



AGENDA
REGULAR MEETING OF THE CITY COUNCIL
FEBRUARY 27, 2007
7:30 P.M.
TOWN HALL
5300 BELT LINE ROAD

REGULAR SESSION

Item #R1 - Consideration of Old Business.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for the February 13, 2007, Work Session and Council Meeting.

#2b - Consideration of and approval to authorize the City Manager to enter into an agreement with HBF Group, Inc. for the company's access to the Town of Addison's E911 Network in order to provide Voice Over Internet Protocol (VoIP) Positioning Center services to VoIP Service Providers.

#2c - Consideration of a Resolution authorizing the City Manager to appoint Carmen Moran as the Assistant City Secretary.

#2d - This item is to authorize the final payment to Insituform Technologies, Inc., in the amount of \$27,160.00 for rehabilitation of the sanitary sewer line serving Talisker Apartments and the sanitary sewer line serving Lake Forest Drive.

Item #R3- Appointment of a Member to the Planning and Zoning Commission.

Administrative Comment:

Commissioner Meier has resigned from the Commission to file as a candidate for City Council. Commissioner Meier was appointed by Councilmember Mellow.

Item #R4- Consideration of the Acceptance of a sidewalk and utility easement along Midway Road. Enterprise Rent-A-Car is constructing a sidewalk along Midway Road from Wiley Post to roughly 200' north of Wiley Post. The width between the right-of-way and the back of curb for Midway Road is insufficient for the sidewalk, thus the sidewalk straddles the property line and an easement is required. In addition, the additional area is needed for telephone utilities.

Attachments:

1. Easement

Administrative Recommendation:

Administration recommends approval

Item #R5- Submission of Racial Profiling Report to Council as required by Senate Bill (SB 1074). This Bill requires that the head of a law enforcement agency make available to the governing body an analysis of traffic contacts made by the agency no later than March 1st of each year and covering the previous calendar year.

Attachments:

1. Report

Item #R6- Consideration and approval authorizing the City Manager to enter into a contract in the amount of \$30,090.00 with Coffman Associates, Inc., to update the Airport Layout Plan (ALP) for Addison Airport.

Attachments:

1. Staff Report

Administrative Recommendation:

Administration recommends approval.

Item #R7- Consideration of and approval to authorize the City Manager to execute an advertising contract with the Dallas Morning News to provide for advertising in the Dallas Morning News/Guide, Quick and Internet advertising in the amount not to exceed \$151,999.

Attachments:

1. Staff Report
2. Contract

Administrative Recommendation:

Administration recommends approval.

EXECUTIVE SESSION

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) 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 and relating to sale of alcoholic beverages.

Item #ES2 - Closed (executive) session of the City Council pursuant to Section 551.074, Texas Government Code, to deliberate a performance evaluation of the City Manager.

Item #R8 - Discussion and consideration of any action regarding and relating to the sale of alcoholic beverages.

Item #R9 - Consideration of a Resolution approving compensation for the City Manager.

Item #R10 - Consideration of a Resolution of the City Council of the Town of Addison encouraging the federal government to enact realistic and sound public laws and policies and to provide appropriate funding to execute the same; providing an effective date.

Attachment:

1. Draft Resolution
-

Adjourn Meeting

Posted:
February 23, 2007 at 5:00 p.m.
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
WORK SESSION**

February 13, 2007
5:30 p.m. – Town Hall
5300 Belt Line Road
Upstairs Conference Room

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

Absent: Councilmember Mallory

Work Session

Item #WS1 - Presentation and discussion of Special Events Overview for 2007.

Lisa Pyles and Barbara Kovacevich led the presentation and discussion.

No action was taken on this Item.

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

Mayor

Attest:

City Secretary

**OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
REGULAR SESSION**

February 13, 2007
7:30 p.m. – Town Hall
5300 Belt Line Road
Council Chambers

Present: Mayor Chow, Councilmembers Braun, Hirsch, Mellow and Niemann

Absent: Councilmembers Kraft and Mallory

Regular Session

Item #R1 - Consideration of Old Business.

The following employee was introduced to the Council: Rebecca Coronado with the Addison Athletic Center.

Nancy Cline gave an update regarding Addison Road.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for the February 23, 2007, Council Meeting and February 27 and 29 Special Meetings. (Approved as written)

Councilmember Braun moved to duly approve the Minutes for February 23, 2007, Council Meeting and February 27 and 29 Special Meetings.

Councilmember Niemann seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Mellow, Niemann

Voting Nay: None

Absent: Councilmembers Kraft, Mallory

#2b - Consideration and approval Ordinance No. 007-004 calling for a general election to be held on May 12, 2007, for the purpose of electing a Mayor and three (3) Council members.

Councilmember Niemann moved to approve Ordinance No. 007-004 calling for a general municipal election to be held on May 12, 2007, for the purpose of electing a Mayor and three (3) Council members.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Mellow, Niemann

Voting Nay: None

Absent: Councilmembers Kraft, Mallory

#2c - Consideration of a resolution authorizing the City Manager to enter into a joint election agreement and election service agreement in the amount of \$6,000.00 with Dallas County to conduct Addison's Municipal Election on May 12, 2007.

Councilmember Niemann moved to duly approve Resolution No. R07-001 authorizing the City Manager to enter into a joint election agreement and election service agreement in the amount of \$6,000.00 with Dallas County to conduct Addison's Municipal Election on May 12, 2007.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Mellow, Niemann

Voting Nay: None

Absent: Councilmembers Kraft, Mallory

#2d - Consideration and approval of a resolution certifying that the ADA iVotronic v. 8.0.1.0. provided by Election Systems and Software is an accessible voting system that may legally be used in Texas elections.

Councilmember Niemann moved to duly approve Resolution No. R07-002 certifying that the ADA iVotronic v. 8.0.1.0. provided by Election Systems and Software is an accessible voting system that may legally be used in Texas elections.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Mellow, Niemann

Voting Nay: None

Absent: Councilmembers Kraft, Mallory

Item #R3 - PUBLIC HEARING, regarding, consideration of approval of, an amendment to a Planned Development district PD 095-006 as amended by PD 095-066 as amended by PD 095-054, to revise approved development plans, located at 4550 Excel Parkway, on application from SPI Holdings, LLD, represented by Mr. Scott Caruthers of Bury + Partners, DFW, Inc.

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

Councilmember Niemann moved to duly approve Ordinance No. 007-007 for an amendment to a Planned Development district PD 095-006 as amended by PD 095-066

as amended by PD 095-054, to revise approved development plans, located at 4550 Excel Parkway, on application from SPI Holdings, LLD, represented by Mr. Scott Caruthers of Bury + Partners, DFW, Inc.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Mellow, Niemann

Voting Nay: None

Absent: Councilmembers Kraft, Mallory

Item #R4 - **PUBLIC HEARING**, requesting approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, Best Thai, located at 4135 Belt Line Road, Suite 112, on application from Mr. Kunya Chaisuwan.

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

Councilmember Braun moved to duly approve Ordinance No. 007-005 for a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, Best Thai, located at 4135 Belt Line Road, Suite 112, on application from Mr. Kunya Chaisuwan.

Councilmember Niemann seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Mellow, Niemann

Voting Nay: None

Absent: Councilmembers Kraft, Mallory

Item #R5 - **PUBLIC HEARING**, requesting approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4930 Belt Line Road, Suite 100, on application from Café Brazil, represented by Mr. Phillip Morse of Edifice Architecture.

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

Councilmember Niemann moved to duly approve Ordinance No. 007-006 for a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4930 Belt Line Road, Suite 100, on application from Café Brazil, represented by Mr. Phillip Morse of Edifice Architecture.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Mellow, Niemann

Voting Nay: None
Absent: Councilmembers Kraft, Mallory

Item #R6 - Consideration and approval of a resolution to amend the Deferred Compensation Plan (ICMA-RC).

Councilmember Niemann moved to duly approve Resolution No. R07-004 to amend the Deferred Compensation Plan (ICMA-RC).

Councilmember Mellow seconded. Motion carried.

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

Item #R7 - Presentation of the Town of Addison Financial Reports for the quarter ended December 31, 2006.

The presentation of the Town of Addison Financial Reports for the quarter ended December 31, 2006, was presented by Randy Moravec of the Finance Department, Town of Addison.

No action was required on this Item.

Item #R8 – Consideration and approval to authorize the City Manager to enter into a contract with Coban Research and Technologies, Inc., for the purchase and installation of fifteen (15) VMDT G2 Systems in the amount of \$129,855, subject to the City Attorney's final approval.

Councilmember Mellow moved to duly authorize the City Manager to enter into a contract with Coban Research and Technologies, Inc., for fifteen (15) VMDT G2 Systems in the amount of \$129,855, subject to the City Attorney's final approval.

Councilmember Niemann seconded. Motion carried.

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

EXECUTIVE SESSION: At 8:26 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) 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 and relating to through-the-fence access to Addison Airport.

Item #ES2 - 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) 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 and relating to sale of alcoholic beverages.

The Council came out of Executive Session at 9:16 P.M.

Item #R9 - Discussion and consideration of any action regarding through-the-fence access to Addison Airport.

No action was taken on this Item.

Item #R10 - Discussion and consideration of any action regarding and relating to the sale of alcoholic beverages.

No action was taken on this Item.

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

Mayor

Attest:

City Secretary

Council Agenda Item: #2b

SUMMARY:

Council authorization is requested to allow the city manager to enter into a 9-1-1 Emergency Service Agreement with HBF Group Inc. to access the Town of Addison's E911 Network to provide Voice Over Internet Protocol (VoIP) Positioning Center (VPC) services to VoIP service providers VSP.

FINANCIAL IMPACT:

The Town has budgeted receiving this current fiscal year \$400,000 in 9-1-1 fees from telecommunication providers. Because any customer converting from standard telephone services to VOIP will be paying the same 9-1-1 surcharge, there is no net financial impact. The Town will receive no fees directly from HBF Group, but from the 17 VSPs who will be using HBF Group's location services. These companies will eventually have to come to the Town obtain their own VoIP 9-1-1 agreement.

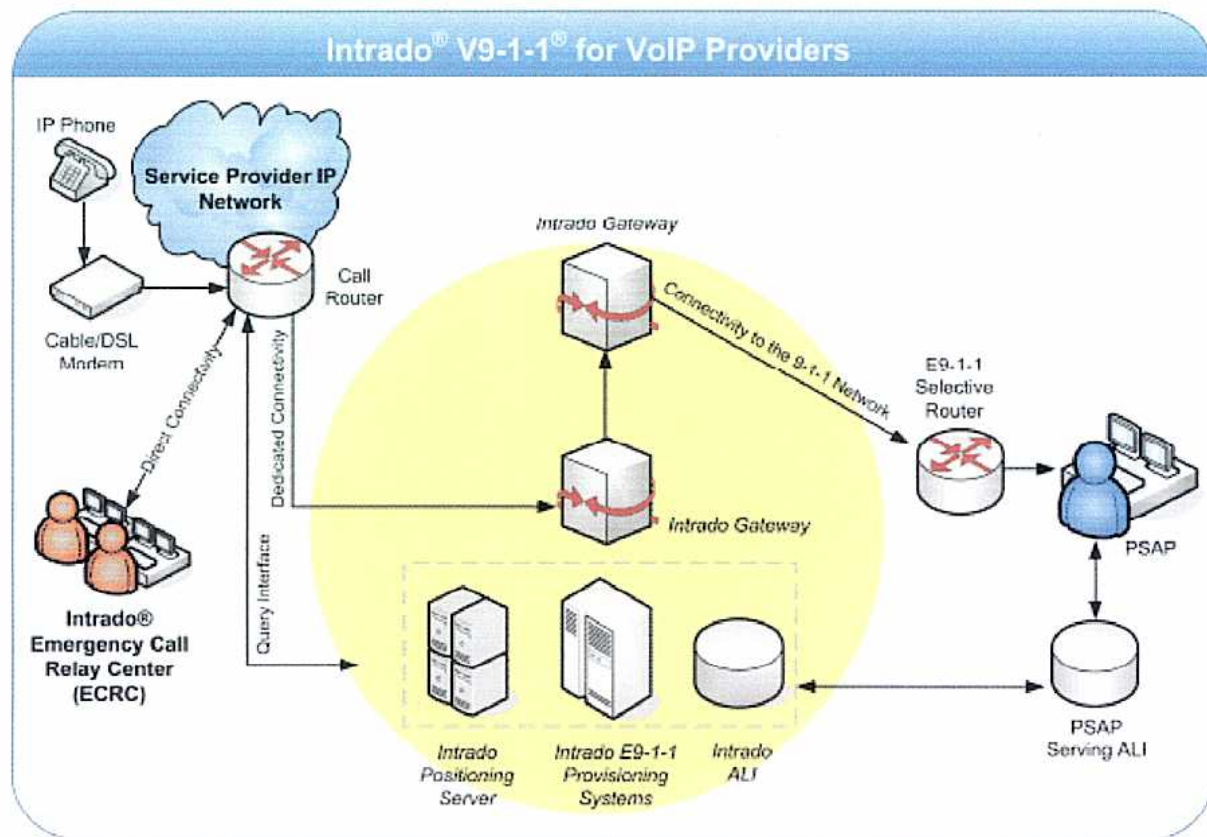
BACKGROUND:

VoIP technology allows people to utilize the Internet to make their telephone calls. Although still in its infancy, the number of customers utilizing VOIP is rapidly expanding and the Federal Communications Commission has issued orders that VOIP providers must enable their technology to allow customers to take advantage of the features of local public safety 9-1-1 communications. Please find attached a diagram of how 9-1-1 calls are handled with VoIP. The diagram refers to "Intrado V911", which in this case will be HBF Group.

RECOMMENDATION:

It is recommended Council authorize the city manager to enter into the agreement with HBF Group Inc.

VoIP Call Flow Diagram Steps:



1. VoIP Service Provider (VSP) customer calls 9-1-1
2. VSP receives customer's 9-1-1 call
3. VSP requests call routing instructions from Intrado
4. Intrado responds to VSP with call routing instructions to route call to either Intrado VoIP 9-1-1 Gateway (including pANI/ESQK assignment) or to existing SR infrastructure in place through VSP
5. VSP routes VoIP 9-1-1 call to Intrado VoIP 9-1-1 Gateway over dedicated IP network (IP) or over dedicated private lines (TDM)
6. Intrado VoIP 9-1-1 Gateway accepts VSP VoIP 9-1-1 call and sends to regional Intrado IP Gateway over dedicated Intrado network
7. Intrado regional IP Gateway passes call to SR over dedicated trunk
8. Selective router transports the call to the PSAP using ESQK (pANI) received with the call
9. PSAP queries ALI database with pANI
10. ALI steers to the Intrado Dynamic ALI database
11. Intrado returns ALI including subscriber's name, address and CBN
12. ALI display is sent to the PSAP by the ALI node

MODEL VPC AGREEMENT

VoIP POSITIONING CENTER AGREEMENT FOR ACCESS

This Agreement ("AGREEMENT") by and between the Voice over Internet Protocol ("VoIP") Positioning Center provider, HBF Group, Inc., executing this AGREEMENT ("VPC Company") and the Town of Addison, ("9-1-1 Entity"). (Collectively, 9-1-1 Entity and VPC Company are referred to as the "Parties.")

This AGREEMENT establishes the terms and conditions for VPC Company to interface with the 9-1-1 Entity's Wireline E911 Network in order to provide VoIP Positioning Center ("VPC") services to interconnected VoIP Service Providers ("VSPs") using the Dynamic Automatic Location Identification ("Dynamic ALI") solution.

This AGREEMENT is specifically limited to VPC Company providing VPC services to Interconnected VSPs that have executed the 9-1-1 Entity's applicable agreement for *nomadic* Interconnected VSPs Using the *Dynamic ALI Solution* and: (1) whose customers' service is portable, in that it is inherently nomadic because it can be accessed from any broadband connection, but non-mobile, whose initial Registered Locations are within the 9-1-1 Entity's service area; and (2) for whom caller identification information is delivered using the Dynamic ALI solution.

WHEREAS, the 9-1-1 Entity is a home-rule city that provides E9-1-1 service pursuant to Health and Safety Code Chapter 771 or Chapter 772 and operates the Wireline E9-1-1 Network in the 9-1-1 Entity's corporate municipal limits or service area; and

WHEREAS, VPC Company is a third-party provider that is being given access to the 9-1-1 Entity's Wireline E9-1-1 Network in order to provide VPC services to enable authorized Interconnected VSPs to comply with Federal Communications Commission ("FCC") orders and regulations and other Applicable Laws as set forth in the Interconnected VSPs' agreements with the 9-1-1 Entities; and

WHEREAS, to assist Interconnected VSPs in implementing E9-1-1 service, VPC Company desires that it be allowed to access (1) the 9-1-1 Entity's individual Wireline E9-1-1 Network; (2) the 9-1-1 ALI database; (3) the 9-1-1 Entity's MSAG and MSAG updates for their service area; and (4) to operate in a manner consistent with the 9-1-1 responsibilities and quality of service requirements set forth herein and in the Interconnected VSPs' Agreements with the 9-1-1 Entities; and

WHEREAS, VPC Company agrees that it shall conform its operations and practices to the level of E9-1-1 emergency service provided for in this AGREEMENT and the requirements imposed upon Interconnected VSPs in their Agreements with the 9-1-1 Entities.

NOW, THEREFORE, in consideration of the listed mutual promises and benefits, the Parties enter into this AGREEMENT as follows

1. **Definitions.** For purposes of this AGREEMENT, terms not specifically defined herein shall have the same meaning as such are used in the Applicable Laws section of the 9-1-1 Entity's Agreement for nomadic Interconnected VSPs Using the Dynamic ALI Solution as entered into with the VSP for whom the VPC Company is providing VPC services.

Commission on State Emergency Communications ("CSEC") Rule and/or Program Policy Statement ("PPS"). Notwithstanding anything to the contrary in this AGREEMENT, VPC Company agrees to follow applicable procedures adopted by CSEC in a Rule and/or PPS regarding the providing of VPC services; and to only provide such services to those Interconnected VSPs who have executed the 9-1-1 Entity's Agreement for nomadic Interconnected VSPs Using the Dynamic ALI.

3. **VSP Identification.** VPC Company shall identify in **Attachment No. 1** its VSP customers and answer whether or not it remits the 9-1-1 Emergency Service Fee ("9-1-1 Fee") on behalf of each Interconnected VSP's end-users. The information contained in **Attachment No. 1** is required, confidential and shall be provided only to the 9-1-1 Entity.

4. **Service Plan.** VPC Company shall submit for approval a plan for the VPC Company's providing of VPC services within the 9-1-1 Entity's service area (the "Service Plan"). The Service Plan is attached as **Attachment No. 2** and consists of the VPC Company's VPC 9-1-1 Information and VPC ESQK Allocation information. (A separate Service Plan must be submitted for each selective router VPC Company is routing, or intends to route, to within the 9-1-1 Entity's service area.)

4.1 The 9-1-1 Entity shall review the Service Plan and either notify VPC Company of any deficiencies therein or approve the Service Plan within ten (10) days of 9-1-1 Entity's receipt of the Service Plan. If not approved, the 9-1-1 Entity shall provide reasonable specificity as to any such deficiencies, and shall work in good faith with VPC Company to resolve such deficiencies. Service Plans deemed deficient must be resubmitted for approval, and the review process and ten (10) day timeline starts again. A Service Plan shall be deemed approved on the 10th day following receipt thereof if the 9-1-1 Entity fails to comply with this section.

4.2 Any changes by VPC Company, or by a third-party acting on behalf of VPC Company, to the Service Plan or in the originating, routing, and/or termination of calls that might materially affect the routing or completion of 9-1-1 calls shall be submitted in writing by VPC Company, or by the third-party acting on behalf of VPC Company, to the 9-1-1 Entity no later than thirty (30) days prior to such change unless a shorter time period is necessary to protect the public safety.

4.3 The 9-1-1 Entity shall, within ten (10) days from receipt of VPC Company's notice of changes, notify VPC Company as to whether any of the proposed changes to the Service Plan or in the originating, routing, and/or termination of calls are material (i.e., changes are material if they would require 9-1-1 Entity to make any material network modifications or upgrades in order to continue receiving 9-1-1 calls from VPC Company). Changes deemed material by the 9-1-1 Entity must be submitted for 9-1-1 Entity approval in an amended Service Plan. Approval of an amended Service Plan shall be in accordance with section 4.1 unless the change is essential to protect the public safety, in which case the Parties shall negotiate the time periods for submitting and approving the amended Service Plan. Review of an amended Service Plan shall not affect prior approval by the 9-1-1 Entity of the current Service Plan.

5. **Implementation, Testing and Maintenance Procedures.** As a condition to VPC Company's interconnection, or continued interconnection, to the 9-1-1 Entity's Wireline 9-1-1 Network, VPC Company is required to implement, test, and maintain its ability to provide VPC

services in accordance with **Attachment No. 3** (unless superseded by a CSEC Rule or PPS). In the interest of public safety and to aid Interconnected VSPs in complying with the *FCC's Order*,¹ the Parties acknowledge that VPC Company may have completed its testing requirements prior to the effective date of this AGREEMENT, and that once interconnected and successfully tested any termination by a 9-1-1 Entity of VPC Company's ability to provide VPC services shall be pursuant to the restrictions set forth in Section 10.1.

5.2 Final approval as to the satisfactory provisioning of VPC services by VPC Company rests with the 9-1-1 Entity and is to be provided in an agreed upon manner to VPC Company upon successful testing.

6. **Work Plan.** The Work Plan of Responsibilities, **Attachment No. 4** (unless superseded by a CSEC Rule or PPS), describes the responsibilities of VPC Company, its Interconnected VSP customers, Emergency Services Gateway providers, and the 9-1-1 Entities specifically related to the provisioning of E9-1-1 service using Dynamic ALI.

6.1 The Parties recognize that functions of the Validation Database ("VDB") and Emergency Services Zone Routing Database ("ERDB") and roles and responsibilities related to the VDB and ERDB have not been clearly defined as of the preparation of this AGREEMENT. The Parties agree to amend this AGREEMENT to the limited extent necessary and appropriate to reflect those functions, roles, and responsibilities as they become more clearly defined. The Parties further agree that as a fundamental principle there should be no denial by either Party of access to any needed data for service provision or service quality unless such denial is required by law or valid contractual restriction.

7. **9-1-1 Fee.** Where VPC Company remits the 9-1-1 Emergency Service Fee ("9-1-1 Fee") on behalf of any of its Interconnected VSPs, determining whether a non-native telephone number (i.e., one that has an NPA/NXX that does not match the service address's rate center) is subject to the 9-1-1 Fee shall be based on the VSP's end-user customer's billing address, unless a different method of determination is adopted by rule or statute. The current 9-1-1 Fee and Surcharge amount and percentage, respectively, are listed in **Attachment No. 5**.

The 9-1-1 Fee shall be calculated consistent with the definition of an access line as defined in 1 Texas Administrative Code § 255.4, as that rule provides now and as the rule may be amended from time to time. The payment is due to 9-1-1 Entity no later than the thirtieth (30th) day after the last day of the calendar month to which the fees were related. The initial payment due is due no later than the 30th day after the last day of the calendar month, in which the fees were collected. Remittances shall be made by direct deposit to the 9-1-1 Entity's bank or by check, the procedure to be designated by mutual agreement of the Parties. The 9-1-1 Fee may be revised from time to time by the 9-1-1 Entity, as allowed by Applicable Law and provided for below. Such changes shall be communicated in writing to VPC Company for changes in VPC Company's remittance of the 9-1-1 Fee. The 9-1-1 Entity shall notify VPC Company of any change VPC Company must make in VPC Company's remittance of 9-1-1 Fee with sufficient advance time, at least thirty (30) days in advance of the effective date of the new 9-1-1 fee, but not to exceed ninety-one (91) days before the date the change takes effect, to permit VPC Company's billing system to comply timely with the change.

8. **Reimbursement for 9-1-1 Trunking.** As a VPC, VPC Company does not provide, and is precluded from providing, any 9-1-1 trunking for which reimbursement is available.

9. **Database Management Activities.** Where applicable, VPC Company shall coordinate and cooperate in a reasonable manner with the 9-1-1 Entities and/or the DBMSP regarding all

¹ *E9-1-1 Requirements for IP-Enabled Service Providers*, WC Docket No. 04-36 and WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, rel. June 3, 2005 (the "FCC's Order").

9-1-1 database activities necessary to provide accurate, efficient, seamless, and transparent E9-1-1 emergency service. VPC Company agrees to use reasonable efforts to comply with current National Emergency Number Association ("NENA") standards (available at www.nena9-1-1.org) and any current reasonable and lawful requirement of the 9-1-1 Entity addressing 9-1-1 database activities or future requirements promulgated pursuant to the terms of this AGREEMENT or provide reasonable function equivalence otherwise in compliance with Applicable Law. VPC Company shall submit records with the correct NENA ID applied in accordance with NENA standards. The 9-1-1 Entity will cooperate with VPC Company regarding activities necessary to provide the services contemplated hereunder. The 9-1-1 Entity agrees to facilitate cooperation with other entities that it has agreements with that may be necessary to provide the services contemplated hereunder.

10. **Dispute Resolution.** The Parties agree to work in good faith with each other to resolve any disagreements and negotiations, including those arising as a result of a change in, or implementation of any laws or regulations, prior to a 9-1-1 Entity or VPC Company taking any formal action. Formal action shall consist of the following, in the order stated: first, alternative dispute resolution by a mutually agreed third party; second, an administrative proceeding, including non-binding arbitration, if authorized by statute; and third, a judicial proceeding. Neither the 9-1-1 Entities nor VPC Company waive any rights that they may have respectively to seek any relief or enforcement from any regulatory body of competent jurisdiction.

10.1 VPC Company and the 9-1-1 Entities agree that E9-1-1 emergency service is an essential, life-saving service. Each Party reserves the right to seek any relief from a court or regulatory body of competent jurisdiction against another Party related to ensuring that the public safety of persons within the 9-1-1 Entities jurisdiction is protected. Under no event, however, may the 9-1-1 Entity unilaterally terminate VPC Company's ability to complete 9-1-1 dialed calls and/or E911 service capability within the 9-1-1 Entity's jurisdiction without a final order by a court or regulatory body of competent jurisdiction expressly authorizing the same.

11. **Confidentiality.** VPC Company may designate as confidential and submit under seal any Attachment or portion thereof that it considers exempt from the requirements of the Texas Public Information Act (Texas Government Code Chapter 552, the "Act"); and shall identify with specificity which provisions of the Act apply. The 9-1-1 Entity shall keep confidential any part of an Attachment so designated to the extent permitted by, and in accordance with, the Act. Upon receiving a request for information the response to which would include a portion of an Attachment marked confidential, the 9-1-1 Entity shall request an Attorney General Open Records Decision in accordance with the Act and shall notify VPC Company concurrently with such request. The 9-1-1 Entity shall not release any portion of the Service Plan designated confidential until the Attorney General issues an Open Records Decision resolving the request for such information. The 9-1-1 Entity is not required to request an open records decision ruling regarding information designated as confidential for which there has been an open records ruling that the same or similar information is public information.

12. **Non-Waiver of Rights.** The Parties do not waive and expressly reserve their respective rights to seek relief and/or advocate any position before the FCC, or other regulatory or administrative body of competent jurisdiction, or to seek any available judicial remedies at law or in equity.

13. **Modifications and Agreed Termination.** Except as otherwise provided herein regarding the submission of Attachments, this AGREEMENT may only be modified in writing and executed by the Parties.

13.1 The Parties may modify or terminate this AGREEMENT before the end of the then-current term solely under the following circumstances:

a. VPC Company may terminate this AGREEMENT with thirty (30) days written notice if VPC Company is discontinuing the services provided for under this AGREEMENT;

b. The 9-1-1 Entity may terminate this AGREEMENT with thirty (30) days written notice if authorized to do so by a final order issued pursuant to Section 10.1; or

c. Within the timeframe established under a mutual agreement of the Parties to terminate this Agreement set forth in writing and executed by both Parties.

14. **Entire AGREEMENT.** This AGREEMENT, together with all attachments, sets forth the entire understanding of the Parties. Neither Party has made any representation, promise, or statement of intention that is not embodied herein.

15. **Severability.** In the event that any part of this AGREEMENT is held to be invalid, unenforceable, or pre-empted for any reason, the affected part shall be deemed deleted or reformed to the extent necessary to be enforceable, and the remainder of the AGREEMENT shall remain in full force and effect.

16. **Governing Law and Venue.** This AGREEMENT shall be governed by and construed according to the laws of the State of Texas. Venue for any action or claim arising out of this AGREEMENT shall be in Dallas County, Texas.

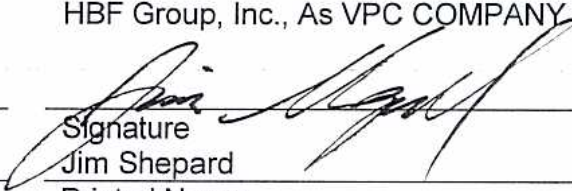
17. **Effective Date and Term.** This AGREEMENT is effective as of the date both the 9-1-1 Entity and VPC Company have executed the AGREEMENT and shall continue for a period of one (1) year, unless terminated earlier as provided for in this AGREEMENT. Thereafter, this AGREEMENT shall automatically renew each year and continue in full force and effect until a Party provides written notice of termination in accordance with the termination rights described in Section 13.

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

Town of Addison, as 9-1-1 Entity

HBF Group, Inc., As VPC COMPANY

Signature



Signature

Printed Name

Jim Shepard

Printed Name

Title

Executive Vice President

Title

Date

February 2, 2007

Date

**ATTACHMENT NO. 2
VPC SERVICE PLAN:
911 INFORMATION
Dynamic ALI Solution**

FUNCTION OF EXHIBIT ISSUED: NEW REVISED

STATUS OF EXHIBIT: _____

DATE PREPARED: 12/14/06

CONTROL NUMBER: HBF-SBC-V002

VPC PROVIDER

COMPANY NAME: HBF Group, Inc.

VPC ADDRESS: 700 Lavaca St., Suite 1200

Austin, TX 78701

VPC NENA CO ID: HBF

REQUESTED SERVICE DATE: ASAP

E9-1-1 SYSTEM

E9-1-1 CONTROL OFFICE (Selective Router)	CLLI CODE	911 SYSTEM SERVICE PROVIDER
Dallas Riverside	DLLSTXRI3ED	SBC

VPC CONTACT INFORMATION

CONTACT	NAME	NUMBER	EMAIL
VPC E911 COORDINATION MANAGER	Darrell Fuquay	512-481-0911	dfuquay@hbfgroup.com
VPC 911 DATABASE MANAGER	Tia Hall	512-481-0911	thall@hbfgroup.com
VPC 24X7 OPERATIONS	NA	866-481-2755	voipops@hbfgroup.com

ESGW ENTITIES (List Names of ESGW entities that will route 911 calls using VPC's assigned ESQKs)

ESGW NAME	NENA CO ID	CSEC or 9-1-1 Entity CONTROL NO.	ESGW CONTACT	NUMBER	EMAIL
Level3	LVL3	LVL3-SBC-G002	Judy Ocondi	720-888-5625	Judy.Ocondi@Level3.com

ESQK Allocations (List separately on ESQK Allocation worksheet)

VPC SERVICE AREA (List PSAP Jurisdictions Served in Alphabetical Order)

911 ENTITY NAME & TYPE (i.e., COG, ECD, HRC)	MSAG SOURCE	9-1-1 Entity Approval Date (May be received via email)
Town of Addison	SBC	

ACTIVITY REQUESTED (Enter Description of Activity Requested by VPC)

Provide authorization to route calls to the Addison PD and provide enhanced ALI

ESQKs ALLOCATED BY:

NAME	NUMBER	EMAIL	DATE
Fondra Marshall	214 745-3168	fs9700@att.com	12/14/2006

ATTACHMENT NO. 3

Implementation, Testing and Maintenance Procedures

Purpose

This document provides procedures for the 9-1-1 Entities, interconnected Voice over Internet Protocol (VoIP) Service Providers (VSPs), and third party vendors to follow in the implementing, testing, and maintaining the provisioning of E9-1-1 service using a dynamic automatic location information solution (Dynamic ALI).

Terms/Definitions

New Service Deployment: Initial deployment of service when a VSP has not previously deployed in a PSAP jurisdiction within the 9-1-1 Entity's region – regardless of architecture used to provide 9-1-1 service.

Successful Testing: Demonstrated capability to correctly route and deliver accurate automatic number information (ANI) and Dynamic ALI for 9-1-1 calls from the point of initiation of the call to the appropriate Public Safety Answering Point (PSAP). All tested ESQKs must route to the correct PSAP.

Maintenance: Maintenance occurs when a VSP, and/or its third party ESGW or VPC vendors, has already deployed E9-1-1 service within a PSAP jurisdiction, adds a new area or service, or changes such service, within that PSAP jurisdiction to comply with industry standards.

I. Implementation Processes:

a. New Service Deployment by VSP:

- i. Notify 9-1-1 ENTITY in writing of its intention to implement E9-1-1 service and include:
 1. VSP name, business address, web site, NENA ID and requested service date;
 2. VSP contact person(s) for E9-1-1 coordination, 9-1-1 translations, and 24X7 operations;
 3. Associated VPC information and control number; and
 4. Associated ESGW information and control number.
- ii. Execute the 9-1-1 ENTITY VSP Dynamic ALI Agreement

b. VPC Responsibilities:

- i. Complete the 9-1-1 ENTITY VPC E911 Exhibit (including the ESQK Allocation and VSP Information worksheets), which includes:
 1. VPC company information and contact person(s);

2. List of ESGWs routing calls for VPC along with contact information and control numbers;
 3. List of 9-1-1 entities served by VPC;
 4. Attachment detailing VSPs served; and
 5. Attachment detailing ESQKs assigned by PSAP to VPC.
- ii. Complete one Exhibit per each Selective Router/Tandem Provider in the state of Texas;
 - iii. Submit a copy of the Exhibit(s) to each impacted 9-1-1 Entity (9-1-1 Entity will submit approval of the ESQK Allocation to the pANI administrator);
 - iv. Update VSP Information worksheet and copy the appropriate 9-1-1 Entity(ies) when adding a new VSP; and
 - v. Update ESQK Allocation worksheet and copy the appropriate 9-1-1 Entity(ies) when deploying new service or adding additional ESQKs.
- c. ESGW Responsibilities:
- i. Complete the 9-1-1 ENTITY E911 Service Plan (including Trunk Group and VSP Information worksheets) and Trunk Exhibit, which includes:
 1. ESGW company information and contact people;
 2. List of VPCs routing calls along with contact information and control numbers;
 3. List of 9-1-1 entities served by ESGW;
 4. Attachment detailing the tandem 9-1-1 trunk groups and the 9-1-1 Entity(ies) authorizing trunk group; and
 5. Attachment detailing VSPs served.
 - ii. Complete one Service Plan and Trunk Exhibit for each Selective Router/Tandem Provider in the state of Texas;
 - iii. Submit a copy of the Service Plan(s) and Trunk Exhibit(s) to each impacted 9-1-1 Entity; and
 - iv. Update the Service Plan and/or Trunk Exhibit when adding a new VSP or trunks.

II. Exhibit Process

- a. The following exhibit process and timelines apply (particularly for the ESGW & VPC exhibits):
 - i. The appropriate entity will obtain default criteria & ESN assignment from the 9-1-1 Entity(ies);
 - ii. ESQK range obtained from applicable numbering administrator;
 - iii. 9-1-1 Entity(ies) send confirmation of receipt of Exhibits within 5 business days of receipt thereof;
 - iv. PSAP has 10 calendar days to respond with notice of deficiencies; and
 - v. If 9-1-1 Entity fails to respond within 10 calendar days, Exhibits are deemed approved.
- b. If 9-1-1 Entity(ies) does not respond within time frame, VSP, VPC, and/or ESGW will notify 9-1-1 Entity(ies), CSEC, and 9-1-1 network service provider

that trunks are being released for live 9-1-1 traffic based on no response signifying approval.

III. New Deployment Testing

- a. Testing Notification: A VSP, or its VPC, must provide notice to the 9-1-1 Entity(ies) of its intention to begin testing New Service Deployment. The VSP, or its VPC, must coordinate with the 9-1-1 Entity(ies) on scheduling. Advance paperwork must include all appropriate exhibit documents, which must be received from the VSP within 5 working days in advance of scheduled test date. The 9-1-1 Entity(ies) will be responsible for distribution to respective PSAPs for documentation of test results, along with call-taker instructions.
- b. Testing: For each affected PSAP, VSP, and/or its VPC and ESGW entities, should place a call into the PSAP using the administrative line to provide notice that testing is about to begin and to verify the PSAPs availability to process the test calls. (Testing protocols can be downloaded from CSEC at [www.911.state.tx.us/browse.php/VoIP Committees](http://www.911.state.tx.us/browse.php/VoIP%20Committees). Upon successful testing, the 9-1-1 Entity(ies) should document the testing and send notice to the VSP.
- c. Successful Testing Documentation and Notice: A 9-1-1 Entity should provide to the party conducting testing timely notice of successful testing. The notice should include, at a minimum, the following:
 - i. Name of Testing Party and type of Entity (i.e., VSP, VPC, and/or ESGW) being tested;
 - ii. PSAP Name;
 - iii. ESQK Information Tested (for each ESQK);
 1. NPA
 2. ESQK NXX
 3. ESQK Number
 - iv. ALL Information Received for each ESQK tested (Yes or No);
 - v. Callback Number Received for each ESQK tested (Yes or No);
 - vi. Date and Time of successful test for each ESQK tested; and
 - vii. Test-call Taker's initials for each successfully tested ESQK
- d. Upon completion of successful testing, a 9-1-1 Entity should notify 9-1-1 Entity and CSEC by completing and sending CSEC's *Model Certification Letter*.

1) System testing

- a) 9-1-1 Entity may assign a PSAP to take initial system test calls
- b) VPC will test all ESQKs & ESGW with at least one VSP

2) Field or rollout testing

- a) Test every ESQK in every pool to every PSAP with at least one VSP.

b) 9-1-1 ENTITY reserves the right to request that a VPC test with more than one VSP.

3) ESGW Testing Requirements:

a) ESGW will test every trunk member in every trunk group & the default trunks.

IV. Maintenance

a. Notice of Maintenance: A VSP, or its ESGW and/or VPC providers, must provide written notice to the 9-1-1 Entity(ies) of maintenance testing or changes.

b. Call Handoff Procedures from the VPC Call Center: At a minimum, the procedure must include:

- i. Caller's name, call back number and location information for each call being handed off; and
- ii. Call Center's call back number. This information may be provided once (at deployment for each VPC) instead of at the call handoff.

V. Quality Assurance

If resources are available, the 9-1-1 Entities and VSPs should conduct frequent Quality Assurance testing to ensure continued compliance.

Model VSP Dynamic ALI Agreement
Attachment No. 4

Work Plan of Responsibilities

I. Responsibilities of Company

Company is responsible, in cooperation with the 9-1-1 Entities and any necessary third parties, to implement and provide E9-1-1 emergency service to its customers within the 9-1-1 Entities service area in accordance with Applicable Law and the terms and conditions under the Agreement.

- a. **VSP Functions** (may be performed by Company or its designated ESGW and/or VPC entities):
- i. establishing contacts with any impacted 9-1-1 Entities, obtaining applicable boundary information, and determining what type of information PSAPs in the 9-1-1 Entities' service area are capable of receiving;
 - ii. participating in network design, implementation, installation;
 - iii. causing its network elements (such as the ESGW, VPC and related data links or trunks) to be installed, or documented as installed, by an authorized ESGW and/or VPC;
 - iv. operating, maintaining, provisioning, contracting, and testing these network elements;
 - v. obtaining a civic address from the end user. A civic address must meet the following criteria: a) the civic address must conform to USPS Publication 28 albeit limited to the delivery address and last lines of the postal addressing standard for purposes of this rule; b) the civic address must be a physical location (excluding Rural Route, Highway Contract, Post Office Box, and Military addresses); and c) the civic address must be processed through a postal validation process;
 - vi. submitting Service Order Inputs (SOIs) for each ESQK in their inventory, to the applicable DBMSP;
 - vii. providing MSAG valid location information to the PSAP during a call; provided, however, that where a civic address/valid registered location input is not MSAG validated or VSP cannot pass MSAG validation, the VSP may opt to have delivered the civic address, where technically feasible. Additionally, the location information data delivered to the PSAP must indicate that the information is NOT MSAG valid. The decision tree determining the location data to be delivered to the PSAP is as follows:

Model VSP Dynamic ALI Agreement
Attachment No. 4

Registered Location Geo-coded	Input Postal Valid	Registered Location MSAG Valid	Input VSP/VPC Display Action
NO	-	-	Default the call to the VSP's default call center(s)
YES	NO	NO	CBN & indication that no address information is available
YES	NO	YES	CBN & MSAG Valid Address
YES	YES	NO	CBN & Postal Valid Address; indicate location information is MSAG invalid
YES	YES	YES	CBN & MSAG Valid Address

- viii. using the appropriate 9-1-1 Entity's MSAG in the address validation process;
- ix. facilitating or participating in the development of an implementation plan which will establish target dates for actions necessary for installation and activation of E9-1-1 emergency service;
- x. acquiring necessary software and equipment (exclusive of Selective Router or ALI System or CPE upgrades);
- xi. assisting in the formulation of routing decisions;
- xii. remitting, as appropriate, the 9-1-1 Service Fee and Equalization Surcharge to the Texas Comptroller of Public Accounts;
- xiii. entering into or ensuring that the necessary interconnection agreements for interconnecting the ESGW to Selective Routers and ensuring VPC ALI system connectivity exists if applicable;
- xiv. working with the 9-1-1 Entities to establish and provide internal performance measures, including, but not limited to, statistics for call volumes, call set-up times, error resolution and other critical measurements;

Model VSP Dynamic ALI Agreement
Attachment No. 4

- xv. working with the 9-1-1 Entities in the assignments of ESQs for a specified ESZ and building associated ALI database records;
 - xvi. coordinating or participating in the adds, changes and deletions of database records in appropriate databases, including, but not limited to ALI Host database and Selective Router;
 - xvii. validating end-user submitted Registered Location Information and resolving errors in a timely manner;
 - xviii. identifying a 24 x 7 contact for E9-1-1 emergency resolution;
 - xix. complying with the Applicable Laws;
 - xx. obtaining from NENA a Company ID;
 - xxi. using reasonable efforts to adhere to the draft NENA I2 standard, the final adopted NENA I2 standard or other industry and technical standards, or provide reasonable functional equivalence;
 - xxii. notifying the appropriate 9-1-1 Entity of any new services or changes to existing services or arrangements that may impact E9-1-1 services (including, but not limited to, deployment of automated Registered Location information);
 - xxiii. participating in the creation of a trouble reporting mechanism and associated trouble resolution process;
 - xxiv. providing statistical measurements and reports to document quality of service and compliance with best practices, when technically feasible; and
 - xxv. if available, providing confidential end user customer record information to the 9-1-1 Entity for database quality and emergency notification purpose when requested.
- b. **ESGW Functions** (may only be provided by authorized ESGWs):
- i. completing the applicable 9-1-1 System Service Provider form;
 - ii. interconnecting trunks groups from the ESGW to the applicable 9-1-1 SR;
 - iii. having access to a minimum of two trunks, on physically diverse paths, to each SR within the 9-1-1 Entities' service area;
 - iv. testing trunks to the SRs;

Model VSP Dynamic ALI Agreement
Attachment No. 4

- v. utilizing Signaling System 7 (SS7) connectivity to the SR where technically feasible, and employing MF CAMA where using SS7 connectivity is not technically feasible;
 - vi. notifying the appropriate 9-1-1 Entity of each entity for whom it provides ESGW functions in the 9-1-1 Entity's service area;
 - vii. working with the 9-1-1 Entities to test service;
 - viii. adhering to the draft NENA I2 standard, the final adopted NENA I2 standard, or other industry and technical standards that provide reasonable functional equivalence;
 - ix. notifying the appropriate 9-1-1 Entities of any new services or changes to existing services or arrangements that materially affect 9-1-1 call routing or completion;
 - x. participating in the creation of a trouble reporting mechanism and associated trouble resolution process;
 - xi. identifying of 24 x 7 contact for E9-1-1 emergency resolution; and
 - xii. upon request, providing statistical measurements and reports to document quality of service.
- c. **VPC Functions** (may only be provided by authorized VPCs):
- i. completing the applicable 9-1-1 System Service Provider form;
 - ii. using the most recent available versions of the 9-1-1 Entities' MSAG;
 - iii. establishing connectivity with the appropriate ALI provider;
 - iv. ensuring that all involved entities and providers (including the ALI and/or SR providers) are aware of which ESQKs the VSP/VPC provider is using and the relationship of the ESQKs to an ESZ or PSAP;
 - v. notifying the appropriate 9-1-1 Entity of each entity for whom it provides VPC functions in the 9-1-1 Entity's service area;
 - vi. adhering to the draft NENA I2 standard, the final adopted NENA I2 standard, or other industry and technical standards that provide reasonable functional equivalence;

Model VSP Dynamic ALI Agreement
Attachment No. 4

- vii. notifying the appropriate 9-1-1 Entities of any new services or changes to existing services or arrangements that materially affect 9-1-1 call routing or completion;
- viii. participating in the creation of a trouble reporting mechanism and associated trouble resolution process;
- ix. identifying a 24 x 7 contact for E9-1-1 emergency resolution; and
- x. upon request, providing statistical measurements and reports to document quality of service.

II. Responsibilities of 9-1-1 Entities

The 9-1-1 Entities are responsible for working and cooperating with Company and its ESGW and VPC vendors, and, where necessary, with other third parties (including, but not limited to, 9-1-1 Provider/LEC, Host ALI Provider, VPC software developers and hardware providers, and other suppliers and manufacturers) for the successful implementation and provision of E9-1-1 Service. This shall include the following:

- a. validating 9-1-1 Entity Jurisdiction map boundaries to delineate ESZs for call routing criteria, forming and implementing data management processes for jurisdictional routing changes;
- b. providing timely and prompt authorization to Company or its ESGW, as applicable, to connect trunks to the SR after receipt of applicable 9-1-1 System Service Provider form;
- c. providing timely and prompt authorization to Company or its VPC provider, as applicable, for access to the MSAG and MSAG updates;
- d. ensuring availability of MSAG records for the purpose of ESQK SOIs MSAG validation;
- e. participating in the development of an implementation plan which will establish target dates for any actions necessary for installation and activation of E9-1-1 emergency service;
- f. providing and verifying needed data about each PSAP's existing infrastructure and any other information necessary for successful installation, maintenance and provision of E9-1-1 Service;
- g. identifying appropriate ESN Routing Codes;

Model VSP Dynamic ALI Agreement
Attachment No. 4

- h. informing third-party vendors, such as Computer Aided Dispatch (CAD) providers, of data to be delivered with 9-1-1 calls for coordination with PSAP premise-based systems;
- i. augmenting the trunks, when necessary, between a selective router and the 9-1-1 Entity;
- j. ensuring that all PSAP premises equipment is equipped to receive MSAG-valid civic address information;
- k. promptly informing Company, or its designated ESGW and/or VPC providers, of any 9-1-1 Entity system changes that may affect E9-1-1 emergency service;
- l. providing that necessary changes, modifications, and/or updates made with respect to the ALI Database for successful receipt of ALI Host Records;
- m. training 9-1-1 Operators to understand the data that they will receive about 9-1-1 calls using the Dynamic ALI solution including, but not limited to, non-native telephone numbers;
- n. supporting all testing/verification activities to be undertaken by Company, or its designated ESGW and/or VPC vendors;
- o. participating in the creation of a trouble reporting mechanism and associated trouble resolution process;
- p. authorizing the DBMSP to make available its MSAG (including delta MSAGs), to Company, or its designated VPC. This requirement is contingent upon Company or its VPC providing its NENA ID;
- q. identifying a 24 x 7 contact for E9-1-1 emergency resolution;
- r. addressing SR or ALI system software upgrades that may be necessary to accommodate the delivery and display of new VoIP-related parameters required by the PSAP (e.g.; COS, Type of Service, etc.);
- s. mediating SR interconnection and ALI Steering conflicts; and
- t. to the extent permitted by law, maintaining the confidentiality of information provided by Company, or its designated ESGW and/or VPC providers, pursuant to Texas Health and Safety Code Ann. § 771.061 and/or 47 U.S.C. § 222.

Model VSP Dynamic ALI Agreement
Attachment No. 4

III. Responsibilities of the Selective Routing Service Provider

- a. validating the 9-1-1 Entities service area map(s) boundaries to delineate ESZs for call routing criteria, forming and implementing data management processes for jurisdictional routing changes; providing connectivity to the Selective Router for Company, and its ESGW provider(s), to provision E9-1-1 as needed;
- b. routing calls based on the draft NENA I2 standard, the final adopted NENA I2 standard, or other industry and technical standards that provide reasonable functional equivalence; and
- c. trouble shooting issues with Company, and its ESGW and VPC vendors, and 9-1-1 Entities as needed.

IV. Responsibilities of the of the ALI Host Service Provider

- a. trouble shooting issues with Company, and its ESGW and VPC vendors, and 9-1-1 Entities as needed;
- b. providing ALI connectivity to Company, and its VPCs, to provision E9-1-1 as needed;
- c. providing MSAGs, daily updates, and direct real-time access, if available, to Company, and its VPCs, as needed; and
- d. trouble shooting issues with Company, and its ESGW and VPC vendors, and 9-1-1 Entity as needed.

ATTACHMENT NO. 5

9-1-1 FEES TO BE BILLED BY COMPANY

FEE AMOUNTS:

The 911 Emergency Service Fee shall be charged pursuant to applicable laws and regulations of the City, as the same may be amended or superseded, and the fee is:

Residential: \$0.62 per line

Business:

Line: \$1.52 per line

Trunk: \$2.40 per trunk line

REMITTANCE TO 9-1-1 ENTITY:

Payable to: Town of Addison, Texas

Send to: Finance Director
Town of Addison
P.O. Box 9010
Addison, Texas 75001-9010

Council Agenda Item: #2c

SUMMARY:

Consideration of a Resolution authorizing the City Manager to appoint Carmen Moran as the Assistant City Secretary.

Council Agenda Item: #2d

SUMMARY:

Staff recommends that the council approve final payment totaling \$27,160.00 to Insituform Technologies, Inc. for the rehabilitation of the sanitary sewer line serving Talisker Apartments and the sanitary sewer line serving Lake Forest Drive.

FINANCIAL IMPACT:

Original Contract
Amount: \$109,680.00

Final Contract
Amount: \$128,964.00

Final Payment: \$27,160.00

Budgeted Amount: \$105,600.00

Funding Source: Utilities Capital Projects Fund

BACKGROUND:

This project involved the rehabilitation of 2,522 linear feet of sanitary sewer lines by the installation of a resin-impregnated flexible tube. The location of this project was located within the Talisker Apartments complex and Lake Forest Drive.

The scope of the work consisted of slip lining the existing 6-inch sanitary sewer line in Talisker Apartments and the 6 and 8-inch sanitary sewer lines on Lake Forest Drive that are clay pipe, approximately 30 years old, and suffered from deteriorated joints and cracks, which allows rainwater to infiltrate into the pipes during wet weather.

There were a total of three (3) change orders executed during the course of this project. Change Order #1 added 3 point repairs on the sanitary sewer in the Talisker Apartments complex that were not known to be necessary prior to bidding the project. Change Order #2 added one point repair on Lake Forest Drive not known to be necessary prior to bidding the project. Change Order #3 rectified the finalized actual quantities with those estimated when bidding the project.

RECOMMENDATION:

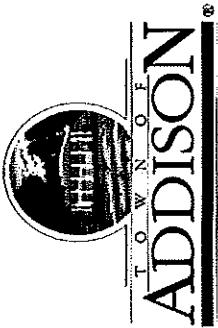
Staff recommends Council authorize the City Manager to execute final payment to Insituform Technologies in the amount of \$27,160.00 for the trenchless rehabilitation of sanitary sewers at Talisker Apartments and on Lake Forest Drive.

Application and Certificate For Payment

To Owner: Town of Addison
16801 Westgrove Dr.
Addison, Texas 75001-9010

From (Contractor): Insituform Technologies
702 Spirit 40 Park Drive
Chesterfield, MO 63005

Phone: 214-317-8586



Project: Talisker-Lake Forest Sewer Rehab

Application No.: FINAL

Contract Start: 9/15/2006

Period to:

Date: 2/21/2007

P.O. Number:

Contractor's Application For Payment
Change Order Summary

Number	Description	Date		Time Change	Additions	Deductions
		Approved				
#1	8" - 12" Point Repair (0' - 8' deep)	10/6/2006			\$7,500.00	
#2	14" Point Repair, Mailbox, Driveway Repair	11/27/2006			\$8,885.00	
#3	Rectify Final Quantities	2/20/2007			\$2,899.00	
#4						
#5						
#6						
Totals				0	\$ 19,284.00	\$ -
Net change by Change orders					19,284.00	

Original contract sum:	\$109,680.00
Net change by change orders	\$19,284.00
Contract sum to date	\$128,964.00
Materials on Hand	\$0.00
Total Completed and stored to date	\$128,964.00
10.0% Retainage	\$0.00
Total earned less retainage	\$128,964.00
Less previous certificates of payments	\$101,804.00


Current payment due \$27,160.00

Balance to finish, including retainage \$0.00

Engineer's Certificate for Payment

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application the Engineer certifies to the Owner that to the best of the Engineer's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment for the Amount Certified.

Amount Certified: \$ 27,160.00

Engineer: 

By: 

Date: 2/20/07

This Certification is not negotiable. The Amount Certified is payable only to the contractor named herein issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

Council Agenda Item: #R3

SUMMARY:

Appointment of a Member to the Planning and Zoning Commission.

Commissioner Meier has resigned from the Commission to file as a candidate for City Council. Commissioner Meier was appointed by Councilmember Mellow.

Council Agenda Item: #R4

DEPARTMENT:
Public Works

SUMMARY:
Consideration of the Acceptance of a sidewalk and utility easement along Midway Road.

FINANCIAL IMPACT:
Cost: No cost

BACKGROUND:
Enterprise Rent-A-Car is constructing a sidewalk along Midway Road from Wiley Post to roughly 200' north of Wiley Post. The width between the right-of-way and the back of curb for Midway Road is insufficient for the sidewalk, thus the sidewalk straddles the property line and an easement is required. In addition, the additional area is needed for telephone utilities.

RECOMMENDATION:
Staff recommends the council accept the sidewalk and utility easement.

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

After Recording Return To:
Ms. Nancy Cline
Town of Addison, Texas
P.O. Box 9010
Addison, Texas 75001

EASEMENT FOR SIDEWALK AND UTILITIES

DATE: _____, 2007

GRANTOR: Midway Addison Group, Ltd.
4040 Vernon
Keller, Texas 76248
(Tarrant County, Texas)

GRANTEE: Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254
(Dallas County, Texas)

CONSIDERATION:

Ten Dollars (\$10.00) in hand paid by Grantee, the receipt and sufficiency of which is acknowledged by Grantor, and other good and valuable consideration.

EASEMENT PROPERTY:

See Exhibit "A" attached hereto and incorporated herein by reference.

EASEMENT PURPOSE: For the construction, installation, operation, improvement, use, inspection, repair, maintenance, reconstruction, replacement, relocation and removal of a public sidewalk (including, without limitation, the use of such public sidewalk for pedestrian traffic) and of utilities (including, without limitation, water, sanitary sewer, storm sewer, drainage, electric, gas, telephone, and cable television), together with all and singular related rights and appurtenances, facilities, equipment and attachments thereto, including, without limitation, lines, pipelines, valves, manholes, manhole vents, lateral line connections, and junction boxes (collectively, the "Facilities"), and customary uses attendant thereto.

RESERVATIONS FROM CONVEYANCE:

None.

EXCEPTIONS TO WARRANTY:

None.

GRANT OF EASEMENT: Grantor, for the Consideration described above and subject to the Reservations from Conveyance and the Exceptions to Warranty, DEDICATES, GRANTS, SELLS, and CONVEYS to Grantee and Grantee's successors and assigns an easement and right-of-way on, in, over, under and across the Easement Property, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), TO HAVE AND TO HOLD the Easement to Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors and assigns to WARRANT AND FOREVER DEFEND the title to the Easement in Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Reservations from Conveyance and the Exceptions to Warranty.

TERMS AND CONDITIONS:

1. *Character of Easement.* The Easement is exclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors and assigns.

2. *Duration of Easement.* The Easement is perpetual.

3. *Reservation of Rights.* Grantor reserves for Grantor and Grantor's heirs, successors and assigns the right to use all or part of the Easement Property in conjunction with Grantor as long as such use by Grantor and Grantor's heirs, successors and assigns does not interfere with the use of the Easement Property by Grantee and Grantee's successors and assigns.

4. *Improvement and Maintenance of Easement Property.* Grantor agrees, for the consideration set forth herein, not to construct or place within the Easement Property any buildings, structures, fences, or other improvements of any nature whatsoever, or any shrubs, trees or other growth of any kind, or otherwise interfere with the Easement, without the prior written consent of Grantee. Grantee shall have the right to remove, and keep removed, all or parts of any building, structure, fence, or other improvement, or any shrub, tree, or other growth, of any character that is located within the Easement Property and which, in the judgment of Grantee, may endanger or in any way interfere with the construction, efficiency, or convenient and safe operation and maintenance of the Facilities described herein or the exercise of Grantee's rights hereunder. Grantee, its successors and assigns and its officers, employees, contractors, and licensees shall at all times have the right and privilege to access the Easement Property for the Easement Purpose.

This Easement for Sidewalk and Utilities binds and inures to the benefit of the Grantor and Grantor's heirs, successors and assigns and the Grantee and Grantee's successors and assigns. This Easement shall be construed under the laws of the State of Texas, without regard to its choice-of-law rules of any jurisdiction; venue is in Dallas County, Texas.

MISCELLANEOUS:

When the context requires it, singular nouns and pronouns include the plural.

EXECUTED effective as of the date first written above.

GRANTOR

By: _____
Typed Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2007 by _____ of _____, general partner of Midway Addison Group, Ltd., on behalf of the said limited partnership.

Given under my hand and seal of office this ____ day of _____, 2007.

Notary Public, State of Texas

My Commission Expires:

Print Name: _____

CONSENT OF LIENHOLDER

Lienholder, the undersigned _____, whose address is _____, as the holder of lien(s) on the Easement Property, consents to the above grant of an Easement, including the terms and conditions of the grant, and to the recording of this instrument, and Lienholder hereby subordinates its lien(s) to the rights and interests of Grantee, its successors and assigns, so that a foreclosure of the lien(s) will not extinguish the rights and interests of Grantee, its successors and assigns. The person signing on behalf of _____ hereby represents that the person has authority and is duly authorized to sign this Consent on behalf of and to bind _____.

FIRST FINANCIAL BANK

By: _____
Printed/Typed Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2007.

Notary Public, State of Texas

My Commission Expires:

Print Name: _____

N84°35'00"E 5.02'

P. O. B.

LOT 13, BLOCK B
ADDISON AIRPORT
INDUSTRIAL DISTRICT

N84°35'00"E 135.61'

15' U/E

SUBJECT SIDEWALK &
UTILITY EASEMENT

MIDWAY ROAD

N0°00'00"E 189.01'

500'00'00"W 179.48'

30' B/L

50'00'00"W 211.81'

LOT 11, BLOCK B
ADDISON AIRPORT
INDUSTRIAL DISTRICT

LOT 12, BLOCK B
ADDISON AIRPORT
INDUSTRIAL DISTRICT

20' B/L

S45°00'00"E 28.28'

N63°26'06"W
22.36'

N90°00'00"W 115.00'

WILEY POST ROAD

N90°00'00"W 5.00'



Bryan Connally

EXHIBIT 'A'
SIDEWALK AND
UTILITY EASEMENT
LOT 11, BLOCK B
ADDISON AIRPORT
INDUSTRIAL DISTRICT

SIDEWALK AND UTILITY EASEMENT

BEGINNING at the Northwest corner of Lot 12, Block B, ADDISON AIRPORT INDUSTRIAL DISTRICT, an addition to The City Of Addison, Dallas County, Texas, recorded in Volume 50, Page 207, Map Records, Dallas County, Texas;

THENCE N 84^o 35' 00" E, along the North line of said Lot 12, Block B, ADDISON AIRPORT INDUSTRIAL DISTRICT, a distance of 5.02 feet to a point for corner;

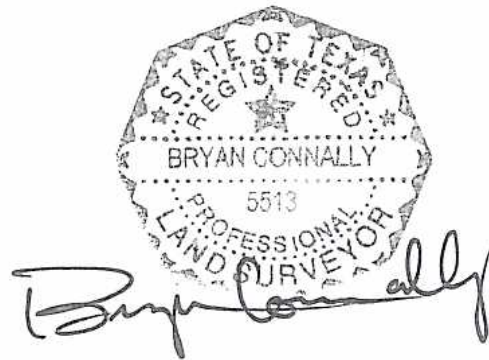
THENCE S 00^o 1' 00" E, 5.00' East of and parallel to the West line of said Lot 12, Block B, ADDISON AIRPORT INDUSTRIAL DISTRICT, a distance of 179.48 feet to a point for corner;

THENCE S 45^o 1' 00" E, a distance of 28.28 feet to a point for corner located on the South line of said Lot 12, Block B, ADDISON AIRPORT INDUSTRIAL DISTRICT;

THENCE N 90^o 1' 00" W, along the South Line of said Lot 12, Block B, ADDISON AIRPORT INDUSTRIAL DISTRICT, a distance of 5.00 feet;

THENCE N 63^o 1' 26" W, along the Southwesterly Line of said Lot 12, Block B, ADDISON AIRPORT INDUSTRIAL DISTRICT distance of 22.36 feet;

THENCE N 00^o 1' 00" W, along the West Line of said Lot 12, Block B, ADDISON AIRPORT INDUSTRIAL DISTRICT, a distance of 189.01 feet to the POINT OF BEGINNING of subject Sidewalk and Utility Easement.



Council Agenda Item: #R5

DEPARTMENT:

Police

SUMMARY:

Submission of Racial Profiling Report to Council as required by Senate Bill (SB 1074). This Bill requires that the head of a law enforcement agency make available to the governing body an analysis of traffic contacts made by the agency no later than March 1st of each year and covering the previous calendar year.

The Addison Police Department Annual Traffic Contact Report (2006)



Del Carmen Consulting, LLC

(I) Introduction

Opening Statement

February 6, 2007

Addison City Council
Addison, Texas 75001

Dear Distinguished Members of the City Council,

The racial profiling issue is regarded as one of the most prevalent themes among law enforcement agencies in the United States. Almost five years ago, the Texas legislature, in an attempt to address the issue of racial profiling in policing, passed the Texas Racial Profiling Law. Since, the Addison Police Department, in accordance with the law, has collected and reported traffic-related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices among police officers.

In this report, you will find three sections that contain information on traffic-based contact data along with documentation which aims at demonstrating the manner in which the Addison Police Department has complied with the Texas Racial Profiling Law. Specifically, section 1 contains the table of contents in addition to the Texas Senate Bill (SB1074) which introduced the Texas Racial Profiling Law. Also, in this section, a list of requirements relevant to the Racial Profiling Law as established by TCLEOSE (Texas Commission on Law Enforcement Officer Standards and Education) is included. In addition, sections 2 and 3 contain documentation which demonstrates compliance by the Addison Police Department relevant to the requirements as established in the Texas Racial Profiling Law. That is, documents relevant to the implementation of an institutional policy banning racial profiling, the implementation of a racial profiling complaint process (which has been disclosed to the public), and the training administered to all law enforcement personnel, are included.

The final component of this report provides statistical data relevant to contacts, made during the course of traffic stops, between 1/1/06 and 12/31/06. This information has been analyzed and compared to data derived from the U.S. Census Bureau's Fair Roads Standard and to traffic-based contact data collected between 2002 and 2005. The final analysis and recommendations are also included in this report.

I am hopeful that the findings presented in this report serve as evidence of the Addison Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.
Del Carmen Consulting, LLC

Table of Contents

Table of Contents

(I) Introduction

- a) Opening Statement
- b) Table of Contents
- c) TCLEOSE Guidelines
- d) The Texas Law on Racial Profiling (S.B. 1074)

(II) Responding to the Texas Racial Profiling Law

- a) Institutional Policy on Racial Profiling
- b) Educational Campaign Relevant to the Complaint Process—
Addressing Allegations of Racial Profiling Practices
- c) Racial Profiling Training of Law Enforcement Personnel
- d) Report on Complaints Filed Against Officers for Violating the Racial
Profiling Law (includes outcome of investigation)
- e) Police (Traffic-Related) Contact Information Table (2006)
- f) Table Depicting Baseline Comparison (2006)
- g) Five-Year Data Assessment (02-06)
- h) Analysis and Interpretation of Data (2006)

(III) Summary

- a) Checklist
- b) Contact Information

TCLEOSE GUIDELINES

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of *what* must be accomplished by an agency but allows wide latitude in determining *how* the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an “agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties.”

The article further defines race or ethnicity as being of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.” The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person's race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer's best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, "the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose."

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide and analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

The Texas Law on Racial Profiling

AN ACT

relating to the prevention of racial profiling by certain peace officers.

BE IT ENACTED BY THE LEGISLATURE OF THE
STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy

adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED. (a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled during the previous calendar year to the governing

body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the

Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling; and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

- (1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;
- (2) the registration number of the vehicle involved;
- (3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) [~~7~~] the date of conviction; and

(9) [~~8~~] the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

(II) Responding to the Law

Institutional Policy on Racial Profiling

ARTICLE 99

Racial Profiling

I. Purpose

The purpose of the policy is to reaffirm the Addison Police Department's commitment to unbiased policing in all its encounters between officers and any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and to protect our officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.

II. Policy

- A. It is the policy of this department to police in a proactive manner and to aggressively investigate suspected violations of law. Officers shall actively enforce Town ordinances, state and federal laws in a responsible and professional manner, without regard to race, ethnicity or national origin. Officers are strictly prohibited from engaging in racial profiling as defined in this policy. This policy shall be applicable to all persons, whether drivers, passengers, or pedestrians.
- B. Officers shall conduct themselves in a dignified and respectful manner at all times when dealing with the public. Two of the fundamental rights guaranteed by both the United States and Texas constitutions are equal protection under the law and freedom from unreasonable searches and seizures by government agents. The right of all persons to be treated equally and to be free from unreasonable searches and seizures must be respected. Racial profiling is an unacceptable patrol tactic and will not be condoned.
- C. This policy shall not preclude officers from offering assistance, such as upon observing a substance leaking from a vehicle, a flat tire, or someone who appears to be ill, lost or confused. Nor does this policy prohibit stopping someone suspected of a crime based upon observed actions and/or information received about the person.

III. Definitions

Racial Profiling – A law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

A. Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, or other citizen contacts.

B. The prohibition against racial profiling does not preclude the use of race, ethnicity or national origin as factors in a detention decision. Race, ethnicity or national origin may be legitimate factors in a detention decision when used as part of an actual description of a specific suspect for whom an officer is searching. Detaining an individual and conducting an inquiry into that person's activities simply because of that individual's race, ethnicity or national origin is racial profiling.

C. Examples of racial profiling include but are not limited to the following:

1. Citing a driver who is speeding in a stream of traffic, where most other drivers are speeding, because of the cited driver's race, ethnicity or national origin.
2. Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity or national origin is unlikely to own or possess that specific make or model of vehicle.
3. Detaining an individual based upon the determination that a person of that race, ethnicity or national origin does not belong in a specific part of town or a specific place.

D. A law enforcement agency can derive at two principles from the adoption of this definition of racial profiling:

1. Police may not use racial or ethnic stereotypes as factors in selecting whom to stop and search, while police may use race in conjunction with other known factors of the suspect.
2. Law enforcement officers may not use racial or ethnic stereotypes as factors in selecting whom to stop and search. Racial profiling is not relevant as it pertains to witnesses, etc.

Race or Ethnicity - Of a particular decent, including Caucasian, African, Hispanic, Asian, or Native American.

Pedestrian Stop - An interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

Traffic Stop - A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic.

IV. Training

- A. Officers are responsible to adhere to all Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements as mandated by law.
- B. All officers shall complete a TCLEOSE training and education program on racial profiling not later than the second anniversary of the date the officer is licensed under Chapter 170 of the Texas Occupations Code or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. A person who on September 1, 2001, held a TCLEOSE intermediate proficiency certificate, or who had held a peace officer license issued by TCLEOSE for at least two years, shall complete a TCLEOSE training and education program on racial profiling not later than September 1, 2003.
- C. The chief of police, as part of the initial training and continued education for such appointment, will be required to attend the LEMIT program on racial profiling.
- D. An individual appointed or elected as a police chief before the effective date of this Act shall complete the program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

V. Complaint Investigation

- A. The department shall accept complaints from any person who believes he or she has been stopped or searched based on racial, ethnic or national origin profiling. No person shall be discouraged, intimidated or coerced from filing a complaint, nor discriminated against because he or she filed such a complaint.
- B. Any employee who receives an allegation of racial profiling, including the officer who initiated the stop, shall record the person's name, address, and telephone number, and forward the complaint through the appropriate channel or direct the individual(s). Any employee contacted shall provide to that person a copy of a complaint form or the department process for filing a complaint. All employees will report any allegation of racial profiling to their superior before the end of their shift.
- C. Investigation of a complaint shall be conducted in a thorough and timely manner. All complaints will be acknowledged in writing to the initiator who will receive disposition regarding said complaint within a reasonable period of time. The investigation shall be reduced to writing and any

reviewer's comments or conclusions shall be filed with the chief. When applicable, findings and/or suggestions for disciplinary action, retraining, or changes in policy shall be filed with the chief.

- D. If a racial profiling complaint is sustained against an officer, it will result in appropriate corrective and/or disciplinary action, up to and including termination.
- E. If there is a departmental video or audio recording of the events upon which a complaint of racial profiling is based, upon commencement of an investigation by this department into the complaint and written request of the officer made the subject of the complaint, this department shall promptly provide a copy of the recording to that officer.

VI. Public Education

This department will inform the public of its policy against racial profiling and the complaint process.

Methods that may be utilized to inform the public are the news media, radio, service or civic presentations, the Internet, as well as governing board meetings. Additionally, information will be made available as appropriate in languages other than English.

VII. Data Collection and Reporting

A. An officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense, shall record and report the following information:

1. A physical description of each person detained as a result of the stop, including:
 - a) the person's gender;
 - b) the person's race or ethnicity, as stated by the person or as determined by the officer to the best of his/her ability.
2. The street address or approximate location of the stop. The suspected offense or the traffic law or ordinance alleged to have been violated.
3. Whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search.

4. Whether probable cause to search existed and, if so, the fact(s) supporting the existence of that probable cause.
5. Whether any contraband was discovered in the course of the search and, if so, the type of contraband discovered.
6. Whether the officer made an arrest as a result of the stop and/or search and, if so, a statement of the offense charged.
7. Whether the officer issued a warning or a citation as a result of the stop and, if so, a statement of the offense charged.

By March of each year, the department shall submit a report to its municipal governing board that includes information gathered by the citations. The report will include:

1. a breakdown of citations by race or ethnicity;
2. number of citations that resulted in a search;
3. number of searches that were consensual; and
4. number of citations that resulted in custodial arrest for this cited violation or any other violation.

VIII. Use of Video and Audio Equipment

- A. It is the intent of this department to equip each motor vehicle regularly used by the department to make traffic and pedestrian stops with a video camera and transmitter-activated equipment. This department has submitted an application to the Texas Department of Public Safety for funding to equip the balance of the fleet with audio and video recording devices.
- B. Each traffic and pedestrian stop made by an officer of this department that is capable of being recorded by video and audio, or audio, as appropriate, will be recorded.
- C. This department shall retain the video and audiotapes, or the audiotape, of each traffic and pedestrian stop for at least ninety (90) days after the date of the stop. If a complaint is filed with this department alleging that one of our officers has engaged in racial profiling with respect to a traffic or pedestrian stop, this department shall retain the video and audiotape, or the audiotape, of the stop until final disposition of the complaint.

D. Supervisors will ensure officers of this department are recording their traffic and pedestrian stops. A recording of each officer will be reviewed at least once every ninety (90) days.

Complaint Process: Informing the Public and Addressing Allegations of Racial Profiling Practices

Informing the Public on the Process of Filing a Racial Profiling Complaint with the Addison Police Department

One of the requirements of the Texas Racial Profiling Law is that police agencies provide information to the public regarding the manner in which to file a racial profiling complaint. In an effort to comply with this particular component, the Addison Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area, information relevant to filing a complaint on a racial profiling violation by a Addison Police officer. This information is made available in English and Spanish. It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

Racial Profiling Training

Racial Profiling Training

Since 2002, all Addison Police officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Addison Police Department have completed the TCLEOSE basic training on racial profiling. The main outline used to train the officers of Addison has been included in this report.

It is important to recognize that the Chief of the Addison Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Addison Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.

**Racial Profiling
Course Number 3256
Texas Commission on Law Enforcement
September 2001**

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

Target Population: Licensed law enforcement personnel in Texas

Prerequisites: Experience as a law enforcement officer

Length of Course: A suggested instructional time of 4 hours

Material Requirements: Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

Instructor Qualifications: Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling CCP 3.05

Racial profiling prohibited CCP 2.131

Law enforcement policy on racial profiling CCP 2.132

Reports required for traffic and pedestrian stops CCP 2.133

Liability CCP 2.136

Racial profiling education for police chiefs Education Code 96.641

Training program Occupations Code 1701.253

Training required for intermediate certificate Occupations Code 1701.402

Definition of "race or ethnicity" for form Transportation Code 543.202

A. Written departmental policies

1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

B. Not prima facie evidence

C. Feasibility of use of video equipment

D. Data does not identify officer

E. Copy of complaint-related video evidence to officer in question

F. Vehicle stop report

1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued

G. Compilation and analysis of data

H. Exemption from reporting – audio/video equipment

I. Officer non-liability

J. Funding

K. Required training in racial profiling

1. Police chiefs

2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074

1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)

1. Motor vehicle search exemption

2. Traffic violation acceptable as pretext for further investigation

3. Selective enforcement can be challenged

B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)

1. Stop & Frisk doctrine

2. Stopping and briefly detaining a person

3. Frisk and pat down

C. Other cases

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)

2. Maryland v. Wilson, 117 S.Ct. 882 (1997)

3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)

4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)

5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)

6. New York v. Belton, 453 U.S. 454 (1981)

2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism

B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole

C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers

D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop

E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources

3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.

A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements

B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)

C. A typical traffic stop resulting from racial profiling

1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers

2. The driver and passengers are questioned about things that do not relate to the traffic violation

3. The driver and passengers are ordered out of the vehicle
4. The officers visually check all observable parts of the vehicle
5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)

3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.

- A. Drug courier profile (adapted from a profile developed by the DEA)
1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
 2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
 3. Vehicle is rented
 4. Driver is a young male, 20-35
 5. No visible luggage, even though driver is traveling
 6. Driver was over-reckless or over-cautious in driving and responding to signals
 7. Use of air fresheners
- B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

- A. Thinking about the totality of circumstances in a vehicle stop
- B. Vehicle exterior
1. Non-standard repainting (esp. on a new vehicle)
 2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
 3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
 4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)
- C. Pre-stop indicators
1. Not consistent with traffic flow
 2. Driver is overly cautious, or driver/passengers repeatedly look at police car
 3. Driver begins using a car- or cell-phone when signaled to stop
 4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)

D. Vehicle interior

1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074:

<http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm>

Report on Complaints

Tables Illustrating Traffic Contact

Tier 1 Data

(I) Tier 1 Data

Traffic-Related Contact Information (1/1/06—12/31/06)

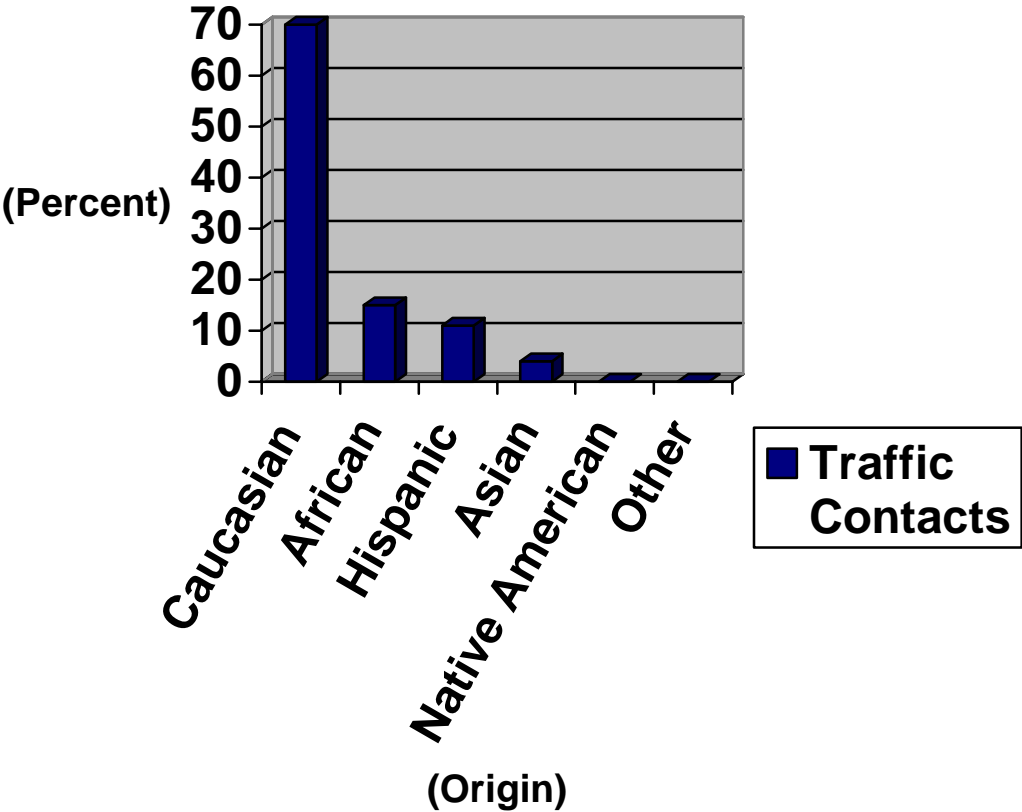
Race/Ethnicity *	Contacts		Searches		Consensual Searches		PC Searches		Custody Arrests	
	N	%	N	%	N	%	N	%	N	%
Caucasian	5,104	70	370	52	62	56	308	52	335	50
African	1,110	15	166	23	24	22	142	24	166	25
Hispanic	780	11	161	23	21	19	140	23	156	23
Asian	269	4	11	2	3	3	8	1	10	2
Native American	2	.03	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Total	7,265	100**	708	100	110	100	598	100	667	100

“N” represents “number” of traffic-related contacts

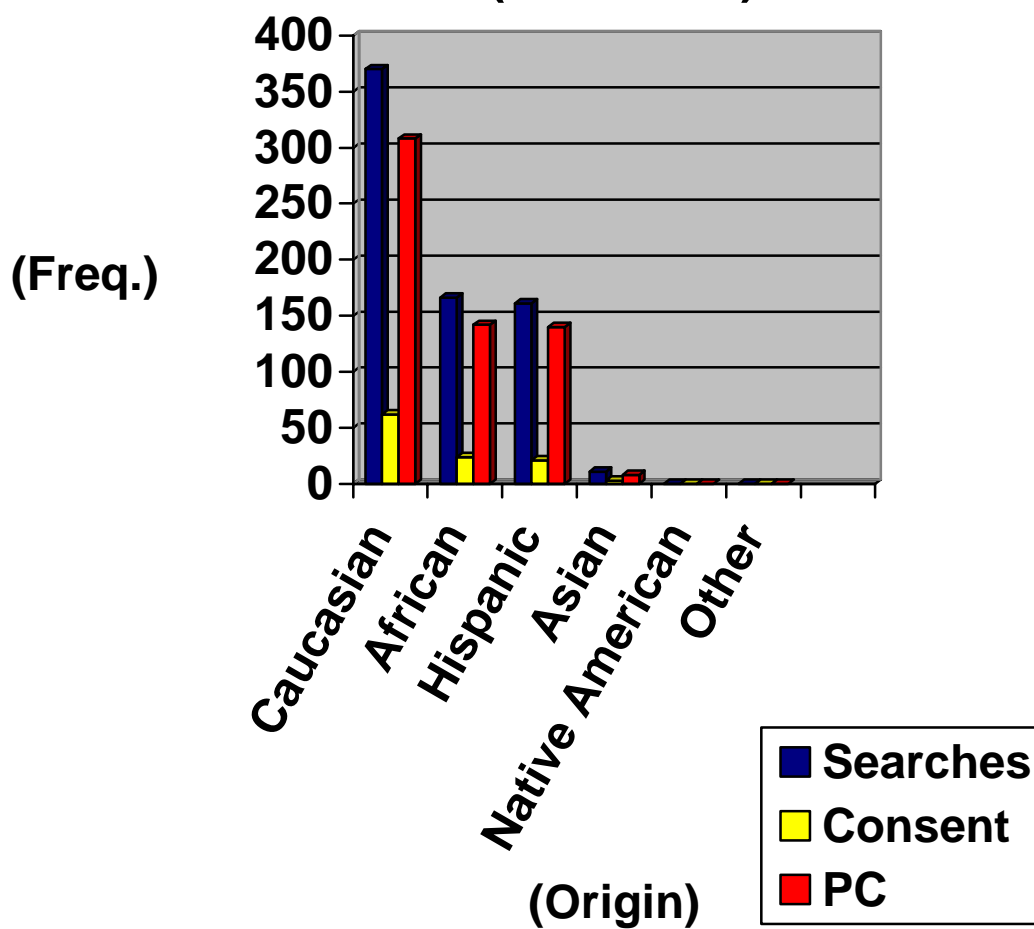
* Race/Ethnicity is defined by Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, or Native American”.

**Figure has been rounded

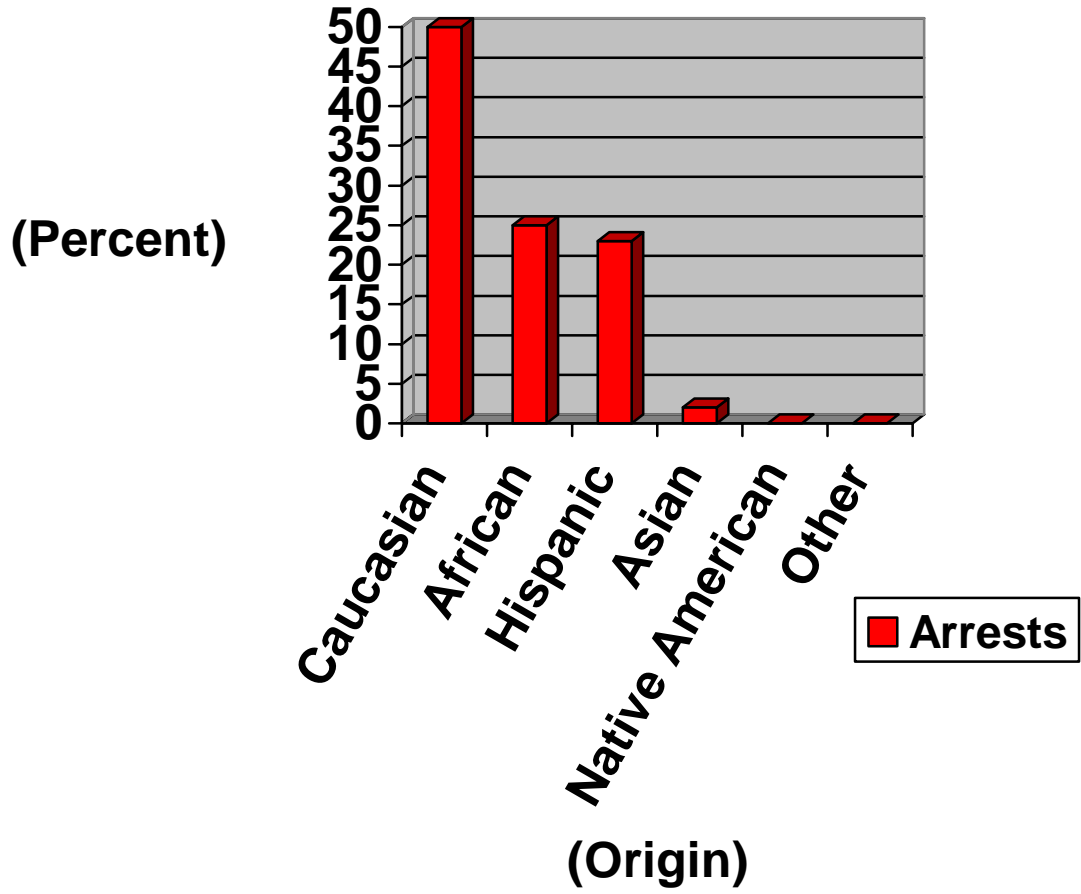
Tier 1 Data (Traffic Contacts)



Tier 1 Data (Searches)



Tier 1 Data (Arrests)



**Tier 1 Baseline Comparison
(Fair Roads Standard)**

(II) Traffic-Contacts and Fair Roads Standard Comparison

Comparison of traffic-related contacts with households in Addison that have vehicle access (in percentages). (1/1/06—12/31/06)

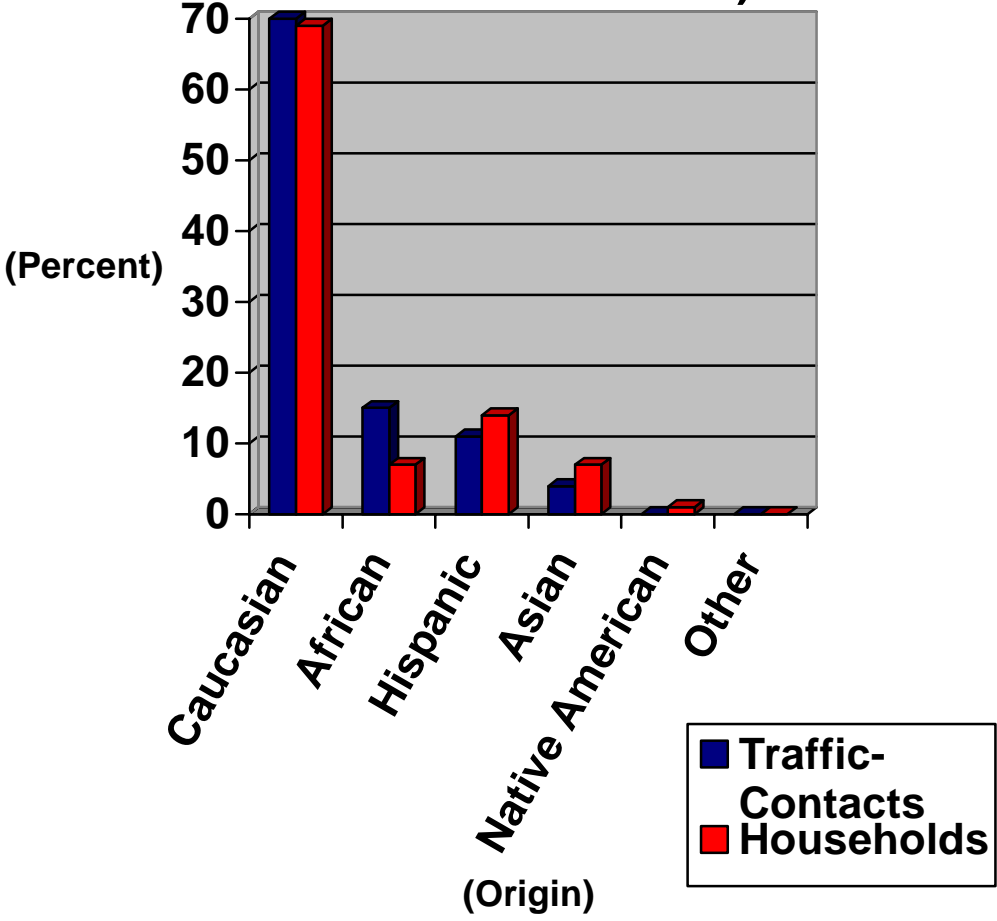
Race/Ethnicity*	Traffic-Contacts (in percentages)	Households with Vehicle Access (in percentages)
Caucasian	70	69
African	15	7
Hispanic	11	14
Asian	4	7
Native American	.03	1
Other	0	N/A
Total	100**	98***

* Race/Ethnicity are defined by Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, or Native American”.

**Represents rounded figure

***Amount does not total 100% since Census data does provide value of “other” category.

Tier 1 (Traffic-Contacts and Households/06)



Tier 1 Data
(Five-Year Comparative Analysis)
(2002—2006)

(III) Five-Year Tier 1 Data Comparison

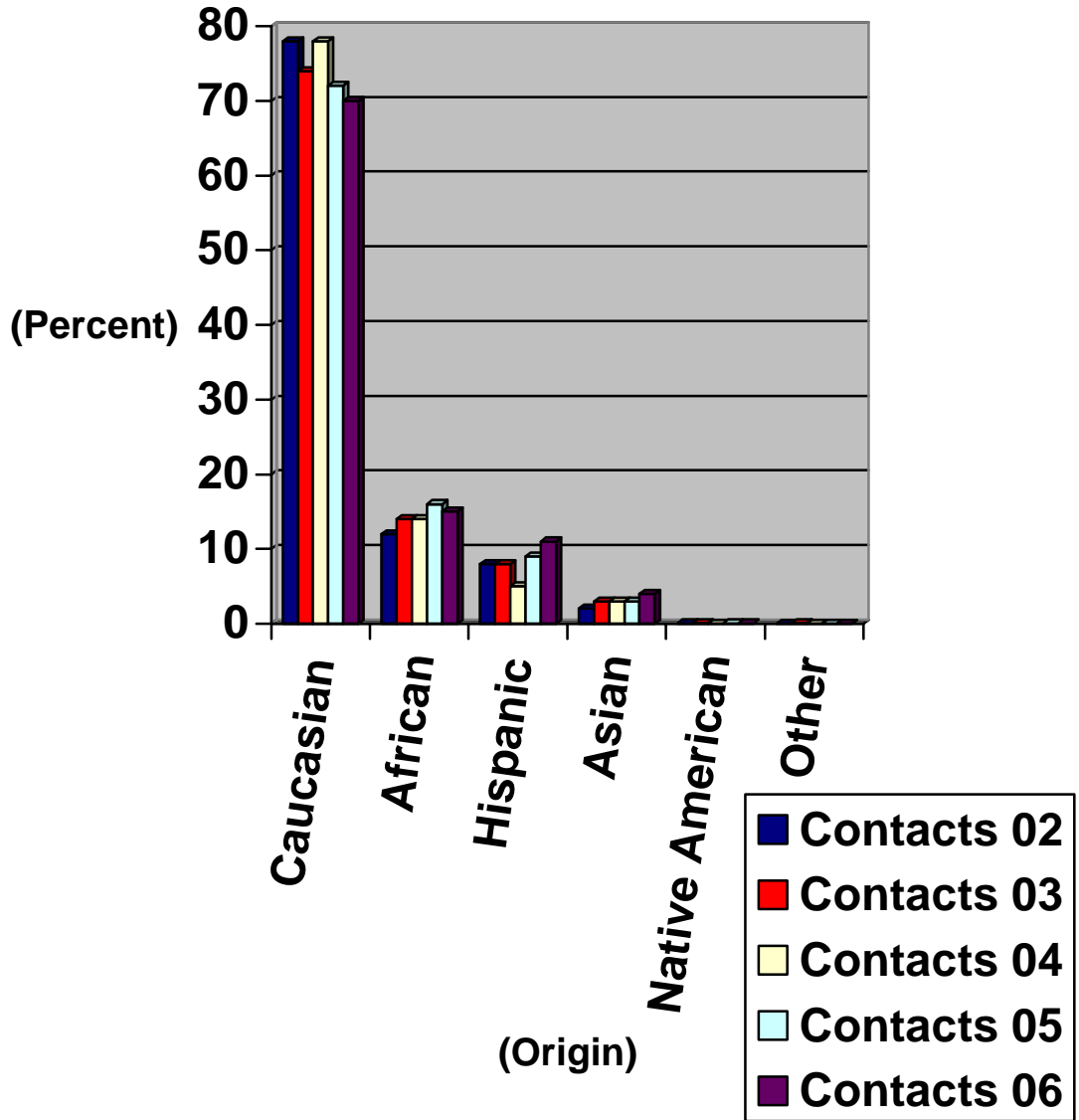
Comparison of Five-Year Traffic-Related Contact Information (1/1/02---12/31/06)

Race/Ethnicity*	Traffic-Related Contacts (in percentages)				
	(02)	(03)	(04)	(05)	(06)
Caucasian	78	74	78	72	70
African	12	14	14	16	15
Hispanic	8	8	5	9	11
Asian	2	3	3	3	4
Native American	.04	.09	.02	.03	.03
Other	0	.05	0	0	0
Total	100	100**	100	100**	100**

* Race/Ethnicity is defined by Texas Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, or Native American”.

** Figure has been rounded.

Tier 1 Data (Traffic-Contacts 02-06)



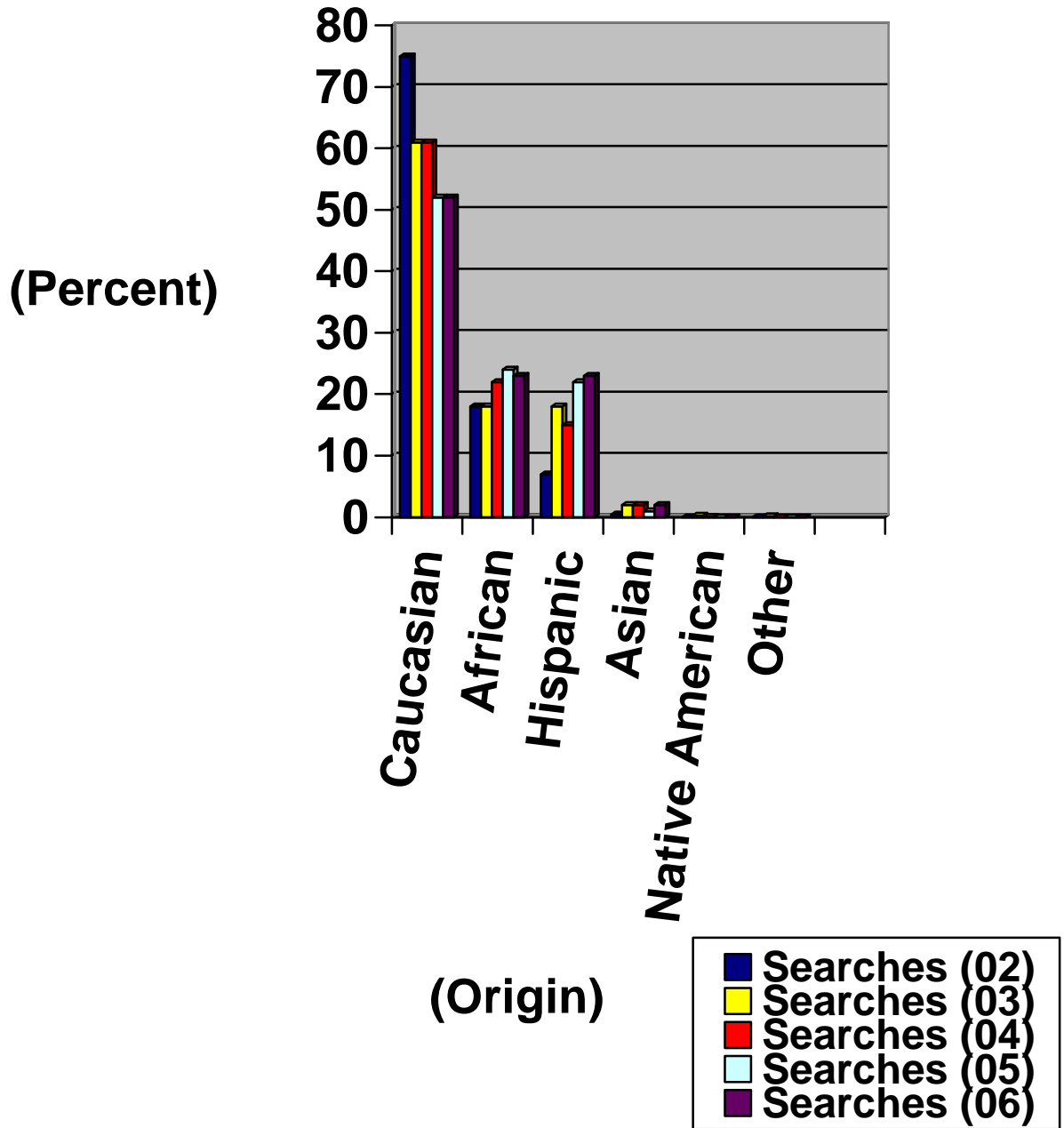
**Comparison of Five-Year Traffic-Related Search Information
(1/1/02---12/31/06)**

Race/Ethnicity*	Traffic-Related Searches (in percentages)				
	(02)	(03)	(04)	(05)	(06)
Caucasian	75	61	61	52	52
African	18	18	22	24	23
Hispanic	7	18	15	22	23
Asian	.42	2	2	1	2
Native American	0	.26	.09	0	0
Other	0	.17	0	0	0
Total	100	100	100**	100**	100

* Race/Ethnicity is defined by Texas Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, or Native American”.

** Figure has been rounded.

Tier 1 Data (Searches 02-06)



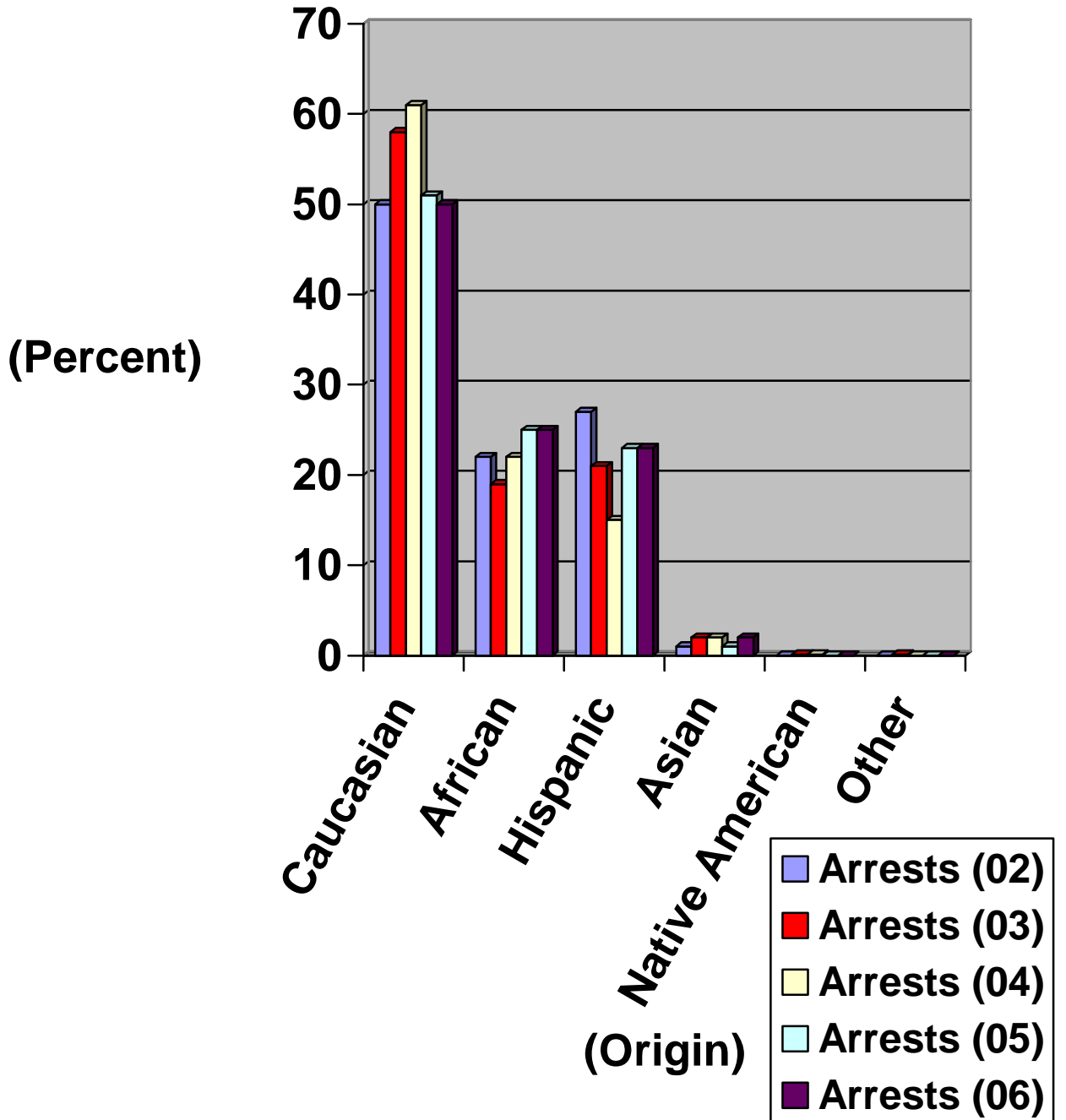
**Comparison of Five-Year Traffic-Related Arrest Information
(1/1/02---12/31/06)**

Race/Ethnicity*	Traffic-Related Arrests (in percentages)				
	(02)	(03)	(04)	(05)	(06)
Caucasian	50	58	61	51	50
African	22	19	22	25	25
Hispanic	27	21	15	23	23
Asian	1	2	2	1	2
Native American	0	.10	.1	0	0
Other	0	.10	0	0	0
Total	100	100**	100**	100	100

* Race/Ethnicity is defined by Texas Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, or Native American”.

** Figure has been rounded.

Tier 1 Data (Arrests 02-06)



Analysis and Interpretation of Data

Analysis

In 2001, the Texas Legislature passed Senate Bill 1074 which later became the Texas Racial Profiling Law. This particular law, which became effective January 1, 2002, requires that all police departments in the state collect traffic-related data and report this information to their local governing authority by March 1st of each year. The purpose in collecting and presenting this information is to determine if a police officer is engaging in the practice of profiling minority motorists.

It should be noted that the racial profiling law in Texas requires the interpretation of traffic-related data. Although most researchers would probably agree with the fact that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is very difficult to determine if police departments are engaging in racial profiling, from a review or analysis of aggregate data. That is, it is challenging for any researcher to identify specific “individual” racist behavior from aggregate-level “institutional” data on traffic-related contacts.

The Addison Police Department, in an effort to comply with The Texas Racial Profiling Law (S.B. 1074), commissioned the analysis of its 2006 traffic contact data. Thus, three different types of data analyses were performed. The first of these involved a careful evaluation of the 2006 traffic stop data. This particular analysis measured, as required by S.B. 1074, the number and percentage of Caucasians, African Americans, Hispanics, Asians, Native Americans, and individuals belonging to the “other” category, that came in contact with the police in the course of a traffic-related stop, and were either issued a citation or arrested. In addition, the analysis included information relevant to the number and percentage of searches (table 1) while indicating the type of search performed (i.e., consensual or probable cause). Finally, the data analysis included the number and percentage of individuals who, after they came in contact with the police for a traffic-related reason, were arrested.

The second analysis performed was based on a comparison of the 2006 traffic-contact data with a particular baseline. When reviewing this particular analysis, one should keep in mind that there is disagreement, in the literature, regarding the appropriate baseline to be used when analyzing traffic-related contact information. Of the baseline measures available, the Addison Police Department opted to adopt, as a baseline measure, the Fair Roads Standard. This particular baseline is based on data obtained through the U.S. Census Bureau (2000) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It is clear that census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless of the fact they may or may not be among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only. Thus, excluding individuals who may have come in contact with the Addison Police Department in 2006 but live outside city limits. In some cases, the percentage of the population that comes in contact with the police but lives outside city limits represents a majority of all traffic-related contacts made in a given year.

For the past few years, several civil rights groups in Texas have expressed their desire and made recommendations to the effect that all police departments should use, in their analysis, the Fair Roads Standard. This contains census data specific to the number of “households” that have access to vehicles. Thus, proposing to compare “households” (which may have multiple residents and only a few vehicles) with “contacts” (an individual-based count). This, in essence, constitutes a comparison that may result in ecological fallacy. Despite this, the Addison Police Department made a decision that it would use this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “good will” and “transparency” before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to Addison.

The final analysis was conducted while using the 2002--2006 traffic contact data. Specifically, all traffic-related contacts made in 2006 were compared to similar figures reported in 2002, 2003, 2004 and 2005. Although some researchers may not support the notion that in five years, a “significant” trend can take place, when considering this analysis, it was determined that comparing five years of traffic contact data may highlight possible areas of consistency with regards to traffic-related contacts. That is, the five-year comparison has the potential of revealing indicators that a possible trend of traffic-based contacts with regards to members of a specific minority group, may in fact, develop.

Tier 1 (2006) Traffic-Related Contact Analysis

The Tier 1 data collected in 2006 showed that most traffic-related contacts were made with Caucasian drivers. This was followed by African American and Hispanic drivers. With respect to searches, most of them were performed on Caucasian drivers. This was also followed by African Americans and Hispanics. It is important to note that the arrest data revealed that Caucasian drivers were arrested the most in traffic-related contacts; this was followed by African Americans and Hispanics, in that order. In addition, no arrests were made, in traffic related incidents, of Native American drivers or those belonging to the “other” category.

Fair Roads Standard Analysis

When comparing traffic contacts to the census data relevant to the number of “households” in Addison who indicated, in the 2000 census, that they had access to vehicles, the analysis produced interesting findings. That is, the percentage of individuals of Hispanic, Asian and Native American descent that came in contact with the police was lower than the percentage of Hispanic, Asian and Native American households in Addison that claimed, in the 2000 census, to have access to vehicles. With respect to Caucasian and African American drivers, a higher percentage of contacts were detected. That is, the percentage of Caucasian and African American drivers that came in contact with the police in 2006 was higher than the percentage of Caucasian and African American households in Addison with access to vehicles. It should be noted that the difference in percentage of Caucasian contacts with households that have access to vehicles, was of one percent; thus, deemed by some as not being statistically significant.

Five-Year Comparison

The five-year comparison (02-06) showed remarkable similarities with respect to the traffic-related contacts. As evident in table 3, the percentage of drivers (from different racial/ethnic groups) that came in contact with the Addison Police in 2006 was similar to the percentage of drivers, from the same racial/ethnic groups that came in contact with the Addison Police Department in 2005, 2004, 2003 and 2002. However, a few differences were noted. When comparing 2006 to the previous years, there was an increase in percentage of contacts among Hispanics and Asians while a decrease in percentage of contacts was detected among Caucasian and African American drivers.

The search figures for all five years showed, for the most part, similar patterns. An increase in percentage was detected among Hispanics and Asians while a percentage decrease was noted among African Americans. When considering the arrests made, the data revealed that the percentage of arrests increased among Asians while a decrease in percentage was evident among Caucasians.

Summary of Findings

As revealed by the findings, the Fair Roads Standard comparison showed that the Addison Police Department came in contact (in traffic-related incidents) with a smaller percentage of Hispanic, Asian and Native American drivers than the percentage that resided in Addison and had access to vehicles. Further, the data suggested that the percentage of Caucasian and African American drivers that came in contact with the police in 2006 was higher than the percentage of Caucasian and African American Addison households with access to vehicles.

The review of the five-year traffic-related contact data suggested that the Addison Police Department has been, for the most part, consistent in the racial/ethnic composition of motorists it comes in contact with during a given year. The consistency of contacts for the past 5 years is in place despite the fact the city demographics are expected to have changed, thus, increasing the number of subjects likely to come in contact with the police.

It is recommended that the Addison Police Department continue to collect and evaluate additional information on traffic-contact data (i.e., reason for PC searches, contraband detected) which may prove to be useful when determining the nature of the traffic contacts police officers are making with all individuals; particularly with African Americans. Although this additional data may not be required by state law, it is likely to provide insights regarding the nature and outcome of all traffic contacts made with the public. As part of this effort, the Addison Police Department is also encouraged to:

- 1) Perform an independent search analysis on the search data collected in 2006.
- 2) Continue to commission data audits in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported

The information provided in this report serves as evidence that the Addison Police Department has, once again, complied with the Texas Racial Profiling Law.

(III) Summary

Checklist

Checklist

The following requirements **were** met by the Addison Police Department in accordance with The Texas Racial Profiling Law:

- Clearly defined act of actions that constitute racial profiling
- Statement indicating prohibition of any peace officer employed by the Addison Police Department from engaging in racial profiling
- Implement a process by which an individual may file a complaint regarding racial profiling violations
- Provide public education related to the complaint process
- Implement disciplinary guidelines for officer found in violation of the Texas Racial Profiling Law
- Collect data (Tier 1) that includes information on
 - a) Race and ethnicity of individual detained
 - b) Whether a search was conducted
 - c) If there was a search, whether it was a consent search or a probable cause search
 - d) Whether a custody arrest took place
- Produce an annual report on police contacts (Tier 1) and present this to local governing body by March 1, 2007.
- Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation

Contact Information

Contact Information

For additional questions regarding the information presented in this report, please contact:

Del Carmen Consulting, LLC
3018 St. Amanda Drive
Mansfield, Texas 76063
817.681.7840
www.texasracialprofiling.com

Disclaimer: The author of this report, Alejandro del Carmen/del Carmen Consulting, LLC, is not liable for any omissions or errors committed in the acquisition, analysis, or creation of this report. Further, Dr. del Carmen/del Carmen Consulting is not responsible for the inappropriate use and distribution of information contained in this report. Further, no liability shall be incurred as a result of any harm that may be caused to individuals and/or organizations as a result of the information contained in this report.

Council Agenda Item: #R6

SUMMARY:

Consideration and approval authorizing the City Manager to enter into contract in the amount of \$30,090.00 with Coffman Associates, Inc., to update the Airport Layout Plan (ALP) for Addison Airport.

FINANCIAL IMPACT:

Budgeted Amount: -0-

A mid-year budget amendment may be needed to recognize the additional expense.

Cost: \$ 30,090.00

BACKGROUND:

The Federal Aviation Administration (FAA) is currently in the process of reviewing an ALP submitted for the Addison Airport that was developed as the result of an updated Airport Master study. Many improvements were proposed, however, due to FAA Advisory Circular changes, airfield improvements proposed on the ALP may have negative airspace implications for Addison Airport. For this reason, staff is requesting an updated Airport Layout Plan (ALP) drawing set to accommodate changes proposed to the development plan as originally proposed in the Airport Master Plan Study. These changes will greatly enhance the airport's ability to provide adequate runway length and also maintain the current level of approach procedures. The project must also include a review and analysis of the proposed runway safety area (RSA) improvements in light of applicable Federal Aviation Administration (FAA) airport design standards. Another important consideration to be studied is the use of Engineered Materials Arresting System (EMAS) applications at the south end of the runway. The following elements will be completed as a part of this project:

1. Update all appropriate ALP drawings with the new development concept. The plan will remove the proposed 408-foot runway extension; however, will include the use of EMAS at the south end of the runway.
2. ALP Drawings Approval Process - This task will include the typical review and revision process to be coordinated with the FAA ALP submittal and review process.
3. Prepare a Runway Safety Area (RSA) Determination - Utilize FAA Order 5200.8, *Runway Safety Area Program*, in analyzing RSA improvements to Runway 15-33. The new development plan will be examined as a means to achieve adequate RSA for both runway ends. EMAS will be considered for the south end RSA improvements.
4. Prepare an EMAS Financial Feasibility Study - Utilize FAA Order 5200.9, *Financial Feasibility and Equivalency of Runway Safety Area Improvements and Engineered Material Arresting Systems*, to determine the financial feasibility of installing EMAS on the south end of the runway.

RECOMMENDATION:

Staff recommends Council authorize the City Manager to enter into contract with Coffman Associates, Inc., to update the Airport Layout Plan upon City Attorneys review of the contract.

Council Agenda Item: #R7

SUMMARY: Consideration of and approval to authorize the City Manager to execute an advertising contract with the Dallas Morning News to provide for advertising in the Dallas Morning News/Guide, Quick and Internet advertising in the amount not to exceed \$152,000.

FINANCIAL IMPACT:

Funds were budgeted in the FY07 Marketing Budget. The cost for each insertion in the Guide is \$5,683; \$2,300 for each insertion in Quick and \$3,500 for 5 two-week Internet campaigns. The total cost is \$151,999.

BACKGROUND: For the past several years the Town has purchased 26 insertions in the Dallas Morning News Friday Guide at a substantially reduced rate with a guarantee of placement on page 2 or 3 of the Guide. The Guide has been an effective mechanism for communicating the many offerings in Addison. Staff still believes that the Guide is effective, but also believes that we need to modify our advertising strategies to reach a younger demographic. Therefore the decision was made to reduce the number of insertions in the Guide to 18 and add 14 insertions in Quick as well as internet advertising utilizing Guidelive. In addition staff is working with Krause to redesign the template for the Guide advertising which will showcase the dining options and special event activities in Addison.

RECOMMENDATION:

| Staff recommends approval subject to final review by the City Attorney.

The Dallas Morning News

DISPLAY Advertising Contract

Dollar volume Contract

 Friday Guide Quick Dallasnews.com and/or Guidelive.com Floating ads

Town of Addison #032811004

Hereinafter referred to as Advertiser hereby contracts with *THE DALLAS MORNING NEWS* for consumption of not less than \$151,999 of advertising, through the use of display advertising (all publications – The Dallas Morning News, Quick, Al Dia), to be published within **twelve (12) months**, such advertising to pertain solely to the business of the Advertiser as now conducted, for which the Advertiser agrees to pay at the office of The Dallas Morning News at Dallas, Texas, in accord with the attached schedule of rates. The term of this agreement is for the period beginning February 13, 2007 and ending February 12, 2008.

1. The Dallas Morning News/Guide, 18 full page insertions on Friday

- *\$98.84 per column inch in black/white , 50% up-charge for full color *Full page in black/white \$5,683.30 *Page 2 position guaranteed
- *Client has an option to switch to page 3 in full color, 3 times a year, full page in full color \$8,524.95
- * Advertising Schedule for 18 full pages in Guide to be delivered to The Dallas Morning News by 2/28/2007
- * Creative art/copy deadline 4pm on Tuesdays of the week of publication

2. Quick, 14 full page insertions in full color on Friday

- *\$40 per column inch in full color *Full page in full color \$2,300
- * Space Reservation deadline 5pm on Tuesday of the week of publication *Creative/art deadline 5pm on Wednesday of the week of publication

3. Internet advertising, Floating advertising (a.k.a. Eye-Blasters), 5-times per 2-week campaign

- * 100,000 impressions each time * \$3,500 per campaign
- * Client can choose for each campaign either dallasnews.com main/home page or guidelive.com main/home page
- * Price includes production and reporting. Production takes 5 business days from idea submission to final release.

4. Value added/Sponsorship Offers

- * Town of Addison will negotiate directly with Quick and with The Dallas Morning News/Community Services Department all the details of value added/Sponsorship programs.
- * Value added/Sponsorship Offers are pending until this contract of \$151,999 is signed.

The Dallas Morning News will provide Advertiser with monthly revenue updates summarizing the advertising revenue spent by Advertiser. If during the Contract Period, Advertiser does not achieve the contracted dollar volume level specified above, Advertiser will be billed and agrees to pay the difference between the amount billed at the discounted rate for the contracted dollar volume level and amount that would have been billed at the rate for the actual dollar volume level. For example, if the contracted dollar volume level is \$500,000 Dollars and Advertiser's actual dollar volume is \$400,000, Advertiser would be charged the difference between the discounted rate charged at the \$500,000 dollar volume level and the rate charged for the \$400,000 Dollar volume level based upon actual advertising volume. Such amount will be due and payable immediately upon receipt of the invoice.

The Dallas Morning News may, during the term of this Agreement, offer different discount programs, designate new Dollar Volume Levels and frequency requirements for advertising. These changes will not be applicable to this Agreement. Rather, the rates and discounts described in this Agreement will apply to the entire Contract Period, except as provided in the Further Conditions attached hereto. In the event any tax is imposed on advertising, Advertiser agrees to pay all such taxes, fees and surcharges.

This Agreement and the attached Further Conditions represents the only Agreement between the parties and may not be modified except in writing signed by both parties. Upon termination of this Agreement, the terms of this Agreement will not be renewable except by written agreement of the parties. The Dallas Morning News is under no obligation to provide the same discount programs or to continue any discounting upon termination of this Agreement.

Upon expiration of the contract term specified above, the contract will continue on a month-to-month basis at Publisher's then current advertising rates. Either party may terminate the month-to-month contract with thirty days' written notice to the other party.

The Display rates of Publisher are based upon the volume or number of inches used by its advertisers. The rates specified herein are to apply only in the event the number of insertions contracted for is used by the Advertiser. An insertion refers to advertising space used on a specific day. Multiple advertisements used in one day are considered one insertion.

The entire contract is expressed on the face hereof and in the additional Further Conditions attached hereto and no verbal agreements, provisions or conditions exist with respect thereto.

Signed:

**The Dallas Morning News
508 Young Street
Dallas, TX 75202-4808**

Town of Addison
P.O. Box 9010
Addison, TX 75001

Signature: _____

Signature: _____

NAME: Heli Zilliacus

NAME:

TITLE: Account Executive

TITLE:

DATE:

DATE:

FURTHER CONDITIONS OF THIS CONTRACT

1. The Publisher reserves the right to edit or reject any advertising tendered under this contract.
2. Payment by Advertiser must be made in Dallas, Texas, and shall be made not later than the 15th of the month for space billed in the preceding calendar month. The Publisher and Advertiser agree that this contract is performable in Dallas County, Texas. Any amount not paid in full by the due date will be considered overdue and incur interest at a rate of 1.5% per month or the maximum amount permitted by law, whichever is less
3. The rates of Publisher as set forth in this Agreement are based upon an assumed classification for the advertising being placed. If at any time the Publisher determines that the advertising being placed does not qualify for the rates set forth, then Publisher shall notify Advertiser that any further inserts run pursuant to this agreement shall be run at a revised rate. Advertiser agrees to pay to Publisher the revised rate for any insertions run after Advertiser has received notice that the rate has been revised and has been advised of the amount of the revised rate. If the advertiser chooses not to pay the revised rate, then the Advertiser must so advise Publisher before any additional insertions are run. If the Advertiser gives notice to Publisher that Advertiser will not pay the revised rate, then this Agreement shall be terminated and the parties shall have no further liability to each other except for amounts owing for advertising run prior to Publisher's receipt of such notice from Advertiser. Upon contract termination, all advertising will be billed at the appropriate rate card rates.
4. Advertisements are to be inserted in accordance with the Publisher's rules of composition, position, and shape.
5. If the Advertiser specifies position, then the Advertiser agrees to pay the rate for such specific position provided the desired position is available. The Publisher does not agree to accommodate a request for a specified position. If a specified position requested by an Advertiser is not available, then the Publisher may position the copy in any position according to the Publisher's rules of composition, position and shape unless the Publisher is notified in writing by the Advertiser that the copy is to be printed only in the specified position and the Advertiser agrees to pay the applicable rate of any copy printed in other than the specified position.
6. In the event the Advertiser fails to make payment as agreed, the Publisher and Advertiser agree that Publisher may at any time discontinue the advertising of Advertiser and cancel this contract. Cancellation of the contract shall in no way affect the obligation of the Advertiser to pay amounts due at the time of cancellation.
7. In case of omission or error in an advertisement as presented, the Publisher shall not be liable for damages, but in such event the Advertiser's sole remedy shall be that the Advertiser shall not be liable for the entire cost of the advertisement. The publisher will determine the % of effective cost due to error and reduce the entire cost of the ad by this % amount. Publisher is the sole judge.
8. Advertising running consecutively will be carried until new copy is furnished or the advertising is ordered suspended. All orders changing copy or suspending an advertisement must be made in writing.
9. In the event of default or other breach of the Advertiser in the undertaking herein, and suit thereon, Advertiser agrees to pay all attorneys fees and costs incurred by Publisher.
10. While this contract is in effect, should any conditions arise which affect the cost of newspaper operation such as, imposition by the Government of a sales tax or increased material or production costs, the Publisher reserves the right to increase the advertising rates named on the reverse side hereof or incorporated, herein by reference. In such event, however, the Publisher must give the Advertiser at least thirty (30) days' notice thereof and if such increase is not satisfactory to the Advertiser, then the Advertiser shall have the privilege of canceling this contract.
11. Advertiser represents and warrants that the material provided by Advertiser for publication in accordance with this Agreement is true, accurate, and correct. Advertiser agrees to indemnify and hold harmless Belo and its directors, officers, agent and employees against and from all claims, exposure, liability, loss, or damage, including reasonable attorney's fees, alleged to be caused by or arising wholly or in part out of the publication of advertiser's material hereunder.
12. This contract made and entered into under Publisher's current published schedule of rates in effect on the date hereof, and by reference such schedule is expressly made a part hereof. Advertiser assumes responsibility for acquainting Advertiser with such current published schedule of rates and Advertiser agrees that Advertiser shall be deemed to know such current published schedule of rates.
13. Advertiser agrees to submit to Publisher in writing, all claims of errors in the statement of account submitted by Publisher within thirty (30) days of billing date. All such claims not submitted shall be considered waived.
14. In the event that Publisher's form "Application for Credit" has been completed and submitted by Advertiser in connection with this contract, Advertiser warrants that the information contained therein is true and correct, and agrees that the making of any false statements therein constitutes a material breach of this agreement.
15. Any Application for Credit executed by Advertiser is hereby made a part of this Contract and incorporated herein fully by reference.
16. The Advertiser, and the person signing in Advertiser's behalf if any, warrants they have the authority to make and sign this agreement.
17. The Advertiser agrees to assume liability for and make payment for all advertising published pursuant hereto in the event the Advertiser's business is sold, merged or otherwise transferred, until such time as a contract is entered into between Publisher and the new owner.
18. Space contracts and frequency contracts are automatically renewed for successive periods of one (1) year rates in effect at time of renewal. Either party may decline such renewal by written notice to the other thirty days prior to the expiration date of the current contract. One-time frequency contracts will not be renewed automatically.

Council Agenda Item: #R8

There are no attachments for this item.

Council Agenda Item:#R9

There are no attachments for this item.

Council Agenda Item:#R10

SUMMARY:

Consideration of a Resolution of the City Council of the Town of Addison encouraging the federal government to enact realistic and sound public laws and policies and to provide appropriate funding to execute the same; providing an effective date.

RECOMMENDATION:

Staff recommends approval.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON ENCOURAGING THE FEDERAL GOVERNMENT TO ENACT REALISTIC AND SOUND PUBLIC LAWS AND POLICIES AND TO PROVIDE APPROPRIATE FUNDING TO EXECUTE THE SAME; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the United States Constitution gives to the federal government certain expressed powers, including the power to lay and collect taxes, to provide for the common defense and general welfare of the United States, to regulate interstate and foreign commerce, to establish a uniform rule of naturalization, to coin money and regulate the value thereof, to establish post offices, to declare war, and to make all laws which are necessary and proper for carrying out the execution of such expressed powers; and

WHEREAS, the Supremacy Clause of the United States Constitution provides that the Constitution and federal laws enacted pursuant thereto are the supreme law of the land, and thus the Constitution and federal laws preempt state and local laws where preemption is expressly stated, where there are conflicts between federal law and state and local laws, where state and local laws impede the achievement of a federal objective, and where the federal law occupies a field; and

WHEREAS, in matters which are preempted and within the province of the federal government, it is proper and fitting that state and local governments look to the federal government to, and should expect that the federal government will, enact realistic and appropriate public laws and policy and provide funding necessary to carry out and execute such laws and policy.

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

Section 1. Where federal authority is preemptive of state and local authority, the federal government is encouraged and expected to adopt and enact realistic, rational, and sound laws and policies, including appropriate funding to execute the same.

Section 2. This Resolution shall take effect upon its adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas on this _____ day of _____, 2007.

Joe Chow, Mayor

ATTEST:

By: _____
Mario Canizares, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

Council Agenda Item # ES1

There are no attachments for this item.

Council Agenda Item # ES2

There are no attachments for this item.