



AGENDA

REGULAR MEETING OF THE CITY COUNCIL

MARCH 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 March 13, 2007, Council Meeting.

#2b - Consideration and approval authorizing the City Manager to approve a Resolution of the Town of Addison, Texas, endorsing certain Legislative changes to enhance the competitive electric market supported by Cities Aggregation Power Project, Inc. (CAPP).

Item #R3 - Dispatchers from the Addison Police Department will be receiving a Proclamation from the Mayor for the National Public Safety Telecommunications Week.

Item #R4 - Discussion and consideration of a Resolution approving the Fourth Amendment to the Master Facilities Agreement (regarding the construction of public improvements within that area generally described as Addison Circle) between the Town of Addison and Fairfield Addison Circle L.P., in order to provide for the construction of certain public streets and streetscaping improvements located generally on the west side of Quorum Drive, north of Goodman Avenue and south of Airport Parkway within the Town, subject to Final Approval by the City Attorney.

Attachments:

1. Council Agenda Item Overview
2. Fourth Amendment to Master Facilities Agreement
3. Quorum Drive Estimate
4. Fairfield @ Addison Circle Illustrative Site Plan

Administrative Recommendation:

Administration recommends approval.

Item #R5 - Consideration of and approval authorizing the City Manager to execute an agreement with Cunningham Architects to assist with the relocation of the historic Addison Train Depot building in an amount not to exceed \$16,000.

Attachments:

1. Council Agenda Item Overview
2. Agreement

Administrative Recommendation:

Administration recommends approval.

EXECUTIVE SESSION

Item #ES1 - 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 #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) to (i) seek the advice of its attorney(s) about pending litigation, to wit: *In re Calla Davis, et al*, Case No. 07-0147, Supreme Court of Texas, and (ii) 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 the sale of alcoholic beverages, and including House Bill No. 2957 and Senate Bill 1735 filed with the 80th Regular Session of the Texas Legislature.

Item #ES3 – 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 matters concerning access to Addison Airport and including House Bill 2955 and Senate Bill 1462 filed with the 80th Regular Session of the Texas Legislature.

Item #ES4 - 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 matters concerning and including the Dallas Area Rapid Transit 2030 Transit System Plan and the Cotton Belt Rail Line, and House Bill No. 107 filed with the 80th Regular Session of the Texas Legislature

Item #ES5 - Closed (executive) session of the City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney(s) to seek the advice of its attorney(s) about pending litigation, to wit: *Eddins Enterprises, Inc., dba Friendly Aviation and RSP Management*

Services, Inc. v. The Town of Addison, Texas, Cause No. 05-11030-K, 192nd Judicial District Court, Dallas County, Texas

Item #R6 - Consideration of a Resolution approving compensation for the City Manager.

Item #R7 - Discussion and consideration of any action in connection with or related to pending litigation, to wit: *In re Calla Davis, et al*, Case No. 07-0147, Supreme Court of Texas, and/or relating to the sale of alcoholic beverages, and including House Bill No. 2957 and Senate Bill 1735 filed with the 80th Regular Session of the Texas Legislature

Item #R8 - Discussion and consideration of any action in connection with or related to access to Addison Airport, including House Bill 2955 and Senate Bill 1462 filed with the 80th Regular Session of the Texas Legislature.

Item #R9 - Discussion and consideration of any action in connection with or related to the Dallas Area Rapid Transit 2030 Transit System Plan and the Cotton Belt Rail Line, and House Bill No. 107 filed with the 80th Regular Session of the Texas Legislature.

Item #R10 - Discussion and consideration of any action in connection with or related to pending litigation, to wit: *Eddins Enterprises, Inc., dba Friendly Aviation and RSP Management Services, Inc. v. The Town of Addison, Texas*, Cause No. 05-11030-K, 192nd Judicial District Court, Dallas County, Texas

Adjourn Meeting

Posted at 5:00 p.m. on March 23, 2007
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

March 13, 2007
7:30 P.M. – Town Hall
5300 Belt Line Road

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

Absent: Councilmember Hirsch

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Brandon Graham with the Public Works Department, Bryan Warning with the Special Events Department and Bobby Wayne Johnson with the Fire Department.

Item #R2 - Consent Agenda.

Item #2b was considered separately.

#2a - Approval of the Minutes for the February 27, 2007, Council Meeting. Approval of the Minutes for the February 26, 2007, Special Meeting. (Approved as written.)

Councilmember Niemann moved to duly approve the Minutes for February 27, 2007, Council Meeting and the Minutes for the February 26, 2007, Special Meeting.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Kraft, Mallory, Mellow, Niemann

Voting Nay: None

Absent: Hirsch

#2b - Consideration and approval to authorize the City Manager to enter into an annual contract with Yellow Rose Landscape Services totaling \$65,223.61 for planting seasonal color.

Councilmember Mallory moved to duly authorize the City Manager to enter into an annual contract with Yellow Rose Landscape Services totaling \$65,223.61 for planting seasonal color.

Councilmember Niemann seconded. Motion carried.

Voting Aye: Chow, Braun, Kraft, Mallory, Mellow, Niemann

Voting Nay: None

Absent: Hirsch

Item #R3 - Presentation of the Government Finance Officers Association (GFOA) "Certificate of Achievement for Excellence in Financial Reporting" to the Town of Addison for its Comprehensive Annual Financial Report (CAFR).

Randy Moravec made the presentation of the Certificate of Achievement for Excellence in Financial Reporting. No action was required for this item.

Item #R4 - Consideration and approval to authorize the City Manager to release the 2006 Comprehensive Annual Financial Report (CAFR) is requested.

Councilmember Niemann moved to duly authorize the City Manager to release the 2006 Comprehensive Annual Financial Report (CAFR).

Councilmember Kraft seconded. Motion carried.

Voting Aye: Chow, Braun, Kraft, Mallory, Mellow, Niemann

Voting Nay: None

Absent: Hirsch

Item #R5 - Consideration and approval to authorize the City Manager to enter into an Interlocal agreement with the North Central Texas Council of Governments (NCTCOG) for purposes related to the implementation of Governmental Accounting Standards Board (GASB) Statement Number 45.

Councilmember Mallory moved to duly authorize the City Manager enter into an Interlocal Agreement with the North Central Texas Council of Governments (NCTCOG) for purposes related to the Implementation of Governmental Accounting Standards Board (GASB) Statement Number 45.

Councilmember Niemann seconded. Motion carried.

Voting Aye: Chow, Braun, Kraft, Mallory, Mellow, Niemann

Voting Nay: None

Absent: Hirsch

Item #R6 - Consideration and approval to authorize the City Manager to enter into a contract with Gabriel, Roeder, Smith, & Company (GRS) to perform actuarial services related to the implementation of Governmental Accounting Standards Board (GASB) Statement Number 45.

Councilmember Niemann moved to duly authorize the City Manager to enter into a contract with Gabriel, Roeder, Smith & Company (GRS) to perform actuarial services related to the implementation of Governmental Accounting Standards Board (GASB) Statement Number 45, subject to City Attorney's approval.

Councilmember Mellow seconded. Motion carried.

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

Councilmember Niemann recused himself and left the Council Chambers.

Item #R7 - Consideration and approval of a resolution of the City Council of the Town of Addison, Texas, in support of the application of Prestonwood Market Square, Ltd., HSM Pepper Square Partners, Ltd., to the Texas Commission on Environmental Quality for a municipal setting designation for properties located at 14856 Preston Road, 14902 Preston Road, 6160 Belt Line Road and adjacent streets rights of way in Dallas, Texas; providing an effective date.

Councilmember Kraft moved to duly approve Resolution No. R07-007 of the City Council of the Town of Addison, Texas, in support of the application of Prestonwood Market Square, Ltd., HSM Pepper Square Partners, Ltd., to the Texas Commission on Environmental Quality for a municipal setting designation for properties located at 14856 Preston Road, 14902 Preston Road, 6160 Belt Line Road and adjacent streets rights of way in Dallas, Texas; providing an effective date.

Councilmember Mallory seconded. Motion carried.

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

Councilmember Niemann returned to the Council Chambers.

Item #R8 - **PUBLIC HEARING**, requesting approval of an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only for Logan's, located at 5290 Belt Line Road, Suite 150, represented by Mr. Jack Bendetti.

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 Mallory moved to duly approve an amendment to an existing Special Use Permit (Ordinance No. 007-008) for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only for Logan's, located at 5290 Belt Line Road, Suite 150, represented by Mr. Jack Bendetti, subject to the following conditions:

-All mechanical equipment on the new building shall be completely screened from view. The screening material shall be architecturally

compatible to the building, and the Building Official shall make the determination of “architecturally compatible.”

-The applicant shall not use any terms or graphic depictions that denote alcoholic beverages in exterior signs.

-The applicant should be aware that he will be required to comply with all requirements of the building and fire codes.

Councilmember Kraft seconded. Motion carried.

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

Mayor Chow recused himself and left the Council Chambers.

Item #R9 - **PUBLIC HEARING**, requesting approval of a Special Use Permit for a Restaurant, Pho Quo Huong, located at 4826 Belt Line Road, represented by Mr. Sonny Huynh.

Deputy Mayor Pro – Tem Braun opened the meeting as a public hearing. There were no questions or comments. Deputy Mayor Pro-Tem Braun closed the meeting as a public hearing.

Councilmember Kraft moved to duly approve Special Use Permit (Ordinance No. 007-009) for a Restaurant, Pho Quo Huong, located at 4826 Belt Line Road, represented by Mr. Sonny Huynh, subject to the following condition:

-The parking requirement for this restaurant shall be set at 15 spaces.

Councilmember Mellow seconded. Motion carried.

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

Mayor Chow returned to Council Chambers.

Item #R10 - Consideration and approval to authorize the City Manager to enter into a contract with Ratliff Hardscape totaling \$155,584 for construction of screening walls on Les Lacs Drive - Grand Homes Subdivision and Beltway Drive - Chatham Court Subdivision.

Councilmember Braun moved to duly authorize the City Manager enter into a contract with Ratliff Hardscape totaling \$155,584 for construction of screening walls on Les Lacs Drive – Grand Homes Subdivision and Beltway Drive - Chatham Court Subdivision.

Councilmember Niemann seconded. Motion carried.

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

At 8:42 P.M., Mayor Chow announced that Council would convene into Executive Session to discuss the following Item:

ES #1 - Closed (executive) session of the City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney(s) on a matter in which the duty of the attorney(s) to the Town Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Tex. Gov. Code, regarding and relating to the Addison Airport fuel farm and its construction.

The Council came out of Executive Session at 9:11 P.M.

Item #R11 - Consideration and approval to authorize the City Manager to approve a payment to Thielsch Engineering including 50% of Retainage and Change Order No. 2, for necessary additions as constructed on the Addison Airport Bulk Fuel Storage Facility.

Councilmember Mallory moved to duly authorize the City Manager to approve a payment to Thielsch Engineering including 50% of Retainage in the amount of \$53,175.00, and Change Order No. 2, in the amount of \$62,980.00, for necessary additions as constructed on the Addison Airport Bulk Fuel Storage Facility.

Councilmember Niemann seconded. Motion carried.

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

Item #R12 - Consideration and approval to authorize the City Manager to approve Change Order No. 3, for corrective measures to make the Addison Airport Bulk Fuel Storage Facility operational.

Councilmember Niemann moved to duly authorize the City Manager to approve Change Order No. 3, not to exceed \$40,000.00, for corrective measures to make the Addison Airport Bulk Fuel Storage Facility operational.

Councilmember Braun seconded. Motion carried.

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

Item #R13 - Consideration and approval to authorize the City Manager to execute a supplemental agreement to the Engineering Services Agreement with Robert and Company, Inc., for construction management services related to the Addison Airport Bulk Fuel Storage Facility.

Councilmember Niemann moved to duly authorize the City Manager to execute a supplemental agreement to the Engineering Services Agreement with Robert and Company, Inc., in the amount of \$20,000.00, for construction management services related to the Addison Airport Bulk Fuel Storage Facility.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Kraft, Mallory, Mellow, Niemann

Voting Nay: None

Absent: Hirsch

Item #R14 - Discussion and consideration of any additional or further action to be taken regarding and relating to the Addison Airport Fuel Farm and its construction.

No action was taken on this Item. The item was withdrawn by Staff.

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

Mayor

Attest:

City Secretary

Council Agenda Item: #2b

SUMMARY:

Council approval is requested endorsing legislative action to assure a truly competitive market for electric power consumers in Texas.

FINANCIAL IMPACT:

There is no direct financial impact associated with this item. The Town currently spends over \$1.1 million annually in electricity costs. A more competitive market could reduce these costs.

BACKGROUND:

The Town is a member of Cities Aggregation Power Project, Inc. ("CAPP"). Together with its sister aggregation group, the South Texas Aggregation Project ("STAP"), CAPP is one of the largest electric aggregation groups in Texas. CAPP and STAP have more than 140 member cities. CAPP has served as a vehicle to increase cities' ability to navigate the deregulated market and bargain for the best rates and contract terms. CAPP members enjoy the benefits of favorable contractual terms and a negotiated commodity rate that has produced savings for its members for the past five years averaging 20 percent compared to what members would have paid according to the Price-to-Beat rates.

As an active market participant, CAPP is in the unique position to identify problems that have developed in the deregulated marketplace. In order to ensure that the Texas retail electric market is a truly competitive market with low prices throughout Texas, CAPP has created a legislative agenda that aims to encourage competition by limiting market power, eliminating cost shifting, and creating competitive options for all customers.

Several changes should be made to the deregulation statute (SB 7) to better protect cities' budgets, enhance cities' ability to protect their citizens, and increase competition among retail providers. The following changes are proposed by the CAPP Board:

- To institute limits upon the ownership and control of generation within functional markets (ERCOT zones) and require further Commission action to mitigate market control. This change will address market power concerns and promote greater competition. This objective is a principal component of the comprehensive electric legislative package filed by Chairman Fraser and Chairman King (**SB 483 and HB 1190**).
- To authorize "opt-out" aggregation Projects that will permit cities and towns with populations less than 50,000 to aggregate the load of all of their residents that have not specifically asked to be excluded from the aggregation project. Currently, the statute permits citizen aggregation projects, but requires all customers to affirmatively "opt-in" to the aggregation group. This has created a significant disincentive to create citizen aggregation projects. Changing citizen aggregation from opt-in to opt-out will enhance the opportunities for rural residential customers to benefit from deregulation and benefit the entire state by increasing competition (**SB 1401 and HB 3498**).

- To ensure that a modest amount (15 percent of installed capacity) of low-cost baseload generation capacity is made available for sale to Competitive Retail Electric Providers at their variable cost plus ten percent. Texas municipalities and customers currently pay generators prices for “baseload” electric energy needs that are inflated well beyond their actual costs because the power is priced as if it were produced by high-priced natural gas-fueled plants even though it is actually produced at a much lower cost by lignite, coal and nuclear plants **(HB 3348)**.
- To declare the current "uniform pricing system" in the balancing energy market unreasonable and direct the Public Utility Commission to adopt rules that will provide for a pricing system that does not produce windfall profits for generators and needlessly inflate energy cost to Texas businesses and consumers **(HB 3349)**.
- To remove unnecessary administrative obstacles in the Local Government Code that prevents cities from taking full advantage of electric competition. CAPP recognizes the importance of diversifying its energy portfolio and is investigating opportunities to add long term power contracts to ensure more price stability, but current provisions of the Local Government Code may make the contracting process unnecessarily cumbersome **(SB 787 and HB 1749)**.

The CAPP Board, made up exclusively of City representatives, requests that the City Council pass the attached resolution endorsing CAPP’s legislative agenda

.RECOMMENDATION:

It is recommended Council approve the attached resolution. Attached are several issue statements that elaborate on the items discussed above.



#2b

Important Policy Issue for 80th Legislative Session:

Texans Need Relief from Excessive Market Power in the State's Wholesale Market

Contrary to the original objectives and expectations of passage of Senate Bill 7 in 1999, the deregulation of electric energy rates in Texas has not produced the benefits envisioned for either the wholesale or retail markets.

And while the reasons that prices have increased dramatically since S.B. 7's inception are numerous and interconnected, one of the primary contributors is the concentration of ownership of power generation in ERCOT's wholesale market.

Some generators—known as pivotal suppliers—control so much capacity that the market must accept at least part of their offers to meet demand, no matter the price. Thus, they can virtually dictate prices most of the year. Certain generators are even more dominant within the smaller zones that make up the ERCOT market. Under some circumstances, each smaller zone can in effect become its own market, and companies with large amounts of generation in particular zones can have increased influence over those smaller markets.

CAPP* members are deeply concerned that such concentration of power has damaged the market's ability to create competitive pricing, which in turn has resulted in higher prices for city governments, local businesses and Texas consumers. The problem is particularly acute in areas where generators control so much capacity — either because they own it themselves or have contracted for capacity from other generators — that their dominance approaches a monopoly.

CAPP members urge the legislature to focus on this serious problem that undermines the objectives of deregulation and to enact measures to prohibit a generator from owning more than 20 percent of ERCOT's system's total capacity or the capacity located within each zone of ERCOT.

**Cities Aggregation Power Project (CAPP) is a political subdivision corporation and registered aggregator for its almost 100 member cities and utility districts, all of whom are located in the areas of Texas that are open to retail electric competition. CAPP's members are concerned about the effect of rising energy costs on their own budgets as commercial consumers, but are also troubled by the prospect that Texas's increasingly expensive electric rates may compel large energy consumers to locate their businesses in other states or countries, taking with them needed jobs, tax revenue, and the potential for further economic development.*



#2b

Important Policy Issue for 80th Legislative Session:

Texas Cities Seek Savings in Electric Bills for Their Citizens With Opt-out Aggregation

Over the past five years, more than 90 Texas municipalities have saved money on their electric bills by combining their electric needs for volume discounts in the electric market. The \$80 million dollars saved by these municipalities is a direct result of a provision in the state's deregulation legislation allowing Texas municipalities to join together and aggregate their electric purchases.

Unfortunately, the same opportunity for savings through aggregation is not easily available to citizens. Cities' aggregation has been limited to the energy used to power city-operated facilities such as water pumps and traffic lights. Current law specifies that the city can pool the power needs of its citizens and purchase power on their behalf *only if* each citizen affirmatively chooses to be part of the aggregation group (*known as opt-in aggregation*).

As experience has shown, that is an unrealistic expectation. Consumers will not sign up for aggregation until they know how much they will save. And no Retail Electric Provider can tell how much money will be saved unless/until it has a reliable estimate of the number of customers who will be part of the aggregation group. Opt-out aggregation for citizens has worked in other states and will work to bring savings to Texans.

To provide Texas consumers the same savings that their municipal governments have secured for themselves, CAPP* urges the Legislature to amend current law to allow ratepayers to aggregate their demand and gain negotiating power for electric rates, unless they choose to opt-out of the aggregation program. That action still will permit every citizen freedom of choice whether to participate and will fulfill the promise of citizen aggregation as originally envisioned by the legislation.

**Cities Aggregation Power Project (CAPP) is a political subdivision corporation and registered aggregator for its almost 100 member cities and utility districts, all of whom are located in the areas of Texas that are open to retail electric competition. CAPP's members are concerned about the effect of rising energy costs on their own budgets as commercial consumers, but are also troubled by the prospect that Texas's increasingly expensive electric rates may compel large energy consumers to locate their businesses in other states or countries, taking with them needed jobs, tax revenue, and the potential for further economic development.*

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF _____, TEXAS, ENDORSING CERTAIN LEGISLATIVE CHANGES TO ENHANCE THE COMPETITIVE ELECTRIC MARKET SUPPORTED BY CITIES AGGREGATION POWER PROJECT, INC.

WHEREAS, the City of _____, Texas (City) has historically been active in the process of regulation of electric utilities; and

WHEREAS, the City is a member of Cities Aggregation Power Project, Inc. (CAPP) and, as such, made a decision to join with more than 95 other cities to switch its municipal electric accounts from its incumbent provider to a retail electric provider; and

WHEREAS, CAPP's experience with the deregulated market and contracts with several different retail electric providers has indicated that the Texas electric retail market has failed to develop into a truly competitive market as envisioned by the Texas Legislature in part because congestion zones within the ERCOT market have allowed certain market players to control enough generation capacity within a given zone to exercise market power to the detriment of customers and non-affiliated retail electric providers; and

WHEREAS, retail electric price competition has not successfully reached residential customers in Texas communities with populations less than 50,000; and

WHEREAS, Texas municipalities and customers currently pay generators prices for “baseload” electric energy needs that are inflated well beyond their actual costs because the power is priced as if it were produced by high-priced natural gas-fueled plants even though it is actually produced at a much lower cost by lignite, coal and nuclear plants; and

WHEREAS, power generators are receiving windfall profits for and energy costs for Texas businesses and consumers are needlessly inflated because of a mechanism known as the “uniform-price auction,” which pays every generator the highest price ERCOT is required to accept to meet demand regardless of what portion of the purchase required that price; and

WHEREAS, CAPP recognizes the importance of diversifying its energy portfolio and is investigating opportunities to add long term power contracts to ensure more price stability, but current provisions of the Local Government Code may make the contracting process unnecessarily cumbersome; and

WHEREAS, the City endorses efforts proposed by CAPP to modify the electric deregulation legislation to enhance competition, implement the original intent of SB 7 and reduce costs to the City and its residents.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF _____, TEXAS, THAT:

I.

The following legislative reforms endorsed by CAPP to limit market power, create effective citizen aggregation, and be supported by the City:

- Limit the ownership and control of generation within functional markets (ERCOT zones) and require further Commission action to mitigate market control (**SB 483 and HB 1190**).
- Authorize citizen aggregation projects that will permit cities and towns with populations less than 50,000 to aggregate the load of all of their residents that have not specifically asked to be excluded from the aggregation project to enhance the opportunities for rural residential customers to benefit from deregulation and benefit the entire state by increasing competition (**SB 1401 and HB 3498**).
- Ensure that a modest amount (15 percent of installed capacity) of low-cost baseload generation capacity is made available for sale to Competitive Retail Electric Providers at their variable cost plus ten percent (**HB 3348**).
- Declare the current "uniform pricing system" in the balancing energy market unreasonable and direct the Public Utility Commission to adopt rules that will provide for a pricing system that does not produce windfall profits for generators and needlessly inflate energy cost to Texas businesses and consumers (**HB 3349**).
- Remove unnecessary administrative obstacles in the Local Government Code that prevent cities from taking full advantage of electric competition (**SB 787 and HB 1749**).

II.

A copy of the resolution shall be sent to the elected lawmakers representing the City's interests in the Texas House and Senate and to the Chairman and legal counsel of CAPP.

PRESENTED AND PASSED on this _____ day of _____, 2007, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of _____, Texas.

Mayor

ATTEST:



#2b

Important Policy Issue for 80th Legislative Session:

Texas Municipalities Urge Reform of Uniform-Price Energy Auction That Produces Unwarranted Windfall Profits for Generators

Imagine that you are the owner of a barbeque restaurant in Austin. You ask your supplier to purchase three cords of special fire wood. Your supplier reports that one rancher has one cord for \$120 while another rancher could part with a cord for \$140. But the only other rancher willing to supply the last cord charges \$500. Then your supplier tells you that because he has to pay \$500 to the third rancher, a quirk in the state law requires him to also pay the first two ranchers \$500 even though they were willing to take less originally.

Crazy? That is exactly what is happening in the ERCOT deregulated wholesale market in Texas. And it is costing Texans.

Under the mechanism known as the “uniform-price auction,” every generator is paid at the highest price ERCOT was required to accept to meet demand regardless of what portion of the purchase required that price.

In other words, if power generators A, B and C bid an average price of \$81 per MWh for 90 percent of the energy demand, but generator D demanded \$285 per MWh for the final 10 percent of the order, all four bidders would be paid \$285, even though generators A, B, and C all offered much lower prices.

CAPP members urge action to reform this unfair system that produces windfall profits for generators and needlessly inflates energy cost to Texas businesses and consumers.

**Cities Aggregation Power Project (CAPP) is a political subdivision corporation and registered aggregator for its almost 100 member cities and utility districts, all of whom are located in the areas of Texas that are open to retail electric competition. CAPP's members are concerned about the effect of rising energy costs on their own budgets as commercial consumers, but are also troubled by the prospect that Texas's increasingly expensive electric rates may compel large energy consumers to locate their businesses in other states or countries, taking with them needed jobs, tax revenue, and the potential for further economic development.*



#2b

Important Policy Issue for 80th Legislative Session:

Texas Needs Reform in Unfair, Artificial Pricing of Baseload Electric Energy

Texas municipalities and industry currently pay generators prices for routine, or “baseload” electric energy needs, that are inflated well beyond their actual costs. The reason? Such power is priced as if it were produced by high-priced natural gas-fueled plants, when it is actually produced at a much lower cost by lignite, coal and nuclear plants. The state's inflated prices for baseload energy have become a serious issue with leaders of Texas industry, who will likely build future manufacturing plants elsewhere.

To make these inflated prices even more unfair, this artificially high-priced energy is produced by baseload plants that consumers will be paying for in the form of so-called “stranded costs” for years.

Municipalities across Texas whose budgets are held hostage to these falsely-inflated prices, along with business leaders, urge the legislature to reform this unexpected and negative result of deregulation. CAPP* proposes legislation that will require owners of low-cost baseload generation capacity to sell 15 percent of that capacity to Retail Electric Providers at their variable cost plus ten percent (*and not a price that is benchmarked to natural gas power production*).

This reform will still provide fair prices to generators. More importantly, it will restore much-needed fairness to Texas consumers who will be paying unjustified “stranded costs” payments to utilities for years, and will help return Texas to a competitive position in economic development.

**Cities Aggregation Power Project (CAPP) is a political subdivision corporation and registered aggregator for its almost 100 member cities and utility districts, all of whom are located in the areas of Texas that are open to retail electric competition. CAPP's members are concerned about the effect of rising energy costs on their own budgets as commercial consumers, but are also troubled by the prospect that Texas's increasingly expensive electric rates may compel large energy consumers to locate their businesses in other states or countries, taking with them needed jobs, tax revenue, and the potential for further economic development.*

Council Agenda Item:#R3

There are no attachments for this item.

Council Agenda Item: #R4

SUMMARY:

Discussion and consideration of a Resolution approving the Fourth Amendment to the Master Facilities Agreement (regarding the construction of public improvements within that area generally described as Addison Circle) between the Town of Addison and Fairfield Addison Circle L.P., in order to provide for the construction of certain public streets and streetscaping improvements located generally on the west side of Quorum Drive, north of Goodman Avenue and south of Airport Parkway within the Town, subject to Final Approval by the City Attorney.

FINANCIAL IMPACT:

Budgeted Amount: Item was not budgeted, but can be supported from unallocated balances in various capital project funds. These balances are a result from interest earnings from invested bond proceeds.

Funding Amount: An amount not to exceed \$471,947.74. (estimate attached). Fairfield Addison Circle L.P. will pay the Town \$184,247.00 toward this project. However, since there are sufficient funds in the streets capital projects fund for this project, the Town will deposit the \$184,247.00 in the general fund so that it may possibly be used for other projects.

BACKGROUND:

On December 16, 2003, the Town entered into the Third Amendment to the Master Facilities Agreement for the construction of public infrastructure in Addison Circle. Under Section 10, subsection (2) of the Third Amendment, the Town agreed to design and construct the improvements on the west side of Quorum Drive. As part of the agreement, the property owner would contribute \$184,247.00 toward the cost of the project, but the Town would design, construct, and manage the project.

The Town had the project designed by Huitt Zollars in 2005. Since that time, the Town has been working with Fairfield Residential on the design and construction of all the remaining public streets in Addison Circle. Fairfield recently began construction on the streets shown on the attached exhibit, and as a part of that construction, the Town and Fairfield have agreed to have the Fairfield contractor construct the west side of Quorum streetscaping. The Fourth Amendment to Master Facilities Agreement, which is attached, sets forth the terms and conditions under which the Town will participate in the construction of these remaining improvements. The agreement lists many exhibits including the construction plans for the streetscaping and the master ordinance for Addison Circle. The staff did not attach all exhibits, but will provide them upon request.

Once the streetscaping is completed, the Town will have one final obligation to support development in the Addison Circle Urban District. The Town is committed to pay \$700,000 for the development of a park adjacent to the Fairfield development.

RECOMMENDATION:

Staff recommends the Council pass a Resolution approving the Fourth Amendment to the Master Facilities Agreement (regarding the construction of public improvements within that area generally described as Addison Circle) between the Town of Addison and Fairfield Addison Circle L.P., in order to provide for the construction of certain public streets and streetscaping improvements located generally on the west side of Quorum Drive, north of Goodman Avenue and south of Airport Parkway within the Town, subject to final approval by the City Attorney.

Staff recommends the agreement be approved by the Council subject to final approval by the City Attorney so that any changes suggested by Fairfield or the Council can be considered by the City Attorney and incorporated if appropriate.

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

#R4

**FOURTH AMENDMENT
TO MASTER FACILITIES AGREEMENT**

This Fourth Amendment to Master Facilities Agreement (the "Fourth Amendment") is entered into this the ____ day of _____, 2007 by and between the Town of Addison, Texas (the "City") and _____, a _____ ("Fairfield").

Recitals:

1. Addison Circle. There is located within the City an area generally known as Addison Circle (and so called herein). The development of the Addison Circle area is controlled by Ordinance No. O95-032 of the City, which Ordinance zoned the area UC Urban Center District and approved a Concept Plan (the "Concept Plan") for its development. The UC Urban Center District Regulations (the "UC District Regulations") are set forth in Ordinance No. O95-019 of the City (a true and correct copy of which is attached hereto as Exhibit 4 and incorporated herein), and are codified in Article XIX of Appendix A–Zoning of the City's Code of Ordinances.

2. Phased Development. As reflected in Ordinance No. O95-032 and the Concept Plan, the Addison Circle area was to be developed in three phases (Phase I, Phase II (to be developed in subphases), and Phase III) with a mixture of uses, including multi-family, residential, retail, office, and civic uses.

3. City Participation in Public Facilities in Residential Subdistrict. Included within the Addison Circle area is a residential subdistrict, as shown on the Concept Plan. To encourage the implementation of the City's comprehensive plan relating to the development of the residential subdistrict and to assure that such development was adequately supported by appropriate levels of public facilities and services, the City Council, by Resolution R95-043, approved the expenditure of public funds in the amount of \$9 million (the "City Funds") to be used to pay a portion of the design and construction costs of certain public improvements within the residential subdistrict. The residential subdistrict is described in Resolution R95-043 and is referred to herein as the "Residential Subdistrict."

4. Master Facilities Agreement.

A. In order to establish a process for the allocation of the City's Funds, to coordinate the construction of the public and private improvements within the Residential Subdistrict, and to further the purposes of Resolution R95-043, on July 17, 1995 the City entered into a Master Facilities Agreement with the then owners of all of the Residential Subdistrict, being Gaylord Properties, Inc. ("Gaylord") and Columbus Realty Trust ("Columbus"). Since the date of its execution, the Master Facilities Agreement has been amended three times, first by that "Amendment to Master Facilities Agreement" dated October 28, 1997, second by that "Second

Amendment to Master Facilities Agreement" dated December 2, 1998, and third by that "Third Amendment to Master Facilities Agreement" dated December ___, 2003 (the "Third Amendment"). The Master Facilities Agreement, as amended, is referred to herein as the "Master Facilities Agreement," and is attached hereto (together with its three amendments) as Exhibit 1.

B. The Master Facilities Agreement, in Exhibit 4 thereto, describes the nature of the Public Infrastructure Improvements (or "Improvements," as defined in the Master Facilities Agreement) covered by the Master Facilities Agreement and the maximum amounts to be paid by the City toward the design and construction of each of the Improvements.

5. Remaining Property. The only portion of the Residential Subdistrict in which Improvements have not yet been constructed is described in Exhibit 2 attached hereto and incorporated herein (the "Remaining Property"). Fairfield is the sole owner of the Remaining Property, and is the successor in interest by way of conveyance to all of the rights, duties, and obligations of Gaylord and Columbus under the Master Facilities Agreement solely with respect to the Remaining Property.

6. Remaining Improvements. There remain to be constructed within the Remaining Property certain of the Improvements (the "Remaining Improvements"), as follows:

A. *West Side of Quorum Drive*. The Third Amendment to the Master Facilities Agreement identified and described certain of the Improvements then remaining to be constructed, a portion of which were certain street infrastructure improvements (the "Street Improvements"). Those Street Improvements included certain improvements described in the Third Amendment as the "Quorum Drive Improvements" (and so called herein, and consisting of paving, streetscape (as described in the UC District Regulations, and in particular Appendices A and B thereof), storm sewer, and wastewater improvements for a portion of Quorum Drive as depicted and/or described in the Third Amendment).

The Quorum Drive Improvements were divided by the Third Amendment into the improvements to be constructed on the east and west sides of Quorum Drive, and defined and described in the Third Amendment (and so called herein) as the "East Side of Quorum Improvements" and the "West Side of Quorum Improvements." Of the Street Improvements, only the West Side of Quorum Improvements remain to be constructed.

B. *Mews Park*. Once the West Side of Quorum Drive Improvements have been constructed, the only Improvements then remaining to be constructed pursuant to the Master Facilities Agreement is the Mews Park (as described in the Master Facilities Agreement). This Fourth Amendment is not intended to address the construction of the Mews Park and, except as set forth herein, the construction of the Mews Park shall continue to be controlled by the Master Facilities Agreement as amended prior to this Fourth Amendment.

7. Remaining City Funds. City Funds remaining to be expended on the Remaining Improvements total One Million One Hundred Seventy One Thousand, Nine Hundred Forty-Seven and 74/100 Dollars (\$1,171,947.74) (the "Remaining City Funds"), as follows:

A. The portion of the Remaining City Funds to be expended in connection with the West Side of Quorum Improvements totals \$471,947.74. A portion of that amount is, however, to be paid by Fairfield to the City - under the Third Amendment, the City was to design and construct the West Side of Quorum Improvements at its cost and expense, less the sum of \$184,247.00 to be paid by the owner of the then remaining property to the City (such sum being described in the Third Amendment as the "Owner's Quorum Payment" and described herein as the "Fairfield Quorum Payment"). Therefore, the \$471,947.74 is comprised of the City's portion (\$287,700.74) (the "City Street Funds") plus the Fairfield Quorum Payment.

B. The rest of the Remaining City Funds (\$700,000.00) is to be expended in connection with the construction of the Mews Park.

8. Remaining Street Improvements. In the development of the Remaining Property there are, in addition to the West Side of Quorum Improvements, certain other public streets to be constructed, identified on Exhibit 3 attached hereto and incorporated herein (the "Other Public Streets"). The Other Public Streets were to be designed and constructed by Fairfield at its sole cost and expense. In lieu of the City paying for the construction of the West Side of Quorum Improvements and Fairfield paying for the construction of the Other Public Streets, and in order to coordinate and facilitate the construction of all of such public facilities (the West Side of Quorum Improvements and the Other Public Streets being referred to herein together as the "Remaining Street Improvements"), the parties desire to modify the Master Facilities Agreement by providing that the Remaining Street Improvements are to be constructed and paid for by Fairfield, with the City paying for a portion of the cost to construct the Remaining Street Improvements in an amount not to exceed (i) \$471,947.74 (the "City Remaining Street Funds"), or (ii) thirty percent (30%) of the total construction contract price, whichever is less.

9. Amendment to Master Facilities Agreement. By this Fourth Amendment, the City and Fairfield desire to supplement and amend the Master Facilities Agreement to reflect their intent and desire regarding construction and funding of the Remaining Street Improvements.

NOW, THEREFORE, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town of Addison, Texas, Fairfield _____, and _____, do hereby agree as follows:

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

Section 2. Remaining Street Improvements. The Remaining Street Improvements, as described and defined in the Recitals above, shall be constructed by Fairfield in accordance with and subject to the following:

A. Design; Construction; Partial Reimbursement. Fairfield shall design and construct the Remaining Street Improvements as described in this Fourth Amendment. Such

design and construction shall be in accordance with and subject to the zoning for the Remaining Property, the Concept Plan, and all other applicable ordinances, laws, standards, rules, regulations and codes of the City and any other governmental entity having jurisdiction over the Remaining Property, and with all of the terms and conditions of this Fourth Amendment, including the following:

1. *Payment of Fairfield Quorum Payment.* Upon the effective date of this Fourth Amendment, Fairfield shall pay to the City the Fairfield Quorum Payment in the amount of \$184,247.00.

2. *Design.* Fairfield shall, at its sole cost and expense, design or cause the design of the Remaining Street Improvements, which design shall be prepared by a design professional (e.g., registered professional engineer, architect, landscape architect), registered and licensed to provide its services in the State of Texas ("Design Professional"), as appropriate, and acceptable in form and content to the City. Any and all design plans and specifications ("Plans"), including any changes thereto, shall be sealed or otherwise certified (as may be required and in accordance with law and the City's ordinances, rules, regulations, and code) by the Design Professional and shall be submitted by Fairfield to the City's Director of Public Works (the "Director") for review and consideration of approval. Approval by the City shall not constitute nor be deemed a release of the responsibility and liability of Fairfield or the Design Professional for the accuracy and competency of the same, nor shall such approval be deemed to be an assumption of or an indemnification for such responsibility or liability by the City for any defect, error or omission in such design plans or specifications.

3. *Construction.*

(a) Upon its receipt of the City's approval of the Plans, Fairfield shall promptly enter into a contract with a contractor (the "Contractor"), acceptable to the City, to construct the Remaining Street Improvements (the "Street Construction Contract" or "Contract"). The Contract (and any change orders thereto) shall be submitted to the City for its review and consideration prior to execution, and upon execution, Fairfield shall provide the City with a true and correct copy of the Contract (and any change orders). In the event the City finds that the Contract amount (including any change orders thereto) is excessive, the City shall notify Fairfield and Fairfield shall seek to reduce the cost of the Contract (and any change orders thereto) (the Contract amount is sometimes referred to hereinafter as the "Street Construction Cost"). Upon entering into the Contract, the construction of the Remaining Street Improvements shall be promptly commenced and thereafter diligently prosecuted to completion. All work on the Remaining Street Improvements shall be performed in a good and workmanlike manner and in accordance with the Plans and all applicable laws, ordinances, rules, standards, regulations, and codes.

(b) Prior to any work on the Remaining Street Improvements, Fairfield shall provide to the City surety bonds guaranteeing the faithful performance of the work and the payment of all obligations arising under the Contract (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Contract), each in the penal sum of one hundred percent (100%) of the Contract sum. Fairfield shall pay or cause the

Contractor to pay the premiums for such bonds. Bonds shall be issued by a surety company satisfactory to the City, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All bonds shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to the City. A surety bond shall also be executed and provided to the City to include a one-year maintenance requirement for the Remaining Street Improvements. Fairfield shall and hereby warrants that it will maintain and keep in good repair the work herein contracted to be done and performed for a period of one (1) year from the date of acceptance of all of the Remaining Street Improvements by the City. Fairfield and the Town of Addison, Texas shall be named as joint obligees on all of such bonds.

(c) The Town of Addison, Texas shall be named as an additional insured on all liability insurance policies provided by the Contractor and any subcontractor.

(d) To the extent any of the area on which the Remaining Street Improvements are to be constructed requires the acquisition of any land or right-of-way, Fairfield shall acquire all lands and rights-of-way necessary to construct the Remaining Street Improvements. To the extent any of the Remaining Street Improvements are located within public right-of-way or property owned by the City, the City hereby grants to Fairfield a license to enter upon such public right-of-way or property for the sole and limited purpose of constructing the Remaining Street Improvements. Fairfield shall coordinate with the City and utility providers to minimize the possibility of damage to utilities in the construction area. Upon completion of the Remaining Street Improvements, Fairfield shall ensure that the Remaining Street Improvements and the property on which the Remaining Street Improvements were constructed are free and clear of all liens and encumbrances, including mechanics liens and purchase money security interests.

(e) Fairfield shall timely pay the Contractor in accordance with the terms and conditions of the Contract. Fairfield shall insure that all Remaining Street Improvements are completed in a timely manner in accordance with the Street Construction Contract. Fairfield shall thoroughly inspect the work of the Contractor to guard the City against defects and deficiencies in the Remaining Street Improvements without assuming responsibility for the means and methods used by the Contractor.

(f) The City has the right to inspect, test, measure or verify the construction work on the Remaining Street Improvements as the City deems necessary.

(g) Fairfield shall keep the Director informed regarding the progress of the Remaining Street Improvements construction. Fairfield shall notify and provide documentation to the Director for the following events: (i) award of the Contract (including copies of bonds and insurance), (ii) notice to proceed, (ii) default of the Contractor (if it occurs), and (iv) completion of the Remaining Street Improvements such that they are ready for inspection by the City. The Project shall not be considered finally complete until the Director has inspected the Remaining Street Improvements and has issued a certificate of completion.

4. *Reimbursement.*

(a) Upon the full and final completion of the Remaining Street Improvements, the City shall reimburse Fairfield a portion of the Street Construction Cost paid by Fairfield in an amount not to exceed (i) Four Hundred Seventy One Thousand Nine Hundred Forty Seven and 74/100 Dollars (\$471,947.74) (and being the sum of the City Street Funds plus the Fairfield Quorum Payment) or (ii) thirty percent (30%) of the total Contract price, whichever is less (the "Reimbursement Amount"). In any event, the Reimbursement Amount paid by the City shall not exceed thirty percent (30%) of the total Contract price.

(b) Payment of the Reimbursement Amount shall be made in accordance with and is subject to the following:

(i) Upon the full and final completion of the Remaining Street Improvements, Fairfield shall submit to the City an invoice for the Reimbursement Amount (which shall also show the total Contract price paid to the Contractor) (the "Reimbursement Invoice"). The invoice shall be accompanied by a certification from Fairfield that the Remaining Street Improvements have been fully and finally completed in accordance with the Street Construction Contract and with all laws, ordinances, standards, codes, rules and regulations of the United States, the State of Texas, the City, and any other governmental entity having jurisdiction (including, without limitation, the standards of the Americans with Disabilities Act of 1990), has been reviewed and accepted by the City (or other appropriate governmental entity having jurisdiction over the Remaining Street Improvements), has been paid for in full by Fairfield, and that there are no outstanding claims or liens by any contractor, subcontractor, or provider of materials, supplies, or labor in connection with work on the Remaining Street Improvements. The certification shall be by affidavit sworn to by an appropriate officer of Fairfield authorized to submit the same.

(ii) The Reimbursement Invoice shall also be accompanied by a copy of the Contractor's certificate of payment to subcontractors and material suppliers, and by a certificate (sealed by the Design Professional) from the Design Professional that the Remaining Street Improvements have been fully and finally completed in accordance with the Street Construction Contract.

(iii) Payment of the Reimbursement Amount is further conditioned on and subject to the City's prior receipt from Fairfield of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees, warranties, and bonds relating to the Remaining Street Improvements, and assignments of all guarantees and warranties from the Contractor, subcontractors, vendors, suppliers, or manufacturers, in connection with or relating to all or any portion of the work on the Remaining Street Improvements.

(iv) Upon the City's receipt and review (to the City's satisfaction) of the Reimbursement Invoice, of Fairfield's certification that the work has been fully and finally completed as set forth above, and other information submitted by Fairfield, and the compliance by Fairfield (to the City's satisfaction) with applicable portions of this Fourth Amendment, the City shall pay to Fairfield within 30 days thereafter the amount of the Reimbursement Invoice, subject to the terms and conditions of this Third Amendment.

B. Insurance.

1. At all times, Fairfield shall maintain minimum insurance coverages, described below. Fairfield may satisfy this requirement through insurance provided by its Contractor.

- (a) Commercial General Liability insurance at minimum combined single limits of \$2,000,000 per-occurrence and \$5,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. An alternative would be to have separate limits for all lines of General Liability coverage for each project.
- (b) Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- (d) Builders Risk coverage as follows:
 - a. “All Risk” Builders Risk insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.
 - b. The Builders Risk policy must provide transit and off-premises coverage if the contract with the builder makes the Town of Addison responsible for materials. The deductible shall not exceed \$5,000.
- (e) Umbrella Liability at minimum limits of \$_____ each-occurrence/\$_____ aggregate with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies.

Any subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. Fairfield shall require its construction contractor(s) to require all subcontractors to carry insurance naming the Town of Addison, Texas as an additional insured and meeting all of the above requirements.

2. With reference to the foregoing insurance requirement, Fairfield shall specifically endorse applicable insurance policies as follows:

- (a) The Town of Addison, Texas shall be named as an additional insured with respect to General Liability, Automobile Liability, and Umbrella Liability.

- (b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- (c) A waiver of subrogation in favor of the Town of Addison, Texas, its officers, employees, and agents shall be contained in the Workers Compensation, Builders Risk, and all liability policies.
- (d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any material change in the insurance coverage.
- (e) All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- (f) All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- (g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- (h) Contractor may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- (i) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Fairfield and the City prior to the commencement of any work on the Remaining Street Improvements, and shall contain provisions representing and warranting the following:

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

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

3. Fairfield shall require its construction contractor(s) to continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If

Fairfield does not comply with this requirement, the Director, at the Director's sole discretion, may

- (a) immediately suspend Fairfield from any further performance under this Fourth Amendment and begin procedures to terminate for default, or
- (b) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Fairfield under this Fourth Amendment.

The City shall never waive or be estopped to assert its right to terminate this Fourth Amendment because of its acts or omissions regarding its review of insurance documents.

C. Indemnity.

1. FAIRFIELD AGREES TO HOLD AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS ELECTED OFFICIALS, ITS OFFICERS, AGENTS AND EMPLOYEES (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (TOGETHER, "INDEMNIFIED PERSONS") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES, COSTS (INCLUDING ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH (1) FAIRFIELD'S PERFORMANCE OF THIS FOURTH AMENDMENT AND ITS CONTRACTOR'S PERFORMANCE OF THE STREET CONSTRUCTION CONTRACT, (2) THE USE OF ANY PREMISES OR PROPERTY OF OR WITHIN THE TOWN OF ADDISON BY FAIRFIELD OR FAIRFIELD'S OWNER'S, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, SUBCONTRACTORS, ASSOCIATES, OR INVITEES, OR ANY PERSON FOR WHOM FAIRFIELD IS LEGALLY LIABLE ("FAIRFIELD PERSONS") IN CONNECTION WITH THIS FOURTH AMENDMENT, (3) THE CONDUCT OF FAIRFIELD'S BUSINESS OR ANYTHING ELSE DONE OR PERMITTED BY FAIRFIELD TO BE DONE IN OR ABOUT THE TOWN OF ADDISON OR IN CONNECTION WITH THIS FOURTH AMENDMENT, (4) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF FAIRFIELD'S OBLIGATIONS UNDER THIS FOURTH AMENDMENT, (5) ANY MISREPRESENTATION OR BREACH OF WARRANTY BY FAIRFIELD UNDER THIS FOURTH AMENDMENT, AND (6) WITHOUT LIMITING ANY OF THE FOREGOING, ANY NEGLIGENT ACT OR OMISSION OF FAIRFIELD OR ANY OF FAIRFIELD PERSONS UNDER, RELATED TO, OR IN CONNECTION WITH, THIS FOURTH AMENDMENT, INCLUDING DAMAGES CAUSED BY THE NEGLIGENCE OF ANY OF THE INDEMNIFIED PERSONS.

2. With respect to Fairfield's indemnity obligation set forth in subsection 1 of this subsection C., Fairfield shall have no duty to indemnify an Indemnified Person for any Damages caused by the sole negligence of the Indemnified Person.

3. With respect to Fairfield's duty to defend set forth herein in subsection 1 of this subsection C., Fairfield shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of

action, or judgment arising out of or in connection with this Fourth Amendment; provided however, that the City (and any other Indemnified Person) shall have the right to approve the selection of counsel by Fairfield and to reject Fairfield's selection of counsel and to select counsel of the City's (and any other Indemnified Person's) own choosing, in which instance, Fairfield shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The City agrees that it will not unreasonably withhold approval of counsel selected by Fairfield, and further, the City agrees to act reasonably in the selection of counsel of its own choosing.

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

5. The provisions of any defense, indemnity, and hold harmless obligation set forth in this Fourth Amendment shall survive the termination or expiration of this Fourth Amendment.

Section 3. Termination.

A. FAILURE OF FAIRFIELD TO TIMELY COMPLETE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS FOURTH AMENDMENT SHALL CONSTITUTE A DEFAULT OF THIS FOURTH AMENDMENT BY FAIRFIELD AND SHALL TERMINATE THE CITY'S DUTY TO REIMBURSE FAIRFIELD FOR ANY COSTS HEREUNDER OR FOR ANY COSTS WHATSOEVER, AND SHALL CONSTITUTE A WAIVER BY FAIRFIELD OF ANY RIGHT TO CLAIM SUCH REIMBURSEMENT OR ANY OTHER COSTS OR DAMAGES ARISING OUT OF THIS FOURTH AMENDMENT OR THE CONSTRUCTION OF THE REMAINING STREET IMPROVEMENTS. FAIRFIELD'S FAILURE TO COMPLETE ITS OBLIGATIONS TIMELY SHALL NOT REQUIRE THE CITY TO GIVE NOTICE OF DEFAULT AS DESCRIBED BELOW OR TO GIVE FAIRFIELD ANY TIME TO CURE.

B. For any other reason except Fairfield's failure to complete its obligations timely as set forth in subsection A. of this Section, either party may terminate its performance under this Fourth Amendment in the event of default by the other party and a failure by that party to cure such default after receiving notice thereof, as provided in this Section. Default shall occur if a party fails to observe or perform any of its duties under this Fourth Amendment. Should such a default occur, the non-defaulting party shall deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such date may not be sooner than the 20th day following receipt of the notice. The non-defaulting party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the defaulting party cures such default to the non-defaulting party's satisfaction, the proposed termination shall be ineffective. If the defaulting party fails to cure such default prior

to the proposed date of termination, the non-defaulting party may terminate this Fourth Amendment, and the obligations of the parties hereunder shall end. The Director may give such notice on behalf of the City for purposes of this Fourth Amendment.

C. In the event this Contract is terminated due to default of Fairfield or Fairfield abandons the Remaining Street Improvements project, either of which event is before the Contractor completes the construction of the Remaining Street Improvements, the City reserves the right to continue the Contract and utilize any unexpended funds for this Fourth Amendment to reimburse the Contractor. In such event, Fairfield shall have no claim for any other funds of the City.

Section 4. Miscellaneous.

A. In connection with this Fourth Amendment and the matter set forth herein, all of Fairfield's books and other records related to the Remaining Street Improvements shall be available for inspection by the City at a location within the City as determined by the City. Fairfield shall include in the Contract that the City has and reserves the right, upon notice, to inspect and make an audit of all books, records, accounts and other data of the Contractor relating to the construction of the Remaining Street Improvements and performance of the Contract. The City further has the right to conduct inspections of all places where work is undertaken in connection with this Fourth Amendment.

B. Fairfield is an independent contractor, and Fairfield shall accomplish all of its obligations and services provided for herein in such capacity, and under no circumstances shall this Fourth Amendment be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the parties; provided always however that the obligations and services of Fairfield hereunder shall be provided in a manner consistent with all applicable standards and regulations governing the same. The City shall have no control or supervisory powers as to the detailed manner or method of Fairfield's performance of the subject matter of this Fourth Amendment. All officers, employees, personnel, contractors, subcontractor's, agents, and representatives supplied or used by Fairfield shall be deemed employees or subcontractors of Fairfield and shall not be considered employees, agents or subcontractors of the City for any purpose whatsoever. Fairfield shall be solely responsible for the compensation of all such persons, for the withholding of income, social security and other payroll taxes and for the coverage of all workers' compensation benefits.

C. Neither party shall have the authority to or shall assign, convey, pledge, or otherwise transfer in any manner this Fourth Amendment, or any of the privileges, rights, or duties set forth herein, to any other person or entity, without the express prior written approval and consent of the other party. Any assignment, conveyance, pledge, or other transfer in violation of this provision shall be null and void *ab initio* and cause for immediate termination (no period of cure) by the other party.

D. This Fourth Amendment and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

E. Except as otherwise provided for in this Fourth Amendment, all obligations and responsibilities arising prior to the expiration or termination of this Fourth Amendment allocating responsibility or liability of or between the parties shall survive the completion or termination of this Fourth Amendment, and any rights and remedies either party may have with respect to the other arising out of the performance during the term of this Fourth Amendment shall survive the cancellation, expiration, or termination of this Fourth Amendment. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by a party shall not preclude or waive its right to use any or all other rights and remedies, and said rights and remedies are given in addition to any other rights and remedies the parties or either or them may have in law, in equity, or otherwise.

F. The failure of either party to enforce any provision or condition contained in this Fourth Amendment at any time will not be construed as a waiver of that condition or provision nor will it operate as a forfeiture of any right of future enforcement of the condition or provision.

G. For purposes of this Fourth Amendment, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

H. All exhibits referenced in this Fourth Amendment are incorporated herein and made a part hereof for all purposes.

I. Any notice and/or statement required and permitted to be delivered shall be deemed delivered upon receipt after depositing same in the United States mail, certified mail with return receipt requested, postage prepaid, or upon receipt by nationally recognized overnight courier, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties by notice under this subsection:

<u>To City:</u>	<u>To Fairfield:</u>
5300 Belt Line Road Dallas, Texas 75____ Attn: City Manager	Fairfield _____ _____ Attn: _____

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

K. This Fourth Amendment supersedes all previous agreements and constitutes the entire understanding of the parties. Fairfield shall be entitled to no other benefits than those

specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

L. If any provision of this Fourth Amendment is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Fourth Amendment shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties shall seek to negotiate a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

M. This Fourth Amendment and all of its terms and conditions are subject to applicable laws, ordinances, rules, regulations, and codes, including, without limitation, the City Charter of the Town of Addison, Texas.

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

O. This Fourth Amendment shall be effective upon the date of the last of the City, Fairfield, and _____ to sign below, as reflected by the date of signing.

IN WITNESS WHEREOF, the City, Fairfield, and _____ have executed this Fourth Amendment.

TOWN OF ADDISON, TEXAS	FAIRFIELD _____
By: _____ Ron Whitehead, City Manager	By: _____
Date of signing: _____	Typed name: _____
ATTEST:	Title: _____
By: _____ Mario Canizares, City Secretary	Date of signing: _____

EXHIBIT 1

[MASTER FACILITIES AGREEMENT, WITH THREE AMENDMENTS]

EXHIBIT 2

[DESCRIPTION/DEPICTION OF THE REMAINING PROPERTY]

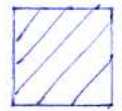
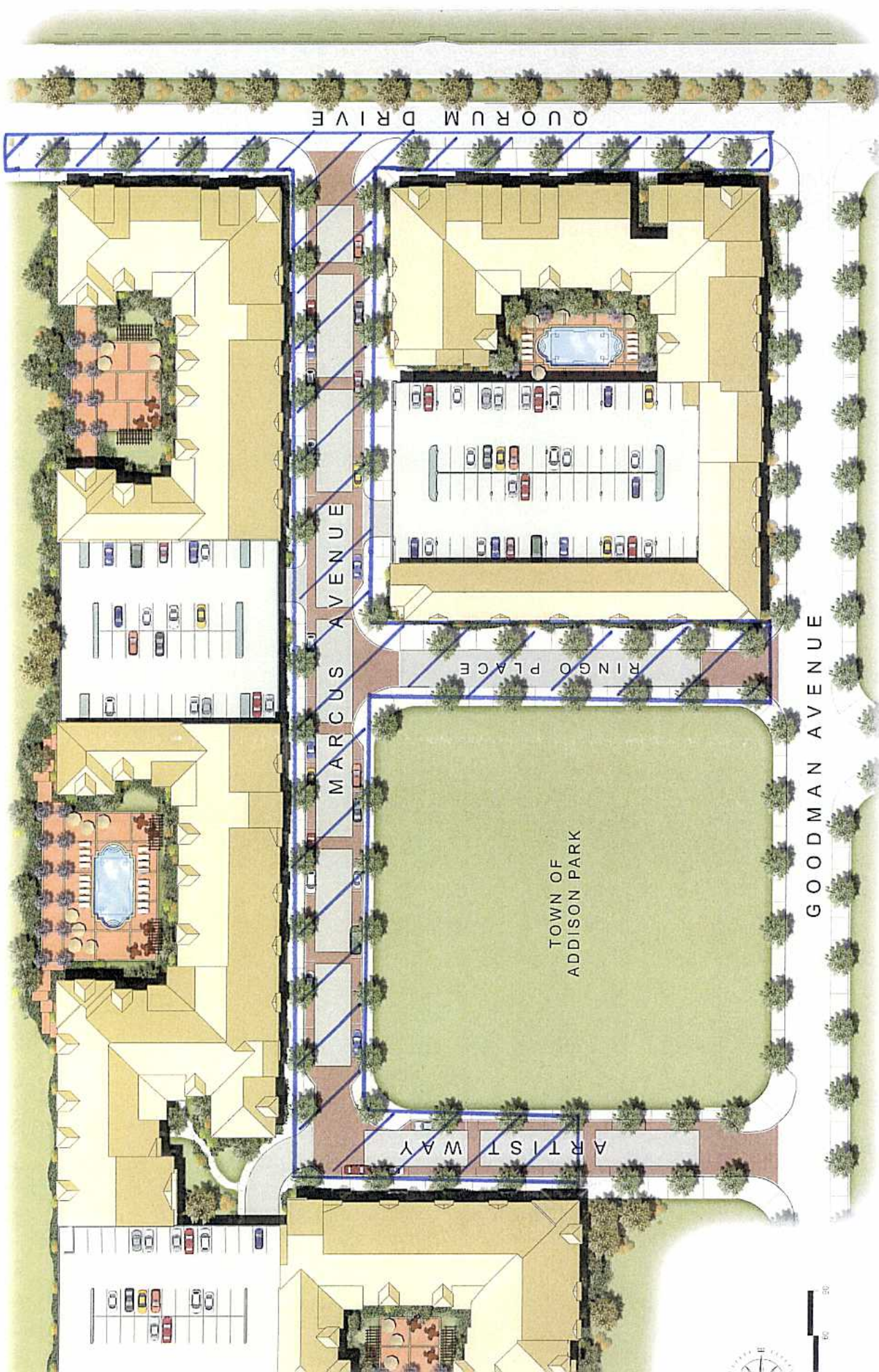
EXHIBIT 3

[OTHER STREETS TO BE CONSTRUCTED]

EXHIBIT 4

[ORDINANCE NO. O95-019]

#R4



FAIRFIELD AT
ADDISON CIRCLE
ILLUSTRATIVE SITE PLAN

associates, Inc.



STREET IMPROVEMENTS
BEING CONSTRUCTED BY
FAIRFIELD, WITH CITY PARTICIPATION

Council Agenda Item #R5

SUMMARY:

This item is to authorize the City Manager to execute a professional services agreement with Cunningham Architects to assist with the relocation of the historic Addison Train Depot building in an amount not to exceed \$16,000.

FINANCIAL IMPACT:

Design Contract Amount: \$16,000

Source of Funds: \$50,000 was budgeted in the Hotel Fund, in the Visitor Services budget for moving of the depot. This funding is in account 11-611-56040-00000.

BACKGROUND:

The Train Depot that was originally located at the Y-tracks on the Cotton Belt was moved to land owned by a cemetery in the City of Dallas. Last year, the Town of Addison was contacted by a mover who was working with the church to re-locate the train depot. The Town requested a proposal for professional design services from Cunningham Architects to assist in the relocation of the historic Addison Train Depot.

RECOMMENDATION:

It is recommended that the Council authorize the City Manager to enter into a professional services agreement with Cunningham Architects to assist with the relocation of the historic Addison Train Depot building in an amount not to exceed \$16,000.

March 1, 2007

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

Cunningham
Architects
918 Dragon Street
Dallas, Texas 75207
214-915-0900
fax 214-915-0901
www.cunninghamarchitects.com

#R5

Re: Town of Addison Train Depot Relocation

Dear Ron,

Cunningham Architects is pleased to offer hourly services to help relocate the historic Town of Addison Train Depot building.

Our work shall include the study of the Train Depot structure itself, and various sites for relocation within the Town of Addison. We will work with Nancy Cline of Public Works on this project.

Our scope of works includes the following:

- Study various sites proposed by the Town of Addison for relocation of the Train Depot structure. Produce sketch studies locating the structure, associated parking, and site circulation.
- Once the final site is determined, we will do a site layout accurately locating the structure and associated hardscape and sitework.
- Work with Public works and its structural consultant to determine foundation needs for the permanent location of the structure. We will draw a foundation plan and details so that the work can be submitted for pricing and construction to a general contractor. These documents will be sealed and submitted to the Town of Addison for a building permit.
- Attend a pre-bid conference organized by the Public Works department and help answer questions from potential bidders for the moving of the structure.
- Monitor the construction of the foundation for the relocated structure.
- Assist the Public Works department and the house mover with any questions on the moving and relocation of the structure.
- Monitor the construction of the stem wall after the structure is placed on the foundation.
- Assist in the "mothballing" and drying-in of the structure.

We understand the Town wishes this structure to be moved to its new location by June 1st, 2007. We also understand that the scope of work for this project does not extend beyond the placement, anchoring and mothballing of the structure. We do not anticipate the construction of any pavement or utilities at time.

Anticipated hourly costs shall not exceed \$16,000 without written permission from the City Manager's office. Work under this scope shall be complete by June 15th, 2007.

The Town may wish to engage Cunningham Architects for architectural and engineering services in the restoration/adaptive use of the Train Depot later.

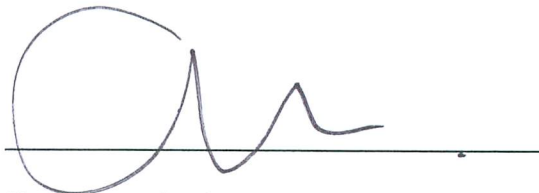
Thank you for the opportunity to help bring this historic structure home to Addison.

Sincerely,

Gary Cunningham, faia

Agreed on March ____, 2007

for the Town of Addison

A handwritten signature in blue ink, consisting of a large, stylized 'G' followed by a series of loops and a final horizontal stroke.

Gary Cunningham
for Cunningham Architects

Council Agenda Item # ES1

There are no attachments for this item.

Council Agenda Item # ES2

There are no attachments for this item.

Council Agenda Item # ES3

There are no attachments for this item.

Council Agenda Item # ES4

There are no attachments for this item.

Council Agenda Item # ES5

There are no attachments for this item.

Council Agenda Item:#R6

There are no attachments for this item.

Council Agenda Item:#R7

There are no attachments for this item.

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

There are no attachments for this item.