.021. Use of Airport by Another

(a) In operating an airport or air navigation facility that it owns, leases, or
controls, a local government may enter into a contract, lease, or other arrange-
ment for a term not exceeding 40 years with a person:

(1) granting the privilege of using or improving the airport or air naviga-
tion facility, a portion or facility of the airport or air navigation facility, or
space in the airport or air navigation facility for commercial purposes;

(2) conferring the privilege of supplying goods, services, or facilities at the
airport or air navigation facility; or

(3) making available services to be furnished by the local government or its
agents at the airport or air navigation facility.

(b) In entering into the contract, lease, or other arrangement, the local
government may establish the terms and fix the charges, rentals, or fees for the
privileges or services. The charges, rentals, and fees must be reasonable and
uniform for the same class of privilege or service and shall be established with
due regard to the property and improvements used and the expenses of
operation to the local government.

(c) An arrangement made under this section must be made subject to the
terms of a grant, loan, or agreement under Section 22.055.

(d) The 40-year limit on the term of a contract, lease, or other arrangement
provided by Subsection (a) does not apply to a contract, lease, or other
arrangement under this section between a local government and this state, the
United States, or an agency or instrumentality of this state or the United States.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg.,
ch. 557, § 1, eff. June 2, 1997.

Revisor's Note

(1) V.A.C.S. Article 46d-4(a) refers to the "terms and conditions" of a grant,
loan, or agreement. The reference to "conditions" is omitted from the revised
law because "conditions" is included within the meaning of "terms."

§ 22.021

Note 3

such land for purpose of producing oil, so long as land was still used as airport and not absolutely abandoned. *Moore v. Gordon* (Civ.App. 1938) 122 S.W.2d 239, error dismissed.

4. — Persons, leases

Commissioners' court has no authority to lease an airport to any party except those set out in paragraph D, Section 1 of this article. *Op. Atty. Gen. 1941, No. 0-3865.*

A commissioners' court does not have the authority to lease a county-owned airport to an individual, but it may appoint a manager for such airport and determine the amount of compensation of such manager for his services and whether such compensation shall be a salary or a commission. *Op. Atty. Gen. 1945, No. 0-6878.*

The Commissioners' Court of Montgomery County may not lease an airport to any individual, and a lease to the city of Conroe so that the city in turn could lease to an individual would

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violate the principal of law that a commissioners' court cannot do anything indirectly that it cannot do directly. *Op. Atty. Gen. 1945, No. 0-6924.*

Commissioners' court cannot lease portion of land comprising county airport to roping and polo association for rodeo purposes. *Op. Atty. Gen. 1951, No. V-1162.*

Commissioners' court does not have authority to convey to federal government or any agency or instrumentality thereof, without payment of a fair consideration, land which was acquired by county for use as an airport. *Op. Atty. Gen. 1940, No. 0-2660.*

San Patricio County may, under art. 5248e, lease land from an individual to be used as an airport by the United States Navy during its training program. *Op. Atty. Gen. 1943, No. 0-5330.*

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Prior Laws:
Acts 1987, 70th I
2.

Aviation § 22.021 to
WESTLAW Topic

§ 22.023. Li

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Acts 1995, 74th I

Prior Laws:
Acts 1947, 50th I
Vernon's Ann. Ci

Aviation § 22.023 to
WESTLAW Topic

§ 22.024. I

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§ 22.022. Duration of Certain Leases

(a) A lease of real property may not exceed 40 years if:

(1) the lease is made under Section 22.011(c) or (d), Section 22.020, or Section 22.021; and

(2) at the time of the execution of the lease, the property is used as nonaeronautical property and is located on an airport on which there are active federal governmental aircraft operations on federal government property.

(b) A renewal or extension of a lease under Subsection (a) may not exceed 40 years. If the lease provides for more than one renewal or extension, the renewals or extensions may not in the aggregate exceed 40 years.

(c) This section does not prevent the parties to a lease from making a new lease to take effect after the expiration of the previous lease or after the expiration of the period covered by a renewal or extension of the previous lease.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Revisor's Note

(1) V.A.C.S. Article 46d-2(e) refers to a lease made under "Subsection (a) or (b) of this section," meaning V.A.C.S. Articles 46d-2(a) and (b). Those statutes are codified in this code as Sections 22.011(c) and (d), respectively, and the revised law reflects that change.

(2) V.A.C.S. Article 46d-4(c) refers to a lease made under "this section," meaning V.A.C.S. Article 46d-4. The relevant portions of that statute are codified in this code as Sections 22.020 and 22.021, and the revised law reflects that change.

Historical and Statutory Notes

Prior Laws:

Acts 1987, 70th Leg., 2nd C.S., ch. 20, §§ 1, 2.

Vernon's Ann.Civ.St. arts. 46d-2(e); 46d-4(c).

Library References

Aviation §211 to 252.
WESTLAW Topic No. 48B.

C.I.S. Aeronautics and Aerospace §§ 5, 19, 21, 57 to 90, 100 to 101, 103, 110 to 124, 139, 179, 282.

§ 22.023. Liens

A local government has a lien on personal property to enforce the payment of a charge for repairs or improvements to, or the storage or care of, the property if the property is made or furnished by the local government or its agents in connection with the operation of an airport or air navigation facility owned or operated by the local government. The lien is enforceable as provided by law.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Historical and Statutory Notes

Prior Laws:

Acts 1947, 50th Leg., p. 186, ch. 114, § 5.
Vernon's Ann.Civ.St. art. 46d-5.

Library References

Aviation §211 to 252.
WESTLAW Topic No. 48B.

C.I.S. Aeronautics and Aerospace §§ 5, 19, 21, 57 to 90, 100 to 101, 103, 110 to 124, 139, 179, 282.

§ 22.024. Disposal of Airport Property by Local Government

(a) A local government may dispose of an airport or air navigation facility or other property, or a portion of or interest in property, acquired under this chapter in any manner, subject to the laws of this state or provisions of the charter of the local government governing the disposition of other property of the local government.

(b) A local government may dispose of the property to another local government or an agency of the state or federal government for use for aeronautical purposes, notwithstanding Subsection (a), in the manner and on the terms the governing body of the local government considers to be in the best interest of the local government.

(c) An arrangement made under this section is subject to the terms of a grant, loan, or agreement under Section 22.055.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Revisor's Note

(1) V.A.C.S. Article 46d-3 refers to the "terms and conditions" of a grant, loan, or agreement. The reference to "conditions" is omitted from the revised law because "conditions" is included within the meaning of "terms."

§ 22.020

Note 1

port land under Local Government Code section 263.051 or Transportation Code section 22.024(a), it must comply with Local Government Code chapter 263. When it leases airport land pursuant to

Transportation Code section 22.020 or 22.021, the county is not required to comply with Local Government Code chapter 263. Op.Atty.Gen.2004, No. GA-0190.

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Historic

2001 Legislation
Acts 2001, 77th Leg., ch. 358 and Acts 200
Leg., ch. 1516, both added subsec. (d).

§ 22.021. Use of Airport by Another

Research References

Forms

Texas Jurisprudence Pleading & Practice Forms
2d Ed § 41:16, Petition - by Aerial Service
Operator for Specific Performance of Contract
Granting Plaintiff Airport Space and Permit-
ting Plaintiff to Operate Business.

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.7, Airports-
Concessions.

Re

Encyclopedias

TX Jur. 3d Aviation § 33, Municipalities.
TX Jur. 3d Aviation § 34, Cities and Tow

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.6, A
Sale of Airport.

Notes of Decisions

3. Leases—In general

Local Government Code chapter 263 requires a county commissioners court to lease county land at a public auction or by a sealed-proposal or sealed-bid procedure. When a county leases county airport land under Local Government Code section

263.051 or Transportation Code section 22.024(a), it must comply with Local Government Code chapter 263. When it leases airport land pursuant to Transportation Code section 22.020 or 22.021, the county is not required to comply with Local Government Code chapter 263. Op.Atty.Gen.2004, No. GA-0190.

1. In general

Local Government Code chapter 263 re county commissioners court to lease county a public auction or by a sealed-proposal or bid procedure. When a county leases county port land under Local Government Code

§ 22.022. Duration of Certain Leases

Research References

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.12, Airports-
Lease.

§ 22.025. Limitation on Design

R

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.5,
Municipal Airports Act.

§ 22.024. Disposal of Airport Property by Local Government

(a) A local government may dispose of an airport or air navigation facility or other property, or a portion of or interest in property, acquired under this chapter in any manner, subject to the laws of this state or provisions of the charter of the local government governing the disposition of other property of the local government.

(b) A local government may dispose of the property to another local government or an agency of the state or federal government for use for aeronautical purposes, notwithstanding Subsection (a), in the manner and on the terms the governing body of the local government considers to be in the best interest of the local government.

(c) An arrangement made under this section is subject to the terms of a grant, loan, or agreement under Section 22.055.

(d) Notwithstanding Subsection (a), the competitive bidding requirements of Chapters 252 and 272, Local Government Code, do not apply to an exchange, sale, lease, or other disposition of land or other real property interest by a municipality if:

(1) the land or other property interest is part of an air navigation facility that is a former military installation; and

(2) the disposition:

(A) is part of a plan to redevelop the facility as an airport-related industrial park or community; and

(B) promotes the best interest of the municipality.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 358, § 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1516, § 3, eff. June 17, 2001.

§ 22.026. Noise Abatement

(a) The governing body of a municipality may enter into an executive grant agreement with the local government to plan, design, and acquire land for

(1) comply with the Aviation Safety Act, Chapter 2101 et seq.;

(2) provide adequate soundproofing within the 65 or higher average noise level of the governing body in accordance with

(3) award a contract for land required for the site of a replacement airport, and provide the replacement

(b) A court may grant appropriate relief to an affected person.

(c) In this section:

(1) "Public building" means a building owned, leased by a governmental entity, or

(2) "Replacement airport" means an airport intended to replace a municipal airport or

(d) Expired.

§ 22.024

TRANSPORTATION CODE
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(2) V.A.C.S. Article 46d-3 refers to V.A.C.S. Article 46d-12. The relevant portion of that statute is codified in this code as Section 22.055, and the revised law reflects that change.

Historical and Statutory Notes

Prior Laws:

Acts 1929, 41st Leg., 1st C.S., p. 209, ch. 83.
Acts 1941, 47th Leg., p. 65, ch. 51, § 1.
Acts 1941, 47th Leg., p. 196, ch. 142, § 1.

Acts 1941, 47th Leg., p. 1345, ch. 609, § 1.
Acts 1947, 50th Leg., p. 185, ch. 114, § 3.
Acts 1947, 50th Leg., p. 473, ch. 273, § 1.
Vernon's Ann.Civ.St. arts. 46d-3; 1269h, § 1, subsecs. A, B, E.

Law Review and Journal Commentaries

Taking of property; air easements. 20 Baylor L.Rev. 344 (1968).

Library References

Aviation ⇨211 to 252.
WESTLAW Topic No. 48B.

C.J.S. Aeronautics and Aerospace §§ 5, 19, 21, 57 to 90, 100 to 101, 103, 110 to 124, 139, 179, 282.

Notes of Decisions

In general 1
Conveyances 2

1. In general

When county commissioners gave site on airport and directed a commissioner to grade a certain site for plaintiff and such site was graded and plaintiff went onto site, an implied contract was presumed from the circumstances and conduct of the parties. Terry County Airport Bd. v. Clark (Civ.App. 1964) 378 S.W.2d 932.

2. Conveyances

Fact that city had leased land to private party was insufficient to excuse city from executing warranty deed to reconvey property in conformity with covenant requiring reconveyance of property if city no longer used same for airport. City of Arlington v. Bardin (Civ.App. 1972) 478 S.W.2d 182, ref. n.r.e..

Where agreement between grantors and city provided that if during eight-year period after conveyance any part of land became unnecessary for operation of airport grantors could reacquire such unnecessary portion on payment of \$400 per acre and city within eight-year period passed resolution that certain part of land was not necessary for airport and same could and should be leased to third party, grantors who notified city of desire to repurchase were entitled to reconveyance of part of their former acreage which was included in acreage to be leased by city. City of Arlington v. Bardin (Civ.App. 1972) 478 S.W.2d 182, ref. n.r.e..

County may not charge additional consideration for the use of an easement over an airport validly conveyed in the past. Op.Atty.Gen.1980, No. MW-223.

County may convey an easement over an airport in exchange for an annual charge. Op. Atty.Gen.1980, No. MW-223.

§ 22.025. Limitation on Design and Operation of Air Navigation Facilities

An air navigation facility established or operated by a local government shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Historical and Statutory Notes

Prior Laws:

Acts 1947, 50th Leg., p. 184, ch. 114, § 2.
Vernon's Ann.Civ.St. art. 46d-2(d).

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WESTLAW Topic No

§ 22.026. Noise

(a) The government to an executory requiring the municipality shall:

(1) comply with U.S.C. Sec. 210

(2) provide a public building as determined by Administration

(3) award a property requirement plan for the

(b) A court may brought by an affe

(c) In this section

(1) "Public building owned or l

(2) "Replacement and constructed

Text

(d) The government (a)(3) before

Acts 1995, 74th Leg

(1) V.A.C.S. ed city, town, town, or village The revised law Code all munic

(2) V.A.C.S. not later than references to th

(3) V.A.C.S. placement airport only of temporary December 31,

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Title 3

tion Code section 22.020 or 22.021, the
not required to comply with Local Gov-
code chapter 263. Op.Atty.Gen.2004, No.

nd Practice Aids
6A Tex. Prac. Series § 41.7, Airports-
ions.

transportation Code section 22.024(a), it
with Local Government Code chapter
it leases airport land pursuant to
on Code section 22.020 or 22.021, the
t required to comply with Local Gov-
le chapter 263. Op.Atty.Gen.2004, No.

overnment

air navigation facility or other
nder this chapter in any manner,
f the local government governing

another local government or an
utical purposes, notwithstanding
ng body of the local government

o the terms of a grant, loan, or

g requirements of Chapters 252
exchange, sale, lease, or other
pality if:

avigation facility that is a former

airport-related industrial park or

ts 2001, 77th Leg., ch. 358, § 1, eff.

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Title 3

Historical and Statutory Notes

2001 Legislation
Acts 2001, 77th Leg., ch. 358 and Acts 2001, 77th
Leg., ch. 1516, both added subsec. (d).

Research References

Encyclopedias
TX Jur. 3d Aviation § 33, Municipalities.
TX Jur. 3d Aviation § 34, Cities and Towns.

Brooks, 36A Tex. Prac. Series § 41.13, Airports-
Joint Airports.

Treatises and Practice Aids
Brooks, 36A Tex. Prac. Series § 41.6, Airports-
Sale of Airport.

Notes of Decisions

1. In general
Local Government Code chapter 263 requires a
county commissioners court to lease county land at
a public auction or by a sealed-proposal or sealed-
bid procedure. When a county leases county air-
port land under Local Government Code section

263.051 or Transportation Code section 22.024(a), it
must comply with Local Government Code chapter
263. When it leases airport land pursuant to
Transportation Code section 22.020 or 22.021, the
county is not required to comply with Local Gov-
ernment Code chapter 263. Op.Atty.Gen.2004, No.
GA-0190.

§ 22.025. Limitation on Design and Operation of Air Navigation Facilities

Research References

Treatises and Practice Aids
Brooks, 36A Tex. Prac. Series § 41.5, Airports-
Municipal Airports Act.

§ 22.026. Noise Abatement

(a) The governing body of a municipality that owns an airport and is a party to an
executory grant agreement with the Federal Aviation Administration requiring the municipal-
ity to plan, design, and acquire land for a replacement airport shall:

(1) comply with the Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. Sec.
2101 et seq.);

(2) provide adequate soundproofing and noise reduction devices for each public building
within the 65 or higher average day-night sound level contour as determined by the
governing body in accordance with Federal Aviation Administration Advisory Circulars; or

(3) award a contract for land acquisition services for the purchase of real property
required for the site of a replacement airport, complete a master plan for the replacement
airport, and provide the replacement airport.

(b) A court may grant appropriate relief to enforce this section in a suit brought by an
affected person.

(c) In this section:

(1) "Public building" means a church, public or private hospital, or building owned or
leased by a governmental entity, including a public school.

(2) "Replacement airport" means a new airport that is planned, designed, and construct-
ed to replace a municipal airport operating on August 28, 1989.

(d) Expired.

§ 22.026

Historical and Statutory Notes

Subsec. (d), providing for the replacement airport under subsec. (a)(3) before January 1, 1997, expired by its own terms December 31, 1999.

Research References

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.10, Airports-Management.

§ 22.027. Municipal Permission for Ground Transportation; Offense

(a) In this section, "ground transportation business" means the transportation by motor vehicle of persons or baggage for compensation, and includes transportation by a bus service.

(b) A person commits an offense if, within the boundaries of an airport operated by a home-rule municipality, the person:

(1) solicits ground transportation business without the permission of the municipality, if required; or

(2) engages in ground transportation business without the permission of the municipality, if required.

(c) An offense under this section is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 95, § 1, eff. Sept. 1, 2003.

Research References

Encyclopedias

TX Jur. 3d Aviation § 45, Airport Space and Support Services; Exclusivity.

SUBCHAPTER C. AIRPORT FINANCING

§ 22.051. Taxation

Research References

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.8, Airports-Taxation and Revenue.

§ 22.052. Bonds

(a) A local government may pay wholly or partly from the proceeds of the sale of bonds the cost of planning, acquiring, establishing, constructing, improving, or equipping an airport or air navigation facility or the site of an air navigation facility or acquiring or eliminating airport hazards.

(b) For a purpose described by Subsection (a), a local government, in the manner provided by Subtitles A,¹ C,² D,³ and E,⁴ Title 9, Government Code, may:

(1) issue any form of secured or unsecured bonds, including general or special obligation bonds, revenue bonds, or refunding bonds; and

(2) impose taxes to provide for the interest and sinking funds of any bonds issued.

(c) In a suit, action, or proceeding involving the security, validity, or enforceability of a bond issued by a local government that states on its face that it was issued under this chapter and for a purpose authorized to be accomplished by this chapter, the bond is considered to have been issued under this chapter for that purpose.

(d) If the principal and interest of a bond issued by a local government under this chapter is payable solely from the revenue of an airport or air navigation facility, the bond must state so on its face.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1420, § 8.371, eff. Sept. 1, 2001.

AVIATION Title 3

AVIATION Title 3

- 1 V.T.C.A., Government Code § 1201.001 et seq
2 V.T.C.A., Government Code § 1251.001 et seq
3 V.T.C.A., Government Code § 1301.001 et seq
4 V.T.C.A., Government Code § 1331.001 et seq

Histori

2001 Legislation

Acts 2001, 77th Leg., ch. 1420 in suit corrected a reference.

R

Treatises and Practice Aids

Brooks, 23 Tex. Prac. Series § 13.02, Authority.

§ 22.053. Time Warrants

(a) The commissioners court of a time warrants to:

(1) condemn or purchase land to 22.020, and 22.024; and

(2) improve and equip the land 22.024.

(b) The commissioners court of a comply with:

(1) Subchapter C, Chapter 262,

(A) notice to issue the time wa

(B) the right to a referendum;

(2) Chapter 1251, regarding the

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1999.

Histori

1999 Legislation

Acts 1999, 76th Leg., ch. 1064, rewro (b) which previously read:

"The commissioners court of a county time warrants under this section shall co Chapter 163, General Laws, Acts of the

§ 22.054. Application of Airpo

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.8 Taxation and Revenue.

§ 22.055. Federal and State A

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.18 Grants.

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§ 22.055

- 1 V.T.C.A., Government Code § 1201.001 et seq.
- 2 V.T.C.A., Government Code § 1251.001 et seq.
- 3 V.T.C.A., Government Code § 1301.001 et seq.
- 4 V.T.C.A., Government Code § 1331.001 et seq.

Historical and Statutory Notes

2001 Legislation

Acts 2001, 77th Leg., ch. 1420 in subsec. (b), corrected a reference.

Research References

Treatises and Practice Aids

Brooks, 23 Tex. Prac. Series § 13.02, General Authority.

Brooks, 35 Tex. Prac. Series § 17.4, Purposes for Bond Issues.

Brooks, 36A Tex. Prac. Series § 41.9, Airports-Bonds.

§ 22.053. Time Warrants

(a) The commissioners court of a county with a population of 15,000 to 15,250 may issue time warrants to:

(1) condemn or purchase land to be used and maintained as provided by Sections 22.011, 22.020, and 22.024; and

(2) improve and equip the land for the use provided by Sections 22.011, 22.020, and 22.024.

(b) The commissioners court of a county that issues time warrants under this section shall comply with:

(1) Subchapter C, Chapter 262, Local Government Code, regarding:

(A) notice to issue the time warrants; and

(B) the right to a referendum; and

(2) Chapter 1251, regarding the imposition of taxes for payment of the time warrants.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1064, § 42, eff. Sept. 1, 1999.

Historical and Statutory Notes

1999 Legislation

Acts 1999, 76th Leg., ch. 1064, rewrote subsec. (b) which previously read:

"The commissioners court of a county that issues time warrants under this section shall comply with Chapter 163, General Laws, Acts of the 42nd Leg-

islature, Regular Session, 1991 (Article 2368a, Vernon's Texas Civil Statutes), regarding:

"(1) notice to issue the time warrants;

"(2) the levy and collection of taxes in payment of the time warrants; and.

"(3) the right to a referendum."

§ 22.054. Application of Airport Revenue and Sale Proceeds

Research References

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.8, Airports-Taxation and Revenue.

§ 22.055. Federal and State Aid; Other Grants and Loans

Research References

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 41.18, Airports-Grants.

(2) Section 2(b), V.A.C.S. Article 1269h, grants the commissioners courts of certain counties the power to issue time warrants "in addition to the powers herein granted." The revised law omits this provision as unnecessary because the provision does not add to the clear meaning of the law. A power granted in this section is granted in addition to other powers granted by law.

(3) The revised law substitutes "15,000 to 15,250" for the source law phrase "not less than fifteen thousand (15,000) and not more than fifteen thousand, two hundred and fifty (15,250)" because under Section 311.015, Government Code (Code Construction Act), a statute that refers to a series of numbers includes the first and last numbers in the series.

(4) Section 2(b), V.A.C.S. Article 1269h, refers to issuing warrants "for the purposes herein stated." This phrase refers to the purposes of condemning, purchasing, improving, and equipping land as stated in Section 2(a), V.A.C.S. Article 1269h, and the revised law is drafted accordingly. In addition, Section 2(a), V.A.C.S. Article 1269h, in setting out these purposes refers to "Section 1 hereof." The pertinent parts of Section 1 are codified in this chapter as Sections 22.011, 22.020, and 22.024, and the revised law refers to those sections.

Historical and Statutory Notes

Prior Laws:

Acts 1929, 41st Leg., 1st C.S., p. 209, ch. 83.
Acts 1941, 47th Leg., p. 65, ch. 51, § 1.

Acts 1941, 47th Leg., p. 196, ch. 142, § 1.
Acts 1941, 47th Leg., p. 1345, ch. 609, § 1.
Vernon's Ann.Civ.St. art. 1269h, § 2(b).

Library References

Aviation ¶211 to 252.
WESTLAW Topic No. 48B.

C.J.S. Aeronautics and Aerospace §§ 5, 19,
21, 57 to 90, 100 to 101, 103, 110 to 124,
139, 179; 282.

§ 22.054. Application of Airport Revenue and Sale Proceeds

A local government shall deposit the revenue received by the local government from the ownership, control, or operation of an airport or air navigation facility, including proceeds from the sale of an airport or a portion of an airport or of air navigation facility property, in a fund to be designated the "Airport Fund." The revenue may be used by the local government only for the purposes authorized by this chapter.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Revisor's Note

The revised law deletes as unnecessary the designation in V.A.C.S. Article 46d-11 of the fund as being special. The designation of a fund as a special fund has no legal effect.

Historical and Statutory Notes

Prior Laws:

Acts 1929, 41st Leg., 1st C.S., p. 209, ch. 83.
Acts 1941, 47th Leg., p. 65, ch. 51, § 1.
Acts 1941, 47th Leg., p. 196, ch. 142, § 1.

Acts 1941, 47th Leg., p. 1345, ch. 609, § 1.
Acts 1947, 50th Leg., p. 187, ch. 114, § 11.
Vernon's Ann.Civ.St. arts. 46d-11; 1269h,
§ 3.

§ 22.054

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Title 3

AVIATION
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Library References

Aviation § 211 to 252.
WESTLAW Topic No. 48B.

C.J.S. Aeronautics and Aerospace §§ 5, 19, 21, 57 to 90, 100 to 101, 103, 110 to 124, 139, 179, 282.

Notes of Decisions

In general 1
Separate bank account 2

n.r.e., certiorari denied 82 S.Ct. 1587, 370 U.S. 939, 8 L.Ed.2d 808, rehearing denied 83 S.Ct. 18, 371 U.S. 854, 9 L.Ed.2d 92.

1. In general

Action of city in constructing new runway on municipal airport to meet growing public needs did not constitute a donation or a loan of credit to private corporations or associations with which city was authorized by statute to contract for use of airport facilities. *Atkinson v. City of Dallas* (Civ.App. 1961) 353 S.W.2d 275, ref.

2. Separate bank account

Commissioners court of Ector County is authorized to order a separate bank account established for the airport fund created pursuant to this article; but establishment of a separate bank account for the special fund is not required if proper accounting procedures are followed. *Op. Atty. Gen.* 1988, No. JM-933.

§ 22.055. Federal and State Aid; Other Grants and Loans

(a) A local government may accept, give a receipt for, disburse, and spend money from grants and loans for any of the purposes of this chapter. A local government must accept and spend federal money under this section on the terms prescribed by the United States and consistent with state law. A local government must accept and spend state money under this section on the terms prescribed by the state. Unless the agency from which the money is received prescribes otherwise, the chief financial officer of the local government shall deposit the money in separate funds designated according to the purposes for which the money is made available and shall keep it in trust for those purposes.

(b) A local government may designate the Texas Department of Transportation as its agent to accept, give a receipt for, and disburse money from grants and loans for any of the purposes of this chapter. The department shall accept and shall transfer or spend federal money accepted under this section on the terms prescribed by the United States. The department shall deposit money it receives under this subsection in the state treasury and, unless the agency from which the money is received prescribes otherwise, shall keep the money in separate funds designated according to the purposes for which the money is made available, and the state shall hold the money in trust for those purposes.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

Revisor's Note

(1) V.A.C.S. Articles 46d-12(a) and (b) authorize a municipality and the Texas Department of Aviation as the municipality's agent, respectively, to "accept" and "receive" money. The references to "receive" are omitted from the revised law because "receive" is included within the meaning of "accept."

(2) V.A.C.S. Articles 46d-12(a) and (b) authorize a municipality and the Texas Department of Aviation as the municipality's agent, respectively, to accept "Federal and State moneys and other moneys, public or private." The revised

law merely re all sources.

(3) V.A.C.S. prescribed by are omitted of meaning of

(4) V.A.C.S. Under Section 1991 (Article Texas Depart Accordingly,

Prior Laws: Acts 1947, 50th L

Aviation § 211 to WESTLAW Topic

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§ 22.071. D

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(1) "Const agreement w

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Acts 1995, 74th

(1) V.A.C defined "un law becaus context to v

(2) V.A.C determined

All matters in controversy, legal and factual, were submitted to the Court for its determination. The Court heard the evidence and arguments of counsel and has determined that judgment should be granted in favor of Plaintiffs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Section 14.106 of the Town of Addison, Texas, Ordinance No. 001-043 setting out the formula for an annual access fee is declared in violation of Section 22.021(b) of the Texas Transportation Code, and that Section 14.106 and all other provisions in Ordinance No. 001-043 imposing or applying said annual access fee are declared invalid and void.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Town of Addison, Texas, its council, officers, agents, servants, employees, attorneys, and those persons in active concert or participating with them who receive actual notice of this Judgment by personal service or otherwise are enjoined from either: (1) denying the Plaintiffs identified above continued use of and access to the common areas of the Addison Airport next to their properties pursuant to Ordinance No. 001-043 for failure to pay said annual access fee set forth in Section 14.106 hereof, or (2) erecting any barriers that would prohibit or deny said Plaintiffs access or use of these common areas pursuant to Ordinance No. 001-043 for failure to pay said annual access fee set forth in Section 14.106 hereof.

Accordingly, In light of the foregoing, the issue of whether the Plaintiffs are entitled unrestricted, free and clear use of the common areas of Addison Airport is DISMISSED as moot.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs recover

damages from the Town of Addison the sum of \$217,846.68.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs are awarded attorneys' fees against the Defendant in the amount of \$90,027.37 for trial, an additional \$15,000 if there is an appeal to the Dallas Court of Appeals and the Plaintiffs are successful, an additional \$10,000 if there is a petition for review filed with the Texas Supreme Court, and the Plaintiffs are successful, and an additional \$7,500 if the petition for review is granted and/or briefing on the merits and/or oral arguments occur at the Texas Supreme Court, and the Plaintiffs are successful.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs are awarded post-judgment interest on the total sum of this judgment at the annual rate of seven percent (7%), compounded annually, and all costs of court. The interest on monetary award to the Plaintiffs and attorneys' fees for trial begins accruing on the date this judgment is signed. The post-judgment interest on the attorneys' fees awarded for an appeal to the court of appeals runs from the date of the notice of appeal. If a petition for review is filed in the Texas Supreme Court, post-judgment interest on the amount awarded for that appeal runs from the date of filing of either party's petition for review; and if the Supreme Court grants the petition or requests briefs on the merits, post-judgment interest on the amount awarded for that runs from the date the Supreme Court grants either party's petition or requests briefs on the merits.


IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant/Counter-Plaintiff Town of Addison take nothing on its counterclaims and

requests for declaratory relief.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any relief not granted in this Judgment is DENIED.

The parties have such writs and processes for the enforcement of this judgment as allowed by law.

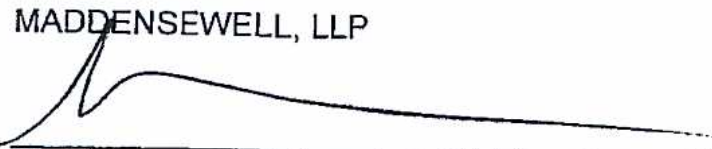
SIGNED on 12/14, 2005.



Joseph M. Cox
Judge, 160th Judicial District Court

ENTRY REQUESTED:

MADDENSEWELL, LLP



Mitchell Madden
State Bar No. 12789350
1755 Wittington Place, Suite 300
Dallas, Texas 75234
(972) 484-7780
(972) 484-7743 - Facsimile

ATTORNEYS FOR PLAINTIFFS

regulate the use and access to the Addison Airport.

6. The Town of Addison accounts for revenues from and expenses arising out of the operation of the Addison Airport in a separate proprietary fund.
7. The main source of airport funds is lease income from those who lease space on the Addison Airport.
8. Addison does not charge fees for use of the Addison Airport's public facilities. The Addison Airport has no landing, takeoff, or taxi fees. Anyone, including the Plaintiffs, may take off and land at the Addison Airport without charge.
9. As a municipal general aviation airport, the Addison Airport is available for use free of charge to the public for general aviation purposes.
10. At all times relevant to the claims made the basis of this suit, the operation of the Addison Airport has generated more revenues than the costs of operations.
11. The property constituting the airport property is as reflected on the aerial photograph, which is Plaintiffs' Exhibit 13. ("Airport Property").
12. An engineer's drawing of the Airport Property is as depicted on Plaintiffs' Exhibit 14.
13. Plaintiffs own property or are tenants with respect to real property located immediately adjacent to and contiguous with the Addison Airport property as depicted on Plaintiffs' Exhibits 13 and 14.
14. The current locations of the Plaintiffs' properties are set forth in dark blue overlay to Plaintiffs' Exhibit 13.
15. Plaintiffs' properties were developed for aviation purposes and use. For example, the improvements constructed upon such properties include taxiways, airport hangars and the like.
16. Since the Addison Airport was acquired by the Town of Addison, the properties now owned or leased by the Plaintiffs have been utilized for aviation purposes and have enjoyed what is known as "Through-the-Fence" use and access to Airport Property for aviation purposes.
17. Prior to 1999, the Town of Addison leased all of the Airport Property to a separate private entity which in turn managed and operated the airport on behalf

- of Addison and paid to the Town of Addison a percentage of the revenues generated from such operations.
18. Prior to 1999, the Plaintiffs and other similarly situated Through-the-Fence users had agreements with the Addison Airport manager regarding use of and access to the airport from their properties.
 19. While the terms and conditions of such agreements were not uniform to the extent that the charges for such use and access were other than nominal (for example, some Through-the-Fence users had license agreements providing them use and access to the airport for \$1.00 per year) they were to reimburse the Addison Airport manager for the cost of maintenance and upkeep of the Airport Property arising out of and relating to the use to be made by the Through-the-Fence user.
 20. In or about 1999, the Town of Addison's existing Management Agreement for the Addison Airport expired and the Town entered into an interim and subsequently long-term management agreement with a private joint venture, Washington Staubach Addison Airport Venture.
 21. During the process of engaging new Addison Airport management, the Town of Addison commenced work on a new policy regarding Through-The-Fence use for the Addison Airport.
 22. Among other things, the Town of Addison utilized a committee and/or an Airport Advisory Board (the "Airport Advisory Board") which generated a "Position Paper for Addison Airport Through-The-Fence Access Background Issues, Concepts and Proposals" in November of 1998.
 23. In 1999 or 2000, the Airport Advisory Board was disbanded.
 24. Prior to disbanding the Airport Advisory Board, the Town of Addison adopted a policy in late 1999 that established fees for Through-the-Fence users.
 25. In 2000, the Town of Addison's Through-The-Fence policy was to be revisited in anticipation of the transition of airport operations from the prior management company to Washington Staubach Addison Airport Venture. The council decided at that time to suspend accessing fees pending further study of the issue.
 26. In early 2001, the Town of Addison established a special advisory committee tasked with the work of reviewing and recommending potential revisions to the existing TTF policy (the "2001 TTF Committee").

27. The 2001 TTF Committee was made up of a cross-section of representatives of businesses both "on airport" and "off airport" and was facilitated by the Washington Staubach representatives, Dave Pearce and Robert Katzer.
28. There is no evidence, or the evidence is unpersuasive, that the 2001 TTF Committee was ever aware of or reviewed the applicability of Section 22.021(b) of the Texas Transportation Code.
29. There is no evidence, or the evidence is unpersuasive, that the 2001 TTF Committee reviewed the information or position papers generated by the Airport Advisory Board in 1998 and 1999.
30. There is no evidence or the evidence is unpersuasive that the Airport Advisory Board in 1998 or 1999 was ever aware of or reviewed the applicability or provisions of Section 22.021(b) of the Texas Transportation Code.
31. The 2001 TTF Committee met on more than one occasion prior to November 27, 2001.
32. Among the issues discussed by the Addison 2001 TTF Committee was the need to determine the actual cost to the Town of Addison to provide use and access to the Addison Airport to Through-the-Fence users. However, this information was never provided to the Committee.
33. On November 27, 2001 the City Council of the Town of Addison was presented with Agenda Item R-11 which purported to reference the presentation and discussion of the final Through-The-Fence policy advisory committee report.
34. There is no evidence or the evidence is unpersuasive that the 2001 TTF Committee ever prepared a final report as represented to the City Council of the Town of Addison in Agenda Item R-11 to the November 27, 2001 regular meeting of the City Council of the Town of Addison.
35. The only information provided to the Council regarding the development of a Through-The-Fence policy or ordinance were the attachments to Agenda Item R-11 which were as follows: (1) Council Agenda Item Overview; (2) Memorandum from Dave Pearce; (3) Guidelines for TTF Request; (4) Order #5190.6A (Airports Compliance); and (5) Comparison of Known and Potential TTF Users.
36. There is no evidence, or the evidence is unpersuasive, that the Town of Addison's staff ever reviewed or considered the applicability of Section 22.021(b)

of the Texas Transportation Code in preparation of the Agenda Item R-11 for the November 27, 2001 regular meeting of the City Council.

37. As a result of the presentation of Agenda Item R-11 at the November 27, 2001 regular meeting of the City Council Town of Addison, the Town's staff prepared Ordinance No. 001-043.
38. On or about December 11, 2001, the City Council of the Town of Addison enacted Ordinance No. 001-043 (the "Challenged Ordinance").
39. There is no evidence, or the evidence is unpersuasive, that the members of the Town of Addison City Council who voted to pass the Challenged Ordinance were aware of or considered the applicability of section 22.021(b) of the Texas Transportation Code.
40. There is no evidence, or the evidence is unpersuasive, that in preparing the Challenged Ordinance the Town of Addison's staff was aware of the cost of providing the use of and/or access to the Airport Property so as to form a basis for the fees contemplated under the Challenged Ordinance to Through-the-Fence users.
41. There is no evidence, or the evidence is unpersuasive, that in passing the Challenged Ordinance the City Council was aware of the cost of providing the use of and/or access to the Airport Property to form a basis for the fees contemplated under the Challenged Ordinance to Through-the-Fence users.
42. There is no evidence, or the evidence is unpersuasive, that the Town of Addison staff was aware of or had determined what benefit would be provided to Through-the-Fence users under the Challenged Ordinance at any time prior to the passage of the Challenged Ordinance.
43. There is no evidence, or the evidence is unpersuasive, that the City Council was aware of or had determined what benefit would be provided to Through-the-Fence users under the Challenged Ordinance at any time prior to the passage of the Challenged Ordinance.
44. The Town of Addison has sought to prohibit the Plaintiffs who had not paid fees in accordance with the Challenged Ordinance from using the Airport.
45. Subsequent to the enactment of the Challenged Ordinance, the Plaintiffs and the Town entered into an Interim Access Agreement which provided for the Plaintiffs to have continued use of and access to the Airport property pending a dispositive

ruling on the validity of the Challenged Ordinance.

46. For and in consideration of the Interim Access Agreement, the Plaintiffs agreed to pay, under protest, the access fees due under the Challenged Ordinance with the agreement and understanding that in the event the Challenged Ordinance was determined to be invalid these monies would be refunded to Plaintiffs.
47. Pursuant to such agreements and understandings, the Plaintiffs have paid \$217,846.68 to the Town of Addison under protest.
48. Since the enactment of the Challenged Ordinance, the Town has inconsistently applied the term "adjacent property" in determining the fee to be charged under the Challenged Ordinance.
49. Since the enactment of the Challenged Ordinance the Town of Addison has provided Through-The-Fence use and access to other owner(s) similarly situated to the Plaintiffs without requiring those owner(s) to execute an Access Agreement as called for under the Challenged Ordinance.
50. At all times relevant to this litigation the Plaintiffs have made distinct and different uses of Addison Airport. Some have used the airport for purely private purposes; others have used the airport for private business purposes; and still others have utilized the airport for commercial purposes.
51. There is no evidence, or the evidence is unpersuasive, that prior to enactment of the Challenged Ordinance, the staff or City Council made a determination of the different uses that had been made or would be made of the Addison Airport by Through-the-Fence users to be governed by the Challenged Ordinance.
52. There is no evidence, or the evidence is unpersuasive that, in passing the Challenged Ordinance the Town of Addison gave due regard to the properties or improvements (of the Airport Property) that were or would be actually used by the users under the Challenged Ordinance.
53. There is no evidence, or the evidence is unpersuasive that in enacting the Challenged Ordinance, the Town gave due regard to the expenses of the operation of Addison Airport or the cost or expense to provide the use of Airport Property as contemplated under the Challenged Ordinance.
54. There is no evidence, or the evidence is unpersuasive, that the fees to be charged under the Challenged Ordinance are related to the Airport Property or improvements to the Airport Property to be actually used by the Through-the-

Fence user.

55. There is no evidence, or the evidence is unconvincing, that the fee to be charged under the Challenged Ordinance is related to the expense or cost of operation of Addison Airport or the expense or cost of providing the use to the Through-the-Fence users under the Challenged Ordinance.
56. There is no evidence, or the evidence is unconvincing, that the fee to be charged is uniform among all the persons who are Through-the-Fence users under the Challenged Ordinance.
57. The fee to be collected under the Challenged Ordinance was for the sole purpose of raising revenues.
58. There is no evidence, or the evidence is unconvincing, that the fees to be charged under the Challenged Ordinance were for purposes other than raising revenues.
59. The Town continues to insist that the Plaintiffs continue to pay the access fees required by the Challenged Ordinance to maintain continued use of Addison Airport.
60. In adopting the Challenged Ordinance, the Town of Addison did not give due regard to the cost or expenses of operations of the Addison Airport.
61. In adopting the Challenged Ordinance, the Town of Addison did not give due regard to the property and improvements to be used by the Plaintiffs pursuant to the Challenged Ordinance.
62. In adopting the Challenged Ordinance, the Town of Addison did not provide for the assessment of a reasonable fee.
63. The Challenged Ordinance does not provide that fees will be uniformed for users who are similarly situated.
64. Under the Challenged Ordinance the Town of Addison has sought to impose fees for noncommercial use.
65. Under the Challenged Ordinance the Town of Addison has sought and charged fees in a discriminatory manner.
66. The fees charged or sought under the Challenged Ordinance are for the use of

Airport Property.

67. Denial of access to the Airport Property would substantially diminish the use and enjoyment of Plaintiffs' properties thereby frustrating their intended purpose in purchasing the property, effectively impounding aircraft and/or place Plaintiffs in default or violations of agreements that they have (i.e., leases, licenses and the like) with third parties.
68. Enjoining the Town of Addison, its council, officers, agents, servants, employees, attorneys and those persons in active concert or participating with them from denying the Plaintiffs' unrestrictive use and access to the Airport Property common areas next to their properties and from erecting any barriers that will prohibit or deny said Plaintiffs' access or use of the airport property common areas until and unless said Plaintiffs are in violation of a valid Ordinance properly enacted which complies with Section 22.021(b) of the Texas Transportation Code will preserve the status quo that existed prior to the enactment of the Challenged Ordinance.
69. Unless the Town of Addison, its council, officers, agents, servants, employees, attorneys and those in active concert or participating with them are enjoined from denying the Plaintiffs unrestrictive use and access to the Airport Property common areas next to their property and from erecting any barriers that will prohibit or deny said Plaintiffs access or use of these airport common areas until and unless said Plaintiffs are in violation of a valid ordinance properly enacted which complies with Section 22.021(b) of the Texas Transportation Code would result in immediate and irreparable injury to the Plaintiffs, for which there is no adequate remedy at law.
70. The Challenged Ordinance does not comply with the provisions of Section 22.021(b) of the Texas Transportation Code.
71. The Challenged Ordinance bases the access and use fee upon the size and value of the Plaintiffs' private property.
72. The formula utilized to calculate the access fee under the Challenged Ordinance does not relate to and is not conditioned upon the potential Through-the-fence users' use of or amount of access to the airport, the type of use made of airport property common area, or the benefit derived by such potential user.
73. The formula utilized to determine the access and use fee under the Challenged Ordinance is conditioned upon factors unrelated to the use of or access to the Airport property common area, the cost to operate the Airport or the use and

benefit enjoyed by the potential user.

74. The formula utilized to determine the access and use fee under the Challenged Ordinance is based upon, among other things, the value of property not utilized for aviation purposes, and local economic activity reflecting real estate values.
75. The formula utilized in the Challenged Ordinance to calculate the access fee as implemented by the Town of Addison since its adoption include valuations for property owned by the Town of Addison.
76. The Town of Addison uses portions of the Airport Property common area for non-airport use and prior to adoption of the Challenged Ordinance the Town of Addison did not determine the cost of such use to the Addison Airport.
77. The Plaintiffs have incurred reasonable and necessary attorneys' fees which are usual and customary in the amount of \$90,027.37 for trial.
78. The Plaintiffs will reasonably incur an additional \$15,000 in attorneys' fees if there is an appeal to the Dallas Court of Appeals.
79. The Plaintiffs will reasonably incur an additional \$10,000 if a petition for review is filed with the Texas Supreme Court, and an additional \$7,500 if the petition for review is granted and/or briefing on the merits and/or oral arguments occur at the Texas Supreme Court.
80. The court takes judicial notice of usual and customary attorneys' fees for the same or similar type litigation in Dallas, Dallas County, Texas.

CONCLUSIONS OF LAW

1. The Challenged Ordinance does not comply with the provisions of Section 22.021(b) of the Texas Transportation Code.
2. The Challenged Ordinance is unreasonable.
3. The Challenged Ordinance is arbitrary and capricious.
4. The Challenged Ordinance is invalid as in violation of Section 22.021(b) of the Texas Transportation Code.
5. The Plaintiffs are entitled to attorneys fees in the trial court and to attorneys fees on appeal if successful on appeal.

- 6. The Plaintiffs are entitled to a take nothing judgment on the Defendant/Counter-Plaintiff Town of Addison's Counterclaims and Request for Declaratory Relief.
- 7. The Plaintiffs are entitled to a recovery of the access fees paid under protest in the total sum of \$217, 846.68.
- 8. The Plaintiffs are entitled to a permanent injunction.

The foregoing findings of fact which should be conclusions of law shall be deemed conclusions of law; and any conclusion of law which should be a finding of fact shall be deemed a finding of fact.

Signed this 6th day of April, 2006.

Nancy A. Thomas
Judge Presiding

Council Agenda Item: #R19

There are no attachments for this item.