

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

AGENDA

REGULAR MEETING OF THE CITY COUNCIL

7:30 P.M.

OCTOBER 14, 2008

TOWN HALL

5300 BELT LINE ROAD

REGULAR SESSION

Item #R1 - Consideration of Old Business.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:
September 23, 2008, Regular City Council Meeting and Work Session

Item #R3 - Introduction of Blaine Herron, Addison Airport Air Traffic Control Tower Manager.

Attachment:

1. Biography

Item #R4 - Presentation of the *Arts and Cultural Awareness Month in the Town of Addison* Proclamation.

Attachments:

1. Council Agenda Item Overview
2. Proclamation

Item #R5 - Presentation of the International Festivals and Events Association Award to the Special Events Team for winning the Silver Grand Pinnacle Award.

Attachments:

1. Council Agenda Item Overview
2. Award

Item #R6 - Discussion and consideration of approval of a resolution to continue with the Selective Traffic Enforcement Program (STEP) grant for traffic safety.

Attachments:

1. Council Agenda Item Overview
2. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R7 - Discussion and consideration of approval of a resolution giving commemorative names to three Addison Parks Facilities.

Attachments:

1. Memo from Carmen Moran
2. Information on three candidates for commemorative naming of Addison Parks Facilities

Administrative Recommendation:

Administration recommends approval.

Item #R8 - REPLAT/Asbury Circle. Discussion and consideration of approval of a replat for 73 lots on 8.140 acres, located at the southeast and southwest corners of the intersection of Belt Line Road and Commercial Drive, on application from Dowdey, Anderson & Associates, represented by Mr. Casey Ross.

Attachments:

1. Docket map
2. Staff report
3. Plat

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 25, 2008, voted to recommend approval of the replat for Asbury Circle, subject to no conditions.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood

Voting Nay: None

Absent: Jandura

Administrative Recommendation:

Administration recommends approval.

Item #R9 - **PUBLIC HEARING** Case 1565-SUP/Patton's Christmas Trees. Public hearing on and discussion and consideration of approval of an ordinance approving a Special Use Permit for a Christmas tree lot, located at 14639 Dallas Parkway, on application from Mr. Jeff Patton of Patton's Corner.

Attachments:

1. Docket Map
2. Staff Report
3. Plan
4. Letter from Mr. Brent Steward

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 26, 2008, voted to recommend approval of a Special Use Permit for a Christmas Tree Lot, on application from Patton's Corner, subject to no conditions.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood
Voting Nay: None,
Absent: Jandura

Administrative Recommendation:

Administration recommends approval.

Item #R10 - **PUBLIC HEARING** Case 1564-SUP/Antonio Ristorante. Public hearing on and discussion and consideration of approval of an ordinance amending an existing Special Use Permit for a restaurant, and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, in order to add a patio, located at 4985 Addison Circle, on application from Mr. Luciano Cola.

Attachments:

1. Docket map
2. Staff report
3. Plans

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in a rescheduled session on September 25, 2008 voted to recommend approval of the amendment to a Special Use Permit for a restaurant and the Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to no conditions.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood,
Voting Nay: None
Absent: Jandura

Administrative Recommendation:

Administration recommends approval.

Item #R11 - **PUBLIC HEARING** Case 1566-SUP/Smashburger. Public hearing on and discussion and consideration of approval of an ordinance approving a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located at 4980 Belt Line Road, on application from Smashburger, represented by Ms. Lisa Davis of Intertech Design Services.

Attachments:

1. Docket map
2. Staff report
3. Plans

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 25, 2008, voted to recommend approval of the request for a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, on application from Smashburger, subject to no conditions.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood

Voting Nay: None

Absent: Jandura

Administrative Recommendation:

Administration recommends approval.

Item #R12 - **PUBLIC HEARING** Case 1567-SUP/Twin Peaks. Public hearing on and discussion and consideration of approval of an ordinance amending an existing Special Use Permit for a restaurant, and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located at 5260 Belt Line Road, on application from Front Burner, LLC, represented by Mr. Bruce Russo of Techcon Dallas, Inc.

Attachments:

1. Docket map
2. Staff report
3. Plans

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 25, 2008, voted to recommend approval of the 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, subject to the following condition:

-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."

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood

Voting Nay: None

Absent: Jandura

Administrative Recommendation:

Administration recommends approval.

Item #R13 - **PUBLIC HEARING** Case 1568-Z/Town of Addison. Public hearing on and discussion and consideration of approval of an ordinance amending the Code of Ordinances, Appendix A (the Comprehensive Zoning Ordinance), Article XX, Special Uses, to add a new paragraph, paragraph 38, in order to require a Special Use Permit for a wind energy system, and amending Article XXX, Definitions, to add a definition for a Wind Energy System, on application from the Town of Addison.

Attachments:

1. Public notice
2. Staff report
3. Proposed ordinance

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 25, 2008, voted to recommend approval of amendments to Appendix A, the Addison Zoning Ordinance, Article XX, Special Uses, to add a new paragraph, Paragraph 28, requiring a Special Use Permit for a wind energy system, and amending Article XXX, Definitions, to add a definition for a wind energy system.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood
Voting Nay: None
Absent: Jandura

Administrative Recommendation:

Administration recommends approval.

Item #R14 - Discussion and consideration of approval of a request from United Dominion Realty (UDR) for an exception to Chapter 62, Signs, Section 62-210, Construction signs, to be placed in the Brookhaven Club area along Brookhaven Club Drive and Marsh Lane.

Attachments:

1. Staff Report
2. Application
3. Plat w/picture

Administrative Recommendation:

Administration recommends approval.

Item #R15 - Presentation of Certificate of Achievement for Excellence in Financial Reporting for Fiscal Year 2008, October 1, 2007-September 30, 2008.

Attachment:

1. Council Agenda Item Overview
-

Item #R16 - **PUBLIC HEARING** on and discussion and consideration of approval of an Ordinance of the Town finding that Oncor Electric Delivery Company's requested increases to its electric transmission and distribution rates and charges within the Town should be denied, finding that the Town's reasonable rate case expenses shall be reimbursed by Oncor Electric Delivery Company, and including other provisions related thereto.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R17 - Discussion and consideration of approval of an Ordinance of the Town of Addison Texas ("City") approving an electric power contract with Cities Aggregation Power Project, Inc. ("CAPP") for electric capacity and energy, providing capacity payments as public property finance contractual obligations of the Town, pledging and levying an ad valorem tax to such payments, providing for energy payments for electric energy, providing for the assignment of such capacity payments to support debt issued by CAPP incurred to acquire electric capacity rights from Luminant Generation Company and related entities pursuant to a 24-year Power Purchase Agreement, and including other matters related thereto.

Attachments:

1. Council Agenda Item Overview
2. Ordinance
3. Memorandum
4. Contract

Administrative Recommendation:

Administration recommends approval.

Item #R18 - Discussion and consideration of approval of a Joint Election Agreement and Election Service Contract in the amount of \$9,902.03, between the Dallas County Elections Administrator and the Town of Addison to conduct a joint election to be held November 4, 2008.

Attachments:

1. Council Agenda Item Overview
2. Contract

Administrative Recommendation:

Administration recommends approval.

Item #R19 - Discussion and consideration of approval of an Interlocal Agreement with Dallas County for the Town of Addison to join the Household Hazardous

Waste Network (HHW Network) with Dallas County and other interested jurisdictions, to participate in an HHW collection program.

Attachments:

1. Council Agenda Item Overview
2. Agreement

Administrative Recommendation:

Administration recommends approval.

Item #R20 - Discussion and consideration of approval of a construction contract with Tri Dal Celina, Ltd., in the amount of \$369,746.79, with a contract duration of 40 calendar days for Vitruvian Park Public Infrastructure – Phase 1.

Attachment:

1. Council Agenda Item Overview
2. Bid Tabulation

Administrative Recommendation:

Administration recommends approval.

Item #R21 - Discussion and consideration of approval for the City Manager to execute an estoppel and non-disturbance agreement relating to MSF Properties III, LLC's acquisition of executive hangar condominium leasehold interests at Addison Airport, as requested by United Community Bank, N.A.

Attachments:

1. Bill Dyer Memorandum
2. Exhibit "A" Sample Bank Estoppel Agreement Form

Administrative Recommendation:

Administration recommends approval.

Adjourn Meeting

Posted:
October 10, 2008 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**

September 23, 2008
6:00 P.M. – Town Hall
5300 Belt Line Road
Living Room

Council Members Present:

Mayor Chow, Councilmembers Braun, Hirsch, Kraft, Meier, Mellow and Niemann

Absent: None

Visitor: Shawn Nichols with LS Power

Work Session

Item #WS1 - Discussion of the Cities Aggregation Power Project's Long Term Purchase Power Agreement.

Randy Moravec led the discussion regarding the Cities Aggregation Power Project's Long Term Purchase Power Agreement.

There was no action taken.

Mayor-Joe Chow

Attest:

City Secretary-Mario Canizares

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

August 12, 2008
7:30 P.M. – Town Hall
5300 Belt Line Road
Council Chambers

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

Absent: None

Regular Session

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Will Hamilton with the Fire Department and Sue Ellen Fairley with the City Manager's Office.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

September 9, 2008, Regular City Council Meeting and Work Session

The Minutes for September 9, 2008, Regular City Council Meeting and Work Session, were approved with the following correction for Item #R11: Change the word "close" to "closed."

Dennis Kraft moved to duly approve Item #2a with the foregoing change.

Councilmember Meier seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow and Niemann

Voting Nay: None

Absent: None

Item #R3 - Presentation of an Award to the Town of Addison from US Pan Asian Chamber of Commerce.

Grace McDermott of the US Pan Asian Chamber of Commerce presented the Outstanding City Economic Development Inclusiveness Award to Mayor Chow.

Item #R4 - Discussion and consideration of approval of an agreement with Shakespeare Dallas regarding the presentation of Shakespeare in the Park.

Councilmember Kraft moved to approve an agreement with Shakespeare Dallas in the Park regarding the presentation of Shakespeare in the Park with the amendment that it be a contract with a term of one year which may be renewed for an additional term for each of the two years immediately following the initial one year term.

Councilmember Niemann seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow and Niemann

Voting Nay: None

Absent: None

Item #R5 - Presentation of and discussion regarding the Town's Quarterly Financial Report for the period ending June 2008.

Jason Cooley presented the Town's Quarterly Financial Report for the period ending June 2008.

There was no action taken.

Councilmember Niemann recused himself for Item #R6 and left Council Chambers.

Item #R6 - **PUBLIC HEARING**, discussion, and consideration of approval of an ordinance approving a negotiated resolution between the Atmos Cities Steering Committee (of which the Town of Addison is a member) and Atmos Energy Corporation, Mid-Tex Division, regarding Atmos Mid-Tex's rate review mechanism filing in cities exercising original jurisdiction, adopting tariffs that reflect rate adjustments, and finding the rates to be set by the attached tariffs to be just and reasonable.

Mayor Chow opened the meeting as a public hearing.

No one spoke.

Mayor Chow closed the meeting as a public hearing.

Councilmember Mellow moved to duly approve Ordinance 008-037, approving a negotiated resolution between the Atmos Cities Steering Committee (of which the Town of Addison is a member) and Atmos Energy Corporation, Mid-Tex Division, regarding Atmos Mid-Tex's rate review mechanism filing in cities exercising original jurisdiction, adopting tariffs that reflect rate adjustments, and finding the rates to be set by the attached tariffs to be just and reasonable.

Councilmember Kraft seconded. Motion carried.

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

Councilmember Niemann returned to Council Chambers.

Item #R7- Discussion and consideration of approval of the Town's Fiscal Year 2008-2009 investment policy.

Councilmember Niemann moved to approve the Town's Fiscal Year 2008-2009 investment policy.

Councilmember Braun seconded. Motion carried.

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

Item #R8 - Discussion and consideration of approval of a resolution adopting the Town of Addison Investment Strategy for Fiscal Year 2008-2009.

Councilmember Kraft moved to duly approve Resolution R08-017 adopting the Town of Addison Investment Strategy for Fiscal Year 2008-2009.

Councilmember Niemann seconded. Motion carried.

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

Item #R9 - Discussion and consideration of approval of an Investment Advisory Service Contract.

Councilmember Meier moved to duly approve an Investment Advisory Service Contract with First Southwest Asset Management, Inc.

Councilmember Kraft seconded. Motion carried.

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

Item #R10 - Discussion and consideration of an exception to Chapter 62, Signs, Article IV, Section 62-138, Holiday decorations, for The Village on the Parkway located at 5100

Belt Line Road, such decoration to be placed on the exterior of Suite 1000, Bed Bath & Beyond Store.

Councilmember Niemann moved to approve an exception to Chapter 62, Signs, Article IV, Section 62-138, Holiday decorations, for The Village on the Parkway located at 5100 Belt Line Road, such decoration to be placed on the exterior of Suite 1000, Bed Bath & Beyond Store, with the condition that the lights go up on October 15, 2008, and must be removed by January 15, 2009. This is for a one time only exception.

Councilmember Meier seconded. Motion carried.

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

Item # R11 - Discussion and consideration of approval of an ordinance amending Subsection 105.5 of and adding Subsection 105.5.1 to the International Building Code, 2006 Edition, and an ordinance amending Subsection R105.5 of and adding Subsection R105.5.1 to the International Residential Code, 2006 Edition, relating to building permits, the expiration thereof, a time period for completion of construction, and obtaining a new permit and payment therefore.

Councilmember Mellow moved to duly approve Ordinance 008-038 amending Subsection 105.5 of and adding Subsection 105.5.1 to the International Building Code, 2006 Edition, and an ordinance amending Subsection R105.5 of and adding Subsection R105.5.1 to the International Residential Code, 2006 Edition, relating to building permits, the expiration thereof, a time period for completion of construction, and obtaining a new permit and payment therefore.

Councilmember Meier seconded. Motion carried.

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

Item #R12 - Discussion and consideration of approval of an ordinance amending the 2006 editions of the International Fire Code and the International Building Code regarding fire sprinkler requirements.

Councilmember Braun moved to duly approve Ordinance 008-039 amending the 2006 editions of the International Fire Code and the International Building Code regarding fire sprinkler requirements.

Councilmember Kraft seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow and Niemann

Voting Nay: None
Absent: None

Item #R13 - Discussion and consideration of approval of a professional services agreement with Grantham and Associates, Inc., in an amount not to exceed \$75,000 for professional design review services on miscellaneous projects.

Councilmember Mellow moved to approve a professional services agreement with Grantham and Associates, Inc., in an amount not to exceed \$75,000 for professional design review services on miscellaneous projects.

Councilmember Niemann seconded. Motion carried.

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

Item #R14 - Discussion and consideration of acceptance of a fifteen foot (15') water line easement from the North Texas Tollway Authority.

Councilmember Braun moved to duly approve acceptance of a fifteen foot (15') water line easement from the North Texas Tollway Authority.

Councilmember Kraft seconded. Motion carried.

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

Item #R15 - Discussion of the 2008 Addison Athletic Club Member survey.

Randy Rogers led the discussion of the 2008 Addison Athletic Club Member survey.

There was no action taken.

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

Mayor-Joe Chow

Attest:

City Secretary-Mario Canizares

Bio – Blaine Herron, Addison Air Traffic Control Tower - Manager

Blaine moved to Garland in 1970 and graduated from South Garland High School in 1975. He then attended Texas A&M University. Blaine is married, with 2 children, ages 31 and 24 and currently reside in Murphy, TX.

Blaine began working as an Air Traffic Controller for the Federal Aviation Administration (FAA) in 1987, at the Fort Worth Center. He changed air traffic options in 1990 and transferred to Fort Worth Flight Service, then Deridder, LA Flight Service Station in 1990. He changed options again in 1995 and transferred to the Tyler, TX, tower, then in 1996 to Mobile, AL to work in TRACON (Terminal Radar Approach Control). He then transferred to the Huntsville, AL TRACON as an Air Traffic Supervisor in 2002, then again to Fort Smith, AR TRACON in 2005..

In August 2007 he was named as Air Traffic Manager at Addison.

Council Agenda Item: #R4

DEPARTMENT:

Special Events

SUMMARY:

Proclamation to announce the month of October as Arts and Cultural Awareness Month in the Town of Addison.

FINANCIAL IMPACT:

N/A

BACKGROUND:

Addison Urbanato is a 15 day arts and culture festival that includes events in over 10 different Addison venues. Events included in the 2008 festival are in the following categories: Dance, Fine Art, Literature, Music, Special Events, and Theatre.

WHEREAS, the Town of Addison is an entertainment destination with a niche that offers a diversity of cultural and performing arts opportunities; and

WHEREAS, arts and culture enhance our community life by giving citizens the opportunity to better understand the human experience through artistic and cultural interactions; and

WHEREAS, arts and culture play an important part of our national and local economy generating \$166.2 billion nationally in economic activity; and

WHEREAS, arts and culture significantly improve the education of our citizens and youth by developing the creativity that is needed to apply skills that support innovative thinking; and

WHEREAS, the Town of Addison has established Addison Urbanato, a 15 day arts and cultural festival that includes fine art, literary, music, theatre, and dance events in different venues throughout Addison;

NOW, THEREFORE, I, Joe Chow, Mayor of the Town of Addison, Texas, and on behalf of the Addison City Council, do hereby proclaim the month of October as

Arts and Cultural Awareness Month in the Town of Addison

dutifully executed this day October 14, 2008 by

Joe Chow, Mayor
Town of Addison
State of Texas

Council Agenda Item: #R5

DEPARTMENT:

Special Events

SUMMARY:

The International Festivals & Events Association awarded the Town of Addison with a Silver Grand Pinnacle Award for **2008 Taste Addison** on September 10, 2008 during the IFEA/Haas & Wilkerson Pinnacle Awards Ceremony held at the IFEA's 53rd Annual Convention & Expo.

FINANCIAL IMPACT:

N/A

BACKGROUND:

About The International Festivals & Events Association: Headquartered in Boise, Idaho, IFEA is a non-profit membership organization with members spanning 40 countries and 5 continents, and offers the most complete source of ideas, resources, information, education and networking for festival and event professionals worldwide.

The Grand Pinnacle award is given out each year to events that demonstrate the Best Overall Event. The award is broken into four budget categories: Under \$250,000, \$250,000 to \$749,999, \$750,000 to \$1.5 Million, Over \$1.5 Million. 2008 Taste Addison was categorized in the \$250,000 to \$749,999 category. The Gold Grand Pinnacle winner in that category was Borderfest Association - Borderfest 2008 "Celebrating China," Proudly Presented by Kraft - Hidalgo, TX U.S.A.



The International Festivals & Events Association paid tribute to **2008 Taste Addison** on September 10th, 2008 during the IFEA/Haas & Wilkerson Pinnacle Awards Ceremony held at the IFEA's 53rd Annual Convention & Expo where they presented the Town of Addison with the:

Silver Grand Pinnacle Award

Sponsored by industry leader Haas & Wilkerson Insurance, the professional competition drew 1,428 entries this year from among the world's top festivals and events.

The Grand Pinnacle Award recognizes the best overall event, looking at categories such as: Purpose & Mission, Attendance, Staffing & Volunteer Programs, Promotional & Marketing Campaigns, Media Outreach, Sponsor Program and Community Outreach Programs.

About The International Festivals & Events Association:

Headquartered in Boise, Idaho, IFEA is a non-profit membership organization with members spanning 40 countries and 5 continents, and offers the most complete source of ideas, resources, information, education and networking for festival and event professionals worldwide.

Council Agenda Item: #R6

Summary:

Council consideration is requested authorizing the Town of Addison to reenter into an agreement with, the Texas Department of Transportation, for a Selective Traffic Enforcement Program (STEP) grant in the amount of \$29,582.21. This STEP grant will focus on Speeding, Safety Belt compliance and Intersection Traffic Control enforcement, for a total of 500 enforcement and 40 supervisory support hours.

Financial Impact:

- \$4,658.21: paid by Town in matching funds.
- \$24,924.00: reimbursement for enforcement hours worked.

This item was not included in the Police Department's Fiscal Year 08/09 Budget, but can be accommodated within the Police Department operating budget. As stated above, the total grant amount will be \$29,582.21. Within that amount, \$24,924.00 (\$22,580 plus \$2,344.00 travel expenses) is guaranteed to the Town for reimbursement of enforcement hours worked by department personnel. Derived from the total salary cost of \$24,924.00 and multiplied by the fringe benefit cost of 15.75%, the Town's matching funds equal \$4,658.21.

During the FY 08/09 period, the Town of Addison will be eligible for mileage reimbursement for the vehicles used during STEP Grant enforcement hours.

Background:

During the previous grant period, October 2007 through September 2008, a total of 648 speeding, 71 safety belts, 120 intersection traffic controls, and 238 other citations issued. The Town received up to \$24,450.00 in wage reimbursements for the 540 enforcement/supervisory hours awarded for the listed time period. In compliance with the grant, numerous public speaking engagements and educational programs were performed for civic and children's groups.

After compiling the motor vehicle accident statistics for October 2007 through September 2008, our highest causative factors continue to be intersection traffic control violations such as red lights and failures to yield right of way. Therefore, the Police Department will continue Intersection Traffic Control to FY 08/09 grant as an additional selected enforcement area. Seat belt and speed surveys conducted in September 2008, showed a 5% increase in seat belt compliance and a 10% increase in speed compliance city wide.

The Police Department is confident this program will continue to be successful in attaining traffic compliance through enforcement and public education.

Recommendation:

Staff recommends approval.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS AUTHORIZING THE TOWN TO ENTER INTO AN AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION, FOR A SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT IN THE AMOUNT OF \$29,582.21.

WHEREAS, the Texas Department of Public Safety, the law enforcement community, training agencies, associations, prosecutors, the judiciary and the Texas Department of Transportation (TX DOT) work together to decrease crashes, fatalities, and injuries; and,

WHEREAS, to achieve this goal, the program combines a concerted local and statewide media campaign with additional law enforcement activities to reinforce the message; and,

WHEREAS, Selective Traffic Enforcement Programs (STEP) are grants provided by TX DOT to law enforcement agencies to enforce traffic safety laws such as speed and safety belt use; and,

WHEREAS, this STEP grant will focus on Speeding and Safety belt compliance only, for a total of 500 enforcement and 40 supervisory support hours; and,

WHEREAS, in these grants, Texas peace officers work primarily overtime to issue citations in order to reduce fatalities, injuries, and crashes within their local jurisdiction; and,

WHEREAS, this item was not included in the Police Department's Fiscal Year 07/08 budget, but can be accommodated within the Police Department operating budget; now, therefore,

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

THAT, the City Council does hereby approve of a resolution authorizing the Town of Addison to enter into an agreement with the Texas Department of Transportation, for a Selective Traffic Enforcement Program (STEP) grant in the amount of \$29,582.21.

PASSED AND APPROVED by the City Council of the Town of Addison,
Texas this 14th day of October 2008.

Mayor-Joe Chow

ATTEST:

City Secretary-Mario Canizares

The Redding Trail

Jerry Redding served as the Mayor of Addison from 1975—1988.



Mayor Redding's leadership and vision made Addison what it is today. Jerry Redding was asked to run for Mayor at a time when Addison town leaders realized that Addison was in the direct path of growth as the Tollway construction headed north. Redding knew that, given Addison's prime location, the question was not *would* Addison develop, but rather *how*. He led the newly-elected City Council toward a vision of not restraining growth, but guiding it. In Addison, guiding growth meant attracting the types of developments that would benefit the town over the long term. To increase property values, the Council improved the town's water and sewage systems, rezoned large pieces of land and set development standards that included comprehensive landscape and sign ordinances. Under Mayor Redding's watchful eye, many of the Town's facilities were constructed, including the Town Park, Jogging Trail, and Addison Athletic Club.

Redding's seven terms as mayor were pivotal years of progress and growth for Addison. Redding's appreciation of customer service, beautification, and attention to detail were known as "the Addison Way" - a value that is still present in the town. His positive contributions cannot be overstated, and it was during his tenure as mayor that the foundations were laid for Addison's future growth and development.

(Information taken from *Addison Texas, a Pictorial History*, by Andrew T. Eads)



Addison!

Beckert Park

Richard N. Beckert served as Mayor of Addison from 1993 to 1999.

Mayor Beckert led the Council during the development of the first phases of Addison Circle. He was instrumental in developing the visions for Bosque Park and Esplanade Park, and he chaired the Town's development team for the selection and production of Addison's first major public art work, Blueprints at Addison Circle. He also led the Town during the construction of the Addison Airport Toll Tunnel, and represented Addison during negotiations for the new management contract for the Addison Airport.



Mayor Beckert brought a can-do attitude to the Council during his tenure. While attending the opening for the Anne Frank School, he realized there was no playground equipment for the children. He researched the matter and discovered that the Dallas Independent School District looks to the local communities to provide such amenities. Mayor Beckert did not ask the Town to fund the equipment, but began a personal campaign, enlisting the help of many friends and the Addison Rotary. The campaign raised over \$50,000 toward the project.

(Information taken from *Addison Texas, a Pictorial History*, by Andrew T. Eads)



Spruill Park

D. Lynn Spruill served as Mayor of Addison from 1988-1993.

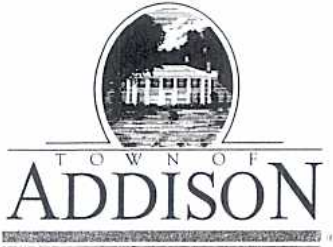
With her diplomacy and calming demeanor, she guided the community through a time of transition and turbulence. Mayor Spruill was a strong advocate for Addison's Special Events, and she was often seen working side-by-side with employees during Oktoberfest. She led the effort to bring a Grand Prix race to Addison, and she even parachuted onto the airport grounds to promote the first Addison Airshow.



Mayor Spruill was passionate about all things Addison. She was Mayor during the construction and opening of the Addison Conference and Theatre Centre. She worked diligently to promote Addison's businesses. She felt Addison should act, not react to changes in the economy. She wanted Addison to plan for its future, and she pulled together a group of Addison residents and business people to create a long-term strategic plan for Addison. The result of the effort was called Vision 2020, and it created the original idea for the new-urbanist development now known as Addison Circle.

(Information taken from *Addison Texas, a Pictorial History*, by Andrew T. Eads)





DEVELOPMENT SERVICES

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

September 17, 2008

STAFF REPORT

RE: REPLAT/Asbury Circle

LOCATION: 73 lots on 8.140 acres, located in a Belt Line Road zoning district, at the southwest corner of the intersection of Belt Line Road and Commercial Drive

REQUEST: Approval of a replat

APPLICANT: Ashton-Woods Homes, represented by Mr. Casey Ross of Dowdey, Anderson & Associates

DISCUSSION:

Background. This plat was originally approved by the Council in November of 2007. During the construction process, it became apparent that the developer needed additional utility easements, and that some drainage easements needed to be added to some lots to accommodate storm water. While those easements could be added by separate instrument, the staff believes it is better for the Town and the developer to have all easements located on the final plat.

Public Works Review. Public Works reviewed the proposed plat and finds it meets the requirements of the subdivision ordinance.

RECOMMENDATION:

Staff recommends approval of the final plat for Asbury Circle, subject to no conditions.

Respectfully submitted,

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 25, 2008, voted to recommend approval of the replat for Asbury Circle, subject to no conditions.

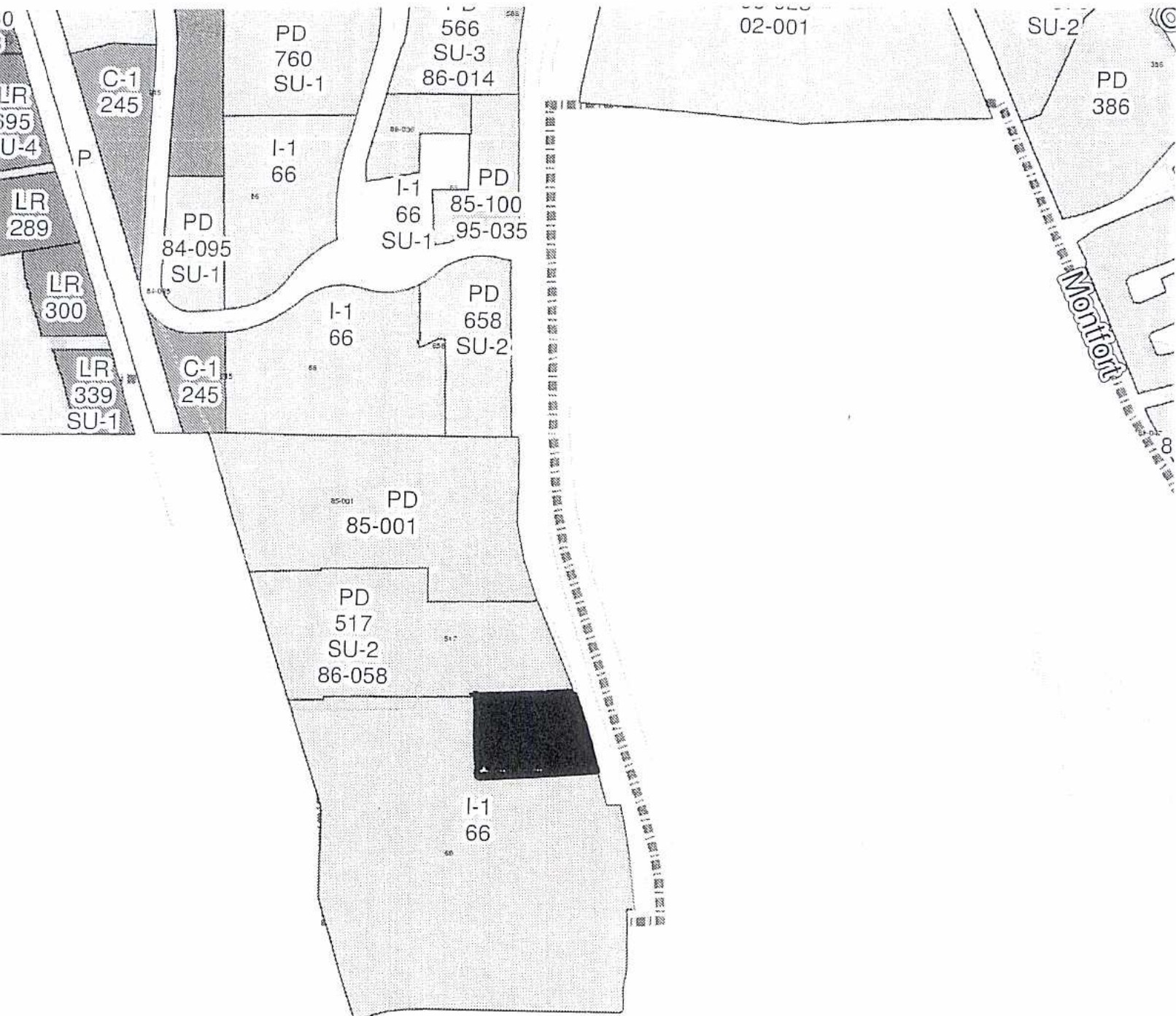
Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood

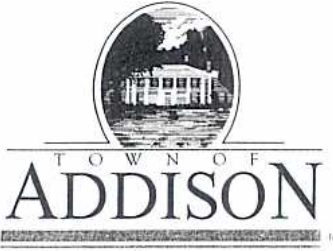
Voting Nay: None

Absent: Jandura

1565-SUP

PUBLIC HEARING Case 1565-SUP/Patton's Christmas Trees. Requesting approval of an ordinance approving a Special Use Permit for a Christmas tree lot, located at 14639 Dallas parkway, on application from Mr. Jeff Patton of Patton's Corner.





DEVELOPMENT SERVICES
(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove
Post Office Box 9010 Addison, Texas 75001-9010

September 17, 2008

STAFF REPORT

RE: Case 1565-SUP/Patton's Corner
LOCATION: 14639 Dallas Parkway
REQUEST: Requesting approval of a Special Use Permit for a Christmas tree lot
APPLICANT: Mr. Jeff Patton
DISCUSSION:

In Addison Christmas tree lots are required to obtain a Special Use Permit. The applicant seeks to operate a Christmas tree lot on the former Ewing Mitsubishi site at 14639 Dallas Parkway. Mr. Patton had a Christmas tree lot at this location last year, and has had lots for the past five years on either this property or the Ewing property to the south of this site. Mr. Patton typically has done a good job cleaning up the lot

RECOMMENDATION:

Staff recommends approval of this request for a Special Use Permit for a Christmas Tree Lot, subject to no conditions.

Respectfully submitted,

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 26, 2008, voted to recommend approval of a Special Use Permit for a Christmas Tree Lot, on application from Patton's Corner, subject to no conditions.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood

Voting Nay: None,

Absent: Jandura

WELLINGTON
CENTRE

September 18, 2008

Carmen Moran
Director of Development Services
City of Addison
PO Box 9010
Addison, TX 75001-9010

Re: Case 1565 SUP/Patton's Corner

Dear Carmen,

On behalf of Parkway Ltd., owner of Wellington Centre Office Building, at the address on this letter (which is adjacent to the proposed Patton pumpkin and Christmas tree sale site), I wish to go on record again this year (as last) as opposing the granting of an SUP for Patton's Corner.

If I can answer any questions or better address this issue with you, please feel free to call me.

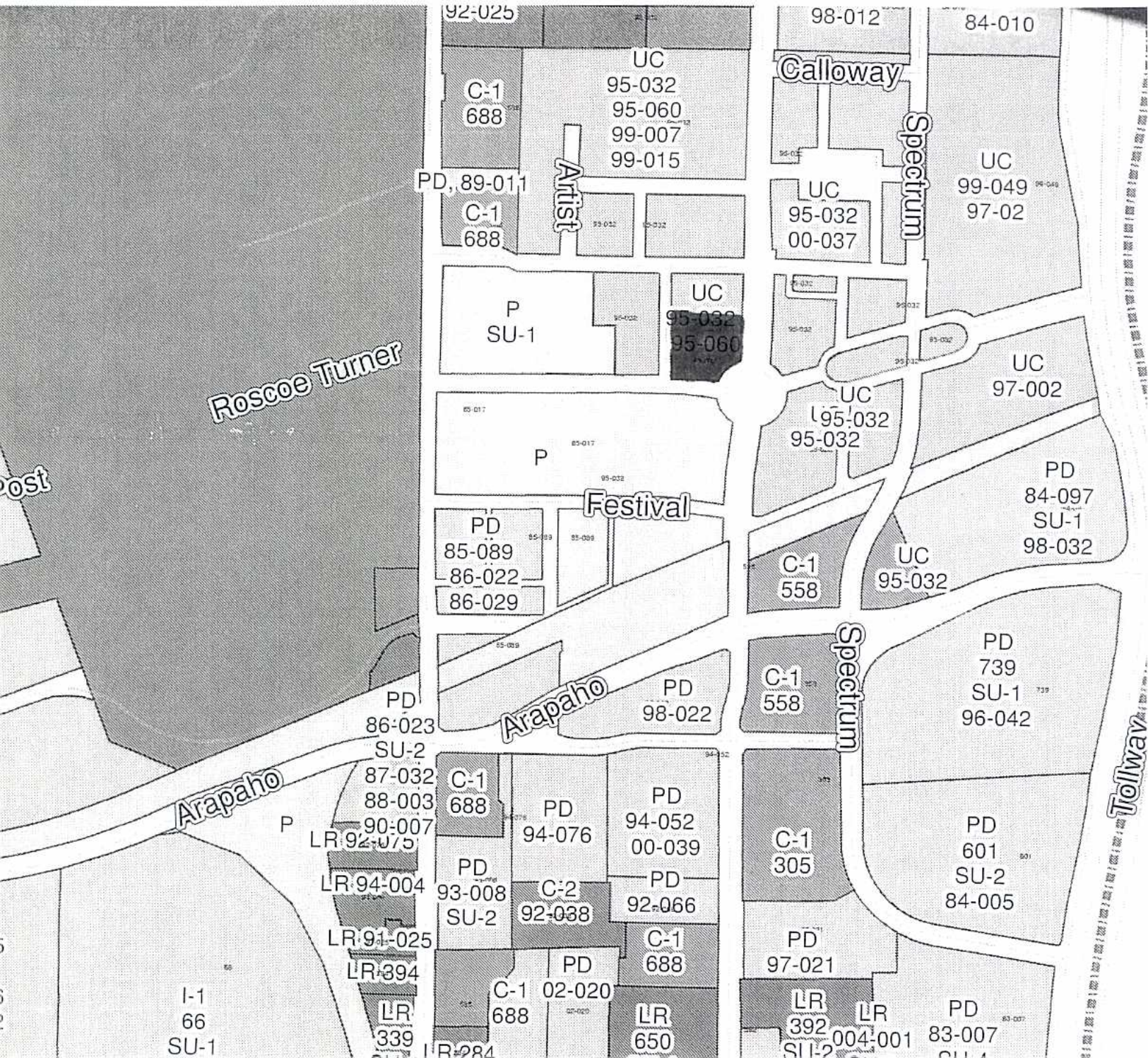
Best Regards,



K. Brent Steward CPM

1564-SUP

PUBLIC HEARING Case 1564-SUP/Antonio Ristorante. Requesting approval of an ordinance amending an existing Special Use Permit for a restaurant, and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, in order to add a patio, located at 4985 Addison Circle, on application from Mr. Luciano Cola.





DEVELOPMENT SERVICES

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

September 17, 2008

STAFF REPORT

RE: Case 1564-SUP/Antonio Ristorante

LOCATION: 4985 Addison Circle

REQUEST: 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

APPLICANT: Antonio Ristorante, represented by Mr. Luciano Cola

DISCUSSION:

Background. Antonio's Ristorante was the first restaurant to open in Addison Circle. It was approved by the Town through Ordinance 097-052 on November 11, 1997, and it has been in continuous operation since it opened. It opened originally with a patio on the east side of the restaurant, and at this point, Antonio's would like to expand its patio to include the entire covered area under the covered over-hang along the south side of the restaurant.

Proposed Plan. The plan indicates that a patio of approximately 421 square feet will be added to the south side of the building. The patio will enclose the area in front of the entrance to the restaurant. The area is covered by a building overhang that runs the length of Building A of Phase I of Addison Circle. While the sidewalk appears to be a public sidewalk, it is actually totally behind the building line and is owned by Post Properties. The public sidewalk is actually to the south of the building, between the building and the street. There is sufficient width and space in the public sidewalk to satisfy all ADA requirements for accessibility.

Parking. Restaurants in the Addison Circle district use a parking ratio of one space per 70 square feet. This patio addition will require six parking spaces. Those spaces can be provided anywhere within the Addison Circle district, even in parking garages in Phase II. Therefore, the district has sufficient space for this use.

Landscaping. The landscaping in Addison Circle is in place and is maintained by the Town.

Façade. The applicant will not be making any changes to the façade with this addition. A 48-inch tall railing will be added around the patio that will be fabricated and painted to match the existing railing around the existing patio.

Fire Occupancy. The Fire Prevention Chief does not have any objections to the SUP request, but would note that the new patio will have a fire occupancy of 15 square foot per person.

Building Code Issues. The Building Official notes that the gates must be hinged gates which open in the direction of egress, and that all hinges and latches must comply with the 2006 International Building Code.

Landscaping Review. Slade Strickland notes that the applicant is removing 750 square feet of landscaped area and one tree. The tree recommends that the tree be removed, as it is overcrowding the area. Slade notes that in general, the landscaping in this area contains many well-maintained mature trees, and the center in general is well-maintained. Therefore, the staff does not recommend that the applicant be required to mitigate the landscaping that is being taken out to accommodate the new patio.

Signs. The applicant did not show any signs on the elevations, and the staff does not anticipate that any changes to the signs will occur as a result of this request.

RECOMMENDATION:

Staff recommends approval of the request for an amendment to an existing Special Use Permit for a restaurant, and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to no conditions.

Respectfully submitted,

A handwritten signature in black ink that reads "C Moran". The signature is written in a cursive, somewhat stylized font.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in a rescheduled session on September 25, 2008 voted to recommend approval of the amendment to a Special Use Permit for a restaurant and the Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to no conditions.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood,
Voting Nay: None
Absent: Jandura

Memorandum

To: Carmen Moran, Director of Development Services
From: Gordon C. Robbins, Deputy Fire Chief
Date: Monday, September 15, 2008
Re: Case 1564-SUP / Antonio's patio



The Fire Department has no objection to this SUP. However you may wish to inform the applicant that a separate occupant load will be set for the new patio at a factor of 15-square feet per person (same as that used inside the restaurant).

Thank you.

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

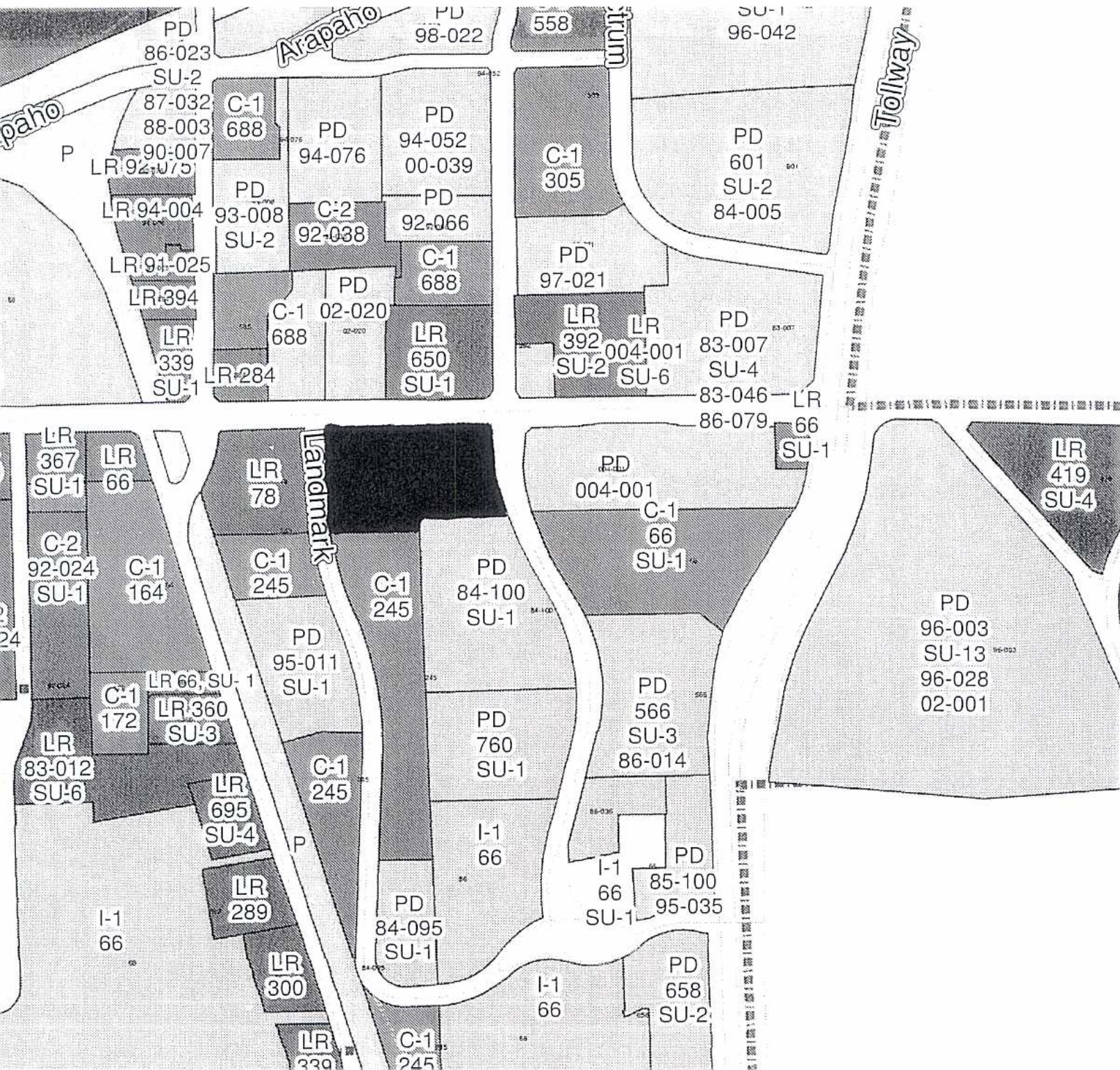
Date: September 15, 2008

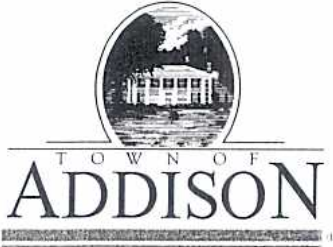
Subject: Case 1564-SUP/Antonio Ristorante

The patio shall have exit gates opening in the direction of egress in compliance with the 2006 IBC.

1566-SUP

PUBLIC HEARING Case 1566-SUP/Smashburger. Requesting approval of a ordinance approving Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located at 4980 Belt Line Road, on application from Smashburger, represented by Ms. Lisa Davis of Intertech Design Services.





September 17, 2008

STAFF REPORT

RE: Case 1566-SUP/Smashburger

LOCATION: 4980 Belt Line Road

REQUEST: Approval of a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption

APPLICANT: Smashburger, represented by Ms. Lisa Davis of Intertech Design Services

DISCUSSION:

Background. The site involved in this request was once part of the Valencia Restaurant. Valencia closed about a year ago, and after it closed, the owners of the center decided to take a different approach with the food operators in the shopping center. The owners decided not to try to put another full-service restaurant tenant under Pete's Dueling Pianos and The Improv because the parking demand for a full service restaurant was more heavily loaded in the evening, which is also the peak demand time for Pete's and The Improv. The owners decided to take the parking spaces allocated to the full service restaurant and divide them up among smaller operators that would cater more to a lunch or breakfast crowd. Toward that end, in July of this year, the owners put a Dunkin Donuts in a lease space on the ground floor of the 2-story building to the west of this building. The owners are now ready to put a smaller, lunch-oriented tenant into 1,973 square feet of this space.

Proposed Plan. Smashburger is a burger chain out of Colorado. This will be one of the first Smashburger locations in this area. The restaurant is "fast casual" in that it does not have waiters, but has orders taken at a counter and self-service drinks. The restaurant does not have a bar area, but may serve beer and wine.

Facades. The applicant will use the facades that were modified for the Valencia Restaurant. The trim around the windows may be painted, but will not be otherwise altered.

Landscaping. The landscaping for this center is already in place. The Parks Department notes that it meets the requirements of the ordinance and is generally well-maintained.

Parking. Restaurant uses within this center park at a ratio of one space per 160 square feet, unless they have designated valet parking, which this proposed restaurant does not. This is a center that the staff constantly monitors for parking compliance, as there are several restaurants in the center. The new owners are planning to take the parking that was allocated to the Valencia Restaurant and reallocate it among smaller tenants. Valencia was 6,171 square feet and required 38.5 parking spaces. The Dunkin Donuts was 2,179 square feet and took 13 of those spaces. This restaurant is 1,973 square feet and will require 12 spaces. Therefore, there is sufficient parking for this restaurant, with 13 spaces remaining to be allocated to other uses.

Food Service Code. The restaurant will be subject to all regulations contained in the Addison Food Service Ordinance. Neil Gayden, the Environmental Services Official, has inspected the site and notes that there is an available grease trap.

Signage. There are signs shown on the facades. The applicant should be aware that all signage for the restaurant must comply with the requirements of the Addison Sign Ordinance.

RECOMMENDATION:

Staff recommends approval of the Special Use Permit for a restaurant subject to no conditions.

Respectfully submitted,

A handwritten signature in black ink that reads "C Moran". The signature is written in a cursive, slightly stylized font.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 25, 2008, voted to recommend approval of the request for a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, on application from Smashburger, subject to no conditions.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood

Voting Nay: None

Absent: Jandura

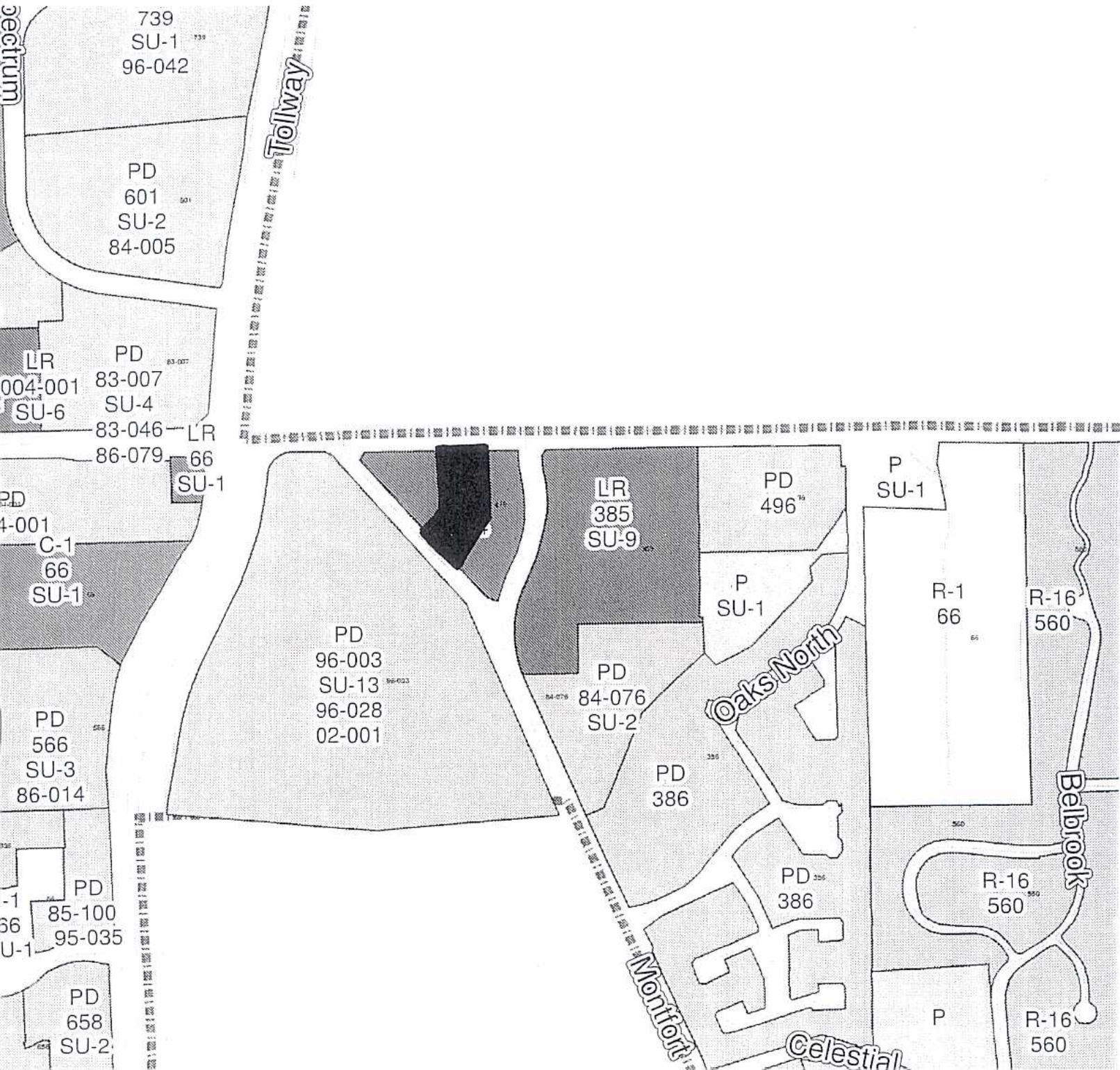
Memorandum

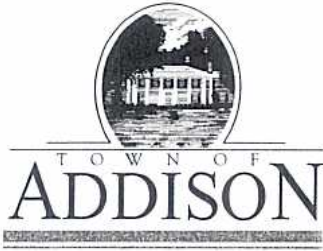
Date: September 16, 2008
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Case 1566-SUP/Smashburger**

The landscaping at this center was completely refurbished, so there are no landscape conditions.

1567-SUP

PUBLIC HEARING Case 1567-SUP/Twin Peaks. Requesting approval of an ordinance amending an existing Special Use Permit for a restaurant, and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located at 5260 Belt Line Road, on application from Front Burner, LLC, represented by Mr. Bruce Russo of Techcon Dallas, Inc.





DEVELOPMENT SERVICES

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

September 17, 2008

STAFF REPORT

RE: Case 1567-SUP/Twin Peaks Restaurant

LOCATION: 5260 Belt Line Road (formerly
Bennigan's Sport)

REQUEST: Approval of an amendment to an
existing Special Use Permit for a
restaurant and an existing SUP for
the sale of alcoholic beverages for
on-premises consumption

APPLICANT: Front Burner, LLC, represented by
Mr. Bruce Russo of Techcon Dallas, Inc.

DISCUSSION:

Background. This property is zoned Local Retail. It was originally developed as a Bennigan's Grill and Tavern. The original SUP for Bennigan's was issued on August 22, 1978 through Ordinance 419. The SUP was amended on November 13, 1979 through Ordinance 542 in order to add additional dining space onto the restaurant. Steak and Ale and Bennigan's Restaurants were originally owned by Norman Brinker, but he sold both chains to Metro Media in the 1980s. In December of 2006, the Council approved an amendment to the SUP for Bennigan's to allow the restaurant to redevelop as a 29-Degree Tavern. However, Metro Media decided not to go forward with the remodel, and later did a cosmetic remodel to the existing Bennigan's and renamed it Bennigan's Sport. Bennigan's Sport operated from early 2007 until the end of August, when all Metro Media restaurants (both Steak and Ale and Bennigan's) declared bankruptcy and closed.

Proposed Plan. At this point, Front Burner LLC is proposing to take over the restaurant and convert it to a Twin Peaks Restaurant. Twin Peaks operates much in the same vein as Hooter's and Ker's Wing House. It serves predominantly a wings/burgers menu and features TVs for screening of sporting events.

The décor for a Twin Peaks is a mountain-style theme featuring split log walls and exterior trim. The interior of the restaurant is intended to look like a mountain lodge. There are other Twin Peaks Restaurants currently operating in Plano, Lewisville, Austin, and Santa Fe, New Mexico.

The operator of the Twin Peaks chain plans to make this his flagship restaurant. He has also purchased the Addison Bank Building on Broadway and established his corporate office in it.

Floor Plan. The floor plan for the restaurant will essentially remain as it is now. The bar will be reduced in size and pushed up against the south wall of the dining area. More tables will be added into the raised area that was once occupied by the large rectangular bar. A service bar will be added to the northeast corner of the building. The kitchen and restroom areas will remain as is, but there will be significant improvements to the plumbing and equipment.

Facades. The facades will be re-imaged. The large windows around the sides of the buildings will be replaced with roll-up garage doors, similar to the roll-up doors currently at BJ's Restaurant and Hooters. The roll-up doors do not go all the way to the ground, but connect to a base of d-log siding. Log siding will also be added to the front and sides of the building, and a standing seam metal room will be added to the wings of the building that are now flat-roofed. The middle section of the restaurant will be bumped up vertically and a gabled roof added. There will be double doors and a balcony added to make the building appear to be 2-story, but the balcony is cosmetic only. There will not be a second floor in the building because there is not sufficient parking to make the building any larger.

Parking. Bennigan's was developed when the restaurant requirement was one space per 100 square feet. The restaurant remodel does not call for the restaurant to be expanded; therefore, Bennigan's does not lose its "grandfathered" status for parking at 1/100. However, the site provides 117 spaces, which almost meets the 119 it would be required to provide at a 1/70 ratio.

Fire Code. The applicant should be aware that if the remodeling of the building totals more than 50% of the area of the building, or 50% of the value of the building, a sprinkler system will be required.

Landscaping. The landscaping was renovated when it was converted to a Bennigan's Sport. The site has less than 20% landscaping. However, it was developed prior to the 20% requirement being added to the ordinance, and since the building is not getting any larger, it is grandfathered with regard to landscaped area. However, the applicant

submitted a plan that shows additional plants to be added to the upgrades that Bennigan's installed. Therefore, the staff recommends approval of the landscape plan.

Screening of Mechanical Equipment. 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".

Signs. The applicant has shown signs on the building. He should be aware that all signs in Addison must meet the requirements of the Addison Sign ordinance. The applicant should also be aware that the Town has a policy against the use of terms such as "bar" "Tavern" or equivalent terms, in exterior signs.

RECOMMENDATION:

Staff recommends approval of the request for the amendment to an existing Special Use Permit for a restaurant and the SUP for the sale of alcoholic beverages for on-premises consumption only, 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".

Respectfully submitted,

A handwritten signature in black ink that reads "C Moran". The signature is stylized and written in a cursive-like font.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 25, 2008, voted to recommend approval of the 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, subject to the following condition:

-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".

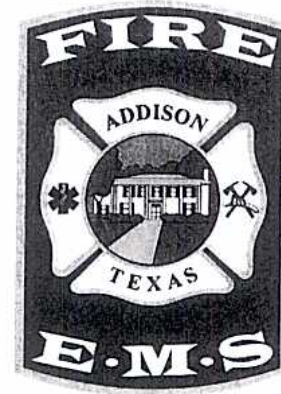
Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood

Voting Nay: None

Absent: Jandura

Memorandum

To: Carmen Moran, Director of Development Services
From: Gordon C. Robbins, Deputy Fire Chief
Date: Monday, September 15, 2008
Re: Case 1567-SUP / Twin Peaks



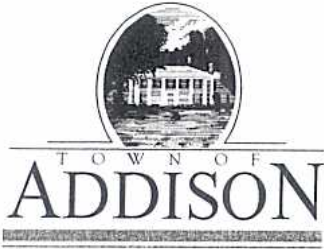
The Fire Department has no objection to this SUP. However the applicant should be informed that fire sprinklers will be required throughout the building if more than 50% of the building is remodeled.

Thank you.

Memorandum

Date: September 16, 2008
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Case 1567-SUP/Twin Peaks**

The landscaping on this site was renovated when the Bennigans was remodeled in 2006. Twenty percent landscaping is typically required for this application; however, only ten percent is provided. Bennigans was not required to increase their landscaping, since the building footprint did not change, and there were no extra parking spaces to convert to landscaping. This is the same situation with Twin Peaks application. The landscape plan submitted by the applicant shows further landscape enhancements to those provided by Bennigans; therefore, staff recommends approval of the landscape plan.



DEVELOPMENT SERVICES

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

**A PUBLIC HEARING BEFORE THE ADDISON
PLANNING AND ZONING COMMISSION**

SEPTEMBER 25, 2008

6:00 P.M.

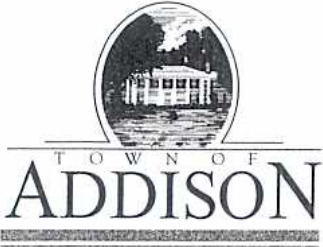
ADDISON TOWN HALL

5300 BELT LINE ROAD

COUNCIL CHAMBERS

1. **PUBLIC HEARING** Case 1568-Z/Town of Addison. Requesting approval of an ordinance amending the Code of Ordinances, Appendix A, Article XX, Special Uses, to add a new paragraph, paragraph 38, for a "wind energy system", and amending Article XXX, Definitions, to add a definition for a "wind energy system", on application from the Town of Addison.

**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.**



September 17, 2008

STAFF REPORT

RE: Case 1568-Z/Town of Addison

LOCATION: Amendment to Appendix A, the Addison Zoning Ordinance

REQUEST: Amendment to Appendix A, the Addison Zoning Ordinance, Article XX, Special Uses, to add a new paragraph, Paragraph 28, requiring a Special Use Permit for a wind energy system, Amending Article XXX, Definitions, to add a definition for a wind energy system

APPLICANT: Town of Addison, represented by Carmen Moran

DISCUSSION:

Background. In October of 2007, the Town took its first steps toward a more "sustainable" Addison by adopting the Brookhaven Sustainability Program as part of the rezoning of the Vitruvian Park neighborhood. In addition, a Citizens' Advisory Committee on the Environment was appointed by the Council and charged with finding ways to make Addison a more sustainable city. The presentation by the Committee was made in the Spring of 2008, and following the presentation, the Council issued a formal statement on its Sustainability Philosophy:

Addison will take actions to be a leader in sustainable development and operations that protect and enhance our Town's quality of life, and will continue to do so for generations. Addison residents, its local government, and the business community will foster, promote, and appysound environmental practices.

High technology, energy and natural resources conservation, sustainable urban design, building and development standards, and recycling are employed appropriately at every opportunity.

At that same meeting, the Council charged the Planning and Zoning Commission with the task of studying sustainability as it relates to building and development standards, and making recommendations to the Council for programs in those areas.

Due to the summer vacation schedule, the Commission was not able to begin in earnest on the study until August. On August 12, 2008, the Planning and Zoning Commission and Council met in a joint session and the P&Z outlined what it felt would be the areas that its recommendations would cover. Those areas were:

1. A policy statement endorsing and encouraging compact development, higher densities, and a mix of land uses for new development and redevelopment.
2. Requirements for energy efficient construction in all buildings the city builds, or remodels, in the future.
3. Requirements for energy efficient construction in all new commercial construction and new multi-family construction. Energy efficient construction might include LEED certification as an option, but not a requirement.
4. Requirements for energy efficient construction in all remodels and redevelopment of existing commercial construction and existing multi-family construction. Again, energy efficient construction might include LEED certification as an option, but not a requirement.
5. A policy statement encouraging energy efficient construction in all new single family homes, and energy efficient remodels and adaptations in existing single family homes. However, those remodels and adaptations should not interfere with the neighborhood aesthetic, or any neighbor's ability to enjoy his home.

At Present. The Planning and Zoning Commission is currently studying the Sustainability Question, and will present a report to the Council in early 2009. However, the Commission directed the staff to move one item ahead of the full study. The Commission has realized that Wind Energy Systems are becoming popular throughout the country and even in the metroplex. A recent story in the Town of Prosper (article attached) caused some concern among the members of the Commission. In addition, the staff has seen small wind energy systems popping up in other cities close to Addison (photos attached).

The staff has done some research on Wind Energy Systems (copy of *Zoning Practice*, July 2008 issue attached), and feels that there may be some viable applications in the city. In fact, the Town is considering a wind energy component to the design of the new municipal water tower that will be constructed at Surveyor Road and Arapaho Road.

The staff would like to encourage an alternative energy solution, and feels that there are some applications and locations where wind energy could supply a viable and source for renewable energy. However, the staff realizes that most of the single-family lots in Addison are very small, and a wind energy system installed in almost any neighborhood in Town would impact the surrounding homeowners.

RECOMMENDATION:

The staff believes the Commission's goal of encouraging remodels and adaptations that do not interfere with the neighborhood aesthetic, or any neighbor's ability to enjoy his home, is important to the quality of life that Addison residents expect.

The staff believes that wind energy systems can be installed in Addison; however, staff recommends they be subject to the extra level of scrutiny that is afforded through the Special Use Permit requirement.

The proposed ordinance to create a Special Use Permit for a wind energy system is attached. In addition, the staff would consider the following criteria, or guidelines, in assessing the merit of a Special Use Permit for Wind Energy System:

- a) A building permit shall be required for the installation of a wind energy system.
- b) A wind energy system is only permitted as a secondary use. A wind energy system may not be erected on a lot until a primary structure has been constructed.
- c) The property which the wind energy system is located on shall be a minimum of one (1) acre in size. Two (2) additional acres of land is required for each additional wind energy system on the property. For example, for two (2) wind energy systems on one property, the size of the property shall be a minimum of three (3) acres in size.
- d) The tower for a wind energy system shall be setback a minimum of the distance equal to 1.25 times the height of the tower from all property lines, rights of way, and overhead utility lines. The tower for a wind energy system shall not be located in the front yard.
- e) The tower for a wind energy system shall be setback a minimum distance of two hundred fifty (250) feet from any other tower for a wind energy system.
- f) The maximum height of a wind energy system, including the turbine and blades, shall be sixty (60) feet.

- g) The minimum height of the lowest part of the blade shall be twenty (20) feet above grade. Blades are not permitted to extend over driveways, parking areas, or sidewalks.
- h) A wind energy system shall be equipped with manual (electronic or mechanical) and automatic over speed controls.
- i) Only monopole towers without guy wires shall be permitted. Lattice type towers are strictly prohibited.
- j) A wind energy system shall comply with applicable Federal Aviation Administration (FAA) regulations, including any necessary approvals for installations close to airports. A wind energy system shall not be lighted unless such lighting is required by the Federal Aviation Administration (FAA).
- k) A wind energy system shall remain painted or finished the color or finish that was originally applied by the manufacturer. Primary, secondary, and bright colors are not permitted.
- l) Ground equipment associated with a wind energy system shall be screened from the view of public rights-of-way and adjacent properties.
- m) Decorative features, banners, and flags shall not be attached to the wind energy system.
- m) All signs, other than appropriate warning signs, shall be prohibited.
- o) Wind energy units shall remain under the ownership of the property owner on which the wind energy unit is located. Pooling power supply output from more than one property for a common operator is prohibited.

Respectfully submitted,

A handwritten signature in black ink that reads "C. MORAN". The signature is stylized with a large, looped "C" and the name "MORAN" in all caps.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 25, 2008, voted to recommend approval of amendments to Appendix A, the Addison Zoning Ordinance, Article XX, Special Uses, to add a new paragraph, Paragraph 28, requiring a Special Use Permit for a wind energy system, and amending Article XXX, Definitions, to add a definition for a wind energy system

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay, Wood

Voting Nay: None

Absent: Jandura

Backyard windmill creates buzz in small town

When Mary Starrett erected a windmill in her backyard in Prosper last November, she never thought it would create such a stir or cause the town to pass a new ordinance.

Ms. Starrett has lived in her one-story home since 2002.

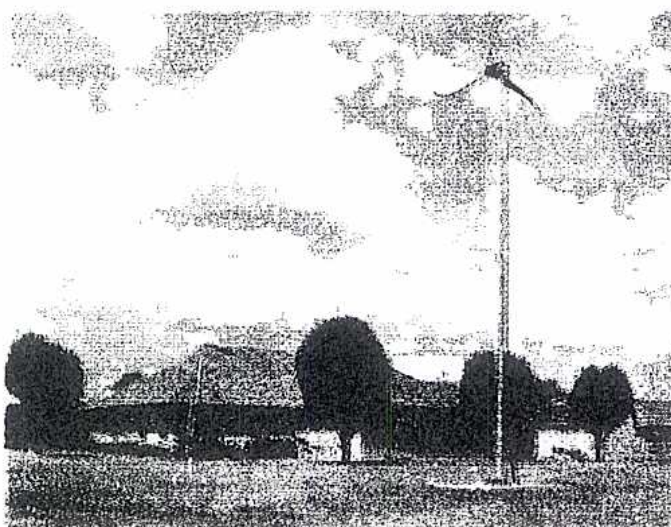
"I was trying to do everything I could think of to cut the electric bill," she says.

She replaced all of her old light bulbs with energy-efficient bulbs. She increased her home's attic insulation to an R-48 level and added a radiant barrier.

Then Ms. Starrett asked Charles Crumpley with WeKnow Technologies to install a 33-foot windmill in her backyard. It generates between 400- and 700-kilowatt hours per month, which is electricity she does not have to buy.

Homeowners had never asked the town of Prosper for permission to install a windmill. Until recently, Ms. Starrett believes her windmill was the only one in Collin County.

Prosper approved her windmill as an "accessory structure."



"I'm happy with it," Ms. Starrett says.

In May and June of this year, Ms. Starrett's electric bill for her 2,200-square-foot home was only \$93, compared to her neighbor with a similar-sized house who had a \$350 bill in May.

That piqued the interest of several homeowners, who applied to the town for a permit to erect a windmill.

"As energy costs rise, we expect requests for windmills to go up," says Chris Copple, a senior planner for the Prosper Planning & Zoning Commission.

He started drafting new regulations in April on how windmills could be erected.

Those regulations have been approved by the Planning & Zoning Commission and are

before the Town Council. On Aug. 12, the Town Council will hold a public hearing on windmill regulations.

In the town of Prosper, which has a population of 6,367, the new regulations will limit windmills to a maximum height of 60 feet, including the blade. They have to be at least 75 feet from the property line and from any right of way. And they must be 250 feet from another windmill. They cannot be placed in the front yard, and the lot has to be at least 1 acre in size.

"We don't want it casting shadows over someone's pool," Mr. Copple says.

Noise is not an issue because windmills of this size are quiet — running at about 45 to 60 decibels.

Not everyone can or should

build a windmill, Mr. Crumpley says. But demand is rising. His company is erecting a new windmill at a rate of one a day, and he expects to add more installers so it can install three new windmills per day. There are special conditions to justify a windmill, he says.

Prosper, whose logo is an old-style windmill, is developing a windmill ordinance that could serve as a model for governing the installation of personal windmills.

Grand Prairie has an ordinance regulating commercial windmills. Waxahachie recently approved a windmill ordinance, and Garland is considering one as well.

Ms. Starrett paid \$13,500 for her windmill. She expects the windmill to pay for itself eventually.

It has become part of the family. She and her daughters talked about the windmill so often, they named it Bud.

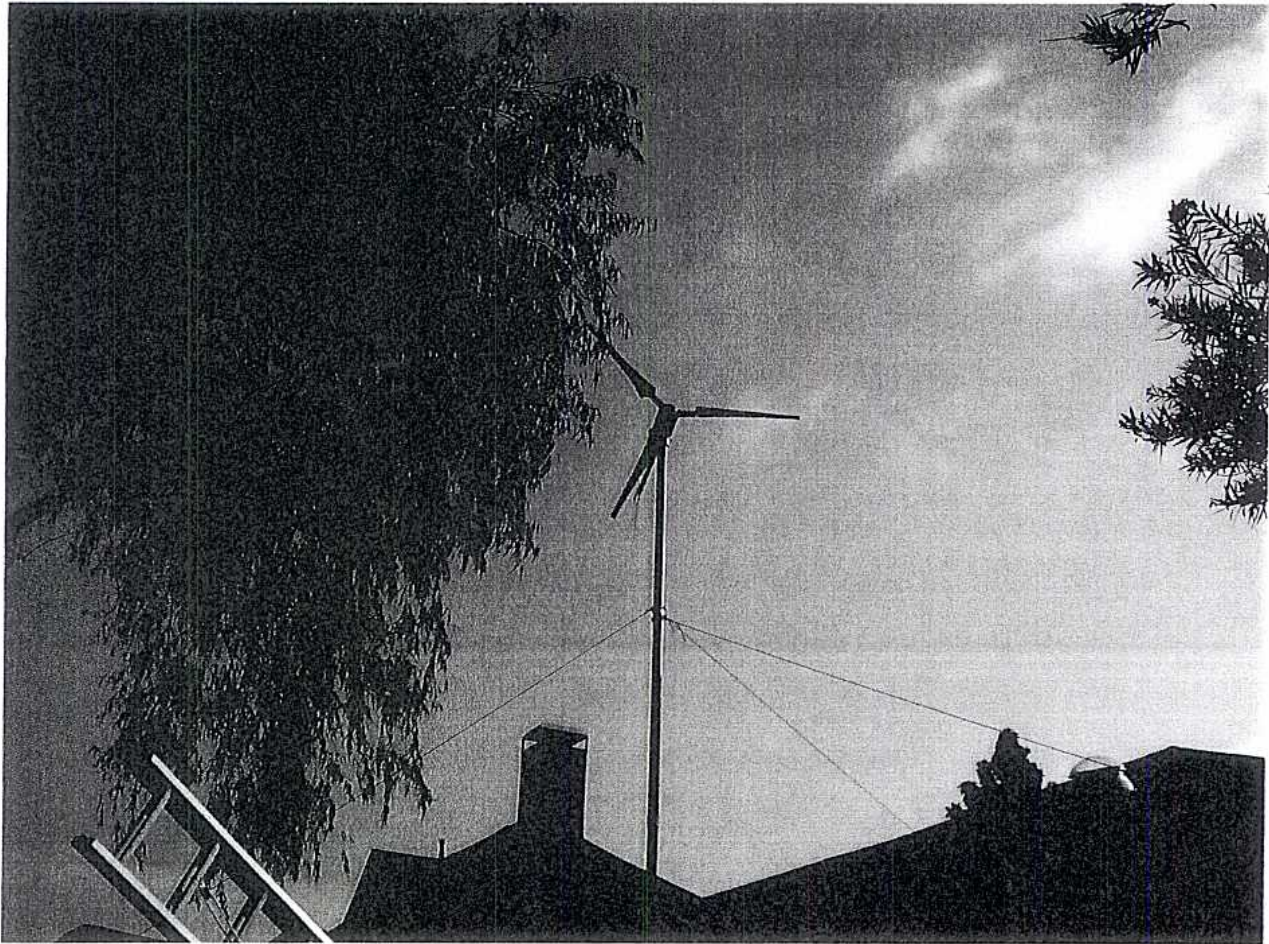
"We watch it all the time. It is better than watching TV," Ms. Starrett says. Last year she photographed it for her Christmas cards.

Bud has also become a local attraction. "I have had 15 or 20 people ask me about it," Ms. Starrett says.

She is now applying to the town for a 50-foot windmill, which will generate 25 percent more electricity. She plans to call the taller windmill Bubba.

Stewart Lytle
stewart@stewartlytle.com

Wind Energy System at a home in Plano



ZONING PRACTICE

July 2008

AMERICAN PLANNING ASSOCIATION



➔ ISSUE NUMBER SEVEN

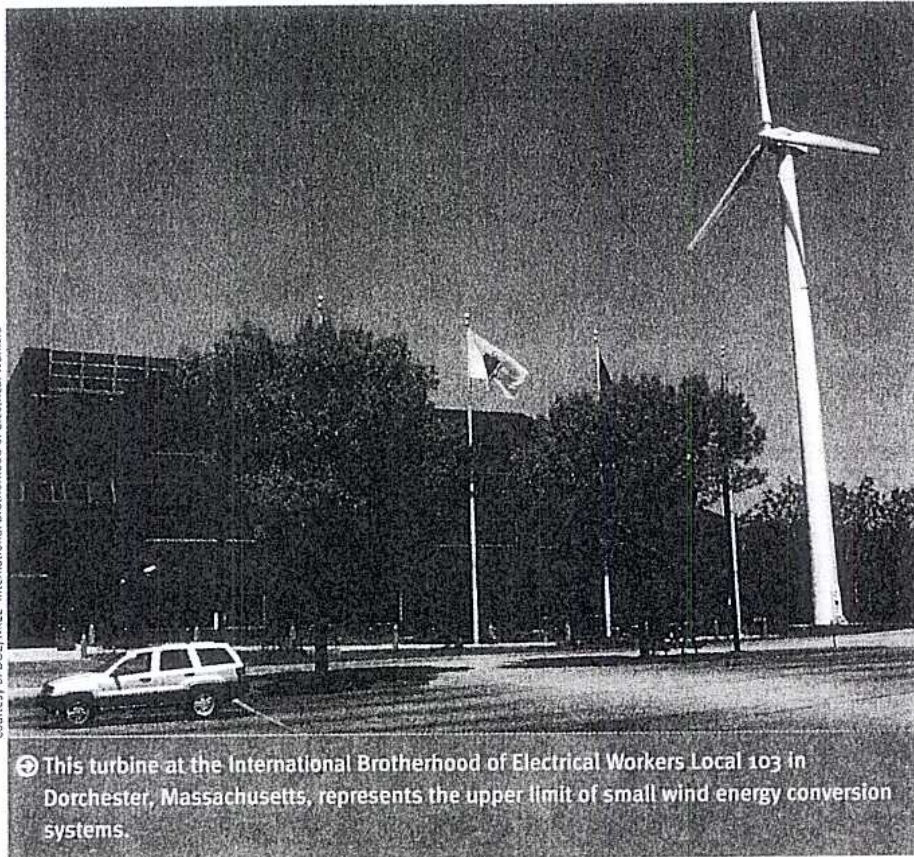
PRACTICE **RENEWABLE ENERGY**

A large, bold, black number '7' is positioned in the lower right quadrant of the cover. The background of the entire cover is a faded, high-contrast photograph of a street scene with utility poles and trees.

Urban Wind Turbines

By Erica Heller

Wind is an abundant renewable resource in much of the U.S.



Courtesy of DOE/NREL—International Brotherhood of Electrical Workers

⊕ This turbine at the International Brotherhood of Electrical Workers Local 103 in Dorchester, Massachusetts, represents the upper limit of small wind energy conversion systems.

As wind power development expands, technologies are being developed and improved to increase efficiency and reduce impacts. A range of new turbines (wind energy conversion systems, or WECs) enable wind power to be harnessed in a much wider variety of settings than ever before, including in urban and suburban settings.

Many local governments that have never processed an application for a wind turbine permit may find themselves needing to review one in coming years. In fact, most of these

communities are unprepared to review these permits and lack the standards to ensure safe installation in compatible locations. This can result in lengthy, costly public review processes that yield mixed results.

SMALL WIND

“Small wind” refers to turbines rated 100 kW or less that can be used to power farms, homes, or businesses. The vast majority of nonrural applications for wind are small WECs, sited as accessory uses to a primary business

or residential use. The photo on the left shows a 100 kW WEC located at the offices of the International Brotherhood of Electrical Workers Local 103 in Dorchester, Massachusetts—this is as big as “small” wind gets. A WEC used at a residence (such as that shown on page 4) is typically smaller—up to 10 kW and about 50 to 80 feet high (depending on a number of factors, as will be discussed). Even smaller WECs may be used for targeted applications, such as the systems shown on page 5, which are mounted on light poles to offset power used by the lights in a shopping center parking lot in Lakewood, Colorado. Rooftop models, often used in rows, are a newer type of small wind that is growing in popularity for commercial applications and urban areas.

URBANIZED SETTINGS

This article focuses on incorporating small WECs in urbanized settings. The science of small wind is the same across urban and rural settings, and the discussion here may also be useful for planners in rural areas. However, this article does not specifically address rural settings. Within urbanized settings, there are a variety of zoning districts in which WECs may be appropriate, including industrial, commercial, and even residential neighborhoods, as the images in this article depict. Successful integration of WECs in densely built environments requires careful examination of potential impacts and thoughtful standards that balance mitigation against the cost effectiveness of installing a turbine.

POWER FROM SMALL WECS

Planners often ask if small WECS produce enough energy to justify both installation

ASK THE AUTHOR JOIN US ONLINE!

Go online from August 18 to 29 to participate in our "Ask the Author" forum, an interactive feature of *Zoning Practice*. Erica Heller will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The author will reply, and *Zoning Practice* will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* webpages.

About the Author

Erica Heller is an associate with Clarion Associates based in Denver, Colorado. She has six years of experience working on community and neighborhood plans, development codes, and airport land use plans. Prior to joining Clarion, she was a long-range planner for Lakewood, Colorado. Heller recently presented at the APA National Conference in Las Vegas on the topic of zoning standards for wind turbines.

costs and potential land-use impacts. Because WECs can be controversial, it is reasonable to ask if they are effective. The answer depends partly on planners and local officials. A small WEC can produce impressive amounts of power, but only with access to good wind, which is largely a function of proper siting and adequate height—factors that zoning regulations impact mightily.

UNDERSTANDING LOCAL WIND RESOURCES

The U.S. Department of Energy (DOE) and National Renewable Energy Laboratory (NREL) provide state-level wind resource maps for nearly every state in the U.S., and some state governments provide more detailed maps. Wind resource maps show the average strength of the wind at 50 meters, with a ranking between 1 (weakest) and 7 (strongest). Most utility wind developers today look for areas with steady Class 4 or 5 winds, but Class 2 or 3 winds, which are found in much of the U.S., can power small WECs.

Large-scale wind maps are a free resource that can help a community understand generally if wind energy potential is likely to exist. To determine the actual wind power generation potential of a given site, a site-specific wind resource assessment by a qualified professional is needed. Site-specific assessments are typically the responsibility of the property owner.

FACTORS THAT INFLUENCE ENERGY PRODUCTION

How much energy a WEC will produce depends primarily on three factors:

(1) The engineered design of the turbine, which determines efficiency of power transfer.

Modern WECs are highly engineered and most are very efficient.

(2) The size of the rotor. Capacity increases with "swept area," meaning the total area of the spinning rotor blades. Area, and thus capacity, increases geometrically with blade length.

(3) The speed and consistency of the wind. Power output increases exponentially with wind speed, but gusty or turbulent winds can damage turbines. Variations in topography and obstructions such as buildings and trees slow the wind and add turbulence near the ground. Therefore, adequate height is a critical factor in WEC effectiveness. In order to function well, the lowest part of the rotor blades must be a minimum of 25 to 35 feet higher than surrounding obstructions. Height regulations that do not achieve such separation eliminate the benefits of investing in a WEC.

The National Renewable Energy Laboratory provides estimates of yearly energy generation potential for small wind turbines.

Using these figures, it is possible to estimate the power generation potential for various turbine sizes and wind classes and to gauge the number of average U.S. homes that can be powered. The table below illustrates the variation by wind speed and rotor size (assuming good wind access). Depending on such factors, a residential turbine can often supply about one-third to one-half of an average U.S. home's energy demand and a substantially greater percentage if the home is energy efficient. Larger "small" WECs can supply consumers with higher energy demand, such as commercial or public facilities.

CARBON EMISSION REDUCTIONS FROM WIND-GENERATED ENERGY

Using 100 percent wind-generated energy versus typical utility energy can reduce annual carbon emissions by eight tons for a U.S. home with typical energy demand. This is equivalent to the carbon emissions produced annually by 1.4 typical U.S. passenger cars. Thus, for an average two-car household, converting the

MEDIAN NUMBER OF HOMES POWERED BY SELECTED WECs SIZES AND WIND CLASSIFICATIONS

Rotor Diameter	Wind Strength					
	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7
3 m	0.3	0.3	0.3	0.4	0.4	0.5
5 m	0.7	1.0	1.2	1.3	1.5	1.9
7 m	1.4	2.0	2.3	2.6	3.0	3.7
10 m	2.9	4.1	4.8	5.4	6.1	7.5
12 m	4.1	5.9	6.9	7.7	8.8	10.8

Estimated NREL median yearly energy production figures, expressed as kWh per square meter of swept area, are multiplied by swept area, then divided by U.S. national average annual home energy usage to estimate the number of average homes powered



Robin Wilson

➤ A small 10 kW residential turbine in San Francisco's Mission District.

home to 100 percent wind power reduces carbon emissions as much as driving one car 40 percent less and not using the other car at all! If we take the need to reduce carbon emissions seriously—as many studies and recent global events strongly suggest that we should—then incorporating WECs into our communities may be a more practical approach than radical changes to our driving behavior. Communities should seriously consider how and where to allow WECs to ensure that regulations are not so strict as to eliminate their potential for effective energy production.

THE CASE FOR LOCAL ACTION

In addition to reducing CO₂ emissions, there are several important reasons that local governments should draft reasonable standards for WECs:

- (1) *Respond to community desires.* Ultimately, permitting decisions are local decisions. Permitting takes public time and resources, especially when uses must be approved through discretionary approvals. Good zoning standards that address potential impacts can allow WECs to be permitted as by-right uses, at least in some districts, reducing public cost and NIMBY battles.
- (2) *Maintain local autonomy.* In several windy states, state legislatures have restricted the ability of local governments to deny permits for WECs. By proactively adopting reasonable,

locally appropriate standards, local governments reduce the likelihood that states will override local control.

- (3) *Protect local resources.* Many states offer incentives such as rebates or buy-down programs for WECs. Where public funds are

COMMUNITIES ALLOWING TURBINES IN SUBURBAN AND URBAN SETTINGS

- BREWSTER, MASSACHUSETTS (www.town.brewster.ma.us)
- CENTENNIAL, COLORADO (www.centennialcolorado.com)
- CHICAGO (www.cityofchicago.org)
- DULUTH, MINNESOTA (www.duluthmn.gov)
- FAIRFIELD, CALIFORNIA (www.ci.fairfield.ca.us)
- MASON CITY, IOWA (www.masoncity.net)
- SACO, MAINE (www.sacomaine.org)
- SAN FRANCISCO (www.ci.sf.ca.us)

Note: Not all communities fully conform to the recommendations in this article.

used to encourage WECs, standards should ensure that this money is well spent.

(4) *Diversify energy supply.* Small-scale WECs can help diversify energy supply. Many small WECs are less vulnerable to attack than a centralized plant. If a storm, system overload, or terrorism event shuts down energy grids, small WECs can provide dispersed backup power.

One of the least expensive alternatives for small increases in grid energy capacity is to allow small-scale producers, since they, rather than the utility, purchase and maintain the infrastructure. Such investments may delay or reduce the need for major capital investments by the utility.

LAND-USE IMPACTS AND RESPONSIVE STANDARDS

Wind turbines can have impacts on surrounding property owners and land uses. Permit requests for wind turbines may be controversial—particularly in residential areas—due to both real and perceived impacts. Impacts can be grouped in four categories: noise impacts (normal and storm conditions); safety impacts (electrical and structural safety, potential for climbing, and avian impacts); aesthetic impacts (appearance and visibility); and property value impacts. Each of these categories is discussed below, along with zoning tools and standards to address them.

In this discussion the assumed goal is to adequately address impacts in a way that is responsive to realistic concerns but not onerous to the turbine owner. Time and cost requirements for permitting are among the biggest hurdles for many potential turbine owners and can quite easily determine whether a WEC is cost effective. For this reason, local governments should strive to keep requirements to the minimum necessary to address impacts.

NOISE IMPACTS AND STANDARDS

Although noise is often a first concern of neighbors, small WECs are less noisy than most people expect and rather easy to regulate. The noise from a modern small WEC that would be used in a residential setting (up to about 10 kW) can be compared to a flag flapping in the wind. To further illustrate, the noise level measured 50 feet away from a WEC on an 80-foot tower is approximately 45 decibels—quieter than standing next to a kitchen refrigerator. When operating in extremely

Due to variation in noise performance of different turbine models, standards to address noise that specify turbine size may produce varied results, and local governments should adopt a standard for noise measured at the property line.

windy conditions, noise levels may be slightly higher, but so will ambient wind-related noise, such as that made by wind in trees. Noise levels are reduced by a factor of four for each doubling of distance (as measured from the turbine to the listener). Thus, off-property noise intrusion from a residential WEC is typically very limited.

Due to variation in noise performance of different turbine models, standards to address noise that specify turbine size may

produce varied results, so local governments should adopt a standard for noise measured at the property line. In general, it is appropriate to use the same standard for "nuisance noise" that the community applies to all other activities in the zoning district. Adding the caveat "or 10 decibels above ambient noise levels" gives some leeway to turbine owners during very windy conditions when ambient noise levels rise and neighbors are less likely to be

outdoors. This caveat also helps if the neighborhood is already impacted by another noise source, such as a freeway. By measuring noise at the property line, the turbine owner can limit it by using a quieter model, increasing setbacks, adding a fence or hedge along the property line, or other techniques.

SAFETY IMPACTS AND STANDARDS

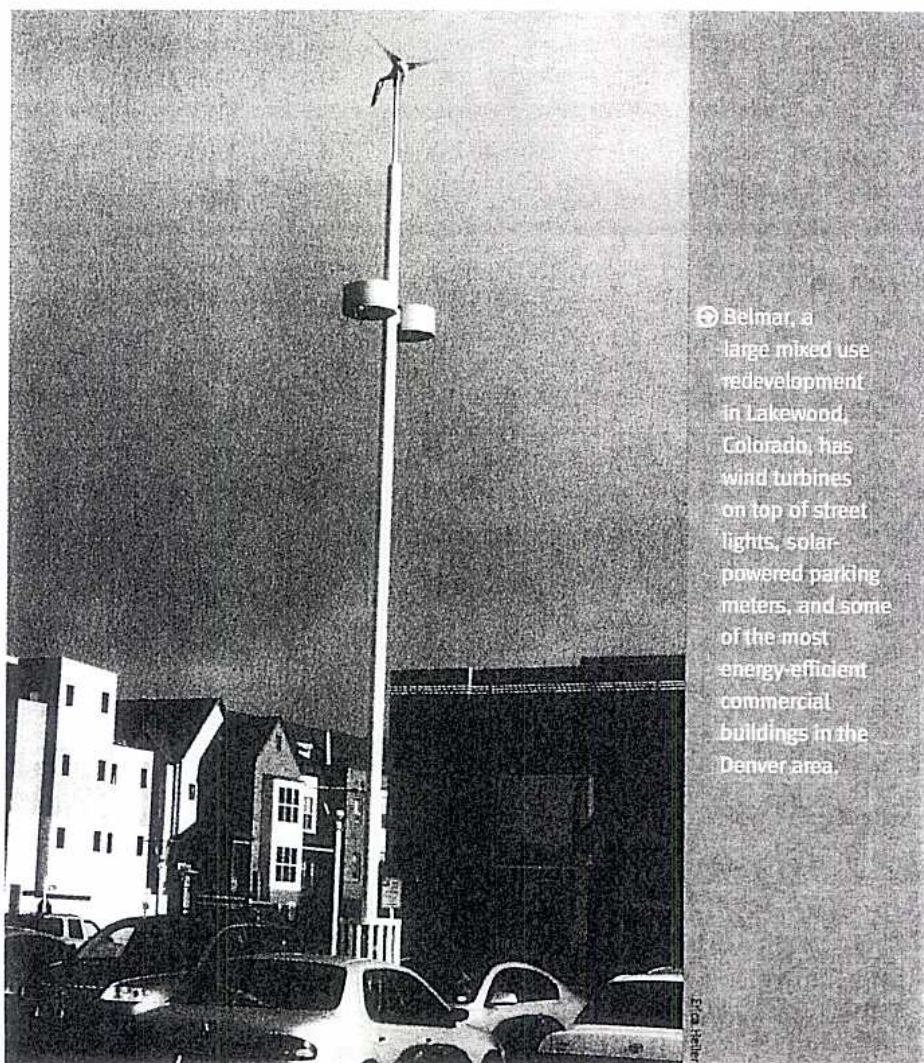
Safety is, of course, an important concern. Local governments should address three main issues when writing zoning and permitting standards for WECs: structural failure, electrical failure, and climbing potential. This section concludes with a brief discussion of safety-related issues associated with wind farms. Although risks for small wind are minimal, opponents often raise safety concerns, and planners should be aware of these concerns and be prepared to respond.

Structural Failure

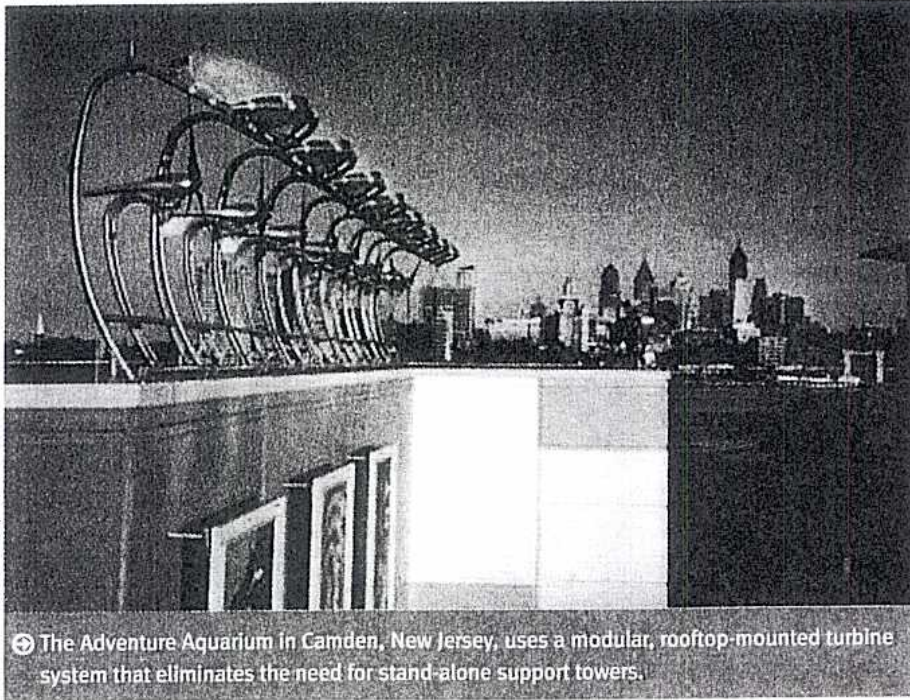
One concern with wind turbines near property boundaries is that the supporting pole or tower could fall down. However, structural failure in a WEC is extremely unlikely. A turbine is a significant investment, as are the engineered towers and poles on which they are installed. WECs are not sold as do-it-yourself appliances. Rooftop models must be installed on structures that are engineered to accommodate the additional weight and stress. The likelihood of structural failure in a properly installed WEC is not more likely than for a flag pole, and is much less likely than for trees. Even so, a setback requirement of 1.1 to 1.5 times the total height of the WEC (i.e., tower or pole height plus rotor radius) is a reasonable requirement. Such setbacks address a range of potential impacts including safety, noise, and aesthetics, and can give neighbors peace of mind.

In most cases the local building inspector can verify that installation conforms to approved plans. It is not necessary to require an engineer to certify installation, except in cases where a reduced setback is to be approved with recorded consent of the adjacent property owner.

Because WECs are installed by professionals, additional certifications add unnecessary expense for a small WEC owner. Soil testing is generally unnecessary and is often cost prohibitive; it should only be required if soils are so weak as to merit testing for



Belmar, a large mixed use redevelopment in Lakewood, Colorado, has wind turbines on top of street lights, solar-powered parking meters, and some of the most energy-efficient commercial buildings in the Denver area.



Ⓢ The Adventure Aquarium in Camden, New Jersey, uses a modular, rooftop-mounted turbine system that eliminates the need for stand-alone support towers.

similar structures, such as flag poles or cell towers.

Finally, it is reasonable that, as for billboards and cell towers, local regulations require an owner of an abandoned WEC to remove it from the property. Over time, an abandoned system might become a structural hazard.

Electrical Failure

Electrical failure is highly unlikely in a modern WEC. Like individual furnace units, these systems are factory certified by engineers for electrical integrity, and thus third-party inspection for an individual turbine is unnecessary. Modern systems also come equipped with manual override brakes so that in the event of an electrical outage the turbine may be shut down. To make sure that the property owner installs a WEC that meets modern standards, local governments should require a permit applicant to submit the manufacturer's electrical drawings and require that the system is equipped with manual braking.

Climbing Potential

WECs on towers may raise the concern that children will try to climb supporting structures and fall, causing injury or death. Many pole-mounted turbines lack climbable features (they are designed to be lowered to the ground for servicing) or have removable climbing features below 12 feet. Local govern-

ments should only require fences around WECs if equivalent regulations apply to similar uses; designs that lack climbing features should be exempt.

Safety and Nuisance Issues of Large WECs

Neighbors may express the following concerns that are associated with large, utility WECs. Planners should be ready to respond.

- *Effects on birds.* The effects of WECs on birds has received much attention due to documented bird kills at a windfarm in Altamont Ridge, California, which is located in a major raptor migration corridor. A small WEC kills fewer birds than a single domestic cat or slid-

ing glass door. Except perhaps in critical endangered bird species habitats, where even very small population losses are unacceptable, WECs should not be restricted based on avian impacts.

- *Acoustical interference.* The slow-spinning blades on large WECs can cause thumping vibro-acoustical effects or cast flickering shadows. Faster rotating, smaller WECs do not cause the same effects. Radio signal interference is also associated with some large turbines. Modern small-scale wind turbine blades are not metal, so they are "invisible" to radio frequency transmissions.

- *Ice buildup.* A concern about turbines in northern climates is that they can accumulate and then throw off ice. This has been observed occasionally in windfarms. However, chunks of ice on the surface of the lightweight blades of small WECs alter aerodynamics so much as to slow or stop the blades from turning until most ice has melted. English and German scholars in a 1998 study used physics to calculate that the risk of personal or property damage from flying ice from a small WEC is lower than the risk of being hit by lightning.

AESTHETIC IMPACTS AND STANDARDS

The appearance of wind turbines is a serious issue in many communities. Opinions vary widely about whether WECs are attractive, based largely on personal taste. Urban environments are not visually pristine, and many of the concerns about aesthetics may sound familiar to planners who have already dealt with aesthetic opposition to satellite dishes, cell towers, and even modern archi-

RESOURCES

- ◆ American Wind Energy Association (AWEA). 2006. Advice from an Expert: Home Sized-Wind Turbines and Flying Ice. Available at www.awea.org/faq/sagrillo/ms_ice_0306.html.
- ◆ Morgan, Colin, Ervin Bossanyi, and Henry Siefert. 1998. "Assessment of Safety Risks Arising From Wind Turbine Icing." BOREAS IV, Hetta, Finland. Available at: www.renew.wisconsin.org.
- ◆ Sagrillo, Mick. 2004. Advice from an Expert: Residential Wind Turbines and Property Value. American Wind Energy Association. Available at www.awea.org/faq/sagrillo/ms_zoning_propertyvalues.html.
- ◆ Sterzinger, George, Frederic Beck, and Damian Kostiuk. 2003. *The Effect of Wind Development on Local Property Values*. Renewable Energy Policy Project. Available at www.crest.org/articles/static/1/binaries/wind_online_final.pdf.

ORDINANCE NO. 008-***

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING THE CODE OF ORDINANCES, APPENDIX A, ZONING, BY AMENDING ARTICLE XX, SPECIAL USES, IN ORDER TO ADD A NEW PARAGRAPH, PARAGRAPH (38), IN ORDER TO REQUIRE A SPECIAL USE PERMIT FOR A WIND ENERGY SYSTEM, AND AMENDING ARTICLE XXX, DEFINITIONS, BY ADDING A DEFINITION FOR A WIND ENERGY SYSTEM IN ANY DISTRICT, PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR A PENALTY CLAUSE.

WHEREAS, the City Council, in accordance with a comprehensive plan, heretofore adopted Appendix A, the same being the Comprehensive Zoning Ordinance (the "Comprehensive Zoning Ordinance"); and

WHEREAS, the City Council is authorized, pursuant to Chapter 211, Tex. Loc. Gov. Code (Vernon), as amended, to amend the Comprehensive Zoning Ordinance; and

WHEREAS, after public notices were given in compliance with State law and public hearings were conducted, and after considering the evidence and information submitted at the said public hearing and all other relevant information and materials, the Planning and Zoning Commission of the City has recommended to the City Council the adoption of the amendments to the Comprehensive Zoning Ordinance as set forth in this Ordinance; and

WHEREAS, after due deliberations and consideration of the recommendation of the Planning and Zoning Commission and the evidence, information and other materials submitted and received at the public hearing and in connection therewith, the City Council has concluded that the adoption of this Ordinance is in the best interests of the City and of the public health, safety and welfare.

Now, therefore,

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

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

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas is hereby amended in the following particulars, and all other articles, sections, paragraphs, sentences, phrases and words are not amended but are hereby ratified, verified, approved and affirmed:

A. Article XX ("Special Uses") is hereby amended by adding a new paragraph, paragraph (38) Wind Energy System in any district.

B. Article XXX (Definitions) is hereby amended by adding a definition for a Wind Energy System, which shall be as follow:

Wind Energy System – A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 10kW and is intended to reduce on-site consumption of electricity.

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

Section 4. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section,

paragraph, sentence, phrase, clause or work in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 5. Penalty. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the city, as heretofore amended, and upon conviction shall be punished by a fine set in accordance with Chapter 1, General Provisions, Section 1.10, General penalty for violations of Code; continuing violations, of the Code of Ordinances for the Town of Addison.

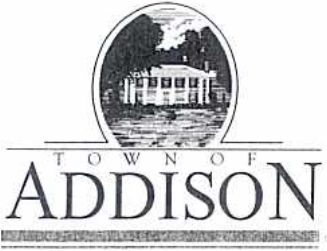
DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,
TEXAS THIS THE _____ DAY OF _____.

MAYOR

ATTEST:

CITY SECRETARY

CASE NO:



DEVELOPMENT SERVICES

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

Memorandum

September 17, 2008

TO: All members of the Planning and Zoning Commission
FROM: Carmen Moran, Director of Development Services
SUBJECT: Sustainability Work Session

Betsy DeMonte, a LEED AP with Beck Group, will join us for the Sustainability discussion.

**MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE
STAFF REPORT
ME 2008-06**

Date: October 7, 2008

Location of Request: 3700 Blk to 4000 Blk Brookhaven Club Dr and 14000 Blk Marsh Ln

Business: UDR

Ordinance Requirement

Sec. 62-210 Construction signs.

Permission is granted to developers to erect temporary construction signs designed to identify contractors, financiers, architects, engineers, and to advertise the coming of new businesses on the premises to which the sign pertains. Such signs shall not be erected prior to the issuance of a building permit for the project to which the sign pertains, and must be removed prior to the issuance of a certificate of occupancy. Such signs shall comply with the provisions of this chapter provided no sign shall contain more than 36 square feet in effective area. All such signs shall comply with the design standards and regulations as determined by the Town. In the case of residential subdivision development, such signs shall be allowed until 75 percent of the residential loys have been sold or 18 months after the issuance of the first certificate of occupancy, whichever event is the first occurring.

Request

The applicant is requesting:

A mural type sign to be located on the construction fence along Brookhaven Club Dr and Marsh Ln.

Variance

Signs will exceed 36 sq. ft. in area.

STAFF RECOMMENDATION: Staff has determined that the mural type sign located on the construction fence will be more aesthetically pleasing than the bland solid black construction fence currently in place. Therefore staff recommends approval.

STAFF: Lynn O. Chandler
Lynn Chandler/Building Official

#R14
1

Addison!

BUILDING INSPECTION DEPARTMENT 16801 Westgrove Dr Addison Texas 75001 972/450-2881 fax: 972/450-2837

Application for Meritorious Exception to the Town of Addison Sign Ordinance

Application Date: 10/7/08

Filing Fee: \$200.00

Applicant: D CO Realty, Inc.

Address: 5430 LBJ Freeway Suite#: 1260

Dallas Tx 76240 Phone#: 972-774-0562
City State Zip

Fax#: 972-991-5718

Status of Applicant: Owner Tenant Agent

Location where exception is requested:

Vitruvian Park Development along Brookhaven Club Drive,
Spring Valley and Marsh

Reasons for Meritorious Exception:

The Development is currently under demolition
and construction. The improved signage design will
help conceal unsightly construction activities
during this stage of development, while at
the same time present an upscale image
and continue to improve the image of
Southwest Addison.

(pictures are subject to change)

YOU MUST SUBMIT THE FOLLOWING:

12 COPIES OF THE PROPOSED SIGN SHOWING:

1. Lot Lines
2. Names of Adjacent Streets
3. Location of Existing Buildings
4. Existing Signs
5. Proposed Signs
6. Sketch of Sign with Scale and Dimensions Indicated (8.5 x 11 PLEASE)

Date Fees Paid _____ Check # _____ Receipt # _____

we have **nature** in mind.



VITRUVIAN PARK™

IN ADDISON



we have **play** in mind.



VITRUVIAN PARK
IN ADDISON

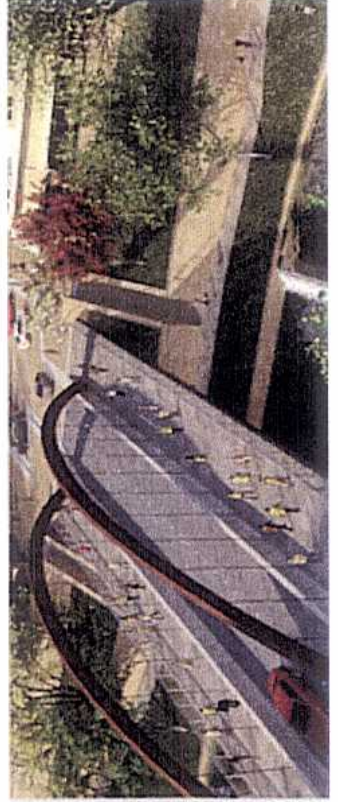


we have **work** in mind.



VITRUVIAN PARK™

IN ADDISON



we have **YOU** in mind.



VITRUVIAN PARKSM

IN ADDISON



Current Signage



Current signage



Current signage



Council Agenda Item: #R15

SUMMARY:

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).

FINANCIAL IMPACT:

There is no financial impact associated with this item.

BACKGROUND:

The GFOA established the Certificate of Achievement for Excellence in Financial Reporting in 1945. This Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting. The purpose of the certificate program is to 1) recognize and encourage excellence in financial reporting by local governments, and 2) provide citizens, legislative bodies, and other decision makers with the best possible financial information.

The Town of Addison has received the Certificate of Achievement for Excellence in Financial Reporting every year since 1983. The GFOA has notified the Town that our CAFR received this distinction for the fiscal year ending September 30, 2008.

Council Agenda Item: #R16

SUMMARY:

Council approval is requested of an ordinance denying the rate increase filed by Oncor Electric Company.

FINANCIAL IMPACT:

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

BACKGROUND:

Oncor Electric Delivery Company ("Oncor" or "the Company") filed an application in June 2008 with cities retaining original jurisdiction seeking to increase system-wide transmission and distribution rates by \$275 million. The Company asks the Town to approve a 17.6% increase in residential rates, a 9.1% increase in commercial rates, and a 5.8% increase in street lighting rates. According to Oncor, annual rates would increase by approximately \$60 for an average residential customer. Oncor's request has been assigned Public Utility Commission Docket No. 35717. The Town, pursuant to § 33.001 of the Public Utility Regulatory Act, has exclusive original jurisdiction over the electric rates charged by the Company. In accordance with that authority, at its July 8 meeting Council lawfully suspended the August 8th effective date for 90 days to review the Company's requested rate increase.

The Oncor Cities Steering Committee ("Steering Committee") coordinates the Town's review of Oncor's filed rate increase. The Town is a member of the 145-city Steering Committee. The Steering Committee has been the primary public interest advocate before the Public Utility Commission, the Courts, and the Legislature on electric utility regulation matters for the last 20 years. To conduct the review and any necessary litigation of Oncor's requested rate increase, the Executive Committee of the Steering Committee retained lawyers and consultants with expertise in regulatory rate making issues. All reasonable consulting and legal fees incurred by the Steering Committee are reimbursable by the Company.

The major components underlying Oncor's requested \$275 million increase include an increase for depreciation expense (\$131 million), a substantial increase to the Company's storm reserve (\$81 million) and additional costs for pension and post retirement benefits (\$36 million). Based upon the analysis of the Company's filing and review of discovery responses, the Steering Committee's consultants have determined that the evidence does not substantiate the Company's proposal. The preliminary analysis indicates that the cities will likely be proposing cumulative reductions to the Company's requested rate increase in excess of \$200 million. In addition, cities' experts will file testimony regarding the rate design and cost allocation proposals made by Oncor.

The action taken by the Town to deny Oncor's rate increase will be appealed by the Company to the Public Utility Commission ("PUC") of Texas. The appeals of all individual city actions will be consolidated into the current proceeding at the PUC, Docket No. 35717. The Steering Committee is already actively involved in Docket No. 35717 and will file testimony challenging the Company's support for the rate increase. The hearing regarding Oncor's requested rate increase will begin January 13, 2009 and is expected to last three weeks. In an effort to avoid litigation, parties to the proceeding have scheduled meetings with the Company to investigate the possibility of settlement.

RECOMMENDATION:

Over the years, the Town has acted as an advocate for its residents and businesses. It is recommended Council adopt the ordinance denying the proposed increases to electric transmission and distribution rates.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS FINDING THAT ONCOR ELECTRIC DELIVERY COMPANY'S REQUESTED INCREASES TO ITS ELECTRIC TRANSMISSION AND DISTRIBUTION RATES AND CHARGES WITHIN THE TOWN SHOULD BE DENIED; FINDING THAT THE TOWN'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY ONCOR ELECTRIC DELIVERY COMPANY; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING THAT NOTICE OF THIS ORDINANCE BE PROVIDED TO THE COMPANY AND LEGAL COUNSEL; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to § 33.001 of the Public Utility Regulatory Act ("PURA"), the Town of Addison, Texas (the "City") has exclusive original jurisdiction over the electric rates, operations, and services provided within City limits;

WHEREAS, on or about June 27, 2008, Oncor Electric Delivery Company ("Oncor" or "Company"), pursuant to PURA §§ 33.001 and 36.001, filed with the City a Statement of Intent to increase electric transmission and delivery rates by \$275 million on a system-wide basis within its service area effective August 8, 2008; and

WHEREAS, pursuant to PURA § 36.108, the City lawfully suspended the August 8, 2008 effective date by resolution to provide time to study the reasonableness of the Company's application to increase rates; and

WHEREAS, the City is a member of the Oncor Cities Steering Committee ("Steering Committee") and has cooperated with 145 similarly situated city members to conduct a review of the Company's application, to hire and direct legal counsel and consultants, to prepare a common response to the filing, to negotiate with the Company and to direct any necessary litigation appealing final city action; and

WHEREAS, the City, in a reasonably noticed meeting that was open to the public, considered the Company's application; and

WHEREAS, the consultants who were retained by the Steering Committee to evaluate the merits of the Company's application have determined that the Company's requested \$275 million increase in revenues for its transmission and distribution system is not supported by evidence; and

WHEREAS, PURA § 33.023 provides that reasonable costs incurred by cities in ratemaking activities are to be reimbursed by the regulated utility.

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

Section 1. The rates proposed by Oncor Electric Delivery Company, to be recovered through its electric transmission and distribution rates charged to customers located within the Town of Addison, Texas limits, are hereby found to be unreasonable and shall be and are hereby denied.

Section 2. The Company shall continue to charge its existing rates for transmission and distribution services to customers within the City.

Section 3. The City's reasonable rate case expenses shall be reimbursed by Oncor.

Section 4. It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting and a public hearing on this matter was given as required.

Section 5. A copy of this Ordinance shall be sent to Oncor, care of Debra Anderson, Oncor Electric Delivery Company, 1601 Bryan St., Suite 23-055C, Dallas, Texas 75201 and to Geoffrey Gay, General Counsel to the Oncor Cities Steering Committee, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

Section 6. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 7. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance.

Section 8. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application hereof is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid parts, which remaining parts shall remain in full force and effect.

Section 9. This Ordinance shall become effective from and after its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the _____ day of October, 2008.

Joe Chow, Mayor

ATTEST:

By: _____
Mario Canizares, City Secretary

APPROVED AS TO FORM:

By: _____
John Hill, City Attorney

Council Agenda Item: #R17

SUMMARY:

Council approval is requested of an ordinance authorizing the city manager to enter into contract with the Cities Aggregation Power Project for the long-term provision of electric power and to support CAPP's issuance of debt with a pledge of the Town's ad valorem (property) taxes.

FINANCIAL IMPACT:

Over the past two years, the Town has consumed an average 10,473,000 kWh of electricity. With no long-term contract, the Town would be projected to pay during the 2009 calendar year, \$994,935 in energy fees (excluding transmission and distribution charges). With the long-term contract, the Town would pay \$839,935, or a savings of approximately \$155,000. The level of savings in future years will depend upon the cost of natural gas, which, for the past few years, has been a commodity with extremely volatile pricing.

BACKGROUND:

For the past three years the Cities Aggregation Power Project (CAPP) Board of Directors has been negotiating with Texas Utilities, and then with Texas Competitive Electric Holdings Company, LLC (TCEH), a long-term electric power contract that takes advantage of low-cost power generated by coal plants. The prices of electricity have sky-rocketed this past year, because Texas' deregulated market allows for all electric power to be pegged at the price of natural gas, despite the fact that 45% of the state's power comes from lower cost coal and nuclear power plants. Natural gas has become an extremely volatile commodity which makes it difficult for electric consumers to budget for electric power.

CAPP has entered into a contract with TCEH which will allow CAPP member cities to obtain their base power load (60% of total power) from seven dedicated coal power plants at a cost which is about half of what would be paid under current natural gas prices. The blended price of the coal power and power from other sources is estimated to be 8¢ per kWh.

Essentially, CAPP will be issuing debt to pre-pay TCEH for the base load power. Security for the debt will be agreements with member cities of CAPP who will commit to take their base load from CAPP for a 24-year period. The ordinance authorizes the city manager to sign the contract, the disclosure memorandum, and the final contract that will include the established allocations of debt to the member cities. The city attorney, John Hill, has reviewed the contract and has suggested a number of changes that were mistakenly not incorporated in the original document. However, we have assurance from CAPP's lead counsel, Geoffrey Gay, that the changes will be included in the final document, once the final allocation of power is committed to. Also, the exhibits to the contract will be added to the final document, based on final allocations.

RECOMMENDATION:

The agreement with CAPP will provide the Town a dependable, low-priced source of power for many years in a market that has witnessed significant inflationary pressures that have increased city operating expenses. It is recommended council approve the attached ordinance with the caveat that the final contract must meet the city attorney's approval prior to the city manager's approval.

MEMORANDUM

TO: Members of Cities Aggregation Power Project, Inc. and South Texas Aggregation Power Project, Inc.

FROM: Board of Directors, Cities Aggregation Power Project, Inc. ("CAPP")
Board of Directors, South Texas Aggregation Power Project, Inc. ("STAP")

DATE: September 10, 2008

SUBJECT: Risks and Considerations Disclosure to CAPP and STAP Members Potentially Participating in the Long Term Power Purchase Agreement -- **MUST BE ACKNOWLEDGED BY EACH PARTICIPATING MEMBER**

This disclosure memorandum is intended to discuss some of the risks and considerations involved in (i) the proposed long term power purchase agreement ("PPA") between CAPP and Luminant Generation Company, LLC, Big Brown Power Company LLC and Oak Grove Management Company, LLC (collectively, "Seller") to provide electric capacity and energy to the members of CAPP who choose to participate in the financing of the PPA ("Participating Members") and (ii) the proposed CAPP-Participating Member Energy Sales Contract (the "Member Contract"), by which a Participating Member participates in the PPA. Such risks and considerations are not organized in any particular order of importance and each potential Participating Member must review and assess the whole of this memorandum.

THIS MEMORANDUM IS NOT INTENDED TO PROVIDE A DETAILED EXPLANATION OF THE PPA MEMBER CONTRACT OR CAPP CONTRACT REVENUE BOND TRANSACTION OR TO PROVIDE AN ECONOMIC AND BUSINESS ANALYSIS OF SUCH TRANSACTION.

THIS MEMORANDUM IS NOT, AND IS NOT INTENDED TO BE, A COMPLETE DISCUSSION OF ALL MATERIAL RISKS AND CONSIDERATIONS INVOLVED WITH THE PPA AND THE MEMBER CONTRACT. NO REPRESENTATION IS MADE BY CAPP, STAP OR THEIR RESPECTIVE LEGAL COUNSELS AND OTHER CONSULTANTS THAT ALL MATERIAL RISKS AND CONSIDERATIONS ARE DISCUSSED OR DESCRIBED IN THIS MEMORANDUM.

Each potential Participating Member is advised to undertake its own assessment of the PPA, the Member Contract and the contemplated transactions described therein and herein.

Copies of the most current forms of the PPA and the Member Contract are available from CAPP. In addition, this memorandum references certain external documents, reports and filings which CAPP will assist any potential Participating Member in obtaining; however, neither CAPP, STAP, their respective legal counsel and other consultants make any representation or warranty with respect to the information, statements or analysis contained in any such sources, as of the date of any such source or as of the date of this memorandum.

RISKS AND CONSIDERATIONS

PPA

Seller's Leveraged Buyout and Security for Seller's Obligations under PPA

Seller's ultimate parent entity, Energy Future Holdings Company ("EFH"), Energy Future Competitive Holdings Company ("EFCH") and Texas Competitive Electric Holdings Company, LLC ("TCEH"), borrowed approximately \$46 billion in October 2007 to privately purchase, through a leveraged buyout, the publicly traded TXU Corp. ("TXU"), formerly the largest electric utility holding company within ERCOT (the "EFH LBO"). Approximately \$26 billion was borrowed from Citibank, N.A., Goldman Sachs Credit Partners L.P., J. Aron & Company, JPMorgan Chase Bank, N.A., Credit Suisse and other lenders and parties who were provided a first lien security interest in the assets (excluding assets related to Oncor Electric Delivery Company, LLC), Seller and the certain other TCEH affiliates and subsidiaries (collectively, "TCEH Pledged Entities"), including all generation assets formerly owned by TXU. Another approximately \$20 billion was borrowed through unsecured debt of EFH and TCEH. EFH, TCEH and EFCH each have credit ratings below investment grade or "junk" ratings.

For a more complete description of the EFH LBO, EFCH and the associated credit ratings, see the presentation entitled "Energy Future Holdings Post Merger Overview," dated January 7, 2008; the publicly available filings of EFH with the U.S. Securities and Exchange Commission (www.energyfutureholdings.com/financial/) (the "SEC Filings"); and the Standard and Poor's Ratings Service ("S&P") reports of July 15, 2008 and March 21, 2008 (to the extent not superseded by the July 15, 2008 report) relating to EFH and the S&P report of October 11, 2007 (to the extent not superseded by the July 15, 2008 and March 21, 2008 reports) relating to TCEH (collectively, the "S&P Reports"). As to the S&P Reports, such reports reflect only the view of S&P, and CAPP makes no representation as to the appropriateness of such reports. There is no assurance that any of the facts, views or opinions reflected therein will continue for any given period of time or that they will not be revised or withdrawn entirely by S&P, if in the judgment of S&P, circumstances so warrant.

The first lien security interest of the secured lenders/parties are governed by the various documents related to the EFH LBO financing, including the Credit Agreement, the Intercreditor Agreement, the Security Agreement, the Guarantee and the Pledge Agreement as well as other documents (collectively, the "LBO Financing Documents"). The PPA provides, as it relates to CAPP's rights and security with Seller, as follows (for purposes of this paragraph, undefined capitalized terms will have the meanings set forth in the aforementioned Intercreditor Agreement):

1. The PPA is a Secured Commodity Hedge and Power Sales Agreement under the Intercreditor Agreement and, under the LBO Financing Documents, the PPA is a Secured Obligation having a first lien security interest in the pledged assets of the TCEH Pledged Entities *pari passu* (on equal footing) with the other secured lenders. Thus, CAPP will have a

first lien on all pledged assets of the TCEH Pledged Entities including the Martin Lake, Big Brown and Oak Grove electric generation plants (the three electric generation facilities from which the unit contingent electric energy under the PPA are to be provided and collectively referred to as the “PPA Facilities”) as well as Comanche Peak, the two unit nuclear electric generation plant near Glen Rose, Texas and other electric generating facilities owned by the TCEH Pledged Entities.

2. Each TCEH Pledged Entity has executed the Guarantee, guaranteeing the Secured Obligations of any other TCEH Pledged Entity, and such guarantee obligation is also a Secured Obligation. The PPA, as a Secured Obligation, is entitled to the benefits of the Guarantee.
3. The obligations of Seller under the PPA will be secured by an additional guaranty from TCEH.

If Seller defaults under the PPA, CAPP would have a right to allege a default (under the LBO Financing Documents, e.g., the Credit Agreement) pursuant to the Intercreditor Agreement. (A payment default by Seller under the PPA is an event of default under the Credit Agreement to the extent such default exceeds \$200 million; it is assumed that a Seller default under the PPA would exceed such amount through the term of the Credit Agreement of October 2014.) The Intercreditor Agreement provides, however, that it will be up to the Collateral Agent to declare a default. The Collateral Agent could be overruled or as the case may be, directed to initiate proceedings, by a majority of the secured lenders, but CAPP will likely have no real influence over such vote. If Seller defaults under the PPA, CAPP, it is assumed, may proceed against Seller, and against TCEH under its guaranty as an unsecured claim.

The Credit Agreement provides certain protections to the various secured parties under the LBO Financing Documents, including CAPP, wherein the TCEH Pledged Entities have covenanted and agreed to certain borrowing and lien structure restrictions giving the secured parties (and permitted future secured parties) some degree of anti-dilution protection. Reference is made to Article 10 of the Credit Agreement for the various negative covenants of the TCEH Pledged Entities relating to future borrowings and lien structures.

The remaining term of the Credit Agreement is approximately six (6) years and ends in October 2014. Therefore, prior to October 2014, the EFH LBO must be refinanced and the secured parties paid (or otherwise participate in such refinancing), with the exception of CAPP. CAPP, through the PPA, will be the sole secured party under the LBO Financing Documents whose agreement extends past October 2014 (the term of the PPA is through December 2032).

TCEH has represented that, under the LBO Financing Documents, the TCEH Pledged Entities have an obligation to repay at least one percent (1%) of the secured debt annually. It is not known how much additional debt the TCEH Pledged Entities may incur between now and 2014, and CAPP can make no assurances with respect thereto.

If CAPP and Seller each meet their respective obligations under the PPA, the security provisions related to the Seller's obligations under the PPA should not be an issue, other than security to CAPP for Seller's future performance under the PPA. The security for the Seller's obligations under the PPA becomes critically important if Seller fails to perform under the PPA or otherwise defaults under the PPA.

Article 9 of the PPA addresses the security for Seller's obligations under the PPA and reference is made to that article. Within Section 9.2 of the PPA, Seller may, in certain circumstances, substitute the pledged collateral with other collateral such as letters of credit, cash or a guaranty from an investment grade rated guarantor ("Substitute Collateral"). Additionally, Section 9.2 of the PPA provides for Seller to refinance the existing LBO Financing Documents and replace the existing collateral pursuant to a new financing package with new collateral ("New Collateral Refinancing") which permits some dilution from value of the security under the LBO Financing Documents existing immediately prior to such refinancing, and which provides CAPP with a first lien on equal footing with other lenders (subject to other liens which may be permitted by the documents related to the New Collateral Refinancing).

Seller's Financial Strength and Resources through the Term of the PPA

Fundamental to any decision to participate in the transactions contemplated in the PPA and the Member Contract is the financial viability of Seller and the TCEH Pledged Entities over the term of the PPA. While Seller's obligations under the PPA are secured by a first lien security interest in certain assets of the TCEH Pledged Entities, Seller's ability to meet its obligations under the PPA are dependent on its financial resources and viability to perform (as well as its willingness to do so). No assurances can be given regarding the financial strength or viability of Seller, TCEH or the other TCEH Pledged Entities or the ability of such entities to meet their obligations with respect to the PPA and the LBO Financing Documents.

Limitation of Remedies; Damages Available under the PPA

The PPA does not provide for the agreement to be enforced by specific performance against either party thereto (i.e., a court directing (i) Seller to meet their obligations to provide electric energy and capacity under the terms of the agreement or (ii) CAPP to accept and pay for electric energy under the terms of the agreement). To the extent a default is declared and such default is not cured, Seller and CAPP have limited remedies.

It should be noted that if Seller fails to schedule energy for CAPP from the PPA Facilities when such facilities are available or to otherwise provide alternate energy, Seller is required to pay CAPP "liquidated damages" equal to the cost of any replacement energy acquired by CAPP to replace the electric energy withheld by Seller less the energy price as provided in the PPA ("Replacement Damages"); provided, however, Seller's withholding energy, for extended or repeated occasions, is a default under the PPA and CAPP may terminate the PPA in such an event.

The PPA provides a similar provision if CAPP fails to take and pay for electric energy. CAPP is required to pay Seller “Resale Damages” equal to the positive difference, if any, between the energy price as provided in the PPA less the sales price realized by Seller selling such electric energy; provided, however, CAPP’s failure to pay for such electric energy, for extended or repeated occasions, is a default under the PPA and Seller may terminate the PPA in such an event. As CAPP will have paid 3/5 of the total electric cost under the PPA as a capacity payment, CAPP believes it is a remote possibility that Resale Damages will ever occur.

Seller and CAPP have also agreed on liquidated damages that do not reflect the actual economic loss of either party at the time of termination of the PPA as a result of a default. The amount of such liquidated damages is explained below.

Upon a Seller default under the PPA and CAPP’s election to terminate the PPA, the parties have agreed to liquidated damages through the payment of a Buyer Termination Payment (provided in Article 12 of the PPA and reference is made to such article). Liquidated damages, being the Buyer Termination Payment, is provided to be the amount equal to (i) the percentage of the principal amount of the outstanding CAPP contract revenue bonds from the initial capacity payment made to Seller under the PPA related to the total initial principal amount of the CAPP contract revenue Bonds (Seller is not responsible for any costs of issuance or reserve fund portions of the CAPP contract revenue bond issue) (such percentage amount is referred to as “Seller’s Bond Portion”), (ii) plus the greater of (a) the “make whole premium” related to the Seller’s Bond Portion or (b) CAPP’s economic damages, capped at \$120 million ratably declining over the term of the PPA and (iii) less the aggregate amount of any Replacement Damages paid by Seller to CAPP over (1) the immediately preceding three (3) year period prior to any New Collateral Refinancing or (2) the immediately preceding five (5) year period following a New Collateral Refinancing.

Under the PPA, Seller has the ability to make termination of the agreement more likely by defaulting if it determines that it can enter a more economically advantageous transaction by paying CAPP the Buyer Termination Payment.

Upon a CAPP default under the PPA (presumably related to unmitigated non-appropriations by Participating Members resulting in CAPP’s inability to pay Seller for electric energy under the PPA) and Seller’s election to terminate the PPA, the parties have agreed to liquidated damages through the payment of a Seller Termination Payment (provided in Article 12 of the PPA). Liquidated damages, being the Seller Termination Payment, is provided to be the amount equal to (i) Seller’s economic damages, capped at \$120 million ratably declining over the term of the PPA, (ii) plus the present value of unpaid New Governmental Charges (as defined below) for which CAPP is responsible, (iii) less the aggregate amount of any Resale Damages paid by CAPP to Seller over certain time periods in the PPA, and (iv) plus an amount equal to the unearned portion of the CAPP capacity payment to Seller, determined on a monthly straight line amortization (as opposed to the actual bond amortization schedule) over the term of the PPA. In such an event of CAPP default, CAPP would not be able to defease all of its contract revenue bonds and a portion of each Participating Member’s capacity payments under the CAPP-Participating Member Contract will remain, even though such Participating Members will not receive any electric energy through the then terminated PPA.

Value of Seller's First Lien Security Interest Assets

CAPP is not aware of any asset valuation of the TCEH Pledged Entities' collateral undertaken with respect to the EFH LBO financing and there has been no current valuation relating to the PPA. CAPP cannot make any representation regarding the current or future value of collateral pledged under the LBO Financing Documents.

Because the cost of electricity within ERCOT has historically been based on the cost of natural gas as a fuel source, it is assumed the value of the electric generation facilities comprising a substantial portion of the collateral pledged under the LBO Financing Documents, at any point in time, will depend heavily upon the price of natural gas and the assumptions related to the future prices of natural gas. Natural gas prices have been historically volatile and no prediction or estimate can be made regarding the future value of pledged collateral of the TCEH Pledged Entities.

If the value of Seller's assets pledged as security under the PPA decreases, there is no requirement in the PPA for Seller to provide additional collateral to CAPP, and CAPP could experience the situation where the value of the collateral under the LBO Financing Documents is insufficient to cover the Secured Obligations under the LBO Financing Documents, including the PPA. If in the event of Bankruptcy, CAPP decides to terminate the PPA and collateral is insufficient to cover CAPP's security, CAPP would not be able to defease all of its contract revenue bonds and a portion of each Participating Member's capacity payments under the Member Contract will remain, even though such Participating Member will not receive any electric energy through the then terminated PPA.

New Governmental Charges

Under Article 20 of the PPA, CAPP and the Participating Members will be responsible for new governmental charges (taxes and required capital improvements at the PPA Facilities), which include the cost of potential carbon and green house gas remediation and taxes, assessments and other governmental impositions and compliance costs imposed on the PPA Facilities ("New Governmental Charges"). Certain taxes, such as income, employment and margin taxes are excluded.

To the extent these charges are imposed on the PPA Facilities (all of which will be providing electricity to CAPP under the PPA), CAPP and the Participating Members will be responsible for a proportionate share of the cost of any such New Governmental Charges in excess of operating expenses of \$100,000 annually or capital expenses greater than \$1,000,000 over the term of the PPA. Such share of the PPA Facilities allocated to CAPP is approximately three percent (3%). To the extent these New Governmental Charges are imposed, the annual energy cost for which each Participating Member is responsible will increase to cover the proportionate share of such charges.

In the event of a default by CAPP and the PPA's termination, part of the Seller Termination Payment CAPP will be required to pay will be an amount relating to New Governmental Charges. It is important to understand that a termination of the PPA under circumstances of a CAPP default may result in a substantial portion of the CAPP bonds remaining outstanding. In the event of a default by Seller and the PPA's termination, CAPP will not be responsible for any continuing New Governmental Charges.

Risk of Non-Appropriation by Participating Members

The capacity payment from CAPP to Seller under the PPA purchases the electric capacity associated with the contract electricity and is approximately 3/5 of the total cost of electricity under the agreement. The annual capacity charge paid by each Participating Member under the Member Contract will be used to support the CAPP contract revenue bonds. These annual capacity charges will be secured by a pledge of the Participating Member's ad valorem taxes, will be debt under State law and will not be subject to non-appropriation.

The annual energy payment, that is the remaining approximately 2/5 of the total cost of electricity under the PPA, is not secured by taxes, but is subject to annual appropriation by each Participating Member. Under the PPA, CAPP is obligated to purchase electric energy on an annual basis and pay for such electric energy. Under the Member Contract, a Participating Member will make its annual determination whether to purchase such electric energy to which it is entitled (pursuant to its acquisition of a portion of the electricity rights CAPP has obtained under the PPA). This purchase is subject to annual appropriation and dependent on each Participating Member appropriating funds in its annual budget for its share of electric energy under the Member Contract.

If a Participating Member fails to appropriate in any year, CAPP should have three options to either mitigate or eliminate the potential negative consequences of any such non-appropriation. CAPP presently believes its options include: (i) selling the available electric energy to other Participating Members (or the non-appropriating Participating Member assigning its rights to a willing and appropriating Participating Member); (ii) selling the electric energy into the ERCOT wholesale market through a series of short-term sales; or (iii) requesting Seller to resell the energy. It is anticipated that these options should effectively mitigate the risk of isolated non-appropriation of a small amount of CAPP's electric energy load (recognizing that only 2/5 of the electric energy's cost needs to be realized through such mitigating options). These mitigating options, however, only contemplate isolated non-appropriation by a small number of Participating Members.

If non-appropriation occurs by a significant number of the Participating Members affecting a significant portion of CAPP's aggregated electric load under the PPA, such occurrence may result in CAPP defaulting under the PPA. The most likely reason for such wide scale non-appropriations would be that the cost of the electric energy portion under the PPA and the CAPP-Participating Member Contract is more than the then projected market price for electric energy for an extended period.

In the event that CAPP defaults under the PPA as a result of the failure by some Participating Members to appropriate funds for the purchase of electricity, Seller may declare a default under the PPA and terminate the agreement. In such event, none of the Participating Members will receive electricity under the PPA, without regard to whether a particular member appropriated or non-appropriated for electric energy. Further, no Participating member will have a claim for damages against CAPP.

If CAPP could not sell the electric energy, as described above, TCEH would have the ability to terminate the PPA and demand a Buyer Termination Payment from CAPP, as explained above in the section “PPA – Limitation of Remedies; Damages Available Under the PPA.” This situation would leave the Participating Members with some portion of their debt under the CAPP Participating Member Contract remaining outstanding and the Participating Members would not receive any electric energy under the PPA.

Defeasance of CAPP's Bonds Will Not Be Realized if Seller Defaults in Certain Events

In the event of a Seller default, the Seller will only be responsible for the Seller Bond Portion and, at least the “make whole redemption premium” related thereto. Funds from a Buyer Termination Payment will only partially defease the CAPP contract revenue bonds – the portion of CAPP bonds issued relating to any reserve fund for the CAPP bonds or the portion issued to pay costs of issuance of the CAPP contract revenue bonds will remain outstanding. Under this scenario, the Participating Members could be in a situation where they are levying and collecting an ad valorem tax to make their capacity payment (debt service obligation) to CAPP under the CAPP-Participating Member Contract, although they may no longer be receiving any energy under the PPA. If this were to occur, there is the potential for Participating Members to collectively be responsible for up to approximately \$12 million of CAPP’s remaining contract revenue bonds.

Seller has the ability to offset a portion of the Buyer Termination Payment under the PPA by paying Replacement Damages to CAPP when Seller fails to schedule energy from the units when such energy is available. Such Replacement Damages paid (1) the immediately preceding three (3) year period prior to any New Collateral Refinancing or (2) the immediately preceding five (5) year period following a New Collateral Refinancing will be subtracted from any Buyer Termination Payment owed by Seller. Seller receives a rolling three to five year credit for such Replacement Damages payment, while reducing the potential Buyer Termination Payment to CAPP.

As TCEH=s credit ratings improve, a portion of the amount secured by the first lien security interest decreases in an amount equal to the Credit Threshold (as defined in the PPA). Therefore, if TCEH, as guarantor, were to become more credit-worthy and yet still declare bankruptcy and CAPP terminates the PPA, a portion of the Buyer Termination Payment due to CAPP (the make-whole price of CAPP=s contract revenue bonds) will be an unsecured claim (i.e., not secured by the first lien security interest under the LBO Financing Documents) and CAPP will not have the benefit of the other secured creditors. While the Credit Threshold gives Seller an economic incentive to improve its financial integrity and thus reduce the financial risk

to CAPP, it could also serve to expose CAPP to unsecured credit risk by reducing the amount of CAPP's first lien security.

New Collateral Refinancing/Substitute Collateral

As discussed earlier, CAPP cannot control or predict the future ownership or structure of Seller or the TCEH Pledged Entities. As the LBO Financing Documents expire in October 2014 and will likely be refinanced in some fashion (otherwise the PPA will have been terminated or otherwise secured by Substitute Collateral), no assurances can be given regarding the financing structure related to the New Collateral Refinancing, the value and nature of any related new collateral or the amount and nature of any related debt secured by such collateral. While provisions relating to Substitute Collateral seem to contemplate substitution that is applicable only to CAPP, the PPA does not specifically require such.

The New Collateral Refinancing provision in the PPA, Section 9.2(b), provides that the EFH LBO and the LBO Financing Documents will be refinanced and collateral under the LBO Financing Documents may be replaced with "substantially similar" collateral (to the collateral existing immediately prior to such refinancing) on a continuing "*pari passu*" first lien basis with other lenders. The PPA provides, however, that such lien may be subject to other liens provided for in the documents related to the New Collateral Refinancing.

The PPA provides that the collateral related to a New Collateral Refinancing shall be substantially similar in substance to the collateral existing immediately prior to such refinancing as reasonably determined by Seller in good faith. Further, collateral meeting prescribed dilution tests will be automatically deemed to be "substantially similar." While the dilution tests obligate Seller to maintain an asset valuation to debt ratio equivalent to the ratio in play today, it must be noted that the test functionally excludes swap and hedge transactions of TCEH Pledged Entities. Various TCEH Pledged Entities may continuously and actively engage in such transactions. With such swap and hedge transactions excluded, the protection provided to CAPP by the dilution test cannot be determined until a New Collateral Refinancing occurs. CAPP may be obligated to accept the New Collateral Refinancing securing Seller's obligations under the PPA that may be of less value than the collateral under the LBO Financing Documents immediately prior to such refinancing.

Additionally, the TCEH guaranty of the Seller's obligations under the PPA is required to be in place for the entire term of the PPA and it is anticipated such guaranty will be secured by the collateral relating to the New Collateral Refinancing Substitute Collateral or other acceptable collateral. However, if such guaranty is not secured, CAPP has potential unsecured credit exposure to the extent CAPP must rely on such TCEH guaranty for payment of the PPA.

Unit Contingent Nature of PPA; Extended Force Majeure May Prevent Realization of Economic Benefits

Under the PPA, CAPP is entitled to a portion of the electric capacity from each plant comprising the PPA Facilities. Seller's obligation to provide such capacity and electric energy is conditioned on the respective PPA Facilities plants being capable of operating. To the extent

there are planned outages or unplanned outages which constitute an event of Force Majeure under the PPA, Seller is not obligated to provide electric energy to CAPP from such affected plants. Sellers are required under the PPA (sections 6.3, 12 and 15.6) to operate and maintain the PPA Facilities according to Prudent Industry Practices, which includes all existing and future Laws. However, CAPP has not undertaken any examination or inspection of the PPA Facilities.

If an event of Force Majeure occurs, such as the destruction of a portion of the PPA Facilities contracted for electric supply under the PPA, Seller is partially excused from performing under the PPA and the rights and obligations under the PPA will be suspended. The Participating Members would not be receiving a portion of the contract energy under the CAPP-Participating Member Contract since Seller is not required to provide electric energy to CAPP under the PPA, and CAPP and the Participating Members would have to find other sources of electric energy (including a “wrap” contract) in the event of an extended Force Majeure, while still being liable to pay for its portion of the capacity payment pursuant to the CAPP-Participating Member Contract.

TCEH/Seller Bankruptcy

If Seller files bankruptcy, this will not happen in a vacuum. It likely will be preceded by months of negotiation with threats of filing bankruptcy. There likely will be ample time to renegotiate the PPA if CAPP so desires.

In the event of bankruptcy, the PPA will remain in effect unless it is specifically set aside. Electricity should continue to be provided by the facilities under contract.

The risks of bankruptcy include:

1. Adequacy of collateral in the event of termination. The PPA contains an *ipso facto* clause providing that bankruptcy is a default, giving CAPP the right to terminate the agreement if it desires. The decision of whether to terminate would depend upon the value of assets and market prices for electricity at the time, neither of which can be predicted by CAPP.
2. Whether the PPA will be regarded as a forward contract or an executory agreement. The PPA specifies on its face that it is a “forward contract,” but such statement does not bind a Bankruptcy Court. However, if the contract terms are not honored because the Court concludes the PPA is “executory,” the likely result would be a renegotiated price closer to the then market rate. CAPP cannot predict what a future judge with broad discretion may rule.
3. The forum for bankruptcy may be Delaware, rather than Texas. TCEH is a Delaware corporation, but venue for pledged entities may be elsewhere. Competing courts will likely have to resolve a venue contest.
4. Whether the Court will apply a “business judgment” test (favoring Seller) or a “public interest” test (favoring CAPP). It is unknown whether courts would apply a heightened public interest standard for electrical energy supply to political subdivisions.

Other Risks and Considerations

There are other events or developments that could impact the transactions contemplated in the PPA and Member Contract including:

- future regulatory changes, including actions of the State legislature, Public Utility Commission of Texas and ERCOT affecting the competitive electric utility industry;
- future technological advances in electric generation and transmission such as development of new electric generation resources, including new nuclear power plants, higher efficiency coal and natural gas generation plants, high efficiency electric transmission and/or advances in alternative sources of electricity (wind, solar and etc.);
- discovery of additional large scale natural gas reserves or the development of large scale liquefied natural gas (“LNG”) facilities in the United States to utilize overseas LNG supplies and transportation facilities and/or a sustained long-term decrease of the price of natural gas;
- future environmental regulation of coal-fired electric generation facilities generally could impact the transaction contemplated in the PPA, including New Governmental Charges; and
- financial markets react to various factors that CAPP can neither predict nor control. Savings protections related to the PPA are dependent upon financing and debt issuance costs that in turn will be influenced by interest rates that will depend upon risk perceptions of financial markets. CAPP can offer no assurances regarding what rates will be applicable when debt is issued or ultimately repaid.

MEMBER CONTRACT

Effect on a City's Debt/Bonding Capacity

There is a possibility that the contract could have negative credit rating implications on Participating Members.

General discussions with the various credit rating agencies have occurred and will continue taking place to inform them of the transaction so they can make educated credit rating decisions regarding the Participating Members. It is possible that the capacity payment (debt obligation) of the Participating Members under the Member Contract will adversely impact any given Participating Member's bonding capacity and credit rating by any or all of the rating agencies. Each rating agency will have questions and analysis regarding the structure and there has been no definitive answer regarding how each rating agency will view this obligation. It is possible that each rating agency may view this obligation differently.

Subject to Annual Appropriation Obligation May Be Viewed as a General Obligation

In the event of a non-appropriation by a Participating Member, rating agencies may view the provision of energy to a Participating Member's electric accounts as a governmental function. The Participating Member's failure to appropriate may be considered a default by one or more credit rating agency on the Participating Member's general obligation debt, regardless of the fact that a Participating Member has the choice to appropriate or not. Further risks regarding non-appropriation were addressed in section "PPA - Risk of Non-Appropriation by Participating Members" above.

Obligation to Levy Ad Valorem Tax

As discussed in prior sections above, the Member Contract obligates each Participating Member to pledge ad valorem taxes to pay for its portion of the capacity payment that CAPP is paying to Seller to acquire energy capacity over the 24 year term of the PPA. The capacity payment under the Member Contract is a debt of the Participating Member municipality which is subject to enforcement by a mandamus action brought by the trustee related to CAPP's contract revenue bonds against a Participating Member municipality to levy taxes sufficient within the limits prescribed by law to make such payments.

In the event of a termination of the PPA, there are a number of situations in which CAPP would not be able to defease all of its contract revenue bonds and a portion of each Participating Member's capacity payments under the CAPP-Participating Member Contract would remain, even though such Participating Member will not receive any electric energy through the then terminated PPA. Such situations are discussed above.

Acknowledgment

This Disclosure Memorandum dated September 10, 2008 is acknowledged and accepted by the undersigned on behalf of the Participating Member indicated below. The governing body of such Participating Member has taken official action acknowledging its understanding of the risks and considerations discussed or described in this Disclosure Memorandum and has formally authorized and directed the undersigned to execute this Disclosure Memorandum on behalf of the Participating Member.

Participating Member
By: _____
Title: _____
Date: _____

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS (“CITY”) APPROVING AN ELECTRIC POWER CONTRACT WITH CITIES AGGREGATION POWER PROJECT, INC. (“CAPP”) FOR ELECTRIC CAPACITY AND ENERGY, PROVIDING CAPACITY PAYMENTS AS PUBLIC PROPERTY FINANCE CONTRACTUAL OBLIGATIONS OF THE CITY, PLEDGING AND LEVYING AN AD VALOREM TAX TO SUCH PAYMENTS, PROVIDING FOR ENERGY PAYMENTS FOR ELECTRIC ENERGY SUBJECT TO ANNUAL APPROPRIATION BY THE CITY, PROVIDING FOR THE ASSIGNMENT OF SUCH CAPACITY PAYMENTS TO SUPPORT DEBT ISSUED BY CAPP INCURRED TO ACQUIRE ELECTRIC CAPACITY RIGHTS FROM LUMINANT GENERATION COMPANY AND RELATED ENTITIES PURSUANT TO A 24-YEAR POWER PURCHASE AGREEMENT (“PPA”); AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR EMPLOYEE TO EXECUTE AND DELIVER THE MEMBER CONTRACT; FURTHER AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN ADDITIONAL AGREEMENTS ARRANGED BY CAPP FOR ELECTRIC POWER NEEDED BY THE CITY IN THE PERIOD 2009-2013 IN EXCESS OF THE AMOUNT OBTAINED UNDER THE MEMBER CONTRACT; ACKNOWLEDGING, AUTHORIZING AND DIRECTING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN AND RETURN CAPP’S DISCLOSURE LETTER; FURTHER AUTHORIZING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR OTHER CITY EMPLOYEE TO ACCEPT CONFORMING CHANGES TO THE MEMBER CONTRACT DEPENDENT ON THE FINAL TERMS OF THE CAPP PPA; PROVIDING FOR VALIDITY AND SUFFICIENCY OF CITY EMPLOYEE’S OR CITY OFFICER’S SIGNATURE IF THE OFFICER OR EMPLOYEE LEAVES OFFICE OR EMPLOYMENT PRIOR TO THE DELIVERY OF THE MEMBER CONTRACT; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the “City”) must purchase electricity in order to perform its proprietary and governmental functions; and

WHEREAS, the price of power sold in the deregulated retail market in Texas has been directly linked to the daily fluctuations for natural gas futures prices, regardless of the type of generation fuel; and

WHEREAS, natural gas prices are extremely volatile, resulting in an upward cost trend and significant electric price instability; and

WHEREAS, the City is a member of the non-profit political subdivision corporation Cities Aggregation Power Project, Inc. (“CAPP”), which has the legal authority to contract for the purchase of electricity on behalf of more than 100 political subdivision members; and

WHEREAS, CAPP has endeavored to provide its members with the most favorable energy pricing available in the market, delivering more than \$100 million in savings for its members since 2002; and

WHEREAS, the CAPP Board of Directors is a voluntary ten-member board comprised entirely of city employees and city officials that directs the activities of CAPP’s legal and energy advisors; and

WHEREAS, the CAPP Board of Directors has investigated potential long-term contracting options to both lower and stabilize electric prices for member political subdivisions that must prepare annual budgets and require cost predictability for essential services like electricity; and

WHEREAS, CAPP negotiated a Purchase Power Agreement (“PPA”) with owners of non-gas fired generation for the long-term, fixed price supply of power, which will allow participating CAPP members to meet a portion of energy needs (approximately 60 percent) at a stable, known price for a 24-year period; and

WHEREAS, the PPA calls for CAPP to contract with Luminant Generation Company LLC, Big Brown Power Company, LLC and Oak Grove Management Company, LLC (collectively, “Luminant”) for approximately 150 MW of baseload power supplied by seven different units over 24 years and pre-paying a portion of the capacity costs associated with power purchased pursuant to the long-term contract; and

WHEREAS, the City wishes to acquire a portion of its future electric energy pursuant to the PPA between CAPP and Luminant; and

WHEREAS, to acquire power pursuant to the PPA, the City must enter into an electric power contract, the Energy Sales Contract Between CAPP and the Town of Addison, Texas (the “Member Contract”), substantially in the form attached hereto; and

WHEREAS, CAPP will issue general revenue bonds, with the bond proceeds used to pre-pay a portion of the 24-year capacity commitment pursuant to the PPA on behalf of the City and all participating CAPP members; and

WHEREAS, bonds issued by CAPP will be backed by the individual Member Contracts of each participating CAPP city committing to pay a capacity payment equal to its proportionate amount of the debt service obligation associated with CAPP’s prepayment of PPA capacity costs; and

WHEREAS, the City's allocated total maximum capacity payment is \$3,524,000.00 (total maximum monthly capacity payment is \$24,000.00); and

WHEREAS, the Member Contract requires that certain capacity payments payable by each participating CAPP member will be public property finance contractual obligations

pursuant to Texas Local Government Code Chapter 271, Subchapter A, secured by a pledge of such member's ad valorem taxes, which will be assigned to support debt issued by CAPP to pay the capacity costs of the PPA; and

WHEREAS, the fixed capacity component constitutes a long-term, general obligation tax debt of each participating member that is secured by a pledge of the member's ad valorem taxes; and

WHEREAS, CAPP must secure an additional "wrap" agreement to arrange for power deliveries when needed to meet the remaining portion of the City's energy needs in excess of the baseload power provided under the Member Contract, with said wrap agreement needing ratification/approval of the City; and

WHEREAS, the resulting power supply blend adds to both stability and savings for the City; and

WHEREAS, the total capacity and energy to be purchased under the long-term PPA cannot be known until all CAPP members have acted on their opportunity to participate in the transaction; and

WHEREAS, a change in total capacity and energy obligated under the PPA will change the cost of the transaction and may change the percentage of debt service obligation and energy assigned to participating CAPP members; and

WHEREAS, the PPA is an effort, initiated by CAPP pursuant to direction and support of its participating members, including the City, to diversify fuel sources and minimize the risk associated with complete reliance upon electric pricing linked to natural gas costs that are influenced by unpredictable weather, geo-political and global economic factors, but nonetheless the PPA involves a number of somewhat unique risks and uncertainties; and

WHEREAS, CAPP has prepared and distributed a Disclosure Statement dated September 10, 2008, in the form attached hereto that identifies and describes certain risks (but may not describe all risks) associated with the transactions contemplated by the Member Contract and the PPA; and

WHEREAS, the Disclosure Statement is to be acknowledged, signed, and returned to CAPP, prior to pricing of CAPP's bonds, if the Member Contract is approved; and

WHEREAS, it is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code; and

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

Section 1. The CAPP Member Contract, attached hereto and incorporated herein for all purposes is deemed necessary and desirable for the City to meet its proprietary functions and basic governmental responsibilities and is hereby approved.

Section 2. The City acknowledges that the Member Contract requires that certain capacity payments payable by the City will be public property finance contractual obligations pursuant to Texas Local Government Code Chapter 271, Subchapter A, secured by a pledge of such member's ad valorem taxes, which will be assigned to support debt issued by CAPP to pay the capacity costs of the PPA; and the City further acknowledges that the fixed capacity component constitutes a long-term, general obligation tax debt of the City that is secured by a pledge of the City's ad valorem taxes.

Section 3. The Town of Addison, Texas hereby acknowledges that it has reviewed the Member Contract and the Disclosure Statement dated September 10, 2008, and the City Manager, or other appropriate officer or staff person of the City, is authorized and directed to sign, date, and return by November 5, 2008, to CAPP both the Member Contract and such Disclosure Statement.

Section 4. The City Manager, or other appropriate officer or staff person of the City, is authorized to approve modifications and corrections to the Member Contract that are necessary to conform to changes to the assigned cost in the PPA after all CAPP members have made decisions regarding participation in the long-term PPA, so long as no such changes increase the City's capacity payment obligations in any year from the amounts reflected in the Member Contract attached hereto.

Section 5. The City Manager, or other appropriate officer or staff person of the City, is authorized to sign additional agreements arranged by CAPP for the provision of electricity during the period 2009-2013 that are necessary to meet the City's power needs that exceed the power arranged through the Member Contract with CAPP, with the understanding that any agreement for energy beyond 2009 is subject to the right of annual appropriation.

Section 6. The City Manager, or other appropriate officer or staff person of the City, is hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this ordinance, the Member Contract and the Disclosure.

Section 7. The City Manager, or other appropriate officer or staff person of the City, is hereby authorized and directed to approve any changes or corrections necessary to this ordinance, the Member Contract or any ancillary agreement, certificate or document, prior to the initial delivery of the Member Contract in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this ordinance, (ii) approve any changes to the Member Contract as contemplated in the recitals hereto and Section 3 hereto, or (iii) obtain the approval of the Member Contract (and the debt issued by CAPP relating to the PPA) by the Texas Attorney General's office.

Section 8. In case any officer of the City whose signature shall appear on the Member Contract shall cease to be such officer before the delivery of such Member Contract, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 9. The sections, clauses, and other provisions of this Ordinance are severable, and if any one or more sections or clauses or other provisions of this ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this ordinance and the remaining provisions of the ordinance shall be interpreted as if the offending section or clause never existed.

Section 10. The City hereby finds that the statements set forth in the recitals of this ordinance are true and correct, and the City hereby incorporates such recitals as a part of this ordinance.

Section 11. This Ordinance shall take effect upon its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the _____ day of _____, 2008.

Joe Chow, Mayor

ATTEST:

By: _____
Mario Canizares, City Secretary

APPROVED AS TO FORM:

By: _____
John Hill, City Attorney

ENERGY SALES CONTRACT
BETWEEN
CITIES AGGREGATION POWER PROJECT
AND
TOWN OF ADDISON TEXAS

**ENERGY SALES CONTRACT
BETWEEN
CITIES AGGREGATION POWER PROJECT
AND
TOWN OF ADDISON, TEXAS**

TABLE OF CONTENTS

Table of Contents

	Page
ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION.....	4
1.1 Definitions.....	4
1.2 Principles of Interpretation.	11
ARTICLE 2 CAPP'S OBLIGATIONS CONTINGENT UPON PERFORMANCE BY FACILITY OWNERS UNDER THE PPA; ASSUMPTION BY MEMBER	12
2.1 Nature of CAPP's obligations to Member.....	12
2.2 CAPP's duty to exercise remedies under the PPA and Guaranty; power coupled with an interest.	12
2.3 Assumption of PPA by Member.....	12
ARTICLE 3 TERM OF CONTRACT AND DELIVERY OF PRODUCTS	13
3.1 Term.....	13
3.2 Delivery of Products.	13
ARTICLE 4 PAYMENT OF CAPACITY PREPAYMENT TO FACILITY OWNERS.....	13
ARTICLE 5 DELIVERY OF CONTRACT ENERGY	13
5.1 Acquisition and Delivery of Product.	13
5.2 Title and Risk of Loss.	14
5.3 Member's Failure to Accept Product.	14
5.4 Failure of Facility Owners to Schedule or Deliver Product to CAPP.....	14
ARTICLE 6 PRICING OF AND PAYMENT FOR ENERGY.....	14
6.1 Payment of Member's Monthly Aggregated Energy Payment.....	14
6.2 Payments through Retail Electric Provider and Designated Agent(s).....	17
6.3 Payments from Available Funds.....	17
6.4 Intent to Continue Payments.	18
6.5 Failure to Appropriate Available Funds.	18
6.6 Assignment Upon Failure to Appropriate.....	18
6.7 Appropriated Energy Payments to be Unconditional.	19
6.8 CAPP as Third Party Beneficiary.	19
6.9 Member's Default of the Energy Payment Covenants and CAPP's Remedies.....	19
ARTICLE 7 CAPACITY PREPAYMENT, MEMBER'S MONTHLY CAPACITY PAYMENT AND PLEDGE OF AD VALOREM TAXES BY MEMBER.....	21
7.1 Capacity Prepayment.	21
7.2 Capacity Payment.	21

7.3	Interest and Sinking Fund; Tax Levy for Monthly Capacity Payments.	22
7.4	Prepayments based upon Early Termination under the PPA.	22
7.5	CAPP and Trustee as Third Party Beneficiaries.	22
7.7	Member’s Default on Capacity Prepayment and CAPP’s Remedies.	23
ARTICLE 8 BILLING AND PAYMENT.		24
8.1	Invoice and Payment Schedules.	24
8.2	Method of Payment.	24
8.3	Netting.	25
8.4	Disputed Charges.	25
8.5	Audits.	26
8.6	ERCOT Barred Issue.	26
ARTICLE 9 DESIGNATION OF MEMBER'S DELIVERY POINTS.		26
9.1	Designation of Member's Delivery Points.	26
ARTICLE 10 SECURITY.		26
10.1	Security from Facilities Owners.	26
10.2	Collateral Assignment of the Contract to Trustee for Bonds.	27
ARTICLE 11 DEFAULT.		27
11.1	Defaults by Facility Owners; Defaults by Participating Members.	27
11.2	Default by CAPP.	27
11.3	Default by Member.	27
11.4	Remedies of CAPP in the event of default by Member.	28
11.5	Remedies of Member in the Event of Default by CAPP.	29
11.6	No Waiver in Event of Default.	30
ARTICLE 12 INDEMNIFICATION; LIMITATION OF LIABILITY.		30
12.1	Member’s Indemnification of CAPP.	30
12.2	Claims arising on Facility Owners side of the Facility Owners' Delivery Point.	30
12.3	Indemnified Claims.	31
12.4	Limitation of Remedies, Liability and Damages.	31
ARTICLE 13 REPRESENTATIONS.		32
13.1	Mutual representations and warranties.	32
ARTICLE 14 NOTICES.		33
14.1	Notices.	33
ARTICLE 15 CONFIDENTIALITY.		34
15.1	Confidential Information.	34
ARTICLE 16 ASSIGNMENT.		34
16.1	Assignment.	34
ARTICLE 17 CONTINUING DISCLOSURE.		34
17.1	Continuing Disclosure Undertaking of Members.	34
17.2	Financial Statements.	34
17.3	Change of Fiscal Year.	35
17.4	Failure to Provide Continuing Disclosure.	35
17.5	Amendment of Continuing Disclosure.	35
ARTICLE 18 TAX-EXEMPT BONDS.		36
18.1	Tax-Exempt Bonds.	36
18.2	Agreement to Pay Beneficiary.	36

18.3	Financing.....	37
ARTICLE 19 MISCELLANEOUS		37
19.1	Applicable Law.....	37
19.2	Counterparts.....	37
19.3	Waiver.....	37
19.4	Modification.....	37
19.5	Severability	37
19.6	Requirements.	38
19.7	Entirety.....	38
19.8	Captions, Titles and Headings.	38
19.9	Forward Contract.	38
19.10	Further Assurances.....	38
19.11	Survival.....	38

**ENERGY SALES CONTRACT
BETWEEN
CITIES AGGREGATION POWER PROJECT
AND
TOWN OF ADDISON, TEXAS**

This Energy Sales Contract (“**Contract**”) is executed on the date set opposite each signature below, effective, however, on December ___, 2008 (“**Effective Date**”), by and between the Cities Aggregation Power Project, Inc. (“**CAPP**”), a political subdivision corporation incorporated in the State of Texas, and the Town of Addison (“**Member**”). CAPP and Member are collectively referred to herein as the "**Parties**", and individually as a "**Party**".

RECITALS:

Capitalized terms used herein not otherwise defined shall have the meanings set forth in Article 1 hereof.

Member is a political subdivision of the State of Texas.

Member is a member of CAPP.

As the result of adoption of Senate Bill 7, enacted as Chapter 405, Acts of the 76th Legislature, Regular Session, 1999, municipalities now have the opportunity to competitively acquire electricity on more advantageous terms. This opportunity was the impetus for the creation of CAPP. CAPP was created to assist Member and the Participating Members in obtaining electricity used in such Members' own buildings and facilities by aggregating each Participating Member's electric load, and negotiating the best electric price based on the aggregated load.

Recognizing that all retail sales in the Texas deregulated electric market have been based on the price of natural gas on the Nymex Futures Market, Member desires to diversify the sources of its electric supplies in order to mitigate potential price volatility associated with a single fuel source supply of electric energy.

Member has a need for reliable electric energy at favorable and stable rates to fulfill its proprietary needs and governmental responsibilities in said buildings and facilities.

Member desires to increase its bargaining power in the deregulated market for Energy by relying upon and combining with other participating CAPP member cities ("**Participating Members**") to negotiate for future sources of electricity. The Participating Members are listed on Exhibit "A" attached hereto and incorporated by this reference herein for all purposes.

Member has determined to utilize the CAPP aggregation method of electric energy procurement for meeting the electric energy needs of governmental facilities that are located within its deregulated jurisdictional boundaries, as provided in this Contract.

CAPP has identified a source of Energy from selected units in the Big Brown generating station in Freestone County, Texas ("**Big Brown Facility**"), Martin Lake generating station located in Rusk County, Texas ("**Martin Lake Facility**"), and Oak Grove generating station located in Robertson County, Texas ("**Oak Grove Facility**") that are owned, respectively, by Big Brown Power Company, LLC, Luminant Generation Company LLC and Oak Grove Management Company, LLC (collectively, the "**Facility Owners**"), and that CAPP believes will assist Member in (i) mitigating potential price volatility of Energy, and (ii) accessing a wholesale power supply to meet the base load requirements of Member and Participating Members for twenty-four (24) years, commencing on January 1, 2009 at 12:00:00 a.m. CPT ("**Service Commencement Date**") and ending at one minute before 12:01 a.m. on January 1, 2033 unless the agreement for the procurement of such Energy is terminated sooner as therein provided ("**Term**"). The Big Brown Facility, Martin Lake Facility, and Oak Grove Facility are collectively called the "**Facilities**".

CAPP has entered into a Power Purchase Agreement with the Facility Owners in substantially the form attached hereto as Exhibit "B" and incorporated by this reference herein for all purposes ("**PPA**"), pursuant to which PPA, CAPP will contract to obtain 150 megawatts of Contract Capacity ("**Contract Capacity**") in the Facilities and access to wholesale power supplies to meet base load Energy needs of Member and Participating Members throughout the Term of the PPA.

Certain obligations of the Facility Owners under the PPA have been partially guaranteed by Texas Competitive Electric Holdings Company, LLC ("TCEH") through execution of a Guaranty substantially in the form attached to the PPA, and TCEH and its subsidiaries have guaranteed the original leveraged buyout ("LBO") documents and the PPA is a secured obligation under such LBO documents and as such is subject to the guaranty provided therein.

Member desires to acquire its Member Contract Energy Allocation in the Project from CAPP ("**Member Capacity**").

All Participating Members, including Member, have collectively contracted for and reserved the full Contract Capacity in the Facilities from CAPP. The PPA provides the terms for CAPP's purchase of all Contract Capacity from the Facility Owners for the benefit and on behalf of Member and Participating Members.

As a result of negotiations with the Facility Owners it has been determined that substantial savings in energy costs based upon today's energy market and current forecasts of future market prices can be realized by purchasing capacity rights in the Facilities from the Facility Owners as provided in the PPA on or before the Service Commencement Date.

CAPP has determined that it is in the best interests of Member and the Participating Members to prepay Facility Owners for Contract Capacity in the Facilities ("**Capacity Prepayment**") out of the proceeds of Bonds issued for such purpose by CAPP. Member and each of the other Participating Members in their respective Participant Contracts, agree to pay Member's Energy Allocation Percentage of the costs incurred by CAPP to issue the Bonds, pay the Capacity Prepayment to the Facility Owners, pay interest costs, establish a reserve, and pay all other costs, fees and charges that CAPP incurs under the Bonds directly to the Trustee, as hereinafter defined, until the Bonds are paid in full according to the payment schedule set forth in the Bonds. The Bonds shall be secured by the collateral assignment of this Contract and all Participant Contracts, as provided in this Contract, including all rights of collection thereon, to the Trustee. A copy of the payment schedule is attached hereto as Exhibit "C" and incorporated by this reference herein for all purposes.

Member acknowledges that CAPP shall additionally provide to Member at Member's expense, through Designated Agent(s), all services required and necessary to deliver the Energy from the Facility Owners Delivery Point to Member's Delivery Points, including all costs of transmission, distribution, and including all necessary tariffs, and fees as provided herein.

Member agrees to the terms of this Contract, and consents to the terms of the PPA. In reliance thereon, and in reliance upon the acceptance and agreement of all other Participating Members, CAPP (i) has entered or shall enter the PPA for the benefit of Member and Participating Members, (ii) shall cause the Bonds to be issued, and (iii) shall cause the Capacity Prepayment to be paid to the Facility Owners as provided in the PPA.

Accordingly, CAPP and Member have determined that it is in their mutual best interests to enter into this Contract as the means of providing Member with the Member Contract Energy Allocation for its base load needs during the Delivery Period described in Section 3.2, below. Other Participating Members have respectively entered or have committed to enter into contracts with CAPP that, when aggregated with this Contract, collectively account for all Contract Energy associated with the Contract Capacity in the Facilities during the Delivery Period that has or will be acquired by CAPP for the benefit of all Participating Members under the PPA.

The Public Property Finance Act, Subchapter A, Chapter 271, Local Government Code, as amended (the "**Act**"), authorizes Member to execute, perform and make payments under contracts with any person for the use, acquisition or purchase of personal property as described in the Act, including the electricity provided for in this Contract.

The Act permits the governing body of Member to execute contracts in any form deemed appropriate by said governing body in connection with the use, acquisition or purchase of personal property.

Member desires to acquire electricity property pursuant to this Contract as described herein from CAPP, and such personal property is deemed by the governing body of Member to be necessary, useful, and/or appropriate for the purposes of Member as contemplated by Section 304.001, Government Code, as amended.

In consideration of the mutual undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions. The following capitalized terms shall have the following meanings assigned to them under this Contract unless the context shall clearly indicate otherwise:

“Aggregated Expenses” shall mean the sum of charges to CAPP that are payable under the PPA to the Facility Owners and under a Wrap Contract for: (a) adjustments to the Capacity Prepayment under Section 4.2(b) of the PPA, (b) sums charged to CAPP under Section 3.3 of the PPA, (c) the amount of Disputed Charges that are payable by CAPP under Section 8.3 of the PPA or as a result of an Audit under Section 8.4 of the PPA, (d) sums payable by CAPP under Article 10 of the PPA, (e) sums, if any, required for the indemnity of the Facility Owners under Section 13.1 of the PPA, (f) Governmental Charges payable by CAPP pursuant to Section 20.1 of the PPA, (g) New Governmental Charges payable by CAPP pursuant to Section 20.2 of the PPA, (h) the cost of environmental improvements that are required to be paid by CAPP under the PPA, (i) any unforeseen non-recurring expenses approved by CAPP, and (j) the amount of any Seller Termination Payment due by CAPP to the Facility Owners pursuant to Article 12 of the PPA. The amount of Aggregated Expenses shall be reduced by (i) credits to the Capacity Prepayment under Section 4.2(a) of the PPA, (ii) credits under Section 3.4 of the PPA on account of the failure of the Facility Owners to deliver the Products to CAPP, and (iii) the amount of Disputed Charges that are payable by the Facility Owners to CAPP under Section 8.3 of the PPA or as a result of an Audit under Section 8.4 of the PPA.

“Alternate Energy” has the meaning set forth in the PPA.

“Appropriate”, “Appropriated”, and/or “Appropriation” means, with respect to any Energy Payment that Member is obligated to make under this Contract during a Fiscal Year, the adoption by the governing body of Member of a budget for such Fiscal Year that includes such payment.

“Available Funds” means, when used to describe funds of Member, those funds of the Member which have been lawfully Appropriated, within the sole and

uncontestable discretion of the Member, from current revenues and which may be expended, during the Fiscal Year for which Appropriated, for the purpose expressed in such Appropriation.

“Bankrupt” means a Party that: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced and regardless of whether the bankruptcy or insolvency is voluntary or involuntary), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Base Year” means an annual period determined by CAPP as of the Effective Date to be representative of the typical total current Energy requirements of all Participating Members.

“Big Brown Facility” means Unit 1 and Unit 2 of the Big Brown generating station located in Freestone County, Texas, with an appropriate cumulative Net Rated Capacity of 1203 megawatts as of the Effective Date.

“Bonds” shall mean all contract revenue bonds issued by CAPP for the purpose of prepaying and funding the Capacity Prepayment plus cost of issuance of and reserve funds required to be maintained under such contract revenue bonds, said bonds to be secured by the pledge and assignment by CAPP to a trustee, pursuant to a trust agreement between CAPP and such trustee of the Capacity Prepayment Component of each Participating Member’s contract, it being stipulated and agreed that this Contract and each Participant Contract constitutes a contract under Subchapter A of Chapter 271, Local Government Code, State of Texas, as amended, payable from such respective Participating Member’s ad valorem taxes within the limits prescribed by law.

“Business Day” means any Day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. CPT and close at 5:00 p.m. CPT.

“Capacity Prepayment” has the meaning set forth in Section 7.1, below.

“CAPP” shall mean the Cities Aggregation Power Project, a political subdivision corporation in Texas organized pursuant to Local Government Code Chapter 304 for the purpose of contracting for electric power for Participating Members and for assisting in procurement of REP and QSE services for governmental electric accounts of Participating Members.

"**Code**" means Texas Local Government Code, Title 7, Chapter 271, Subchapter 1, Sections 271.151 through 271.160.

"**Contract**" shall mean this Energy Sales Contract and all related exhibits, as same may be amended from time to time by the mutual written agreement of the Parties.

"**Contract Capacity**" means 150 megawatts, being the Contract Capacity acquired by CAPP in the Facilities under the PPA on behalf of Member and the Participating Members.

"**Contract Energy**" has the meaning set forth in the PPA. Additionally, the Parties understand that if, in any Settlement Interval, the output of one or more of the Facilities is less than its Net Rated Capacity, due to a Planned Outage or Forced Outage as provided in the PPA, the Contract Energy may be reduced. In such an event, CAPP shall only receive a share of the output as provided in the PPA. In such event, the reduced amount of output received by CAPP will be delivered to and apportioned between Member and the other Participating Members based on their respective Member's Energy Allocation Percentages.

"**Contract Price**" has the meaning set forth in Section 6.1.

"**CPT**" means central prevailing time.

"**Day**" means the consecutive twenty-four (24) hour period beginning at 12:00:00 a.m. CPT on any calendar day and ending at 12:00:00 p.m. CPT on such calendar day.

"**Default**" has the meaning set forth in Article 11 hereof.

"**Defaulting Member**" shall mean one or more Participating Members that default under a Participant Contract that has been collaterally assigned in whole or in part as security for the repayment of the Bonds.

"**Delivery Month**" has the meaning set forth in the PPA.

"**Delivery Period**" means that period of time in which Energy shall be delivered to CAPP as agent for Member as the Energy is delivered by the Facility Owners under the PPA, commencing on January 1, 2009 at 12:01:00 a.m. CPT and ending on the earlier of: (i) 12:01:00 a.m. CPT on January 1, 2033, (ii) the date and time that the PPA is terminated in accordance with its terms, or (iii) the date and time that this Contract is rightfully terminated in accordance with its terms.

"**Designated Agent(s)**" means service providers such as, but not limited to, REPs, QSEs, and other market service product providers that are engaged from time-to-time by CAPP to act as agents for and representatives of CAPP, Member, and/or

Participating Members for the purposes of: (i) receiving and accounting for Products delivered by Facility Owners under the PPA, and Energy that is delivered to Member and Participating Members under this Contract and Participant Contracts, (ii) remitting payments, including payments of ERCOT fees, transmission fees, congestion fees, QSE fees, REP charges, and tariffs, (iii) allocating costs between Member and Participating Members, and/or (iv) billing, netting, and collecting sums due under this Contract.

“**Effective Date**” has the meaning set forth in the preamble of this Contract.

“**Energy**” has the meaning set forth in the PPA.

“**Energy Payment**” means the product of the Energy Price times the number of megawatt hours delivered to Member .

“**Energy Price**” has the meaning set forth in Section 6.1(a)(i).

“**ERCOT**” shall mean the Electric Reliability Council of Texas, or its successor in function.

“**ERCOT Guides**” means the then-current ERCOT Operating Guides, Market Guides, Protocols, Nodal Protocols, Transaction Guides, and/or ISO procedures, as they may be amended from time to time.

“**ESI-IDs**” shall mean Electric Service Identifiers as defined in ERCOT Protocols, or their successor in function, same being the basic identifier assigned to each service delivery point used in the registration and settlement systems managed by ERCOT.

“**Facilities**” means the Big Brown Facility, Martin Lake Facility, and upon COD of the Oak Grove Unit 1 and Oak Grove Unit 2, the Oak Grove Facility as defined and described in the PPA, including, with respect to each, the land, structures, fixtures, equipment, machinery, lignite, and related auxiliary equipment required to operate each such facility.

“**Facility Owner Delivery Points**” means the point at a Facility at which Contract Energy is capable of being injected for the credit of CAPP into the ERCOT high voltage transmission system with Member and other Participating Members being fully responsible for reimbursing CAPP for any and all charges and assessments by ERCOT related to delivery of energy from the Facility Owner’s Delivery Points into the ERCOT high voltage transmission system.

“**Facility Owners**” shall mean Big Brown Power Company, LLC, Oak Grove Management Company, LLC, Luminant Generation Company, LLC, and their respective successors and assigns.

"Fiscal Year" means the fiscal year of Member.

"Forced Outage" has the meaning set forth in the PPA.

"Governmental Authority" has the meaning set forth in the PPA.

"Governmental Charges" has the meaning set forth in the PPA and which are charged to or payable by CAPP, including those Governmental Charges that survive the termination of the PPA.

"Guarantor" shall mean Texas Competitive Electric Holdings Company, LLC, a Delaware limited liability company.

"Guaranty" shall mean that certain Guaranty Agreement executed by Guarantor and delivered to CAPP at closing.

"Interest and Sinking Fund" means that a special fund or account designated as the "**City of _____ Electric Public Property Finance Contractual Obligation Interest and Sinking Fund**", authorized, established and maintained in a depository bank of the Member, so long as the contractual obligation to make Monthly Capacity Payments hereunder are outstanding and unpaid.

"kW" means kilowatt(s).

"Law" means (i) any law, legislation, statute, act, rule, ordinance, decree, treaty, regulation, order, judgment, or other similar legal requirement, and (ii) any legally binding announcement, directive or published practice or interpretation thereof, including but not limited to, ERCOT Guides, enacted, issued or promulgated by any Governmental Authority having jurisdiction over this Contract, the Facilities, and the delivery of Energy pursuant to this Contract.

"Martin Lake Facility" means Unit 1, Unit 2, and Unit 3 of the Martin Lake generating station located in Rusk County, Texas, with an approximate cumulative Net Rated Capacity of 2,345 megawatts as of the Effective Date of the PPA.

"Member Contract Energy Allocation" shall equal the product of the Member's Energy Allocation Percentage and the Contract Energy during each Delivery Month of the Delivery Period.

"Member's Monthly Aggregated Energy Payment" has the meaning set forth in Section 6.1(a).

"Member's Energy Allocation Percentage" is _____%, being calculated by multiplying 100 by a fraction, the numerator of which is Member estimated energy required during the Base Year, and the denominator of which is the

estimated total energy requirement of all Participating Members during the Base Year.

“Member’s Delivery Points” shall be all ESI-IDs accounts that Member has for receipt of energy to the revenue meters of such Member that are metered and the light fixtures for street/outdoor lights or other accounts of such Member that are not metered.

“Member’s Unique Delivery Costs” shall have the meaning set forth in Section 6.1(b) hereof.

“Monthly Capacity Payment” shall have the meaning set forth in Article 7 below.

“Monthly Energy Payment” means the product of the Monthly Energy Price times Member’s Energy Allocation Percentage times the megawatt hours delivered to CAPP by the Facility Owners during the Delivery Month.

“Monthly Energy Price” means the price per megawatt hour as set forth in the PPA.

“MW” means megawatt.

“MWh” means megawatt hour.

“New Governmental Charges” means (i) any Governmental Charges enacted and effective after the Effective Date, including without limitation, that portion of any Governmental Charges or New Governmental Charges that constitutes an increase or that cause the Facility or Facilities to incur additional or new expenses less Governmental Charges enacted or imposed prior to the Effective Date that are replaced by the New Governmental Charge and that become payable by CAPP under the PPA, (ii) any Law or interpretation thereof, enacted and effective after the Effective Date resulting in a new or additional expense to the Facility or the Facilities or the application of any Governmental Charges to a new or different class of parties and that become payable by CAPP under the PPA.

“Oak Grove Facility” means, when the first commercial operation date is reached, Oak Grove Unit 1 and Oak Grove Unit 2 of the lignite coal- fired power generation facility known as the Oak Grove Generating Station located in Robertson County, Texas.

“Ordered Backdown” has the meaning set forth in Section 5.2 of the PPA.

“Participant Contracts” means those individual contracts between CAPP and a Participating Member under which such Participating Member is acquiring a portion of the Contract Energy that CAPP is acquiring for the benefit of all

Members under the PPA. Such term has the same meaning as the term "Member Output Contract" in the PPA. This Contract is one of the Participant Contracts.

“Participating Members” shall mean those members of CAPP that enter into contracts with CAPP for the procurement of electric energy from the Facilities. A list of Participating Members is attached to this Contract as Exhibit “A” and incorporated by this reference herein for all purposes. Member is one of the Participating Members.

“Person” means a natural person, corporation, electric cooperative, partnership, trust, association, joint venture, real estate investment trust or business trust (including any beneficiary thereof), unincorporated association, Governmental Authority, and any other form of business or legal entity.

“Planned Outage” has the meaning set forth in Section 6.1 of the PPA.

“PPA” shall mean that certain Power Purchase Agreement between CAPP and the Facility Owners, a copy of which is attached hereto as Exhibit “B” and incorporated by this reference herein for all purposes.

“Product” or ***“Products”*** means Contract Capacity, Contract Energy and Alternate Energy, if any, received by CAPP from the Facility Owners under the PPA.

“QSE” means the entity which is responsible for performing the responsibilities defined for a Qualified Scheduling Entity under the ERCOT Guides, or their successor in function.

“Regulatory Authorities” has the meaning found in the Utilities Code Vernon’s Texas Codes Annotated.

“REP” means Retail Electric Provider, as defined in ERCOT Protocols.

“REP Services” shall mean all services that a REP provides that are associated with the provision of electric service to a retail customer by a REP in ERCOT.

“Replacement Price” has the meaning in the PPA.

“Resale Price” has the meaning in the PPA.

“Service Commencement Date” has the meaning set forth in Section 3.2 hereof and shall be one minute before 12:01 a.m. CPT on January 1, 2009.

“Settlement Interval” has the meaning as set forth in the ERCOT Guides.

“Term” has the meaning set forth in Section 3.1 hereof.

“Transmission Losses” means losses associated with the transmission of Energy under this Contract and under the PPA from resources used by (a) the Facility Owners to the Delivery Points for the respective Facility Owners, and (b) the Designated Agent(s) from the Facility Owners’ Delivery Point to Member's Delivery Points as determined in accordance with the ERCOT Guides.

“Transmission Service Provider” has the meaning found in the Utilities Code.

“Trustee” means the trustee related to the Bonds pursuant to an indenture of trust with CAPP.

“Unit” means each of the generating units at the Big Brown Facility, the Oak Grove Facility and the Martin Lake Facility that are then the subject of the PPA.

“Unit Contingent Energy” means the Contract Energy supplied to CAPP for delivery to Participating Members from the Facilities under the terms of the PPA, for which non-delivery is excused if: (i) a Facility is unavailable as a result of a Forced Outage or a Planned Outage; (ii) CAPP fails to perform any of its obligations under the PPA; or (iii) an event of Force Majeure prevents delivery of such Energy to CAPP.

“Wrap Contract” means any energy service contract executed by CAPP on behalf of Participating Members for electrical service requirements in addition to the PPA and other associated and ancillary services necessary to fulfill the full requirements for each of the Members electric power needs.

1.2 Principles of Interpretation. Unless the context requires otherwise, any reference in this Contract to any document means such document and all schedules, exhibits, and attachments thereto as amended and in effect from time to time. Unless otherwise stated, any reference in this Contract to any Person or Party includes its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities. The words “*hereof*”, “*herein*” and “*hereunder*” and words of similar import when used in this Contract, unless otherwise expressly specified, refers to this Contract as a whole and not to any particular provision of this Contract. The singular includes the plural, and the masculine includes the feminine and neuter genders. Whenever the term “*including*” is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. The language used in this Contract is deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party. All times set forth in this Contract shall be construed to be CPT.

ARTICLE 2
CAPP'S OBLIGATIONS CONTINGENT UPON
PERFORMANCE BY FACILITY OWNERS UNDER THE PPA;
ASSUMPTION BY MEMBER

2.1 Nature of CAPP's obligations to Member. Member agrees and understands that CAPP has entered or shall enter the PPA on behalf of Member and all Participant Members for the purpose of achieving the benefits set forth in the Recitals, above, including contracting for less than market prices for energy. Member understands that CAPP is not a power provider or power deliverer. Member agrees and understands that CAPP's obligation to perform its covenants under this Contract is absolutely contingent upon the performance of obligations of the Facility Owners and Guarantor to CAPP under the PPA, including, but not limited to, timely delivery of the Products in the quantities required under the PPA.

2.2 CAPP's duty to exercise remedies under the PPA and Guaranty; power coupled with an interest. In the event that the Facility Owners, without an excuse or right permitted under the PPA, fail to deliver the Products and/or fail to perform their obligations to CAPP as required under the PPA and Guaranty, then CAPP, on behalf of itself, Member, and the Participating Members, may exercise one or more of the remedies available to it under the PPA, the Guaranty, or both, as the Board of Directors of CAPP shall determine in its sole judgment and discretion. To the fullest extent necessary, Member hereby irrevocably appoints CAPP as its agent and attorney-in-fact to exercise such of the remedies available to CAPP under the PPA, that CAPP, in the sole judgment and discretion of its Board of Directors, believes to be the best interests of the Parties and Participating Members. Member agrees and understands that the power granted by it to CAPP in this Section 2.2 is and shall be construed to be a power coupled with an interest that cannot be revoked during the Term of this Contract. It is further agreed and understood that Member's obligation to pay the sums set forth in Article 6 and Article 7 on the dates set forth in Article 8, below, shall not be excused, offset, or mitigated on account of a default by Facility Owners under the PPA or by the failure of Facility Owners to deliver the Products.

2.3 Assumption of PPA by Member. Member agrees and understands that CAPP has entered or will enter into the PPA for the benefit of Member and Participating Members to the extent of their respective Member's Energy Allocation Percentages. For the consideration set forth in this Contract, Member assumes CAPP's obligations under the PPA, to the extent of Member's Energy Allocation Percentage, provided, however, that such rights and obligations shall be exercised on Member's behalf as the Board of Directors of CAPP shall determine in its sole and absolute discretion.

ARTICLE 3
TERM OF CONTRACT AND DELIVERY OF PRODUCTS

3.1 Term. The term ("*Term*") of this Contract shall commence on the Effective Date, and shall continue until the later of: (a) January 1, 2033 at 12:00:00 a.m., or (b) the date that the Bonds have been repaid in full and all covenants required to be performed and all interest and costs required to be paid by CAPP under the Bonds have been performed and paid in full by CAPP.

3.2 Delivery of Products. A Member's Contract Energy Allocation of the Products shall be provided by CAPP to Member as set forth herein at 12:00:00 a.m. CPT on January 1, 2009 (the "*Service Commencement Date*") provided that the Products are then commenced to be delivered by Facility Owners to CAPP under the PPA. Thereafter, the Products shall be received by CAPP or its Designated Agent(s) for the benefit of and as agent for Member as the Products are delivered by Facility Owners under the PPA until the earlier of: (a) one second following 11:59:59 p.m. CPT on December 31, 2032, (b) the date that the PPA is terminated in accordance with its terms, or (c) the date that this Contract is terminated in accordance with its terms ("*Delivery Period*"). In the event that the Facility Owners fail to deliver all of the Products they are required to deliver under the PPA, Member shall be entitled to receive only Member's Energy Allocation Percentage of the Products actually delivered to and received by CAPP, net of Transmission Losses

ARTICLE 4
PAYMENT OF CAPACITY
PREPAYMENT TO FACILITY OWNERS

Provided that the PPA has not been terminated by CAPP or by the Facility Owners prior to the Service Commencement Date pursuant to Article 11 of the PPA, CAPP shall pay or cause the Capacity Prepayment to be paid to Facility Owners on or before the date described in said Section 4.1(b) of the PPA. CAPP and Member stipulate and agree that the Capacity Prepayment shall be paid to the Facility Owners as required by the PPA, in whole or in part, from the proceeds of the Bonds, interest earned while such Bond proceeds are escrowed, and, as CAPP may elect, funds paid to CAPP by Member and Participating Members.

ARTICLE 5
DELIVERY OF CONTRACT ENERGY

5.1 Acquisition and Delivery of Product. Upon the Service Commencement Date, CAPP shall require (i) Facility Owners to provide and deliver the Contract Energy described in the PPA to the Designated Agent(s) at the Facility Owners' Delivery Point, and (ii) the Designated Agent(s) to deliver Energy to Member at the Member's Delivery Points, in both cases from Products generated from the Facilities or acquired by the

Facility Owners for delivery under the PPA as Alternate Energy pursuant to Section 5.3 of the PPA.

5.2 Title and Risk of Loss. Risk of loss of the Energy provided in accordance with this Contract shall transfer to CAPP as agent for Member and Participating Members at the Facility Owners' Delivery Points. Title to the Energy (subject to loss) shall be held by CAPP as agent for Member and Participating Members between the Facility Owners' Delivery Points and Member's Delivery Points.

5.3 Member's Failure to Accept Product. If Member fails to accept all or part of the Product under this Contract and such failure is not excused under the terms of this Contract or by failure of the Facility Owners to deliver same under the PPA, then Member shall pay to CAPP or to the Designated Agent(s) from time-to-time designated by CAPP, on the date payment would otherwise be due with respect to the month in which the failure occurred, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Resale Price from the Contract Price. The invoice for such amount shall include reasonable detail as to the calculation of such amount.

5.4 Failure of Facility Owners to Schedule or Deliver Product to CAPP. If one or more of the Facility Owners fail to schedule and/or deliver all or part of the Product as required by it under the PPA, and such failure is not excused under the terms of the PPA or by CAPP's failure to perform, then CAPP or the then-designated Designated Agent(s) shall, on behalf of all Participating Members, at the expense of and in the proportion of their respective Member's Energy Allocation Percentages, seek to collect sums from the Facility Owners that are recoverable pursuant to Section 3.4 of the PPA; provided, however, that any obligation by CAPP or by the Designated Agent(s), as the case may be, to pay Member in such event is limited to the amount that CAPP or the Designated Agent(s) actually collect from the Facility Owners and the Guarantor, net of costs of collection. For the avoidance of doubt, CAPP shall not be required to pay damages under this Section 5.4 when the failure to schedule and/or deliver is excused under the definition of Unit Contingent Energy.

ARTICLE 6 PRICING OF AND PAYMENT FOR ENERGY

6.1 Payment of Member's Monthly Aggregated Energy Payment. In consideration for the Energy received by it under this Contract, Member shall pay Member's Monthly Aggregated Energy Payment to CAPP, or to the Designated Agent(s), as the case may be, on or before the dates for payment set forth in Article 8, below, and calculated as follows:

(a) Calculation of Member's Monthly Energy Payment. Commencing on the Service Commencement Date, and continuing during each Delivery Month during the Term, but subject to annual appropriation therefore by Member during such Member's Fiscal Year, Member shall pay to CAPP, or to the Designated Agent(s) from time-to-time designated by it, the Member's Monthly Energy Payment, as computed monthly pursuant to the provisions of this Section 6.1(a). The Member's Monthly Energy Payment shall be the sum of (i) the Energy Component of Member's Energy Payment and (ii) the Aggregated Expenses Component of Member's Energy Payment, both determined as follows:

(i) Energy Component of Member's Monthly Energy Payment. The price of Energy deliverable to CAPP under the PPA at the Facility Owners' respective Delivery Points during the Delivery Month as provided in the PPA is set forth in the schedule attached hereto as Exhibit "D" and incorporated herein by reference herein for all purposes. The Parties recognize that the PPA calls for the Contract Energy to be delivered to CAPP at the Facility Owners' respective Delivery Points at which points the Energy Payment is measured and calculated pursuant to Section 4.1(a) of the PPA. The Wrap Contracts shall provide that the cost of energy delivered to Member will be measured at Member's Delivery Points. The price of energy deliverable to CAPP under the Wrap Contracts shall be at a price determined by negotiations at that time. Member recognizes that the Energy Component in the monthly invoices will reflect a blended rate per MWh taking into account the Energy provided to all Participating Members under all energy procurement contracts and shall include (1) the cost of Contract Energy; (2) ancillary services under Section 3.5 of the PPA; (3) the cost of engaging a QSE under Section 7.1 of the PPA or under any Wrap Contracts; (4) the cost of engaging a REP under the PPA or under any Wrap Contracts; (5) the cost of delivering the Contract Energy to the Delivery Points of all Participating Members from the Facility Owners' respective Delivery Points; and (6) the cost of energy and other expenses associated with one or more Wrap Contract. The Energy Component of Member's Monthly Energy Payment shall be computed as the product of such blended rate and the total Energy delivered to Member's Points of Delivery during the billing month.

(ii) Aggregated Expenses Component of Member's Monthly Energy Payment. The total Aggregated Expenses for each Delivery Month shall be allocated and apportioned between Member and each of the other Participating Members based upon each Member's Energy Allocation Percentage. The total amount so allocated to Member shall be billed to Member on a monthly basis by CAPP or its Designated Agent(s) as they shall determine appropriate.

(b) Member's Unique Delivery Costs. The Parties further recognize that Member and each of the Participating Members require delivery of the Energy by the Designated Agent(s) from the Facility Owners Delivery Point to their respective Member's Delivery Points, the cost of which may vary between Participating Members based on a number of factors, including, but not limited to, distance from the Facility Owners Point of Delivery, differing zones into which Energy shall be delivered, different tariffs that may change from time to time as ordered by Regulatory Authorities, loss of Energy during transmission, and differing contractual arrangements that must be made to effect the delivery of Energy to the required points of delivery. In this connection, CAPP shall, as agent for Participating Members (including Member) (i) enter into one or more contracts with Designated Agent(s) for delivery of the Products to all Participating Members from the Facility Owners Delivery Point to each of their respective Member's Delivery Points, and (ii) require the Designated Agent(s) to separately account to and bill each Participating Member for the unique costs that are associated with delivery of the Energy from the Facility Owners Point of Delivery. Commencing on the Service Commencement Date, and continuing during each Delivery Month during the Term, but subject to annual appropriation therefore by Member during such Member's Fiscal Year, Member shall pay to CAPP or to the Designated Agent(s) from time-to-time designated by it the Member's Unique Delivery Costs. The Member's Unique Delivery Costs shall be due and payable at the same time that the Member's Aggregated Monthly Energy Payment is due.

(c) Governmental Charges and New Governmental Charges. Member shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Facility Owners' Delivery Points. In the event CAPP and/or the Designated Agent(s) are required by Law to remit or pay Governmental Charges which are Member's responsibility hereunder, or in the event that CAPP must remit or pay to Facility Owners for Governmental Charges that it may pass through to CAPP for reimbursement under the PPA, CAPP shall notify Member of the amount of Governmental Charges owed, whether such payment is to Facility Owners or to the governmental entities that made such Governmental Charges, on Member's behalf. Such notice shall be provided in a commercially practicable manner and may be provided by a Designated Agent. Notwithstanding any other provision of this Contract to the contrary, if a New Governmental Charge (as defined in the PPA) is passed through to CAPP for reimbursement, including but not limited to New Governmental Charges imposed on all coal and lignite generating facilities in ERCOT, including the Product, and CAPP's share of any such New Governmental Charge is greater than the Materiality Threshold set forth in the PPA (after taking into account the application of any entitlements and the extent of old charges that are replaced by the New Governmental Charge), such charges shall be treated as though they were incurred by CAPP for the benefit of all Participating Members (including Member). All Governmental Charges and New Governmental Charges shall be apportioned between Member and the Participating Members as an energy charge reflected on monthly bills from a Designated Agent. If, as, and when CAPP pays Governmental Charges and New Governmental Charges, it shall be deemed to have paid same on behalf of Member and all Participating Members in the proportion stated immediately above, and Member shall pay CAPP and/or the Designated Agent(s)

its proportionate share, subject, however, to Appropriation by Member during Member's Fiscal Year. The obligation to pay such Governmental Charges and New Governmental Charges shall continue until such time as reimbursement of Facility Owners therefore are no longer required by the PPA.

(d) Adjustments. Section 4.2 of the PPA provides for monthly adjustments if the Equivalent Availability Factor for such month is greater or less than 90%. It is the intention of the Parties to this Contract that (i) such credits and supplemental payments shall be allocated and passed through to Member and each of the **other** Participating Members, on a pro rata basis, in the month payable or credited against the Energy Payment based on an energy basis and (ii) the Designated Agent responsible for billing shall net the adjustments under Section 4.2 of the PPA against other amounts owed. It is understood that Member's obligation to pay any adjustments under this Section 6.1(d), as part of an Energy Payment or Payments, is subject to appropriation by Member during Member's Fiscal Year.

(e) Other Adjustments. In the event that inequities arise between Participating Members or between Member and Participating Members in energy based allocation of credits and supplemental charges under this or other energy contracts, the Board of Directors of CAPP, in its sole discretion, may direct further adjustments as necessary to preserve the integrity of the allocation process and relative economic position of Member and Participating Members; provided, however, no adjustments shall affect the obligation to make Capacity Payments under Article 7 of this Contract.

6.2 Payments through Retail Electric Provider and Designated Agent(s). CAPP reserves the right to bill and invoice Member and Participating Members for the Contract Price, collect sums due by Member and Participating Members under Article 6, pay sums to Facility Owners that CAPP is required to pay pursuant to the terms of the PPA, collect payments and credits due to CAPP by the Facility Owners, and allocate and distribute credits and payments received from Facility Owners and third parties to Member and Participating Members as their respective interests appear through a REP or through Designated Agent(s). Notwithstanding the foregoing, it is expressly agreed and understood that (a) the Capacity Payments required to be paid by Member pursuant to Section 7, below, must be paid by Member directly to CAPP or the Trustee, and (b) payments received by CAPP or by Member from the Facility Owners, Guarantor, or any of same as a result of Early Termination of the PPA as defined in and calculated under Article 12 of the PPA must be paid by the recipient of such payments directly to CAPP or the Trustee for application to the Bonds.

6.3 Payments from Available Funds. Notwithstanding any provision herein to the contrary, the obligations of Member under this Contract to make Energy Payments shall be payable solely from the Available Funds received in each Fiscal Year during the Term of this Contract. The obligation of the Member to make any Energy Payments pursuant to this Contract shall constitute a current expense of Member during each Fiscal Year and shall not constitute an indebtedness of Member within the meaning of the laws of the

State of Texas. Nothing in this Contract shall constitute a pledge by the Member of any taxes or other money, other than such funds so Appropriated and received in each Fiscal Year during the Term of this Contract and constituting Available Funds, to the payment of any Energy Payment due or to become due hereunder.

6.4 Intent to Continue Payments. Member presently intends to continue this Contract for the entire Term and to pay all Energy Payments required hereunder. Member presently intends to appropriate, from lawfully Available Funds received in each Fiscal Year, money sufficient to pay the Energy Payments required hereunder. However, Member has no obligation to, and makes no representation that it will, appropriate or seek to appropriate in any Fiscal Year Available Funds for the payment of Energy Payments due pursuant to this Contract.

6.5 Failure to appropriate Available Funds. If, for any Fiscal Year of the Member, the Member does not appropriate Available Funds received during such Fiscal Year to pay the Energy Payments required under this Contract due and payable by Member during the succeeding Fiscal Year, and if the Member provides CAPP with written notice of such failure to appropriate thirty (30) days prior to the expiration of Member's then-current Fiscal Year, the obligation to take electric Energy from CAPP under this Contract and make Energy Payments for such electric energy shall terminate and be canceled at the end of such current Fiscal Year for the period of the next Fiscal Year for which the Member has failed to appropriate Available Funds. The written notice shall be accompanied by a statement as to whether or not Member has made an assignment to another Participating Member under Section 6.6 hereof. The Member may appropriate Available Funds for any subsequent Fiscal Year for Energy Payments due during such subsequent Fiscal Year and then shall be entitled to receive electric Energy from CAPP under this Contract for such Fiscal Year.

6.6 Assignment Upon Failure to appropriate. For any Fiscal Year which the Member has failed to appropriate for Energy Payments (or portion thereof), the Member may assign to another Participating Member all or a portion of such non-appropriating Member's right to receive electric energy for such Fiscal Year provided the Participating Member certifies to CAPP that the assigned electric energy will be utilized by such Participating Member for its buildings and facilities, in compliance with the Local Government Code Chapter 304. The Energy Payments associated to such assigned right to such electric energy shall be calculated according to the terms of this Contract (assuming the Member was receiving such electric energy). At such time the Member provides written notice of its failure to appropriate for Energy Payments for any Fiscal Year, the Member may also give written notice to CAPP of its assignment of all or a portion of its right to receive electric energy under this Contract, including a written agreement between the Member and the Participating Member reflecting the terms and conditions of such assignment. Prior to the beginning of the relevant Fiscal Year, the assuming Participating Member must provide CAPP written notice of (i) its appropriation for the Energy Payments associated with the assumed electric energy for the period of the non-appropriating member's Fiscal Year which such non-appropriation is applicable (or portion thereof), (ii) certification that such assumed electric energy will

be utilized by such Participating Member for its buildings and facilities, in compliance with the Local Government Code Chapter 304 and (iii) a valid and binding assignment agreement between the Member and the Participating Member. If the Member failing to appropriate for Energy Payments does not assign the Energy to another Participating Member within 30 days following the failure to Appropriate, Member shall assign the Energy to CAPP, and CAPP shall have the right to assign to a Participating Member, or to otherwise dispose of the Energy in a commercially practicable manner.

6.7 Appropriated Energy Payments to be Unconditional. Except as provided herein, including Section 6.3 hereof, the obligation of Member to make Energy Payments each Fiscal Year from funds that have been appropriated for such purpose when due shall be absolute and unconditional. Notwithstanding any dispute between Member and CAPP or any other Participating Member or person, the Member shall make all Energy Payments required hereunder when due and shall not withhold any such payments pending final resolution of such dispute, nor shall Member assert any right of set-off or counterclaim against its obligation to make such payments required under this Contract. Member's obligation to make Energy Payments during the Term shall not be abated because of accident or unforeseen circumstances. However, nothing herein shall be construed to release CAPP from the performance of its obligations hereunder; if CAPP should fail to perform any such obligation, Member may institute such legal action against CAPP as Member may deem necessary to compel the performance of such obligation. Notwithstanding anything to the contrary above, Member's obligation to pay Energy Payments shall not require it to pay Energy Payments from any source other than Available Funds specifically appropriated by Member for payment of the Energy Payments.

6.8 CAPP as Third Party Beneficiary. Member acknowledges that CAPP is an intended third party beneficiary of all Appropriations made by Member for sums described in this Article 6. As part of the consideration for this Contract, Member grants to CAPP and to any Designated Agent(s) appointed by CAPP all rights to enforce, by a mandamus action against Member and its governing body, such provisions for each Fiscal Year of Member for which there has been an Appropriation as contemplated in this Article.

6.9 Member's Default of the Energy Payment Covenants and CAPP's Remedies.

(a) Events of Default. Each of the following occurrences or events for the purpose of this Contract is hereby declared to be a Default:

(i) The failure to make payment of the Energy Payment when the same becomes due and payable; or

(ii) Default in the performance or observance of any other covenant, agreement or obligation of the Member, the failure to perform which materially, adversely affects CAPP, including, but not limited to, its

prospect or ability to be repaid in accordance with this Contract, and the continuation thereof for a period of 30 days after notice of such default is given by CAPP or Trustee to the Member.

(b) Remedies for Default.

(i) Upon the occurrence of a Default, then and in every case, CAPP or an authorized representative thereof may proceed against the Member, or any official, officer or employee of the Member in their official capacity, for the purpose of protecting and enforcing the rights of CAPP under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of CAPP hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the benefit of CAPP.

(c) Remedies Not Exclusive.

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

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy. The failure to exercise a remedy upon a Default shall not be deemed to be a waiver of the right to exercise such remedy in the future.

(iii) By accepting the delivery of Energy Payment authorized under this Contract, CAPP agrees that the certifications required to effectuate any covenants or representations contained in this Contract do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the Member.

(iv) No official or officer, agent, or employee of the Member, shall be charged personally by CAPP or the Trustee with any liability, or be held personally liable under any term or provision of this Contract, or because of a Default or Default under this Contract.

ARTICLE 7
CAPACITY PREPAYMENT, MEMBER'S MONTHLY CAPACITY PAYMENT
AND PLEDGE OF AD VALOREM TAXES BY MEMBER

7.1 Capacity Prepayment. In order to procure Energy at favorable rates produced in the Facilities by the Facility Owners under the PPA, CAPP, at the request of Member and the other Participating Members, shall (i) prepay to Facility Owners the sum of \$465,000,000.00 (the "**Capacity Prepayment**") from the proceeds of the Bonds (ii) establish a reserve fund under the Bonds as may be required for issuance of the Bonds, and (iii) pay costs and charges associated with issuance of the Bonds, including legal fees, accounting fees, and consultant's fees engaged by the bond issuer, bond counsel, and CAPP. The Capacity Prepayment shall be paid to Facility Owners as provided in Section 4.1 hereof and as provided in Section 4.1(b) of the PPA. Once the actual amount of the Bonds and the interest rate established thereunder are known, this Contract shall be amended by CAPP and Member to reflect such facts, and to stipulate the amount of Member's Monthly Capacity Payment. It is the intention of the Parties that CAPP shall receive from Member and each Participating Member through the Monthly Capacity Payment set forth in Section 7.2(a), based upon the Member's Energy Allocation Percentage of each, the amount sufficient to pay: (i) CAPP's costs to issue the Bonds, (ii) the principal and redemption premium, if any, of and interest on the Bonds, (iii) trustee and other administrative fees, and (iv) other costs associated therewith.

7.2 Capacity Payment.

(a) Member shall pay CAPP, its Designated Agent or the Trustee, as CAPP shall direct, upon the assignment of all or a portion of this Contract by CAPP to such trustee, a Monthly Capacity Payment for each Delivery Month throughout the remainder of the Term, or until such earlier date as such Monthly Capacity Payments have been prepaid or otherwise fully defeased as provided in Section 7.4 hereof, in an amount equal to the amount shown in Exhibit "E" times the Member Energy Allocation Percentage.

(b) It is hereby certified and covenanted that the contractual obligation to make the Monthly Capacity Payments when due, as described in subsection (a) above, has been duly and validly authorized and delivered; that all acts, conditions and things required or proper to be performed, exist and be done precedent to or in the authorization and delivery of this Contract have been performed, existed and been done in accordance with law; that the contractual obligation to make the Monthly Capacity Payments herein is a limited tax obligation of Member; and that annual ad valorem taxes, within the limits prescribed by law, sufficient to provide for the payment of the Monthly Capacity Payments, as such payments come due, have been levied and ordered to be levied against all taxable property in Member, and have been pledged from Member's annual ad valorem maintenance tax for such payment, within the limit prescribed by law.

(c) It is understood and agreed that all Monthly Capacity Payments payable by the Member under this Article 7 are assigned by CAPP to the Trustee for the benefit of the Owners of the Bonds. The Member assents to such assignment.

7.3 Interest and Sinking Fund; Tax Levy for Monthly Capacity Payments. The Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of Member, and shall be used only for paying the Monthly Capacity Payments when due. All ad valorem taxes levied and collected for and on account of the Monthly Capacity Payments shall be deposited, as collected, to the credit of the Interest and Sinking Fund. During each Fiscal Year while a Monthly Capacity Payment is outstanding and unpaid, the governing body of the Member shall compute and ascertain a rate and amount of ad valorem tax which together with any other lawfully available funds that are on deposit in the Interest and Sinking Fund at the time of such levy will be sufficient to provide and maintain a sinking fund adequate to pay the Monthly Capacity Payments as such payments become due (but never less than 2% of the original aggregate amount of the Monthly Capacity Payments as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the Member, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied and is hereby ordered to be levied, against all taxable property in the Member for each year while any of the Monthly Capacity Payments are outstanding and unpaid; and said tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes to be sufficient to provide for the payment of the Monthly Capacity Payments, as such payments come due, are hereby pledged for such payment, within the limit prescribed by law.

7.4 Prepayments based upon Early Termination under the PPA. In the event that CAPP shall receive a Buyer Termination Payment under Article 12 of the PPA, such amount shall be assigned and paid to the Trustee for payment on the Bonds with such payment to be applied to a prorata redemption of all outstanding maturities of such Bonds. Such prorata redemption on the Bonds shall similarly be applied prorata to reduce Member's Monthly Capacity Payments and the Monthly Capacity payments of other Participating Members. If any balance of the Bonds remains unpaid after application of the Buyer Termination Payment, then notwithstanding the obligation to pay the Monthly Capacity Payment under Section 7.2 above, Member shall pay Member's Energy Allocation Percentage of such balance within thirty (30) days following receipt of notice from CAPP.

7.5 CAPP and Trustee as Third Party Beneficiaries. Member acknowledges that CAPP and Trustee are intended third party beneficiaries of the obligation to pay Monthly Capacity Payments and to make provision for payment from ad valorem tax revenues. As part of the consideration for this Contract, Member grants to CAPP and to Trustee all rights to enforce, by a mandamus action against Member and its governing body, the provisions and obligations of this Article 7.

7.6 Monthly Capacity Payments to be Unconditional. Except as provided herein, including Section 6.3 hereof, the obligation of Member to make Monthly Capacity Payments when due shall be absolute and unconditional. Notwithstanding any dispute between Member and CAPP or any other Participating Member or person, the Member shall make all Monthly Capacity Payments required hereunder when due and shall not withhold any such payments pending final resolution of such dispute, nor shall Member assert any right of set-off or counterclaim against its obligation to make such payments required under this Contract. Member's obligation to make Monthly Capacity Payments during the Term shall not be abated because of accident or unforeseen circumstances. However, nothing herein shall be construed to release CAPP from the performance of its obligations hereunder; if CAPP should fail to perform any such obligation, Member may institute such legal action against CAPP as Member may deem necessary to compel the performance of such obligation.

7.7 Member's Default on Capacity Prepayment and CAPP's Remedies.

(a) Events of Default. Each of the following occurrences or events for the purpose of this Contract is hereby declared to be a Default:

(i) The failure to make payment of the Capacity Prepayment when the same becomes due and payable; or

(ii) Default in the performance or observance of any other covenant, agreement or obligation of the Member, the failure to perform which adversely affects CAPP, including, but not limited to, its prospect or ability to be repaid in accordance with this Contract, and the continuation thereof for a period of 30 days after notice of such default is given by CAPP or Trustee to the Member.

(b) Remedies for Default.

(i) Upon the happening of a Default, then and in every case, CAPP or an authorized representative thereof, including, but not limited to, the Trustee, may proceed against the Member, or any official, officer or employee of the Member in their official capacity, for the purpose of protecting and enforcing the rights of CAPP under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of CAPP hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the benefit of CAPP and/or owners of the Bonds.

(c) Remedies Not Exclusive.

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

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy. The failure to exercise a remedy upon a Default shall not be deemed to be a waiver of the right to exercise such remedy in the future.

(iii) By accepting the delivery of the Capacity Prepayment authorized under this Contract, CAPP agrees that the certifications required to effectuate any covenants or representations contained in this Contract do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the Member.

(iv) No official or officer, agent, or employee of the Member, shall be charged personally by CAPP or the Trustee with any liability, or be held personally liable under any term or provision of this Contract, or because of a Default or Default under this Contract.

ARTICLE 8 BILLING AND PAYMENT

8.1 Invoice and Payment Schedules. CAPP shall cause the Designated Agent(s) to submit invoices to Member for the Contract Price. All such invoices under this Contract shall be due and payable in accordance with the invoice instructions of the Designated Agent(s) consistent with ERCOT protocols, Rules of the Public Utility Commission of Texas, and contractual agreements between CAPP and Designated Agents. CAPP will cause the Designated Agent(s) to render to Member a separate invoice for the Contract Price for each ESI-ID on a billing month basis. All Monthly Capacity Payment invoices under this Contract pursuant to Article 7, shall be separately due and payable directly to CAPP or the Trustee in accordance with the invoice instructions of CAPP, Trustee or Designated Agent.

8.2 Method of Payment. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue

interest at the Interest Rate, such interest to be calculated from and including the due date, but excluding the date the delinquent amount is paid in full. Because certain charges are aggregated between Member and Participating Members, Member understands that a failure to timely pay an invoice may result in additional costs, interest charges, and damages that CAPP may be required to pay to Facility Owners under the PPA and that are disproportionate to the default by Member. Member agrees, in the event of its default, to reimburse CAPP for all costs, interest charges, and damages that it may be required to pay to Facility Owners that result from Member's default under this Contract. Except for Capacity Payments that are required to be paid by Member directly to CAPP or the Trustee, CAPP may require Member to pay all or any of the payments required to be paid by Member under this Contract to Designated Agent(s) appointed by CAPP.

8.3 Netting. Member understands that CAPP and Facility Owners have agreed to discharge mutual debts and payment obligations due and owing to each other on the same payment due date pursuant to the PPA through netting, so that only the excess amount remaining due shall be paid by the Party who owes such excess amount. All payment obligations of the Parties and all rights to receive payment under this Contract are subject to the netting provisions contained in the PPA. Additionally, it is understood that Designated Agents may net credits and supplemental payments in monthly invoices of the Contract Price.

8.4 Disputed Charges. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Contract or adjust any invoice for any arithmetic or computational error within twenty-three (23) months of the date the invoice, or adjustment to an invoice, was rendered, except when a dispute is limited by ERCOT protocols, Rules of the Public Utility Commission or contracts between CAPP and Designated Agents. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved unless CAPP is required to pay the disputed amount to Facility Owners under the PPA. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution (along with interest accrued, if any, on account thereof under the PPA). Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued only to the extent it accrues under the PPA. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 8.4 within twenty-three (23) months or shorter period if required by ERCOT protocols, Rules of the Public Utility Commission or contracts between CAPP and Designated Agents after the invoice is rendered or any specific adjustment to the invoice is made.

8.5 Audits. Each Party has the right, at its sole expense and during normal working hours, to examine copies of the relevant portions of the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, charge or calculation made pursuant to this Contract. If any such examination reveals any inaccuracy in any invoice or calculation, the necessary adjustments in such invoice or calculation, and the payment of any adjustment thereto, shall be paid, with interest at the Interest Rate calculated from the date the overpayment or underpayment was made until paid, by the responsible Party pursuant to the terms of the PPA, the Wrap Contract or the applicable contract between CAPP and Designated Agents.

8.6 ERCOT Barred Issue. It is recognized by the Parties that ERCOT has some established time periods for disputing certain matters and the Parties expressly desire to be bound by such periods in their performance under this Contract. Therefore, notwithstanding any provisions in Article 7 of this Contract to the contrary, in the event CAPP is barred from disputing and correcting or adjusting with ERCOT any matter of any nature whatsoever affecting any matter covered by this Contract (an “*ERCOT Barred Issue*”), then Member shall be barred for all purposes from disputing any portion of any statement, invoice, notice or other matter hereunder to the extent that CAPP is unable to receive adjustment from or dispute such matter with ERCOT because such statement, invoice, notice or other matter is an ERCOT Barred Issue, even if Member’s notice is given within the twenty-three (23) months’ period set forth in this Article 8.

ARTICLE 9 DESIGNATION OF MEMBER'S DELIVERY POINTS

9.1 Designation of Member's Delivery Points. Member has designated its initial Member's Delivery Points by identifying the ESI-IDs and providing that information to CAPP’s Designated Agent(s). Such Member's Delivery Points are all points of receipt for electric service that are subject to retail choice. Member shall have a continuing obligation to provide CAPP and Designated Agent(s) with an updated listing of ESI-IDs by location and profile type.

ARTICLE 10 SECURITY

10.1 Security from Facilities Owners. The Facility Owners and Guarantor have agreed under Article 9 of the PPA to provide CAPP a first lien on certain collateral on a pari passu basis with other creditors. Member acknowledges that it has no direct right to enforce the lien, nor does it have any individual interest in the Facilities in the event of foreclosure of the first lien, nor may it exercise remedies available to CAPP under the PPA. To the extent that CAPP shall determine that it is in CAPP's interest to (i) agree to renewals, modifications, amendments, and refinancing of the first lien indebtedness described in the PPA, (ii) exercise or fail to exercise one or more remedies available to it under the PPA, or (iii) terminate or modify the PPA, Member irrevocably appoints the Board of Directors of CAPP as its agent and attorney in fact to enter into agreements

appropriate to the situation, including, but not limited to, agreements to substitute collateral, and agreements to release or partially release liens. The power herein granted to CAPP and its Board of Directors by Member is a power coupled with an interest that may not be revoked while all or any portion of the Bonds is unpaid.

10.2 Collateral Assignment of the Contract to Trustee for Bonds. This Contract and the Participant Contracts shall be collaterally assigned to the Trustee under the Bonds as security for the repayment of the Bonds to the extent of the Capacity Payment payable pursuant to Article 7 of this Contract and each of Participant Contracts.

ARTICLE 11 DEFAULT

11.1 Defaults by Facility Owners; Defaults by Participating Members. In the event of default by Facility Owners under the PPA, or in the event of a default by Member or by a Participating Member under a Participant Contract, the Parties agree and stipulate that decisions as to the exercise or non-exercise of remedies upon such default shall be solely vested in CAPP, as its Board of Directors may determine from time to time. Member acknowledges that CAPP's rights to elect remedies may be subject and subordinate to rights granted to or reserved by the holders and owners of the Bonds or the Trustee thereof.

11.2 Default by CAPP. Except as otherwise excused under this Contract, the occurrence of any of the following shall constitute an event of default by CAPP:

- (a) Failure of CAPP to pay the Capacity Prepayment as required under the PPA;
- (b) Failure by CAPP to timely perform its covenants under the Bonds, including payments required by it, unless such failure is caused by the failure of Member under this Contract or of one or more Participating Members under the Participant Contracts to pay CAPP sums required under Article 6; or
- (c) CAPP breaches any material contractual obligation under this Contract and such breach continues for a period of thirty (30) Days after the date on which written notice thereof is received from Member by CAPP.

11.3 Default by Member. Except as otherwise excused under this Contract, the occurrence of any of the following shall constitute an event of default by Member:

- (a) Member fails to accept delivery of the Products, or any portion thereof from CAPP. In the event of such failure, CAPP may, in addition to other remedies available to it under this Contract, provide the unaccepted Products to another Participating Member or, if no Participating Member elects to accept such

Products, to a third party at such price as CAPP may negotiate in the marketplace. If the price obtained in the marketplace is less than the price Member would have been required to pay for such Products, Member shall pay CAPP and CAPP may recover from Member (i) the positive difference, if any, obtained by subtracting what was received from the Participating Member or third party from what would have been received from Member had Member accepted the full delivery of Products required of it, and (ii) all costs of collection incurred by CAPP, including reasonable attorney's fees;

(b) Except for disputed charges arising under Section 8.4, Member fails to pay amounts due to CAPP as and when required under this Contract, which failure continues for a period of three (3) Business Days after the date on which written notice of a prospective Default is received by Member from CAPP;

(c) Failure by Member to levy the rate and amount of ad valorem taxes out of the maintenance tax of Member, and failure by Member to establish and maintain a sinking fund for the Monthly Capacity Payments and CAPP fees as required under Section 7.3, above;

(d) Failure by Member to pay to CAPP any sum of money required to be paid by Member under this Contract;

(e) Member breaches any material contractual obligation under this Contract and such breach continues for a period of twenty-eight (28) Days after the date on which written notice thereof is received by the breaching Party;

(f) Member becomes Bankrupt.

11.4 Remedies of CAPP in the event of default by Member. Unless otherwise limited by the terms of this Contract, in the event that Member shall default in the performance of its obligations under this Contract, CAPP may:

(a) Suspend delivery of Products to Member, and provide such Products to one or more Participating Members or third parties until such default is cured;

(b) Then and in every case, CAPP or an authorized representative thereof may proceed against the Member, or any official, officer or employee of the Member in their official capacity, for the purpose of protecting and enforcing the rights of CAPP under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of CAPP hereunder or any combination of such remedies;

(c) Suspend performance of CAPP's obligations to Member under this Contract until the earlier of (i) the Day the Default has been cured in accordance with the terms of this Contract, except for Member's obligations to make Monthly Capacity payments under Article 7 hereof which shall not be affected by any such action;

(d) Exercise any other remedy available to CAPP at law or in equity.

In addition to all of the rights and remedies provided to CAPP by the laws of the State of Texas, and in addition to the remedies set forth above, the Member covenants and agrees that in the event of its default under this Contract, including failure to pay Monthly Capacity Payments and payments under Section 7.5 when due or Energy Payments when due after the Member has Appropriated for such payments, or, in the event it fails to make the payments required to be made into the Interest and Sinking Fund or defaults in the observance or performance of any other of the contracts, covenants, conditions or obligations set forth in this Contract, the following remedies shall also be available:

(e) CAPP, the trustee if CAPP has assigned all or part of this Contract to a trustee for the benefit of bond owners, shall be entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring Member and the officials thereof to observe and perform all agreements, covenants, obligations and conditions prescribed in this Contract;

(f) Any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient; and

(g) Any other remedies available to CAPP at law or in equity.

11.5 Remedies of Member in the Event of Default by CAPP. Unless otherwise limited by the terms of this Contract, in the event that CAPP shall default in the performance of its obligations under this Contract, Member may:

(a) Then and in every case, Member may proceed against CAPP, or any official, officer or employee of CAPP in their official capacity, Sue for the purpose of protecting and enforcing the rights of Member under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of Member hereunder or any combination of such remedies;

(b) Terminate this Contract, except for Member's obligations to make Monthly Capacity Payments under Article 7 hereof which shall survive any termination of this Contract;

(c) Exercise any other remedies available to Member at law or in equity.

11.6 No Waiver in Event of Default. Pursuit by either Party of any remedy for default pursuant to Article 11 of this Contract shall not constitute a forfeiture or waiver of any amount due by the defaulting Party or of any damages occurring by reason of the violation of any terms, provisions, or conditions of this Contract, provided however, that in no event shall CAPP be required to return to Member any sums paid by Member to CAPP for Capacity Prepayment. No waiver of any default or breach of this Contract shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, or conditions of this Contract. Forbearance to enforce one or more of the remedies available upon the occurrence of an event of default shall not constitute a waiver of that or any subsequent default or breach.

ARTICLE 12 INDEMNIFICATION; LIMITATION OF LIABILITY

12.1 Member's Indemnification of CAPP. To the extent permitted by the Constitution and laws of the State of Texas, and with full reservation of all defenses and immunities available under the Law, Member agrees to and shall indemnify, defend, and hold harmless CAPP and all of CAPP's officers, directors, shareholders, representatives, and employees, from and against all Indemnified Claims, including Indemnified Claims for personal injury, death, or damages to property, occurring after the Facility Owners' Delivery Points, arising out of or related to the Products. Notwithstanding the foregoing, CAPP agrees and understands that Member cannot indemnify CAPP, Facility Owners, or any individual associated with either of them from and against their own gross negligence and willful misconduct. To the extent that CAPP has agreed to indemnify Facility Owners pursuant to Article 13 of the PPA, then Member agrees to and shall indemnify, defend, and hold harmless CAPP and all of CAPP's officers, directors, shareholders, representatives, and employees, from and against all Indemnified Claims that CAPP has made to Facility Owners, but only to the extent permitted by the Constitution and laws of the State of Texas, and with full reservation of all defenses and immunities available under the Law.

12.2 Claims arising on Facility Owners side of the Facility Owners' Delivery Point. To the extent that claims for personal injury, death, or damages to property: (a) occur at and/or before the Facility Owners' Delivery Point, (b) arise out of or are related to the Product and Products, and (c) are covered as an Indemnified Claim by Facility Owners for the benefit of CAPP, Member and Participating Members, and each of their respective officers, officials, directors, and employees, then CAPP, on behalf of itself, Member, and Participating members, agrees to enforce the indemnity and

duty of defense that Facility Owners have granted to CAPP and Member under Article 12 of the PPA.

12.3 Indemnified Claims. “*Indemnified Claims*”, as used in Sections 12.1 and 12.2, above, means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Contract.

12.4 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED EXCEPT AS SET FORTH IN ARTICLE 11 OF THIS AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 13
REPRESENTATIONS

13.1 Mutual representations and warranties. Each Party represents and warrants to the other Party that:

(a) Such Party has the power and authority to execute, deliver and perform its obligations under this Contract. Such Party has authorized the execution and delivery of this Contract by the person(s) executing this Contract below.

(b) No provision contained in Member's charter or enabling legislation, as the case may be, if any, prohibits Member from entering into this Contract and performing the obligations required of Member under this Contract.

(c) This Contract constitutes a legal, valid and binding obligation of such Party, except as the enforceability of this Contract may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and by general principles of equity which permit the exercise of judicial discretion.

(d) Neither the execution or delivery of this Contract results in any breach of or constitutes any default under any material agreement to which such Party is bound or causes such Party to be in violation of any Law, regulation, administrative or judicial order or process or decision to which such Party is a party or by which it or its properties are bound or affected.

(e) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

(f) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

(g) All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Contract or other document relating hereto or thereto to which it is a party have been obtained or submitted and are in full force and effect and all conditions of any such authorizations, approvals, consents, notices and filings have been complied with.

(h) No Default with respect to it, or event which with notice and/or lapse of time would constitute such a Default, has occurred and is continuing and

no such event or circumstance would occur as a result of its entering into or performing its obligations under this Contract or other document relating hereto or thereto to which it is a party.

There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Contract, or other document relating hereto or thereto to which it is a party or its ability to perform its obligations under the same.

ARTICLE 14 NOTICES

14.1 Notices. All notices and other communications required or permitted by this Contract or by Law to be served upon or given to a Party by the other Party shall be deemed duly served and given when received after being delivered by hand, or courier service, or sent by confirmed facsimile or certified mail, return receipt requested, postage prepaid, to the following address.

To Member:

Attention: City Manager
Telephone: 972-450-7001
Facsimile: 972-450-7043

To CAPP:

Attention:
Telephone:
Facsimile:

Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the Day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight

United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of it in accordance herewith.

ARTICLE 15 CONFIDENTIALITY

15.1 Confidential Information. Parties to this Contract acknowledge that they are obligated to protect the confidentiality of certain information provided by Luminant to CAPP in the course of negotiating the PPA pursuant to Article 17 of the PPA. Member agrees to be bound by the provisions of Article 17 of the PPA regarding any information that counsel to CAPP indicates in writing should be kept confidential and to promptly advise counsel to CAPP of any request for Public Information pursuant to Chapter 552 of the Texas Government Code for public revelation of confidential information provided to Member in its consideration of this Contract and related documents.

ARTICLE 16 ASSIGNMENT

16.1 Assignment. Except as provided otherwise in this Contract, neither Party shall assign this Contract or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that the assignee is at the time of assignment a Member of CAPP. In no event shall the assigning Party be relieved from liability under this Contract upon assignment.

ARTICLE 17 CONTINUING DISCLOSURE

17.1 Continuing Disclosure Undertaking of Members. At such time that Member's aggregated unpaid Monthly Capacity Payments equals at least ten percent (10%) of the outstanding principal amount of the Bonds, Member agrees to provide annually to each Nationally Recognized Municipal Securities Information Depositories ("NRMSIR") and any State Information Depositories ("SID") financial information and operating data with respect to the Member of the general type hereinafter described. Subject to the foregoing sentence Member agrees to provide, within 195 days after the end of each Fiscal Year thereof ending in or after 2009, financial information and operating data with respect the Member. Any financial statements so to be provided shall be prepared in accordance with the accounting principles as Member may be required to employ from time to time pursuant to state law or regulation.

17.2 Financial Statements. If Member is required to file financial information pursuant to Section 17.1 and Member commissions an audit of such statements and the audit is completed within the period during which they must be provided, the financial statements to be provided shall be audited. If the audit of such financial statements is not complete within such period, then Participating Member shall provide unaudited financial statements and thereafter audited financial statements for the applicable fiscal year to

CAPP, each NRMSIR and any SID, when and if the audit report on such statements become available.

17.3 Change of Fiscal Year. If Member is required to file financial information pursuant to Section 17.1 and Member changes its Fiscal Year, it shall be the duty of such Member to notify each NRMSIR and any SID of the change (and of the date of the new Fiscal Year end) prior to the next date by which such Member otherwise would be required to provide financial information and operating data pursuant to this Article. The financial information and operating data to be provided pursuant to this Article may be set forth in full in one or more documents or may be provided pursuant to this Article may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the Municipal Securities Rulemaking Board (“MSRB”) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

17.4 Failure to Provide Continuing Disclosure. Member shall notify CAPP, any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure of such Member to provide financial information or operating data in accordance with this Article by the time required thereby and hereby. No default by Member in observing or performing its obligations as described in this Article shall constitute a breach of or default under this Contract for purposes of any other provision of this Contract. Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of any Member under federal and state securities laws. If Member fails to provide such continuing disclosure required under this Article, CAPP shall use its best efforts to obtain relevant financial information and operating data with respect to any such Participating Member and to provide the same annually to each NRMSIR and any SID within 195 days after the end of each Fiscal Year of any such Member.

17.5 Amendment of Continuing Disclosure. Member’s undertaking under this Article may be amended by Member, with the consent of CAPP, from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of any Member, but only if (1) the undertaking, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of such Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount of the outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with Member (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the holders and beneficial owners of the Bonds. If Member amends its undertaking herein, it shall include with any amended financial information or operating data next provided in accordance with this Article an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided.

Member shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, Member remains an "obligated person" with respect to the Bonds within the meaning of the Rule. The provisions of this Article are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person.

ARTICLE 18 TAX-EXEMPT BONDS

18.1 Tax-Exempt Bonds. The Parties understand and agree that CAPP will use commercially reasonable efforts to provide for, but will not be liable for a failure to produce, the lowest overall debt service cost for the Bonds. In connection therewith, the parties intend that CAPP may, with the approval of the Member, issue refunding bonds to refund the Bonds, if possible, the interest on which is excludable from the gross income of the owners thereof for federal income tax purposes. The Parties acknowledge that, under current federal tax laws, such tax-exempt financing of the Capacity Prepayment is not permitted. The Parties further acknowledge their understanding that the federal income tax laws impose certain restrictions on the use and investment of proceeds of tax-exempt bonds and on the use of the property financed therewith and the output produced therefrom. Accordingly, the Parties agree and covenant that if any refunding bonds are offered to investors with the understanding that the interest thereon will be exempt from federal income taxation, then the Parties, their assigns and agents, will take such action to assure, and refrain from such action which will adversely affect, the treatment of such refunding bonds as obligations described in Section 103 of the Internal Revenue Code of 1986. Should either Party fail to comply with such covenant, the effect of which being that such refunding bonds no longer qualify as obligations described in the Internal Revenue Code of 1986, such defaulting party shall be liable for all costs resulting from the loss of the tax-exempt status of such bonds. The Parties hereby agree and covenant to comply with all of the representations and covenants relating to such exemption which are set out in any relevant trust indenture or bond resolution. The Parties further agree and covenant that in the event any refunding bonds issued are to be tax-exempt, they will modify such agreements, make such filings, restrict the yield on investments, and take such other action necessary to fulfill the applicable provisions of the Internal Revenue Code of 1986. For these purposes, the Parties may rely on the respective opinion of any firm of bond attorneys selected by CAPP.

18.2 Agreement to Pay Beneficiary. In the event that tax-exempt refunding bonds are issued with the consent of the Members as provided in the immediately preceding paragraph above, Member hereby covenants and agrees to pay its proportionate share of any deficiency to CAPP for deposit into the appropriate rebate fund at the times and as described in the indenture of trust related to the Bonds to comply with the provisions of Section 148(f)(2) of the Internal Revenue Code of 1986.

18.3 Financing. Member agrees to cooperate with CAPP in connection with the issuance of the Bonds. Without limiting the foregoing, CAPP and Member acknowledge that this Contract may be an integral part of the documentation securing the Bonds. At CAPP's request, Member shall agree to amend this Contract to include any provision which may reasonably be requested by the issuer of the Bonds, and to include any provision that may be required to correspond to an amendment of the PPA; provided, however, that no such amendment shall increase the burdens or obligations of Member hereunder with respect to the price and purchase obligations set forth herein. Upon the request of CAPP, Member agrees to negotiate in good faith and shall execute additional documents, opinions and instruments reasonably requested by the proposed issuer of the Bonds including (i) a consent and agreement that provides an additional reasonable period of time to remedy any Default, and (ii) a legal opinion of counsel for Member affirming the enforceability of this Contract against Member and other matters reasonably requested, subject to customary exceptions and qualifications.

ARTICLE 19 MISCELLANEOUS

19.1 Applicable Law. This Contract is governed by and shall be construed under the Laws of the State of Texas excluding any conflict of laws rules. The Parties submit to the exclusive jurisdiction of the state and federal courts in Dallas County, Texas in connection with any litigation arising hereunder.

19.2 Counterparts. This Contract may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

19.3 Waiver. No waiver of any breach of the terms of this Contract shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any subsequent breach.

19.4 Modification. The provisions of this Contract, including any exhibits, may only be modified by written agreement duly executed by each Party.

19.5 Severability If any provision of this Contract shall be determined to be unenforceable, void or otherwise contrary to Law, such condition shall in no manner operate to render any other provision of this Contract unenforceable, void or contrary to Law, and this Contract shall continue in force in accordance with the remaining terms and provisions hereof, unless such condition invalidates the purpose or intent of this Contract. In the event that any of the provisions, or portions or applications thereof, of this Contract are held unenforceable or invalid by any court of competent jurisdiction, Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Contract with a view toward effecting the purposes of this Contract by replacing the provision that is unenforceable, void, or contrary to Law

with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be unenforceable, void, or contrary to Law.

19.6 Requirements. Each Party shall timely comply with all then-current PUCT and ERCOT requirements (including, without limitation, the ERCOT Guides) that are applicable to it and shall reasonably cooperate upon reasonable notice with the other Party to the extent necessary for the other Party to timely comply with then-current PUCT and ERCOT requirements (including, without limitation, the ERCOT Guides) that are applicable to it.

19.7 Entirety. It is the intention of the Parties that this Contract shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of the Products as contemplated herein, and supersedes all prior agreements regarding the subject matter hereof, whether written or oral.

19.8 Captions, Titles and Headings. Captions, titles and headings used in this Contract are for ease of reference only and do not constitute a part of this Contract.

19.9 Forward Contract. The Parties acknowledge and agree that this Contract constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

19.10 Further Assurances. Each Party shall, from time to time, upon the written request of any other Party, execute and deliver such further instruments and documents as shall be necessary to perform its obligations hereunder.

19.11 Survival. The confidentiality and audit provisions, indemnities, releases from liability, and limitations on liability or damages expressed in this Contract shall, unless otherwise provided herein, survive without limitation the termination, cancellation or expiration of this Contract, and shall apply whether in contract, equity, or otherwise. Notwithstanding the foregoing, the statute of limitations for bringing any action with respect to this Contract or either Party’s performance hereunder is not extended by the provisions of this Section 19.11.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed in their respective names by their duly authorized officers.

MEMBER:

TOWN OF ADDISON

By: _____

Printed name: Ron Whitehead

Its: City Manager

Date

ATTEST:

CAPP:

CITIES AGGREGATION POWER
PROJECT

By: _____

Printed name: _____

Its: _____

Date

ATTEST:

SCHEDULE OF EXHIBITS

- "A" List of Participating Members
- "B" PPA
- "C" Payment Schedule
- "D" Total Monthly Contract Payment Schedule.
- "E" CAPP Capacity Payment Schedule

Council Agenda Item: #R18

SUMMARY:

Staff requests the approval of a Joint Election Agreement and Election Service Contract in the amount of \$9,902.03, between the Dallas County Elections Division and the Town of Addison to conduct a joint election to be held on November 4, 2008.

FINANCIAL IMPACT:

Cost Amount: \$9,902.03

BACKGROUND:

For the last several years, the Town has engaged with Dallas County Elections to conduct the Town's elections. Although most of Addison's elections occur in May, this year the Town is conducting a bond election in November.

RECOMMENDATION:

Staff recommends approval.

JOINT ELECTION AGREEMENT

AND

ELECTION SERVICE CONTRACT

BETWEEN

DALLAS COUNTY ELECTIONS ADMINISTRATOR

AND

TOWN OF ADDISON (TOA)

CITY OF ROWLETT (CORW)

FOR THE CONDUCT OF A JOINT ELECTION

TO BE HELD TUESDAY, NOVEMBER 4, 2008

TO BE ADMINISTERED BY THE DALLAS COUNTY ELECTIONS DEPARTMENT (DCED)

1. JURISDICTION

Dallas County plans to hold a General Election on November 4, 2008 in 687 Dallas County voting precincts, a Parkland Bond Election on November 4, 2008 in 687 Dallas County voting precincts, and a Local Option Election in the City of Irving in 53 Dallas County voting precincts. The Town of Addison plans to hold a Special Bond Election on November 4, 2008 in 4 Dallas County voting precincts only. The City of Rowlett plans to hold a Special Charter Amendment Election on November 4, 2008 in 10 Dallas County voting precincts only. Subchapter D of Chapter 31, Texas Election authorizes this contract for election services between the participating political subdivisions of the City of Rowlett (CORw) and the Town of Addison (TOA), hereafter the Contracting Authorities, and Dallas County Elections Administrator Bruce R. Sherbet, who is the Department Head of the Dallas County Elections Department (DCED).

2. ADMINISTRATION

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

3. LEGAL DOCUMENTS

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

3.2 DCED will be responsible for making the submission required by the Federal Voting Rights Act of 1965, as amended, with regard to administration of the joint election. A copy of the submission will be furnished to each Contracting Authority. Any other changes which require preclearance by the U.S. Department of Justice will be the responsibility of each Contracting Authority. Preparation of necessary bilingual materials for notices and preparation of the text for the official ballot will also be the responsibility of each Contracting Authority. Each Contracting Authority will provide a copy of their respective election notices and Justice submission to DCED.

4. DIRECT RECORD VOTING SYSTEM/OPTICAL SCAN

4.1 Each Contracting Authority agrees that voting at the joint election will be by use of a direct record and optical scan voting system approved by the Secretary of State in accordance with the Texas Election Code. DCED will be responsible for the preparation of programs and the testing of the direct record system and optical scan system used for tabulating the ballots. Testing of the direct record equipment will be conducted at the Elections Department, 2377 N. Stemmons Frwy, Suite 820, Dallas beginning Thursday, October 16, 2008 at 10:00 am and testing of the optical scan equipment will be conducted at the Elections Department, 2377 N. Stemmons Frwy, Suite 820 beginning Thursday, October 31, 2008 at 10:00 am, and before ballots are tabulated at the scheduled polling locations listed in Section 13 of this contract and Attachment "B" by the presiding judges. DCED agrees to establish ten (10) regional sites and a central counting station to receive and tabulate the voted ballots and provisional ballots as outlined in Section 9 of this agreement.

4.2 DCED agrees to provide direct record tabulators, precinct tabulators and voting booths for the Joint Election. The Gemini voting booth allocation will be based on providing one (1) Gemini for each 300 registered voters in each election precinct unit, not to exceed six (6) Gemini voting booths in any given precinct unit, one (1) ADA Terminal per location, one (1) precinct tabulator in any given precinct unit, and not to exceed at any given time eight (8) iVotronics and two(2)Master PEB's per early voting location. Additional iVotronics and Gemini voting booths may be required due to large voter turnout in certain areas.

4.3 It is estimated that 3008 geminis, 532 precinct tabulators, 475 iVotronics, 523 ADA Terminals, and 100 Master PEB's will be needed to conduct the November 4, 2008 Joint Election. The cost of the direct record voting system for the election will be determined by multiplying the total number of iVotronics by \$250.00 each, ADA Terminals by \$300.00 each, and Master PEB's by \$10.00 each. The cost for the use of the gemini voting booths will be \$35.00 each. The cost for the use of the precinct tabulators will be \$468.00 each (See Attachment "A"). It is agreed by all entities that ADA voting terminals will be used during the Joint Election in accordance with the Help America Vote Act (HAVA), and that the said terminals will be part of the Joint Election Agreement.

5. VOTING LOCATIONS

5.1 DCED will select and arrange for the use of and payment for all voting locations, subject to the approval of each Contracting Authority. Voting locations will be, whenever possible, the usual voting locations for the precincts. Voting precincts may be combined by mutual agreement between the Contracting Authorities with an exception for those holding a Local Option Election in accordance with Section 501.102 of the Texas Election Code. The proposed voting locations are listed in Attachment "B" of this agreement. In the event a voting location is not available, DCED will arrange for use of an alternate location with the approval of each Contracting Authority affected by the change. DCED will notify each Contracting Authority of any changes from the locations listed in Attachment "B".

5.2 DCED will send each Contracting Authority a final version of Attachment "B" which reflects the actual locations to be used on the day of the election.

6. ELECTION JUDGES, CLERKS AND OTHER ELECTION PERSONNEL

6.1 DCED will be responsible for the appointment of the presiding judge and alternate for each polling location subject to the approval of each Contracting Authority. DCED shall arrange for the training and compensation of all presiding judges and clerks. The proposed election judges are listed in Attachment "C" of this agreement. If a person is unable or unwilling to serve, the Elections Administrator will name a judge for the precinct and notify each Contracting Authority affected by the change.

- 6.2 In compliance with the Federal Voting Rights Act of 1965, as amended, precincts containing more than 5% Hispanic population, according to the 2000 census statistics, are required to have interpreter assistance. If a presiding judge is not bilingual and is unable to hire a bilingual clerk, DCED may make a recommendation. If DCED is unable to make a recommendation, the Contracting Authorities shall be notified and responsible for providing a recommendation for the precinct.
- 6.3 DCED is responsible for notifying all election judges of the eligibility requirements of Subchapter C of Chapter 32 of the Texas Election Code, and will take the necessary steps to insure that all election judges appointed for the joint election are eligible to serve. The presiding judge, with the Elections Department assistance, will be responsible for insuring the eligibility of each appointed clerk hired to assist the judge in the conduct of the election.
- 6.4 DCED will send joint participants an updated version of Attachment "C" which reflects the names of judges who were sent the letter requesting service for this election. A final version for Attachment "C" which reflects the name of the judges who actually presided on the day of the election will be sent to each Contracting Authority.
- 6.5 DCED will hold three (3) public schools of instruction on the use of direct record and optical scan card voting equipment and election laws on Saturday, October 25, 2008 from 10:00 am - 2:30 pm for new judges only, on Thursday, October 30, 2008 from 7pm - 9pm, and on Saturday, November 1, 2007, from 10am-12pm in the Central Jury Room, Frank Crowley Courthouse, 133 N. Industrial Blvd, Dallas, Texas 75207. Additional training classes and instructional labs may be scheduled as needed. Election judges will be notified of additional training sessions. No election judge will be appointed unless he/she has attended an election judge training session taught by the Elections Department in the past eighteen (18) months and on the optical scan system. However participating entities have requested that judges appointed for the joint election attend one of the scheduled training sessions.

6.6 The election judges are responsible for picking up election supplies at the time and place determined by DCED (which will be set forth in the election judge letter requesting service for this election). Each election judge will receive \$ 9.00 per hour and each clerk will receive \$ 8.00 per hour (for a maximum of 14 hours). The election judge will receive an additional \$25.00 for picking up the election supplies prior to Election Day and for delivering election returns and supplies to their designated regional drop off site. Election judges and clerks attending a training class on Election Law Procedures will receive a one-time stipend of \$ 10.00 for the completion of the course and working on Election Day.

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

7. SUPPLIES AND PRINTING

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

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

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

8. OPTICAL SCAN CARD BALLOTS

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

8.2 Ballot allocation for Local Option Election will be allocation in accordance to Title 17, Section 501.105 of the Texas Election Code.

9. RETURNS OF ELECTIONS

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

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

- | | |
|-----------------------|--|
| Manager | - Bruce R. Sherbet
Dallas County Elections
Administrator |
| Tabulating Supervisor | - Mary Kay West
Central Counting
Station Manager |
| Presiding Judge | - TO BE DETERMINED (____)
TO BE DETERMINED |

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

- 9.4 DCED will prepare the unofficial canvass report after all precincts have been counted, and will deliver a copy of the unofficial canvass to each Contracting Authority as soon as possible after all returns and provisional ballots have been tabulated, but in no event no later than 10 am Wednesday, November 12, 2008. All Contracting Authorities will be responsible for the official canvass of their respective elections.
- 9.5 DCED will be responsible for conducting the post election manual recount, unless a waiver is given from the Secretary of State in accordance with Section 127.201 of the Texas Election Code. Notification and copies of the recount, if waiver is denied, will be provided to each Contracting Authority and the Secretary of State's Office. Each political subdivision must notify the Elections Department if waiver has been granted or denied twenty (20) days before the election.
10. ELECTION EXPENSES
- 10.1 The Contracting Authorities agree to share the costs of administering the November 4, 2008 Joint Election. A general supervisory fee not to exceed 10% of the total cost of the election shall be assessed as authorized by the Texas Election Code, Sec. 31.100. Allocation of costs, unless specifically stated otherwise, is mutually agreed to be shared according to a formula which is based on average cost per polling place (unit cost) as determined by adding together the overall expenses and dividing expenses equally among the total number of polling places. The cost of any special request from a participant, which is not agreed upon by all authorities, shall be borne by that participant. See Attachment "A".
- 10.2 The expenses for early voting by mail and personal appearance will be paid equally by each Contracting Authority, unless otherwise amended.
- 10.3 Final election expenses will be determined within 120 business days after the election. DCED will provide each Contracting Authority with a final accounting in writing of all funds deposited into the joint election account and an accounting of all payments from the joint election account.
- 10.4 If additional funds are needed, DCED will bill each Contracting Authority in accordance with the expense formula enumerated herein. Any amount remaining will be refunded accordingly to each Contracting Authority.

11. DEPOSIT OF FUNDS

11.1 Each Contracting Authority agrees to deposit with the Dallas County Treasurer's Office, by no later than Friday, October 10, 2008, a sum equal to the total estimated cost of election expenses to be paid to DCED as administrator of the Joint Election. The City of Irving, by letter of agreement, shall reimburse DCED for the actual cost of holding and Special Local Option Election. Such funds will be placed in a joint election account to be used by DCED for paying expenses as outlined in this agreement. No funds will be expended by DCED except for supplies and services outlined in this agreement, or except as may be agreed to, in writing, by each Contracting Authority. No adjustments will be made to deposits for partial withdrawals after contract has been signed by all Contracting Authorities.

11.2 The amounts to be deposited are as follows:

Dallas County	\$ 2,953,253.38
Town of Addison	\$ 9,902.03
City of Rowlett	\$ 26,405.40

TOTAL DEPOSIT \$ 2,989,560.81

Deposits should be delivered within the mandatory time frame to:

Joe Wells
Dallas County Treasurer
303 Records Building
509 Main Street
Dallas, Texas 75202

12. RECORDS OF THE ELECTION

12.1 Bruce R. Sherbet, Elections Administrator is hereby appointed general custodian of the voted ballots and all records of the Joint Election as authorized by Section 271.010 of the Texas Election Code.

12.2 Access to the election records will be available to each Contracting Authority as well as to the public in accordance with the Texas Public Information Act, Chapter 552, Government Code, at the Elections Department, 2377 N. Stemmons Frwy, Suite 820, Dallas, Texas, at any time during normal business hours. The Election Administrator shall ensure that the records are maintained in an orderly manner, so that records are clearly identifiable and retrievable per records storage container.

12.3 Records of the election will be retained and disposed of in accordance with the records retention schedules which may have been adopted by each Contracting Authority, and in accordance with the provisions of Title 6, Subtitle C, Chapters 201 through 205, Texas Local Government Code, including the minimum retention requirements established by the Texas State Library and Archives Commission. If records of the election are involved in any pending election contest, investigation, litigation, or Texas Public Information Act, DCED shall maintain the records until final resolution or until final judgement, whichever is applicable. It is the responsibility of any Contracting Authority to bring to the attention of the DCED any notice of any pending election contest, investigation, litigation, or Texas Public Information Act request which may be filed with a Contracting Authority.

12.4 Upon request to maintain records beyond eligibility for preservation according with Section 66.058 of the Texas Election Code, DCED shall supply a written cost estimate for storage to requesting participant. (See Section 10)

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

13. EARLY VOTING

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

13.2 Early voting by personal appearance will be conducted on weekdays beginning Monday, October 20 2008 and continuing through Friday, October 24, 2008, between 8:00am and 5:00pm; Saturday, October 25, 2008 between 7:00 am and 7:00pm; Sunday, October 26, 2008, between 1:00pm and 6:00pm; Monday, October 27, 2008, and continuing through through Friday, October 31, 2008 between 7:00am and 7:00pm. Any qualified voter for the Joint Election may vote early by personal appearance at either the main early voting location, or branch locations.

MAIN EARLY VOTING POLLING PLACE

DALLAS COUNTY RECORDS BUILDING
509 Main Street
Dallas 75202

BRANCH EARLY VOTING POLLING PLACES

Addison Firestation #1 4798 Airport Pkwy Addison, TX 75001	Audelia Road Library 10045 Audelia Rd. Dallas, TX 75238	Boze Secondary Learning Center 202 College St. Grand Prairie, TX 75050
DeSoto Middle School East 601 E Beltline Rd. DeSoto, TX 75115	Duncanville Library 201 James Collins Duncanville, TX 75116	Dunford Recreation Center 1015 Green Canyon Mesquite, TX 75150
Fretz Park Recreation Center 6950 Beltline Dallas, TX 75240	Garland City Hall 200 N. Fifth St. Garland, TX 75040	Grauwlyer Park Recreation Center 7780 Harry Hines Dallas, TX 75235
Harry Stone Recreation Center 2403 Millmar Dallas, TX 75228	Irving City Hall 825 W. Irving Blvd Irving, TX 75060	Josey Ranch Library 1700 Keller Springs Rd. Carrollton, TX 75006
Lancaster Library 1600 Veterans Memorial Pkwy. Lancaster, TX 75134	Martin Luther King Jr. Core Bldg 2922 M.L.K. Blvd. Dallas, TX 75215	Martin Weiss Recreation Center 1111 Martindell Dallas, TX 75211
Northway Baptist Church 3877 Walnut Hill Ln Dallas, TX 75229	Oak Cliff Sub-Courthouse 410 S. Beckley Dallas, TX 75203	Our Redeemer Lutheran Church 7611 Park Ln Dallas, TX 75229
Pleasant Oaks Recreation Center 8701 Greenmound Dallas, TX 75227	Richardson Civic Center 411 W. Arapaho Richardson, TX 75080	Rowlett Library 3900 Main Street Rowlett, TX 75088
St. Lukes Community Life Center 6211 East Grand Ave. Dallas, TX 75223	Valley Ranch Library 401 Cimarron Trail Irving, Texas 75063	Veterans Admin. Medical Center 4500 S. Lancaster Dallas, TX 75216
West Dallas Multipurpose Ctr 2828 Fish Trap Dallas, Texas 75212		

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

13.4 All early voting ballots will be prepared for counting by an Early Voting Ballot Board appointed in accordance with Section 87.001 of the Texas Election Code. Each Contracting Authority will appoint one member to the board/committee and will notify DCED of the person's name, telephone number and address no later than October 13, 2008. The Contracting Authorities agree to appoint Chorsia Davis as presiding judge of the early voting ballot board.

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

14. ELECTION REPORTS

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

15. RUNOFF ELECTION

In the event a runoff is necessary, the agreement will automatically be extended to cover the runoff. The Elections Administrator will provide the designated entity in the runoff election with an estimate of funds to be deposited in a special runoff election account. The funds must be deposited no later than five (5) days after the runoff estimate figures are received from DCED.

16. NOTICE

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

If to the Elections Administrator:

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

If to the Participants:

Mario Canizares, (COM)
Town Secretary/Asst. City Mgr.
5300 Beltline Road
Addison, Texas 75240

Susie Quinn, (CORw)
City Secretary
4000 Main St
Rowlett, Texas 75030

17. INDEMNITY.

All parties agree to be responsible each for their own negligent acts or omissions, or other tortious conduct in the course of performance of this Contract without waiving any sovereign immunity, governmental immunity or other defenses available to the parties under federal or State law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities. All parties agree that any such liability or damages occurring during the performance of this Contract caused by the joint or comparative negligence of the parties, or their employees, agents or officers shall be determined in accordance with comparative responsibility laws of Texas.

18. SEVERABILITY

If any provision of this Contract is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

19. ENTIRE CONTRACT

This Contract, including all Exhibits and attachments, constitutes the entire Contract between the parties and supersedes any other Contract concerning the subject matter of this transaction, whether oral or written.

20. ORDER OF PRECEDENCE

In the event of any inconsistency between the provisions of this Contract and any incorporated documents as described herein, all parties agree that the provisions of this Contract shall take precedence.

21. SIGNATORY WARRANTY


The parties represent that each has the full right, power and authority to enter and perform this Contract in accordance with all of the terms and conditions, and that the execution and delivery of this Contract has been made by authorized representatives of the parties to validly and legally bind the parties to all terms, performances and provisions set forth in

this Contract.

22. COUNTERPARTS.

This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

RECOMMENDED FOR APPROVAL BY:



BRUCE R. SHERBET,
DALLAS COUNTY ELECTIONS ADMINISTRATOR

APPROVED AS TO FORM*:




BEN STOOL
ASSISTANT DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS

*By law, the District Attorneys' Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

ACCEPTED AND AGREED TO BY THE TOWN OF ADDISON:

APPROVED:



RON WHITEHEAD,
CITY MANAGER

ATTEST:



MARIO CANIZARES
TOWN SECRETARY/ASST. CITY MANAGER

Poll Location Info

	Total	CTY	TOA
Split by 1	449.00	449	0
Split by 2	48.00	48	3
Split by 3	0.00	0	0
Split by 4	0.00	0	0
Split by 5	0.00	0	0
Split by 6	0.00	0	0
Split by 7	0.00	0	0
Total Splits	545.00	497	3
Total Units	497.00	473.00	1.50
Cost per Poll	\$6,000.72	\$6,000.72	\$6,000.72
Total Cost	\$2,982,360.13	\$2,838,342.74	\$9,001.09
% of Units	100%	95.17%	0.30%

	Total	CTY	TOA
Election Total	\$2,982,360.13	\$2,838,580.67	\$9,001.84
Election Services Fee	\$3,300.68	\$0.00	\$900.18
Total Cost	\$2,985,660.81	\$2,838,580.67	\$9,902.03
Amount of Deposit			
Exceptional Cost (Legal Notice)	\$3,900.00		
Total Cost	\$2,989,560.81		
(Overpaid)/Underpaid	\$2,985,660.81	\$2,838,580.67	\$9,902.03

Exp Code	Early Voting	Units/Descriptions	Cost Per Unit	Estimated	CTY	TOA
POSTAGE						
2170	EV Ballots Mailed	50,000	\$1.64	\$82,000.00	\$78,040.24	\$247.48
2170	Polling location Change	Early Voting Location	(Northway Baptist)	\$5,000.00	\$4,758.55	\$15.09
2170	Bad/Late Letters	Rejected/Incomplete mail(500)	\$1.06	\$530.00	\$504.41	\$1.60
5590	Election Related Correspondence	Press Release/Translation Legal Notice	Local Option Election Notices for joint entities/Legal	\$25,000.00	\$23,792.76	\$75.45
EQUIPMENT RENTAL						
7040	Voting Booths (7p/loc.)	(PROVISIONAL USAGE) 26	\$35.00	\$910.00	\$866.06	\$2.75
7040	Touch Screen/ iVotronics	475	\$250.00	\$118,750.00	\$113,015.59	\$358.40
7040	PEB/Activator	100	\$10.00	\$1,000.00	\$951.71	\$3.02
7040	ADA/Terminals	26	\$300.00	\$7,800.00	\$7,423.34	\$23.54
7040	Communication Packs	26	\$50.00	\$1,300.00	\$1,237.22	\$3.92
7040	Provisional Bag	52	\$5.00	\$260.00	\$247.44	\$0.78
7030	Furniture Rental	Various EV Locations,Ballot Board and EV Mail		\$9,500.00	\$9,041.25	\$28.67
7040	Computer Rental (County)	90	\$400.00	\$36,000.00	\$34,261.57	\$108.65
7050	Van Rental/Car Rental			\$8,500.00	\$8,089.54	\$25.65
7213	Cellular phones	Techs		\$2,500.00	\$2,379.28	\$7.55
7211	Telephones	Various EV locations		\$1,100.00	\$1,046.88	\$3.32
RENTAL BUILDINGS						
7010	Custodial Charges	Various Locations(Dallas Parks&Rec. Churchs,etc.)	(Our Redeemer , Northway Baptist)	\$13,500.00	\$12,848.09	\$40.74
PERSONNEL						
1050	Elections Overtime	12 people @ 12 days @ \$21 p/h @ various hrs		\$13,500.00	\$12,848.09	\$40.74
1050	Warehouse Overtime	8 people @ various hrs @ \$22 p/h		\$8,500.00	\$8,089.54	\$25.65
1050	Security-Branch Locations	5 people @ 37 hrs @ \$17p/h		\$3,500.00	\$3,330.99	\$10.56
1060	Election Department Tempor	5 people @ various hrs @ various payrates		\$1,500.00	\$1,427.57	\$4.53
1050	Canvass Committee	40 people @ 14 days@ var. hrs@ var. payrates	Overtime	\$15,000.00	\$14,275.65	\$45.27
1060	Canvass Committee	40 people @ 14 days@ var. hrs@ var. payrates	Includes Signature Verification	\$27,840.00	\$26,495.61	\$84.02
1060	Judges	26 Judges @ 11.26 @ 85hrs	(Training Included)	\$24,884.60	\$23,682.93	\$75.10
1050	Jugdes	26 Judges @ 16.89 @ 85hrs	Overtime	\$37,326.90	\$35,524.39	\$112.66
1050	Clerks	310 clerks@ 13.05 @ 85hrs	Overtime	\$343,867.50	\$327,262.23	\$1,037.83
1060	Clerks	310 clerks@ 8.70 @ 85hrs	(Training Included)	\$229,245.00	\$218,174.82	\$691.89
1050	Mail Supervisor	1 person @ various hrs @ \$23.71p/h		\$4,500.00	\$4,282.70	\$13.58
1050	Mail Workers/PA Workers	14@15.70@40hrs	Overtime	\$8,792.00	\$8,367.44	\$26.54
1060	Mail Workers/PA Workers	2ppl @ 10.45 @ various hrs @ 2ppl\$11.26, 1 person@ 11.45, 9 ppl @ \$11.26 , 13 people various hrs @ \$8.70		\$26,634.00	\$25,347.85	\$80.38
1060	Warehouse Temporaries	2 people @ 30hrs @ \$11.26 , 13 people various hrs @ \$8.70		\$2,100.00	\$1,998.59	\$6.34
1050	Supervisors/Ballot Board	2 people @ \$16.89 @ various hrs	Overtime	\$1,350.00	\$1,284.81	\$4.07
1060	Supervisors/Ballot Board	2 people @ 12 days @ various hrs @ \$11.26		\$1,801.60	\$1,714.60	\$5.44
1060	Branch Runners	26 locations @ 1 day @ \$25.00		\$650.00	\$618.61	\$1.96
1050	Branch Technicians	6 people @ various payrates	Overtime	\$8,641.95	\$8,224.63	\$26.08
1060	Branch Technicians	6 people @ various payrates		\$5,422.40	\$5,160.55	\$16.37
1111	Social Security Chargeback	x 6.2%		\$34,641.52	\$32,968.69	\$104.55
1112	Medicare	x 1.45%		\$8,101.64	\$7,710.41	\$24.45
1150	Retirement Charge Back	x 8.5%		\$2,550.00	\$2,426.86	\$7.70
5590	Temporary Service	Bilingual Clerks		\$6,500.00	\$6,186.12	\$19.62
5590	Temporary Service	All Temp Personnel		\$6,500.00	\$6,186.12	\$19.62

SUPPLY EXPENSE						
2180	Ballot Cards	75,000	0.08000	\$6,000.00	\$5,710.26	\$18.11
2180	Sample Ballot	1,352	.37756	\$510.12	\$485.49	\$1.54
2180	Provisional Ballots	30,420	0.0800	\$2,433.60	\$2,316.08	\$7.34
2180	(Mail ballot kit)	50,000	2.0000	\$100,000.00	\$95,171.03	\$301.81
2180	Voted Stamps	500	1.0500	\$525.00	\$499.65	\$1.58
2180	Personal Appearance Applica	450,000	0.0800	\$36,000.00	\$34,261.57	\$108.65
2180	Judges Kits	26	55.0000	\$1,430.00	\$1,360.95	\$4.32
2880	Supplies/Office Depot	Budget Copy/Xerox	(copies)training e/v	\$10,000.00	\$9,517.10	\$30.18
SERVICE EXPENSE						
5590	ES& S Support/Consulting			\$15,194.00	\$14,460.29	\$45.86
5590	NTCOG/Website			\$950.00	\$894.61	\$2.84
5590	ES&S Sound Wave Cards(ADA Terminals)			\$5,000.00	\$4,758.55	\$15.09
PREPARATION AND TRANSPORTATION OF VOTING EQUIPMENT						
2910	Votomatic Delivery and Pickup		\$45.00	N/A	\$0.00	\$0.00
MILEAGE						
3095	Mileage for Runners/Gas			\$1,500.00	\$1,427.57	\$4.53
1080	Warehouse /Elections Mileag	400	\$0.505	\$250.00	\$237.93	\$0.75
	Early Voting Total			\$1,316,791.83	\$1,253,194.78	\$3,974.19

Exp Code	Election Day	Units/Descriptions	Cost Per Unit	Estimated	CTY	TOA
EQUIPMENT RENTAL						
7040	Precinct Counter (1p/loc.)	532	\$468.00	\$248,976.00	\$236,953.01	\$751.44
7040	Voting Booths (6p/loc.)	2,982	\$35.00	\$104,370.00	\$99,330.00	\$315.00
7040	ADA/Terminals	497	\$300.00	\$149,100.00	\$141,900.00	\$450.00
7040	PEB/Activator	497	\$10.00	\$4,970.00	\$4,730.00	\$15.00
7040	Laptop	497	\$75.00	\$37,275.00	\$35,475.00	\$112.50
7030	Furniture Rental	Polling locations		\$8,500.00	\$8,089.54	\$25.65
7040	Provisional Bags	497	\$5.00	\$2,485.00	\$2,365.00	\$7.50
7050	Truck Rental/Van Rental			\$10,000.00	\$9,517.10	\$30.18
7213	Cellular phones	Techs		\$2,800.00	\$2,664.79	\$8.45
7213	Phones for Judges		Cellular Usage	\$500.00	\$475.86	\$1.51
7211	Phones for Warehouse	37 lines		\$0.00	\$0.00	\$0.00
RENTAL BUILDINGS						
7010	Location Rental	various polling locations		\$15,000.00	\$14,275.65	\$45.27
7010	Custodial Charges	various polling locations		\$50,000.00	\$47,585.51	\$150.91
PERSONNEL						
1020	Judges	497	\$151.00	\$75,047.00	\$71,423.00	\$226.50
1020	Clerks	2,393	\$112.00	\$268,016.00	\$255,073.58	\$808.90
1020	Emergency Judges/Clerks				\$0.00	\$0.00
1020	Pollbook Stamping	2hrs. Maxium @ \$9p/h		\$8,946.00	\$8,514.00	\$27.00
1020	Election Day Training Class	Judges & Clerks (2,890)	\$10.00	\$28,900.00	\$27,504.43	\$87.22
1020	Regional Site Support (10 reg.sites)	Election night & Supply Pickup/Election Clerks Regional Site		\$10,800.00	\$10,278.47	\$32.60
1020	Technicians/ Satellite Service Center	Election Day		\$21,900.00	\$20,842.45	\$66.10
1020	Traffic Control officers (10 reg. Sites)	election night & Supply Pickup		\$9,500.00	\$9,041.25	\$28.67
1050	Security/Central Count	4 people @ various hrs @ \$17 p/h		\$3,400.00	\$3,235.81	\$10.26
1020	County Employee/CCS	40 people @ various hrs @ \$20 p/h		\$6,800.00	\$6,471.63	\$20.52
1050	Election Department O/T	18 people @ \$21 p/h @ various hrs		\$25,000.00	\$23,792.76	\$75.45
1050	Sheriff's Deputies	35 deputies (4) Supervisors/35 deputies (4)runners		\$29,070.00	\$27,666.22	\$87.74
1050	Warehouse O/T	10 people @ various hrs @ \$22 p/h		\$18,000.00	\$17,130.78	\$54.33
1050	Election Dept. Temporaries	7 ppl @ var. hrs@var.payrates	Overtime	\$2,364.60	\$2,250.41	\$7.14
1060	Election Dept. Temporaries	8 ppl@ var. hrs. @ var. payrates		\$6,305.60	\$6,001.10	\$19.03
1050	Warehouse Temporaries	5 people @ 40hrs @ various pay rates	Overtime	\$3,378.00	\$3,214.88	\$10.20
1060	Warehouse Temporaries	5 people @ 80hrs @ various pay rates		\$4,504.00	\$4,286.50	\$13.59
1110	Social Security Chargeback	x 6.2%		\$5,705.37	\$5,429.86	\$17.22
1112	Medicare	x 1.45%		\$1,334.32	\$1,269.89	\$4.03
1150	Retirement Charge Back	x 8.5%		\$6,414.95	\$6,105.17	\$19.36
5590	Temporary Service	Bilingual Clerks		\$6,600.00	\$6,281.29	\$19.92
5590	Temporary Service	All Temp Personnel		\$8,500.00	\$8,089.54	\$25.65
MILEAGE						
1080	Warehouse Mileage	350	\$0.505	\$176.75	\$168.21	\$0.53
1080	Mileage for Deputies	7,500	\$0.505	\$3,787.50	\$3,604.60	\$11.43
3095	Mileage for Runners/Gas			\$1,500.00	\$1,427.57	\$4.53
SERVICE EXPENSE						
5590	NTCOG/Website			\$475.00	\$452.06	\$1.43
5590	Sound Wave Card programming			\$5,000.00	\$4,758.55	\$15.09
5590	ES& S Support/Consulting			\$130,858.00	\$124,538.90	\$394.94
2170	Federal Express	Legal Notice		\$0.00	\$0.00	\$0.00
POSTAGE						
2180	Election Judges Letters(+Alt)	997	\$0.59	\$750.00	\$713.78	\$2.26
2180	EJ Reply Card/(+Alt)	450	\$0.39	\$500.00	\$475.86	\$1.51
2170	Poll location letters				\$0.00	\$0.00
2170	Polling location Change			\$12,000.00	\$11,420.52	\$36.22
2170	Election Paychecks	3,500	\$0.41	\$1,435.00	\$1,365.70	\$4.33
PREPARATION & TRANSPORTATION OF VOTING EQUIPMENT						
2910	Votomatic Delivery and Picku	497	\$60.00	\$29,820.00	\$28,380.00	\$90.00

SUPPLY EXPENSE						
2180	Ballot Cards/Precinct	931,225	0.21200	\$197,419.70	\$187,886.35	\$595.83
2180	Formats	1,316	\$29.50	\$38,822.00	\$36,947.30	\$117.17
2180	Supplies			\$8,500.00	\$8,089.54	\$25.65
2180	Test Ballots	19,840	0.21200	\$4,316.95	\$4,108.49	\$13.03
2180	Ballot & Seal Certificate	658	\$2.95	\$1,941.10	\$1,847.36	\$5.86
2180	Blank Ballot Seal	390	\$2.95	\$1,150.50	\$1,094.94	\$3.47
2180	Provisional Ballots	99,250	\$0.08	\$7,940.00	\$7,556.58	\$23.96
2180	Rubber Voting Stamps	3,600	\$1.05	\$3,780.00	\$3,597.46	\$11.41
2180	Provisional Ballot & Seal Cer	664	\$2.95	\$1,958.80	\$1,864.21	\$5.91
2180	Sample Ballots	2,632	\$0.0800	\$210.56	\$200.39	\$0.64
2180	ADA Ballot & Seal Cert.	497	\$2.9500	\$1,466.15	\$1,370.08	\$4.34
2180	Misc. Judge Kit Supplies	497	\$55.00	\$27,335.00	\$26,015.00	\$82.50
SERVICE EXPENSE						
1080	Storage Fee		Election Records	N/A	\$0.00	\$0.00
1080	Training Night (parking fee)		\$2.00	\$500.00	\$0.00	\$0.00
7040	Modems			N/A	\$0.00	\$0.00
	Election Day Total			\$1,666,104.85	\$1,585,147.96	\$5,026.90

Council Agenda Item: #R19

SUMMARY:

This item is consideration of an Interlocal Agreement with Dallas County for the Town of Addison to join the Household Hazardous Waste Network (HHW Network) with Dallas County and other interested jurisdictions, to participate in a HHW collection program.

FINANCIAL IMPACT:

Budgeted Amount: \$5,700

Cost: \$2,165 annual membership fee
\$3,535 estimated annual usage fee

Project Manager: Robin Jones

BACKGROUND:

In order to handle the increasing volume of household hazardous waste generated by single family residents, and to offer disposal service to multifamily residents, staff is recommending that the Town enter into this agreement with Dallas County.

The agreement term is from October 1, 2008 through September 30, 2009, with options to renew for three additional one-year terms. This agreement provides the cooperative framework for the Town and Dallas County to undertake a variety of activities necessary to coordinate the planning and implementation of a HHW collection program, and to provide public education aimed at decreasing the generation of HHW.

In addition to meeting the increasing need of Public Works to dispose of HHW collected from single-family residences, this agreement provides an opportunity for all multi-family residents in Addison the properly dispose of HHW by utilizing the disposal collection center on Plano Road in the city of Dallas.

RECOMMENDATION:

Staff recommends Council authorize the City Manager to enter into an Interlocal Agreement with Dallas County making Addison a member of the Dallas County Household Hazardous Network.

STATE OF TEXAS)
COUNTY OF DALLAS)

AGREEMENT BETWEEN TOWN OF ADDISON AND DALLAS COUNTY

WHEREAS, the Town of Addison, Texas, (the "City") and the County of Dallas, Texas, (the "County") wish to enter into an agreement (the "Agreement") to join the Household Hazardous Waste Network (the "HHW Network") to coordinate the planning and implementation of a hazardous waste collection program from October 1, 2008, through September 30, 2009, with options to renew for three additional one-year terms; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended, provides authorization for local governments to enter into contracts with other local governments and state agencies; and

WHEREAS, the Dallas County Commissioners Court adopted Court Order Number 94-751 establishing the HHW Network to coordinate the planning and implementation of a HHW collection program; and

WHEREAS, the HHW Network has successfully served the residents of the participating cities since its inception in 1994 and is prepared to continue its services;

NOW, THEREFORE, THIS AGREEMENT is hereby made and entered into by the City and the County upon mutual consideration stated herein:

PURPOSE:

It is the desire of the City to voluntarily join with the County and other interested jurisdictions, to participate in a HHW collection program as a continuation of the 1994-2008 program. The terms and conditions set forth within this agreement provide the cooperative framework for the City and the County to undertake a variety of activities necessary to coordinate the planning and implementation of a HHW collection program and to provide public education aimed at decreasing the generation of HHW.

GENERAL CONDITIONS:

The specific Scope of Services (see Exhibit A2009) has been reviewed and approved by the HHW Network. Any and all changes having a financial impact must be

approved in advance by a mutually executed letter of agreement between the City and the County. Each letter of agreement, upon full execution, shall become an addendum to this agreement.

WITNESSETH:

I. TERM

The Term of this Agreement shall begin on the date executed below and continue until September 30, 2009. This Agreement may be extended annually for three (3) additional one-year terms, upon mutual written agreement by all parties.

II. NOTICE

Any notice to be given under this Agreement shall be deemed to have been given if reduced to writing and delivered in person or mailed by overnight or Registered Mail, postage pre-paid, to the party who is to receive such notice, demand or request at the addresses set forth below. Such notice, demand or request shall be deemed to have been given three (3) days subsequent to the date it was so delivered or mailed.

Dallas County Contact

Sandy Cook
HHW Program Manager
Dallas County
11234 Plano Road
Dallas, TX 75243
PHONE: (214) 553-1765 x 6592
FAX: (214) 553-5007

City Contact (Name, Title, Address, Phone, Fax)

III. COUNTY RESPONSIBILITIES

During the term of the agreement, the County agrees to the following provisions:

1. To provide HHW project management, HHW disposal contract negotiations and signatory, a HHW Mobile Unit, HHW public education, assistance with advertisement of HHW collections, all as per funding scheduled and provided by the participating cities, grants, and contributions.
2. To enter into an agreement with disposal vendor(s) to provide household hazardous waste services including a series of disposal events and disposal services at the County's fixed-site HHW collection center. The City recognizes that compensation for vendors under such agreements will be payable only to



the extent that City funds are made available.

3. To provide two representatives on the HHW Network.
4. To provide, manage, operate, and maintain a site at 11232-11234 Plano Road in Dallas for exclusive use as a Home Chemical Collection Center.
5. To provide regular reports to the City regarding collection statistics taken from event surveys.

IV. CITY RESPONSIBILITIES

During the term of the agreement, the City will provide:

1. A sum not to exceed \$_____ for disposal, setup, operational, capital and transportation costs for HHW collection for residents of the City, during the period from October 1, 2008 through September 30, 2009.
 - a) Collection, setup, and disposal costs will be paid after-the-fact, based on actual usage by the city at events and at the collection center.
 - b) Operational and capital costs shall be paid quarterly in advance.
 - c) In the event of early withdrawal, the operational and capital costs will not be pro-rated for partial quarter participation but will become immediately due and payable in full.
2. Evidence in appropriate form (City Council resolution, approved line item budget, letter from department head or other official authorized to encumber funds, etc.) that funding has been committed and will be available for obligations herein.
3. A request to the County in writing when the City wishes a collection event to be held within the city's jurisdiction and assistance in obtaining HHW collection site location(s), community support, volunteers, and volunteer amenities for the requested event.
4. Onsite representation at HHW collection(s) within its jurisdiction.
5. Notification to the County in writing at least sixty (60) days prior to withdrawal from the agreement by the City.
6. One representative and one alternate on the HHW Network to attend Network meetings and participate in the decision-making process.

BUDGET
AMT
HERE
←

The City acknowledges that the financial responsibility for vendor's disposal, set up, and transportation costs, based on actual usage by residents of the City, rests with the City. The City further acknowledges financial responsibility for a proportional share of the program Operational and Capital Budgets, based on the City's percentage of total single-

family households served and using single-family household projections from North Central Texas Council of Governments. The Operational and Capital Budgets will be determined by the County and the HHW Network. No City will be obligated to incur expenses without their prior knowledge and approval.

V. HHW NETWORK RESPONSIBILITIES

Under the Bylaws of the HHW Network as included in Exhibit B2009, the HHW Network will:

1. Provide guidance and direction to the Program Manager in the selection of a HHW disposal contractor, in identifying and selecting waste disposal options, in advertising HHW collections, and in developing and implementing a HHW public awareness program.
2. Create a Finance Committee, composed of those HHW Network members that contribute funds, to make recommendation to the Network regarding expenditures of funds for the HHW Program.
3. Provide guidance and direction to the Program Manager in scheduling community HHW collection events. The HHW Network will attempt to honor all requests from member cities wishing to host a community HHW collection event. Should insufficient dates be available to accommodate all such requests, the number of events hosted by a single member City annually may be scheduled at a rate that is proportional to that City's share of single family households served.
4. Pay for all routine maintenance at the Home Chemical Collection Center and be responsible for capital additions necessitated by program operations.

VI. LIABILITY

To the extent allowed by law, and without creating a sinking fund, the County agrees to be responsible for any liability or damages the County may suffer as a result of claims, demands, costs or judgments against the County, including workers' compensation claims, arising out of the performance of the work and services under this agreement, or arising from any accident, injury or damage, whatsoever, to any person or persons, or to the property of any person(s) occurring during the performance of this agreement and caused by the sole negligence of the County, its agents, officers and/or employees. To the extent allowed by law, and without creating a sinking fund, the City agrees to be responsible for any liability or damages the City may suffer as a result of claims, demands, costs or judgments against the City, including workers' compensation claims, arising out of the performance of the work and services under this agreement, or arising from any accident, injury or damage, whatsoever, to any person or persons, or to the property of any person(s)

occurring during the performance of this agreement and caused by the sole negligence of the City, its agents, officers and/or employees.

County and City agree that any such liability or damages as stated above occurring during the performance of this agreement caused by the joint or comparative negligence of their employees, agents and officers shall be determined in accordance with the comparative responsibility laws of the State of Texas.

This agreement is made solely for the benefit of the parties, and nothing herein shall be construed as granting any rights or cause of action to any third party. This agreement is made subject to the County's and City's sovereign immunity, Title 5 of the Texas Civil Practice and Remedies Code and the Texas Tort Claims Act.

VII. RENEWAL, CANCELLATION AND AMENDMENTS

This agreement may be renewed on October 1 of each year for three (3) additional one-year terms. Either party may withdraw from this agreement at any time without cause, provided that it has notified the other party in writing at least sixty (60) days prior to its intended withdrawal date. Amendments may be made to this Agreement only upon written approval by both parties.

Notwithstanding anything to the contrary herein, County's obligations contained in this Agreement and any extension hereto are expressly contingent upon the availability of funding for each item and obligation. Neither the State of Texas nor any City or any other person or entity shall have any cause of action against the County of Dallas regarding this Agreement in the event that the County is unable to fulfill its obligations under this Agreement as a result of the lack of sufficient funding from any source utilized to fund this Agreement or failure of any funding party, including the County, to budget or authorize funding for this Agreement during the current or future fiscal years. In the event of insufficient funding by County or any other funding source, or if funding for this Agreement is terminated, limited, suspended or withdrawn, or if funds become unavailable in whole or part, the County, at its sole discretion, shall have the right, but not the obligation, to terminate County's obligations herein and withdraw from this Agreement with at least sixty (60) days prior written notice to the other Network parties. Nothing herein shall prevent the County, in its sole discretion, from providing funding from a separate source.

VIII. PAYMENT

The City, once receiving an invoice from the County for services rendered (operational, disposal, capital, set up, and/or transportation costs), shall provide payment within thirty (30) days to the County as per this agreement and any addendum(s) to this agreement. Cities which fail to pay within thirty (30) days will be charged a late fee of one percent (1%) of the invoice amount for each additional month or portion thereof. Disputes should be directed to the HHW Program Manager. Interest charges on disputed amounts

will be suspended until an accurate figure has been documented and re-submitted to the City by HHW staff. Upon written request from the City, invoices from the County shall be accompanied by copies of all participant surveys and/or other backup documents relevant to the invoice. Payments required under this agreement must be in amounts that fairly compensate the performing party for the services or functions performed and shall be made from current revenues available to the paying party.

IX. AMENDMENTS AND CHANGES IN THE LAW:

No modification, amendment, innovation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition or deletion to the terms of this Agreement which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law. Provided, however, that if the change in federal or State law renders the basic purposes of this Agreement illegal, invalid or unenforceable then either party may, upon written notice to the other, terminate this agreement, and the parties agree to enter into good faith negotiations to replace this Agreement with an agreement as similar to the terms and conditions of this Agreement as legally permissible.

X. SEVERABILITY:

If any provision of this Agreement is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions herein. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

XI. SIGNATORY WARRANTY:

This agreement has been authorized by the City through a duly enacted resolution passed by the City Council. The person or persons signing and executing this Agreement on behalf of City, or representing themselves as signing and executing this Agreement on behalf of City, do hereby warrant and guarantee that he, she or they have been duly authorized by City to execute this Agreement on behalf of City and to validly and legally bind City to all terms, performances and provisions herein set forth.

XII. ENTIRE AGREEMENT:

This Agreement, including all exhibits and attachments, constitutes the entire agreement between the parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written.

XIII. BINDING EFFECT:

This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit and be binding upon the successors and assigns of the parties hereto, as well as the parties themselves.

XIV. FEDERAL FUNDED PROJECT:

If Agreement is funded in part by either the State of Texas or federal government, the City agrees to timely comply without additional cost or expense to County, unless otherwise specified herein, to any statute, rule, regulation, grant, contract provision or other State or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the services rendered under the terms of this Agreement. Provided, however, that if the change in federal or State law renders the basic purposes of this Agreement illegal, invalid or unenforceable, then either party may, upon written notice to the other, terminate this agreement, and the parties agree to enter into good faith negotiations to replace this Agreement with an agreement as similar to the terms and conditions of this Agreement as legally permissible.

XV. DEFAULT/CUMULATIVE RIGHTS/MITIGATION:

It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance or otherwise. The City has a duty to mitigate damages.

XVI. COUNTERPARTS, NUMBER/GENDER AND HEADINGS:

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender, and any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

The County of Dallas, State of Texas, has executed this Agreement pursuant to Commissioners Court Order 2007-1474 and passed on the 24th day of July, 2007.

COUNTY:

EXECUTED THIS _____ DAY OF _____, 2008.

BY: Jim Foster
Dallas County Judge

RECOMMENDED:

APPROVED AS TO FORM:

BY: Rick Loessberg
Director, Planning and Development

BY: Bob Schell
Chief, Civil Section *

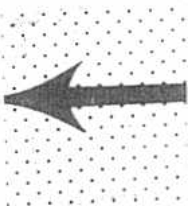
*By law, the District Attorney's office may only advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal Perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

CITY:

Approved by the Town Council of Town of Addison, Resolution Number _____,
the ____ day of _____, 2008.

EXECUTED THIS _____ DAY OF _____, 2008.

BY:
TITLE:



Scope of Services

Overview

For the term of this agreement, Dallas County proposes to operate a Household Hazardous Waste (HHW) disposal program on behalf of the participating cities of the Dallas Area Household Hazardous Waste Network (HHW Network). To accomplish this, the County will continue to use the HHW Network as multi-jurisdictional guidance to the HHW Program Manager in order to maintain an efficient and jurisdictionally sensitive collection program.

As the nucleus of a management structure, the County, through Interlocal Agreements with participating cities, will continue to direct and manage the planning, coordination, and implementation of the HHW Network and HHW collection program. The HHW Network will function as an advisory board and will consist of representatives from participating cities, environmental or other relevant citizen interest groups, Texas Cooperative Extension Service, and Dallas County. County staff will provide project governance and oversight.

Strategy

Each spring and fall, the HHW program will target a series of temporary collection sites throughout the participating area, as selected by participating cities in the HHW Network, for one-day community collection events. The participating cities will select the days of the events. The County will oversee the operation of a fixed-site HHW Collection Center for year-round access in addition to the aforementioned collection events.

Each city will be able to participate in each of the one-day community collection events. Each event will be held on a different day, at a different location, as determined by the HHW Network. Residents of each participating city also can use the collection center on a year-round basis.

For all community collection events, the HHW Program Manager and staff will coordinate scheduling, vendor services, equipment, supplies, advertising, and labor for onsite activities. The host city will provide for traffic control and site security, and will have an onsite City representative for the duration of any collection held within its jurisdiction. The host city will also assist in providing volunteers and volunteer amenities. The County will negotiate the disposal or diversion of HHW on behalf of the HHW Network participants, according to the criteria established by the HHW Network.

Dallas County will provide office space, a Home Chemical Collection Center site, and project management. The HHW Program Manager and staff shall be County employees, whose salaries and benefits are funded by the participating cities and/or through grants. All disposal, set up, and transportation costs will be funded by the participating cities, based on participation rates. All operating costs, including personnel, facility and equipment maintenance, advertising, supplies, services, and other operational

costs will be funded by the participating cities proportionally, based on the most current single family population figures from the North Central Texas Council of Governments. Program enhancements and capital additions necessitated by program operations will be the responsibility of the HHW Network and funded by the participating cities and/or by grants.

All overhead for the Household Hazardous Waste Program and Home Chemical Collection Center will be funded through the HHW Network operating and capital budgets. Each participating city must provide the County with funds to cover its collection, disposal, transportation and setup costs within thirty (30) days of receiving an invoice from the County. Operational and capital costs will be paid quarterly in advance. The city will pay a percent of the operational and capital costs equivalent to its percent of the total of single family households in all participating cities. Single family household totals will be acquired from statistics published by the North Central Texas Council of Governments. Collection center disposal costs will be billed to the city at the end of each billing period, according to the number of residents participating during the billing period. Collection event costs, including setup, disposal, transportation, etc., will be billed after each event, according to the number of residents participating at the event. The County, as signatory on all contracts, will pay the HHW disposal contractor and all other vendors with the funds received from the cities.

If, at any time, it appears that a city lacks sufficient funding to complete the contract year, the city must choose one of the following options:

- The city may cap its costs, and no longer pay for its residents to drop off their waste at the collection center or future one-day events to be held within the term of the agreement; or
- The city may decide to continue to allocate funds and allow its residents to participate in the collection center and future events to be held in the agreement year. *

* If a city decides to continue to fund costs for its residents above the sum provided for in its Interlocal Agreement with the County, then the city must provide the County with a letter of agreement as an addendum to the Interlocal Agreement whereby the city is contractually obligated to pay the County any additional costs for HHW collection during the period in which it wishes to extend its payment obligations.

If a city does not make a provision to cover a cost overrun, and the city reaches its contractual limit (as provided for in the Interlocal Agreement or its addendum(s)), subsequent participants from that city must pay their own collection fees in order to dispose of their HHW at the collection center or community collection event sites until an addendum is added to the agreement to cover additional costs. This fee will be calculated from the most recent average collection cost per household or from actual disposal costs, whichever is greater.

Program Objectives

The ultimate objective of the HHW program shall be to minimize or eliminate the disposal of HHW in area landfills and storm water sewers through reuse/recycling, education and collection/disposal. Toward this end, this program shall:

1. Operate a year-round collection center and a series of one-day community collection events each spring and fall throughout Dallas County, serving at least 9,000 households annually.
2. Provide HHW Network cities an opportunity and forum to address storm water pollution and HHW issues.
3. Involve as many cities as possible in the HHW Network.
4. Establish a precedent in Dallas County for handling HHW through a regional approach that will serve as a model for other multi-jurisdictional areas.
5. Educate the public as to alternatives, wise purchasing, and safe disposal through the use of as many of the following as possible: internet sites, utility bill stuffers, newspaper, television & radio public service announcements, contact with local environmental groups, trade show exhibits, presentation at schools, neighborhood organization meetings, service organizations, etc.
6. Gather data regarding citizen interest as well as types and amounts of HHW diverted from the waste stream by surveying collection participants.
7. Divert a substantial amount of HHW from municipal landfills.
8. Involve local businesses, especially those connected with the manufacture or sales of HHW generating products.
9. Involve local environmental groups, Dallas County Public Health Advisory Committee, Dallas County Health Dept., Texas A&M/Dallas County Agricultural Extension Services, and the Institute of Forensic Sciences.

Special Training Requirements

EPA First Responder Technical Level training will be required for all workers (such as county, city, volunteer, contract personnel, etc.) who come in contact with chemicals and/or chemical containers. The contractor will provide these personnel at collection events and be responsible for their training. Police, Fire, and Haz Mat Response Teams will have training appropriate for their functions.

Citizen volunteers will be used at the collection sites only for the purposes of taking surveys, distributing educational literature, processing non-hazardous recyclables, and

assisting with traffic control. Volunteers who assist with the consolidation of paint, used motor oil, antifreeze, or oil filters must have completed EPA First Responder Technical Level training or abbreviated EPA First Responder Awareness Level Training and/or must satisfy the experience level requirements as determined by the County's onsite Safety Officer. All volunteers will be required to attend a brief onsite orientation session prior to beginning a work shift. The Program Manager and program staff will be responsible for volunteer training.

Records and Reporting

The Program Manager and staff will prepare quarterly progress reports for the County, HHW Network, and relevant grant agencies. Financial reports and progress reports will be presented at least quarterly and in accordance with grant requirements. Financial records, contacts, and data from the collection surveys will be computerized. A final report will be presented within 90 days of the end of each collection event, fiscal quarter, and fiscal year. It will include the results of surveys taken from participating citizens and participating cities to gather data including frequency of use and materials collected.

Program Goals

- Participation by at least 9,000 of the area households annually
- Participation by at least 50% of the cities in the County
- Increase public outreach to households in participating cities
- Coverage by general circulation newspaper and/or broadcast media
- Involvement of the community at all levels; government, industry, and citizens

BYLAWS OF THE DALLAS AREA HOUSEHOLD HAZARDOUS WASTE NETWORK

Article I: Name

The name of this organization shall be the **Dallas Area Household Hazardous Waste Network**, herein after referred to as the “**HHW Network.**”

Article II: Mission

The purpose of the HHW Network shall be to efficiently organize and promote the collection of household hazardous wastes (HHW) among individuals residing in Dallas County, or in counties adjacent to Dallas County, as agreed to by the Network Members. In order to accomplish this mission, the HHW Network will actively promote cooperative arrangements among governmental agencies in the County and will provide a forum for discussion of techniques for collection and disposal of HHW.

Article III: Members

Voting Members - Voting membership in the HHW Network will be offered to one representative of each city volunteering to participate in the HHW Network and to one representative of Dallas County. Any city requesting membership shall provide an official indication of the name of the individual to be designated as the HHW Network member. Once designated, an individual member shall arrange to have an alternate designated to participate in the absence of the member.

Advisory (Non-voting) Members - the County Judge shall name additional Advisory (Non-voting) Members to the HHW Network representing the following categories or organizations:

- one member representing Dallas County, other than the County's voting member
- one member representing the North Central Texas Council of Governments
- three members representing advocacy, environmental, or other citizen groups such as: Texas Cooperative Extension Service, Audubon Society, and League of Women Voters
- two members representing the private sector

Term - each of the designated individuals shall serve until his/her successor is designated.

Article IV: Meetings

The HHW Network will meet as required to conduct its business. All HHW Network meetings will be public meetings open to all participants. The Project Manager of the HHW Network will establish a mailing list for notification of all meetings, and shall include

on this list any individual that requests notification.

Quorum - At any regular meeting of the HHW Network, a quorum shall consist of half of the individuals who have then been duly designated or appointed pursuant to Article III.

Article V: Voting

Each Voting Member of the HHW Network will have one vote.

Article VI: Officers and Committees

The HHW Program Manager shall preside at all meetings. The HHW Program Manager and staff shall be responsible for all staff work and notifications related to the Network. The Program Manager shall not be a voting member of the Network. The HHW Network, by majority vote, may establish such committees as shall be deemed necessary to carry out the work of the organization.

Finance Committee - The Finance Committee shall consist of representatives of each city that has made a binding commitment to participate in a disposal program and the County's voting member. The Program Manager will serve as an ex officio member of this committee. No contract or other financial arrangement affecting the participants may be referred to the HHW Network without first receiving approval of the Finance Committee.

Article VII: Amendments

These bylaws shall become effective when ratified by a majority of HHW Network voting members attending a regular meeting, and when approved by Dallas County Commissioners Court. Amendments may be proposed by any member at any time, in writing. Such amendments will be voted on at a duly called HHW Network meeting to which notice has been given that an amendment will be proposed. Amendments passed by 2/3 of the voting members present shall become part of the bylaws.

Exhibit C2009

FY2009 HHW PROGRAM BUDGET SUMMARY

This exhibit summarizes the total program funding for FY09 as approved by the Dallas Area Household Hazardous Waste Network at its regular meeting on June 4, 2008.

Fixed costs include personnel and operating costs, which are shared by the Network cities based on single-family household projections published by North Central Texas Council of Governments. Personnel costs include all HHW staff salaries and fringe. Operating costs include supplies, equipment, advertising, public education, volunteer support, staff development, printing, postage, facility maintenance, utilities, and all other direct programming costs.

Capital costs are provided by the cities based on single-family household projections published by North Central Texas Council of Governments and set aside for capital maintenance and improvements including building repairs, equipment repair or replacement, mechanical upgrades, and expansion projects.

Variable costs are comprised of vendor costs for collection, contract labor, and disposal, which vary according to actual usage and are indicated in the budget summary for planning purposes only. ***Funding for collection, contract labor, and disposal costs will be collected from the cities after the fact, on an as-used basis.***

Budget adjustments made during the term of the agreement shall not result in a City Funding amount that exceeds the approved budget total shown herein. The County may make line item transfers within the budget when these transfers do not exceed \$5,000. Budget adjustments in excess of \$5,000 must be approved by the HHW Network.

BUDGET SECTION	CITY FUNDING
OPERATIONAL BUDGET (FIXED COSTS)	
Personnel Costs	\$ 362,736
Operating Costs	\$ 239,750
Sub-Total	\$ 602,486
CAPITAL EXPENSE BUDGET	\$ 20,000
COLLECTION / LABOR / DISPOSAL BUDGET (VARIABLE COSTS)	\$ 545,000
TOTAL PROGRAM BUDGET	\$1,167,486

Council Agenda Item: #R20

SUMMARY:

This item is to authorize the City Manager to execute a Construction contract with Tri Dal Celina, Ltd. in the amount of \$369,917.00 with a contract duration of 40 calendar days for the Vitruvian Park Public Infrastructure – Phase 1.

FINANCIAL IMPACT:

Construction Budget Amount: \$386,782.00

Construction Contract Amount: \$369,917.00

Source of Funds: General Obligation Bonds for Vitruvian Park

BACKGROUND:

The Town received bids for the proposed widening of Vitruvian Park on September 22, 2008. The lowest responsive bid received was \$369,917.00.

The table below summarizes the three lowest bids received for this work:

	Tri Dal, LTD	AUI Contractors, INC.	2L Construction, LLC
Base Bid (A)	\$329,917.00	\$440,321.00	\$465,964.50
Time Bid (B) Days Bid x \$1,000	\$40,000	\$30,000.00	\$85,000.00
A+B Total	\$369,917.00	\$470,321.10	\$550,964.50

RECOMMENDATION:

It is recommended that the Council authorize the City Manager to execute a Construction contract with Tri Dal Celina, Ltd. in the amount of \$369,917.00 with a contract duration of 40 calendar days for the Vitruvian Park Public Infrastructure – Phase 1.

ATTACHEMENTS:

Itemized Bid tabulation

VITRUVIAN PARK INFRASTRUCTURE IMPROVEMENTS - PHASE I
WATER, SANITARY SEWER AND STORM DRAIN IMPROVEMENTS
BROOKHAVEN CLUB DRIVE, PONTE AVENUE & VITRUVIAN PARK

BID SCHEDULE

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	Pipeworks Construction, LLC		Jeske Construction Co.		2L Construction, LLC		AUI Contractors, INC.		Tri Dal, LTD		Dowager Utility Construction		Saber Development Corporation		East Texas Contracting	
				UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
1	1	L.S.	For Mobilization (not to exceed 5% of total bid amount)	\$ 25,000	\$ 25,000.00	\$ 24,750	\$ 24,750.00	\$ 25,000	\$ 25,000.00	\$ 21,410	\$ 21,410.00	\$ 15,176.88	\$ 15,176.88	\$ 25,000.00	\$ 25,000.00	\$ 20,000.00	\$ 20,000.00	\$ 15,500.00	\$ 15,500.00
2	1	L.S.	For Installation and Maintenance of Barricades, Signage, and Traffic Control Measures	\$ 10,000	\$ 10,000.00	\$ 11,700	\$ 11,700.00	\$ 3,500	\$ 3,500.00	\$ 3,590	\$ 3,590.00	\$ 3,360.02	\$ 3,360.02	\$ 7,000.00	\$ 7,000.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00
3	1	E.A.	For Installation and Maintenance of Stabilized Construction Entrance	\$ 2,100	\$ 2,100.00	\$ 950	\$ 950.00	\$ 1,500	\$ 1,500.00	\$ 1,840	\$ 1,840.00	\$ 560.00	\$ 560.00	\$ 2,000.00	\$ 2,000.00	\$ 750.00	\$ 750.00	\$ 2,300.00	\$ 2,300.00
4	1	E.A.	For Installation of Inlet Protection Devices on Existing Inlets	\$ 200	\$ 200.00	\$ 155	\$ 155.00	\$ 300	\$ 300.00	\$ 306.50	\$ 306.50	\$ 119.31	\$ 119.31	\$ 3,000.00	\$ 3,000.00	\$ 150.00	\$ 150.00	\$ 225.00	\$ 225.00
5	2	E.A.	For Furnishing and Installing Project Signs in Accordance with Sign Plan	\$ 400	\$ 800.00	\$ 570	\$ 1,140.00	\$ 500	\$ 1,000.00	\$ 531	\$ 1,062.00	\$ 336.01	\$ 672.02	\$ 800.00	\$ 1,600.00	\$ 400.00	\$ 800.00	\$ 450.00	\$ 900.00
6	913	L.F.	For Full Depth Saw Cut of Existing Asphalt Street Pavement	\$ 5	\$ 4,565.00	\$ 2.50	\$ 2,282.50	\$ 1.50	\$ 1,369.50	\$ 3.70	\$ 3,378.10	\$ 2.80	\$ 2,556.40	\$ 3.00	\$ 2,739.00	\$ 4.00	\$ 3,652.00	\$ 4.00	\$ 3,652.00
7	1,810	S.F.	For Removal and Disposal of Existing Asphalt Street Pavement	\$ 2	\$ 3,620.00	\$ 2.30	\$ 4,163.00	\$ 1	\$ 1,810.00	\$ 1.40	\$ 2,534.00	\$ 1.28	\$ 2,316.80	\$ 2.50	\$ 4,525.00	\$ 2.00	\$ 3,620.00	\$ 1.00	\$ 1,810.00
8	40	S.F.	For Sawcutting, Removal and Disposal of Existing Concrete Sidewalk Pavement	\$ 2	\$ 80.00	\$ 1.55	\$ 62.00	\$ 7	\$ 280.00	\$ 4.80	\$ 192.00	\$ 4.04	\$ 161.60	\$ 10.00	\$ 400.00	\$ 2.00	\$ 80.00	\$ 3.00	\$ 120.00
9	20	L.F.	For Sawcutting, Removal and Disposal of Existing Concrete Curb and Gutter	\$ 20	\$ 400.00	\$ 4.60	\$ 92.00	\$ 9	\$ 180.00	\$ 9	\$ 180.00	\$ 6.36	\$ 127.20	\$ 10.00	\$ 200.00	\$ 3.00	\$ 60.00	\$ 15.00	\$ 300.00
10	1	L.S.	For Removal and Disposal of Existing Rock Walls and Stairs	\$ 4,000	\$ 4,000.00	\$ 4,500	\$ 4,500.00	\$ 4,500	\$ 4,500.00	\$ 1,500	\$ 1,500.00	\$ 2,737.22	\$ 2,737.22	\$ 2,000.00	\$ 2,000.00	\$ 4,000.00	\$ 4,000.00	\$ 2,500.00	\$ 2,500.00
11	1	L.S.	For Removal and Disposal of Existing Water Well, Motor, Pump, Piping, etc. and Backfilling of Hole	\$ 5,000	\$ 5,000.00	\$ 1,940	\$ 1,940.00	\$ 3,000	\$ 3,000.00	\$ 1,450	\$ 1,450.00	\$ 900.00	\$ 900.00	\$ 2,000.00	\$ 2,000.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00
12	1	L.S.	For Removal and Stockpiling of Existing Rock Rip Rap	\$ 2,500	\$ 2,500.00	\$ 2,015	\$ 2,015.00	\$ 2,500	\$ 2,500.00	\$ 1,590	\$ 1,590.00	\$ 1,555.76	\$ 1,555.76	\$ 2,000.00	\$ 2,000.00	\$ 5,000.00	\$ 5,000.00	\$ 3,000.00	\$ 3,000.00
13	1,110	L.F.	For Removal of Existing Silt Fence	\$ 1	\$ 1,110.00	\$ 0.70	\$ 777.00	\$ 0.75	\$ 832.50	\$ 0.70	\$ 777.00	\$ 0.71	\$ 788.10	\$ 0.10	\$ 111.00	\$ 0.40	\$ 444.00	\$ 1.50	\$ 1,665.00
14	1	L.S.	For Compliance with Storm Water Pollution Prevention Plan Including Maintenance of Erosion Control Devices	\$ 1,500	\$ 1,500.00	\$ 3,850	\$ 3,850.00	\$ 1,500	\$ 1,500.00	\$ 1,040	\$ 1,040.00	\$ 1,680.02	\$ 1,680.02	\$ 4,000.00	\$ 4,000.00	\$ 1,200.00	\$ 1,200.00	\$ 6,500.00	\$ 6,500.00
15	1,760	L.F.	For Installing Silt Fence Sediment Barrier	\$ 2	\$ 3,520.00	\$ 1.80	\$ 3,168.00	\$ 2	\$ 3,520.00	\$ 2.50	\$ 4,400.00	\$ 1.18	\$ 2,076.80	\$ 2.00	\$ 3,520.00	\$ 1.75	\$ 3,080.00	\$ 4.00	\$ 7,040.00
16	12,640	S.F.	For Installing Erosion Control Blanket (Curlex 2 or Approved Equal)	\$ 0.50	\$ 6,320.00	\$ 1	\$ 12,640.00	\$ 0.25	\$ 3,160.00	\$ 1.40	\$ 17,696.00	\$ 0.26	\$ 3,286.40	\$ 0.50	\$ 6,320.00	\$ 0.75	\$ 9,480.00	\$ 1.25	\$ 15,800.00
17	174	L.F.	For Furnishing and Installing Gabion Barrier (3'x3'x6') w/ Geotextile Filter Fabric	\$ 600	\$ 104,400.00	\$ 259	\$ 45,066.00	\$ 60	\$ 10,440.00	\$ 129	\$ 22,446.00	\$ 18.93	\$ 3,293.82	\$ 80.00	\$ 13,920.00	\$ 150.00	\$ 26,100.00	\$ 145.00	\$ 25,230.00
18	5,720	C.Y.	For Unclassified Street Excavation and Controlled Density Placement of Embankment Materials	\$ 13	\$ 74,360.00	\$ 9.20	\$ 52,624.00	\$ 13	\$ 74,360.00	\$ 4.80	\$ 27,456.00	\$ 2.47	\$ 14,128.40	\$ 9.00	\$ 51,480.00	\$ 7.35	\$ 42,042.00	\$ 8.60	\$ 49,192.00
19	2	E.A.	For Removal and Disposal of Existing Concrete Wingwalls on Existing Box Culvert Structure	\$ 1,500	\$ 3,000.00	\$ 2,730	\$ 5,460.00	\$ 1,200	\$ 2,400.00	\$ 434	\$ 868.00	\$ 798.99	\$ 1,597.98	\$ 1,000.00	\$ 2,000.00	\$ 5,600.00	\$ 11,200.00	\$ 500.00	\$ 1,000.00
20	1	L.S.	For Removal and Disposal of Existing 36-inch Reinforced Concrete Pipe and Headwall	\$ 1,000	\$ 1,000.00	\$ 1,515	\$ 1,515.00	\$ 1,000	\$ 1,000.00	\$ 831.50	\$ 831.50	\$ 533.85	\$ 533.85	\$ 1,000.00	\$ 1,000.00	\$ 1,950.00	\$ 1,950.00	\$ 2,500.00	\$ 2,500.00
21	1	E.A.	For Removal and Disposal of Existing 54-inch Reinforced Concrete Headwall	\$ 1,500	\$ 1,500.00	\$ 795	\$ 795.00	\$ 1,000	\$ 1,000.00	\$ 1,010	\$ 1,010.00	\$ 798.99	\$ 798.99	\$ 600.00	\$ 600.00	\$ 2,000.00	\$ 2,000.00	\$ 1,000.00	\$ 1,000.00
22	1	E.A.	For Connecting Proposed Pipe to Existing 54-inch Storm Sewer Pipe	\$ 1,000	\$ 1,000.00	\$ 1,140	\$ 1,140.00	\$ 1,200	\$ 1,200.00	\$ 616.50	\$ 616.50	\$ 710.21	\$ 710.21	\$ 2,000.00	\$ 2,000.00	\$ 1,500.00	\$ 1,500.00	\$ 500.00	\$ 500.00
23	97	L.F.	For Furnishing and Installing 54-inch Reinforced Concrete Pipe (Class III)	\$ 300	\$ 29,100.00	\$ 284	\$ 27,548.00	\$ 230	\$ 22,310.00	\$ 216	\$ 20,952.00	\$ 194.18	\$ 18,835.46	\$ 360.00	\$ 34,920.00	\$ 250.00	\$ 24,250.00	\$ 302.00	\$ 29,294.00
24	1	E.A.	For Furnishing and Constructing 54-inch Reinforced Concrete Sloping Headwall	\$ 5,000	\$ 5,000.00	\$ 5,930	\$ 5,930.00	\$ 2,000	\$ 2,000.00	\$ 784	\$ 784.00	\$ 3,550.97	\$ 3,550.97	\$ 4,800.00	\$ 4,800.00	\$ 2,500.00	\$ 2,500.00	\$ 5,500.00	\$ 5,500.00
25	5	V.F.	For Adjustment of Existing 7' Square Storm Drain Manhole to Finish Grade	\$ 1,500	\$ 7,500.00	\$ 1,640	\$ 8,200.00	\$ 600	\$ 3,000.00	\$ 262.50	\$ 1,312.50	\$ 726.08	\$ 3,630.40	\$ 600.00	\$ 3,000.00	\$ 600.00	\$ 3,000.00	\$ 610.00	\$ 3,050.00
26	1	L.S.	For Placing of Stockpiled Rock Rip-Rap	\$ 5,000	\$ 5,000.00	\$ 7,000	\$ 7,000.00	\$ 2,000	\$ 2,000.00	\$ 2,210	\$ 2,210.00	\$ 2,417.85	\$ 2,417.85	\$ 3,000.00	\$ 3,000.00	\$ 7,500.00	\$ 7,500.00	\$ 6,000.00	\$ 6,000.00

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	Pipeworks Construction, LLC		Jeske Construction Co.		2L Construction, LLC		AUI Contractors, INC.		Tri Dal, LTD		Dowager Utility Construction		Saber Development Corporation		East Texas Contracting	
				UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
27	1	EA.	For Connection to Existing 8-inch Sanitary Sewer Pipe	\$ 1,500	\$ 1,500.00	\$ 415	\$ 415.00	\$ 700	\$ 700.00	\$ 568	\$ 568.00	\$ 1,068.66	\$ 1,068.66	\$ 2,000.00	\$ 2,000.00	\$ 850.00	\$ 850.00	\$ 250.00	\$ 250.00
28	1	EA.	For Connection to Existing Inside Drop Sewer Manhole Complete with 12" x 10" Reducer Connection to 10-Inch Drop	\$ 750	\$ 750.00	\$ 1,270	\$ 1,270.00	\$ 700	\$ 700.00	\$ 816	\$ 816.00	\$ 1,655.27	\$ 1,655.27	\$ 3,500.00	\$ 3,500.00	\$ 8,000.00	\$ 8,000.00	\$ 1,150.00	\$ 1,150.00
29	942	L.F.	For Furnishing and Installing 12-Inch PVC Sanitary Sewer Pipe (SDR 35) by Open Cut with Embedment	\$ 60	\$ 56,520.00	\$ 79.40	\$ 74,794.80	\$ 40	\$ 37,680.00	\$ 38.10	\$ 35,890.20	\$ 29.54	\$ 27,826.68	\$ 68.00	\$ 64,056.00	\$ 82.00	\$ 77,244.00	\$ 105.00	\$ 98,910.00
30	539	L.F.	For Furnishing and Installing 10-Inch PVC Sanitary Sewer Pipe (SDR 35) by Open Cut with Embedment	\$ 50	\$ 26,950.00	\$ 74.80	\$ 40,317.20	\$ 35	\$ 18,865.00	\$ 36.10	\$ 19,457.90	\$ 40.49	\$ 21,824.11	\$ 62.00	\$ 33,418.00	\$ 52.00	\$ 28,028.00	\$ 102.00	\$ 54,978.00
31	99	L.F.	For Furnishing and Installing 8-Inch PVC Sanitary Sewer Pipe (SDR 35) by Open Cut with Embedment	\$ 40	\$ 3,960.00	\$ 69	\$ 6,831.00	\$ 32	\$ 3,168.00	\$ 34.80	\$ 3,445.20	\$ 24.54	\$ 2,429.46	\$ 50.00	\$ 4,950.00	\$ 48.00	\$ 4,752.00	\$ 100.00	\$ 9,900.00
32	52	L.F.	For Furnishing and Installing 6-Inch PVC Sanitary Sewer Pipe (SDR 35) by Open Cut with Embedment	\$ 35	\$ 1,820.00	\$ 66	\$ 3,432.00	\$ 30	\$ 1,560.00	\$ 44.30	\$ 2,303.60	\$ 19.83	\$ 1,031.16	\$ 44.00	\$ 2,288.00	\$ 42.00	\$ 2,184.00	\$ 99.00	\$ 5,148.00
33	208	L.F.	For Furnishing and Installing 20-Inch Steel Casing Pipe by Open Cut with Embedment	\$ 75	\$ 15,600.00	\$ 162	\$ 33,696.00	\$ 95	\$ 19,760.00	\$ 111.50	\$ 23,192.00	\$ 85.08	\$ 17,696.64	\$ 90.00	\$ 18,720.00	\$ 151.00	\$ 31,408.00	\$ 149.00	\$ 30,992.00
34	208	L.F.	For Furnishing and Installing 18-Inch Steel Casing Pipe by Open Cut with Embedment	\$ 50	\$ 10,400.00	\$ 156	\$ 32,448.00	\$ 85	\$ 17,680.00	\$ 108	\$ 22,464.00	\$ 77.11	\$ 16,038.88	\$ 80.00	\$ 16,640.00	\$ 100.00	\$ 20,800.00	\$ 144.00	\$ 29,952.00
35	6	EA.	For Furnishing and Installing 8-Inch Double Cleanouts on Sewer Service Line	\$ 200	\$ 1,200.00	\$ 985	\$ 5,910.00	\$ 1,200	\$ 7,200.00	\$ 606	\$ 3,636.00	\$ 801.66	\$ 4,809.96	\$ 600.00	\$ 3,600.00	\$ 600.00	\$ 3,600.00	\$ 625.00	\$ 3,750.00
36	3	EA.	For Furnishing and Installing 6-Inch Double Cleanouts on Sewer Service Line	\$ 150	\$ 450.00	\$ 685	\$ 2,055.00	\$ 1,200	\$ 3,600.00	\$ 445	\$ 1,335.00	\$ 630.91	\$ 1,892.73	\$ 500.00	\$ 1,500.00	\$ 500.00	\$ 1,500.00	\$ 625.00	\$ 1,875.00
37	5	EA.	For Connection to Existing Private Sewer Services	\$ 300	\$ 1,500.00	\$ 645	\$ 3,225.00	\$ 100	\$ 500.00	\$ 923.50	\$ 4,617.50	\$ 647.98	\$ 3,239.90	\$ 1,000.00	\$ 5,000.00	\$ 350.00	\$ 1,750.00	\$ 425.00	\$ 2,125.00
38	4	EA.	For Standard 4' Diameter Sanitary Sewer Manhole to 6' Depth including Pressure Type Frame and Cover, and interior surface epoxy coating	\$ 4,000	\$ 16,000.00	\$ 3,590	\$ 14,360.00	\$ 2,500	\$ 10,000.00	\$ 2,930	\$ 11,720.00	\$ 1,971.76	\$ 7,887.04	\$ 4,000.00	\$ 16,000.00	\$ 3,600.00	\$ 14,400.00	\$ 3,650.00	\$ 14,600.00
39	1	EA.	For Standard 4' Diameter Sanitary Sewer Manhole to 6' Depth including Pressure Type Frame and Cover Constructed over 8" Sewer Line	\$ 3,000	\$ 3,000.00	\$ 4,040	\$ 4,040.00	\$ 3,000	\$ 3,000.00	\$ 2,980	\$ 2,980.00	\$ 3,769.70	\$ 3,769.70	\$ 3,000.00	\$ 3,000.00	\$ 3,500.00	\$ 3,500.00	\$ 3,900.00	\$ 3,900.00
40	1	EA.	For Standard 4' Diameter Sanitary Sewer Manhole to 6' Depth with Standard Frame and Cover	\$ 2,500	\$ 2,500.00	\$ 3,520	\$ 3,520.00	\$ 2,200	\$ 2,200.00	\$ 2,790	\$ 2,790.00	\$ 1,825.00	\$ 1,825.00	\$ 2,800.00	\$ 2,800.00	\$ 3,400.00	\$ 3,400.00	\$ 3,550.00	\$ 3,550.00
41	35	V.F.	For Extra Depth for Standard 4' Diameter Manhole in Excess of 6' Depth	\$ 150	\$ 5,250.00	\$ 315	\$ 11,025.00	\$ 175	\$ 6,125.00	\$ 229.50	\$ 8,032.50	\$ 178.62	\$ 6,251.70	\$ 340.00	\$ 11,900.00	\$ 170.00	\$ 5,950.00	\$ 280.00	\$ 9,800.00
42	158	L.F.	For Removal and Disposal of Existing 8-Inch Sanitary Sewer Pipe	\$ 10	\$ 1,580.00	\$ 14	\$ 2,212.00	\$ 12	\$ 1,896.00	\$ 15	\$ 2,370.00	\$ 17.06	\$ 2,695.48	\$ 15.00	\$ 2,370.00	\$ 6.00	\$ 948.00	\$ 22.00	\$ 3,476.00
43	883	L.F.	For Filling of Existing 10-inch Sanitary Sewer Pipe with Flowable Fill	\$ 5	\$ 4,415.00	\$ 4.90	\$ 4,326.70	\$ 4	\$ 3,532.00	\$ 2.20	\$ 1,942.60	\$ 4.54	\$ 4,008.82	\$ 10.00	\$ 8,830.00	\$ 7.00	\$ 6,181.00	\$ 7.00	\$ 6,181.00
44	4	EA.	For Removal and Disposal of Existing Sanitary Sewer Manhole and Capping of Existing 10-Inch Sewer Pipe	\$ 250	\$ 1,000.00	\$ 706	\$ 2,824.00	\$ 1,200	\$ 4,800.00	\$ 289	\$ 1,156.00	\$ 783.24	\$ 3,132.96	\$ 1,000.00	\$ 4,000.00	\$ 1,500.00	\$ 6,000.00	\$ 1,000.00	\$ 4,000.00
45	1	EA.	For Removal and Disposal of Exist. Manhole Top and Filling Manhole w/ Flowable Fill and Capping of Exist. 10-Inch SS	\$ 300	\$ 300.00	\$ 1,270	\$ 1,270.00	\$ 1,200	\$ 1,200.00	\$ 902.50	\$ 902.50	\$ 1,024.93	\$ 1,024.93	\$ 1,800.00	\$ 1,800.00	\$ 1,450.00	\$ 1,450.00	\$ 1,750.00	\$ 1,750.00
46	218	L.F.	For Removal and Disposal of Existing 10-inch Sanitary Sewer Pipe	\$ 10	\$ 2,180.00	\$ 12.90	\$ 2,812.20	\$ 15	\$ 3,270.00	\$ 15	\$ 3,270.00	\$ 16.23	\$ 3,538.14	\$ 15.00	\$ 3,270.00	\$ 7.00	\$ 1,526.00	\$ 22.00	\$ 4,796.00
47	25	L.F.	For Cement Stabilized Trench Backfill	\$ 25	\$ 625.00	\$ 65	\$ 1,625.00	\$ 60	\$ 1,500.00	\$ 100.50	\$ 2,512.50	\$ 125.38	\$ 3,134.50	\$ 20.00	\$ 500.00	\$ 50.00	\$ 1,250.00	\$ 68.00	\$ 1,700.00
48	1,481	L.F.	For TV Inspection of Sanitary Sewer System	\$ 1	\$ 1,481.00	\$ 2	\$ 2,962.00	\$ 1.50	\$ 2,221.50	\$ 0.60	\$ 888.60	\$ 1.12	\$ 1,658.72	\$ 2.00	\$ 2,962.00	\$ 2.00	\$ 2,962.00	\$ 1.20	\$ 1,777.20
49	2	EA.	For Connection to Existing 8-inch Water Pipe by Installing 8" Cut-in Tee	\$ 500	\$ 1,000.00	\$ 3,060	\$ 6,120.00	\$ 1,500	\$ 3,000.00	\$ 1,930	\$ 3,860.00	\$ 1,895.28	\$ 3,790.56	\$ 2,000.00	\$ 4,000.00	\$ 2,000.00	\$ 4,000.00	\$ 3,050.00	\$ 6,100.00
50	414	L.F.	For Furnishing and Installing 12-Inch PVC Water Pipe by Open Cut with Embedment	\$ 55	\$ 22,770.00	\$ 86.60	\$ 35,852.40	\$ 50	\$ 20,700.00	\$ 46.90	\$ 19,416.60	\$ 28.90	\$ 11,964.60	\$ 68.00	\$ 28,152.00	\$ 55.80	\$ 23,101.20	\$ 98.00	\$ 40,572.00
51	293	L.F.	For Furnishing and Installing 10-Inch PVC Water Pipe by Open Cut with Embedment	\$ 50	\$ 14,650.00	\$ 81.40	\$ 23,850.20	\$ 40	\$ 11,720.00	\$ 42.40	\$ 12,423.20	\$ 29.51	\$ 8,646.43	\$ 58.00	\$ 16,994.00	\$ 50.80	\$ 14,884.40	\$ 94.00	\$ 27,542.00

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	Pipeworks Construction, LLC		Jeske Construction Co.		2L Construction, LLC		AUI Contractors, INC.		Tri Dal, LTD		Dowager Utility Construction		Saber Development Corporation		East Texas Contracting	
				UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
52	712	L.F.	For Furnishing and Installing 8-Inch PVC Water Pipe by Open Cut with Embedment	\$ 45	\$ 32,040.00	\$ 71.60	\$ 50,979.20	\$ 30	\$ 21,360.00	\$ 30.80	\$ 21,929.60	\$ 22.81	\$ 16,240.72	\$ 54.00	\$ 38,448.00	\$ 45.05	\$ 32,075.60	\$ 91.00	\$ 64,792.00
53	101	L.F.	For Furnishing and Installing 6-Inch PVC Water Pipe by Open Cut with Embedment	\$ 40	\$ 4,040.00	\$ 69	\$ 6,969.00	\$ 25	\$ 2,525.00	\$ 47.50	\$ 4,797.50	\$ 17.72	\$ 1,789.72	\$ 50.00	\$ 5,050.00	\$ 40.55	\$ 4,095.55	\$ 89.00	\$ 8,989.00
54	4	EA.	For Furnishing and Installing 12-Inch Gate Valve Complete w/ C.I. Valve Box and Cover	\$ 1,500	\$ 6,000.00	\$ 2,340	\$ 9,360.00	\$ 2,500	\$ 10,000.00	\$ 2,480	\$ 9,920.00	\$ 1,864.54	\$ 7,458.16	\$ 1,800.00	\$ 7,200.00	\$ 1,650.00	\$ 6,600.00	\$ 1,825.00	\$ 7,300.00
55	1	EA.	For Furnishing and Installing 10-Inch Gate Valve Complete w/ C.I. Valve Box and Cover	\$ 1,200	\$ 1,200.00	\$ 1,825	\$ 1,825.00	\$ 2,000	\$ 2,000.00	\$ 2,250	\$ 2,250.00	\$ 1,534.79	\$ 1,534.79	\$ 1,600.00	\$ 1,600.00	\$ 1,400.00	\$ 1,400.00	\$ 1,575.00	\$ 1,575.00
56	6	EA.	For Furnishing and Installing 8-Inch Gate Valve Complete w/ C.I. Valve Box and Cover	\$ 800	\$ 4,800.00	\$ 1,240	\$ 7,440.00	\$ 1,500	\$ 9,000.00	\$ 1,230	\$ 7,380.00	\$ 984.46	\$ 5,906.76	\$ 1,000.00	\$ 6,000.00	\$ 950.00	\$ 5,700.00	\$ 1,125.00	\$ 6,750.00
57	5	EA.	For Furnishing and Installing 6-Inch Gate Valve Complete w/ C.I. Valve Box and Cover	\$ 600	\$ 3,000.00	\$ 1,010	\$ 5,050.00	\$ 1,000	\$ 5,000.00	\$ 873.50	\$ 4,367.50	\$ 709.42	\$ 3,547.10	\$ 800.00	\$ 4,000.00	\$ 735.00	\$ 3,675.00	\$ 885.00	\$ 4,425.00
58	3	EA.	For Furnishing and Installing Fire Hydrant Assembly Complete in Place	\$ 2,000	\$ 6,000.00	\$ 2,700	\$ 8,100.00	\$ 2,200	\$ 6,600.00	\$ 2,970	\$ 8,910.00	\$ 2,339.69	\$ 7,019.07	\$ 3,400.00	\$ 10,200.00	\$ 2,300.00	\$ 6,900.00	\$ 2,525.00	\$ 7,575.00
59	2	Tons	For Furnishing and Installing Cast Iron Fittings for Water Pipe	\$ 3,000	\$ 6,000.00	\$ 5,850	\$ 11,700.00	\$ 8,000	\$ 16,000.00	\$ 8,300	\$ 16,600.00	\$ 8,502.54	\$ 17,005.08	\$ 6,500.00	\$ 13,000.00	\$ 8,000.00	\$ 16,000.00	\$ 7,020.00	\$ 14,040.00
60	1	L.S.	For Preparing, Furnishing, Installing and Maintaining Trench Safety System	\$ 1,000	\$ 1,000.00	\$ 3,200	\$ 3,200.00	\$ 5,500	\$ 5,500.00	\$ 797.50	\$ 797.50	\$ 3,638.91	\$ 3,638.91	\$ 4,000.00	\$ 4,000.00	\$ 3,000.00	\$ 3,000.00	\$ 1,100.00	\$ 1,100.00
61	1,810	S.F.	Furnish, Laying and Compacting Short Term Asphaltic Pavement Repair	\$ 4	\$ 7,240.00	\$ 9.10	\$ 16,471.00	\$ 4	\$ 7,240.00	\$ 8.70	\$ 15,747.00	\$ 4.68	\$ 8,470.80	\$ 10.00	\$ 18,100.00	\$ 6.00	\$ 10,860.00	\$ 5.25	\$ 9,502.50
62	20	L.F.	For Constructing Reinforced Concrete Curb and Gutter	\$ 40	\$ 800.00	\$ 38.20	\$ 764.00	\$ 25	\$ 500.00	\$ 63.30	\$ 1,266.00	\$ 9.05	\$ 181.00	\$ 50.00	\$ 1,000.00	\$ 22.00	\$ 440.00	\$ 37.00	\$ 740.00
63	40	S.F.	For Furnishing and Placing 4-inch thick Reinforced Concrete Sidewalk Pavement	\$ 5	\$ 200.00	\$ 6	\$ 232.00	\$ 10	\$ 400.00	\$ 17.10	\$ 684.00	\$ 8.51	\$ 340.40	\$ 10.00	\$ 400.00	\$ 6.00	\$ 240.00	\$ 6.00	\$ 240.00
64	24,500	S.F.	For Topsoiling, Seeding, Fertilization, Watering and Maintenance of Grassing Within Easements	\$ 0.40	\$ 9,800.00	\$ 0.95	\$ 23,275.00	\$ 0.80	\$ 19,600.00	\$ 0.50	\$ 12,250.00	\$ 0.26	\$ 6,370.00	\$ 0.40	\$ 9,800.00	\$ 0.06	\$ 1,470.00	\$ 0.33	\$ 8,085.00
TOTAL AMOUNT OF BASE BID (Items 1 Through 64)				\$	582,096.00	\$	696,021.20	\$	465,964.50	\$	440,321.10	\$	329,917.00	\$	564,183.00	\$	541,482.75	\$	693,465.70
TOTAL OF TIME BID: (Calendar Days)					111		85		85		30		40		80		100		190
TOTAL OF CALENDAR DAYS x \$1,000 (B):				\$	111,000.00	\$	85,000.00	\$	85,000.00	\$	30,000.00	\$	40,000.00	\$	80,000.00	\$	100,000.00	\$	190,000.00
(A) + (B) = TOTAL BID:				\$	693,096.00	\$	781,021.20	\$	550,964.50	\$	470,321.10	\$	369,917.00	\$	644,183.00	\$	641,482.75	\$	883,465.70



#R21

William M. Dyer
Real Estate Manager
16051 Addison Road,
Suite 220
Addison, Texas 75001

Main: 972-392-4850
Direct: 972-392-4856
Fax: 972-788-9334
bill.dyer@staubach.com

Memorandum

To: Mark Acevedo

From: Bill Dyer

CC: Joel Jenkinson

Date: 10/8/2008

Re: United Community Bank, N.A. requests the Town's consideration to execute an estoppel and non-disturbance agreement relating to MSF Properties III, LLC's acquisition of executive hangar condominium leasehold interests at Addison Airport

United Community Bank, N.A. (the "Bank") is asking the Town of Addison to consider and authorize the City Manager to execute and deliver an estoppel and non-disturbance agreement (the "Estoppel") in favor of the Bank to be substantially in the form as attached hereto as Exhibit "A." The Estoppel relates to a loan the Bank intends to make to MSF Properties III, LLC for the specific purpose of acquiring 18 executive hangar condominium units and related sub-leasehold interests from EHOAA, Inc., at Addison Airport.

Airport Management recommends the Town give its consent and authorize the City Manager to execute the proposed Estoppel requested by the Bank, subject to the City Attorney's review of the final executable agreement.

Background Information:

On May 27, 2008, the Town entered into a ground lease agreement with EHOAA, Inc., a Texas non-profit corporation ("EHOAA") formed pursuant to the Texas Condominium Act. EHOAA is currently building 23 executive condominium hangars on 3.554 acres of land at Addison Airport (the "Leased Premises"). Construction has already commenced on this project, which is on schedule to be completed in June 2009. MSF Properties III, LLC is a Texas limited liability company ("MSF"), which is related to MSF Properties II, LLC,

developer for EHOAA, Inc. MSF is wholly owned by Plano- based McRight-Smith Companies.

MSF is purchasing 18 executive hangar units pursuant to the Ground Lease and EHOAA's Condominium Declaration (the "Declaration"), both of which have been recorded in the Dallas County Deed Records as Instrument #20080201533 and #20080201546, respectively.

Pursuant to the Ground Lease, EHOAA or any unit owner may sell, assign or otherwise convey any unit of the project without the Town's prior consent provided such conveyance is strictly in accordance with the Ground Lease and the Declaration. Furthermore, a unit owner may create a condominium leasehold mortgage for the purpose of financing its acquisition of the unit without the Town's prior consent provided such leasehold mortgage is created pursuant to the Ground Lease and the Declaration. Accordingly, and as provided for in Section 9.B.2-4 of the Ground Lease, the Town agrees to execute and deliver to any proposed leasehold mortgagee, or lender, an estoppel or non-disturbance agreement wherein the Town agrees to (1) recognize the mortgagee's lien position, which is subordinate to the Ground Lease and Declaration; (2) recognize the mortgagee as the owner of a condominium leasehold unit in the event of foreclosure or transfer in lieu of foreclosure; and (3) give the mortgagee notice at the same time the Town gives notice to EHOAA of any default under the Ground Lease.

United Community Bank, N.A. intends to make a loan to MSF Properties, III LLC, which loan in the amount of Two Million Eight Hundred Twelve Thousand Five Hundred and No/100 (\$2,812,500.00) to allow MSF to acquire from EHOAA the leasehold condominium interest identified in the Estoppel and to construct the building improvements on the leasehold property, which loan is to be in accordance with Section 9.B of the Ground Lease and the Declaration.

Recommendation

Generally, the Airport favors the creation of ground leasehold mortgages at the Airport because they help to promote development and economic growth at the Airport. It is reasonable to expect the lender to require certain assurances from the Town as the Landlord, so the lender will be compelled to make such loans. These assurances are typically set forth and agreed to by both parties in the form of a non-disturbance agreement similar to that proposed here by the Bank.

Airport Management recommends the Town give its consent and authorize the City Manager to execute the proposed Estoppel requested by the Bank, subject to the City Attorney's review of the final executable agreement, which is to be substantially in the form of Exhibit "A" attached hereto.

EXHIBIT "A"

SAMPLE BANK ESTOPPEL AGREEMENT FORM

On Bank Letterhead

_____, _____

Town of Addison
P.O. Box 9010
Addison, Texas 75001-9010

RE: Ground Lease dated May 27, 2008 (the "Ground Lease"), by and among the Town of Addison, Texas, a home-rule municipality (the "City"), as Landlord, and EHOAA, Inc., a Texas non-profit corporation formed pursuant to the Texas Uniform Condominium Act dba Executive Hangar Owners Association of Addison ("EHOAA" or "Tenant"), as Tenant; the said Ground Lease (the Ground Lease having been filed or record as Instrument #20080201533 in the Official Public Records of Dallas County, Texas) and the EHOAA Leasehold Condominium Declaration (the "Declaration," the same having been filed of record as Instrument #20080201546 in the Official Public Records of Dallas County, Texas), by which Ground Lease Landlord leases to EHOAA certain real property located at Addison Airport in Dallas County, Texas (which real property is referred to in the Ground Lease as the "Leased Premises" and so called herein).

Ladies and Gentlemen:

As set forth in Section 5.A. and in other provisions of the Ground Lease, Tenant intends to construct twenty-three (23) non-residential aircraft hangar units (each a "Unit" and collectively the "Units") within the Leased Premises and to operate therein and thereon a condominium leasehold regime as generally described in the Ground Lease and as set forth in the Declaration. Tenant further intends to convey the Units for individual Unit ownership, subject to the terms, conditions, and provisions of the Ground Lease.

In accordance with the Ground Lease, MSF Properties III, LLC, a Texas limited liability company ("MSF") desires to acquire from Tenant a leasehold condominium interest in eighteen (18) of the individual Units (together with a leasehold condominium interest in the common elements of the leasehold condominium regime). Those eighteen (18) Units are identified and described as Unit(s) 4A (R4-11), 4B (R4-13), 4C (R4-15), 4D (R4-17), 4E (R4-19), 4F (R4-21) 2B (R4-14), 2C (R4-16), 2E (R4-20), 5B (R6-25), 5C (R6-27), 5D (R6-29), 5E (R6-31), 5F (R6-33), 3B (R6-24), 3C (R6-26), 3D (R6-28), 3E (R6-30), and are shown on the depiction of the Units on the Leased Property attached hereto as Exhibit A (collectively, the "MSF Units"). The leasehold condominium interest to be conveyed by Tenant to MSF in each Unit is or will be reflected in a separate,

individual sublease for each of the MSF Units (each a "Sublease") and will be made in accordance with the Ground Lease (including without limitation, Section 9.B.1. thereof).

United Community Bank, N.A. (the "Bank") intends to make a loan to **MSF Properties II, LLC**, a Texas limited liability company ("MSF"), which loan in the amount of Two Million Eight Hundred Twelve Thousand Five Hundred and No/100 Dollars (\$2,812,500.00) (the "Loan") in order to allow MSF to acquire from Tenant a leasehold condominium interest in the MSF Units and to fund and pay for the costs to construct the Building Improvements, as the term "Building Improvements" is defined in the Ground Lease. The Loan will be secured by a lien against the condominium leasehold interests in Unit(s) 4A (R4-11), 4B (R4-13), 4C (R4-15), 4D (R4-17), 4E (R4-19), 4F (R4-21) 2B (R4-14), 2C (R4-16), 2E (R4-20), 5B (R6-25), 5C (R6-27), 5D (R6-29), 5E (R6-31), 5F (R6-33), 3B (R6-24), 3C (R6-26), 3D (R6-28), 3E (R6-30), together with its/their respective common interests in the Leased Premises (which interest were created pursuant to individual Subleases), pursuant to a certain leasehold deed of trust (the "Leasehold Deed of Trust") to be executed by MSF to Gary D. Lewis, as Trustee for the benefit of Bank, which Leasehold Deed of Trust is and shall be subject to the provisions of the Declaration and the Ground Lease, together with Landlord's lien (contractual and statutory) and other rights thereunder and all terms and conditions thereof, which Leasehold Deed of Trust shall be in substantially the form of the Leasehold Deed of Trust attached hereto. The Loan has been or will be made in accordance with the Ground Lease (including without limitation, Section 9.B.2. thereof). The Leasehold Deed of Trust and the Bank's interest therein and rights thereunder are subordinate and inferior in all respects to the Ground Lease and to the interests of Landlord therein and in the Leased Premises.

The Bank has advised MSF and Tenant that the Bank requires the written consent and acknowledgment of Landlord and Tenant to the execution by MSF of the above-described Leasehold Deed of Trust and the written acknowledgment and consent of the Landlord to the statements set forth in this letter.

In connection with this request, Bank acknowledges and takes notice of Tenant's duties and obligations under the Ground Lease to perform under a certain "Developer Participation Contract" by and between the Town of Addison and Tenant dated May 27, 2008, a true and correct copy of which is on file with the City Secretary of the Town of Addison, Texas and has been provided to Bank (the "Developer Participation Contract"), and that Tenant's breach by failure to comply with the terms, conditions and provision of the said Developer Participation Contract (beyond any applicable cure period as may be set forth in the Developer Participation Contract) is a default under the Ground Lease.

Therefore, by executing the enclosed copy of this letter and returning it to the undersigned, Landlord hereby specifically states as follows:

1. Landlord takes notice of the Leasehold Deed of Trust and the lien provided for therein being impressed solely against the condominium Unit subleasehold interests owned by MSF in the Leased Premises. Landlord agrees that a

conveyance of the condominium leasehold Unit interests to MSF by Tenant in accordance with the terms and provisions of the Ground Lease (including, without limitation, Section 9.B.1. thereof) is contemplated within Section 9.B.1. of the Ground Lease and does not require any further consent of Landlord. Landlord further agrees that a loan made in accordance with the terms and provisions of the Ground Lease (including, without limitation, Section 9.B.2. thereof) is contemplated within Section 9.B.2. of the Ground Lease, and if the Loan is made accordingly, the Loan provided by Bank to MSF will satisfy the requirements of Section 9.B.2. of the Ground Lease and does not require the consent of Landlord, and qualifies Bank for the provisions applicable to a leasehold condominium mortgagee set forth in Section 9.B.3 and Section 9.B.4. of the Ground Lease.

2. The Ground Lease has not been modified, altered or amended.
4. Landlord has no actual knowledge of the existence of any default by Tenant under the Ground Lease, or of any lien against the Leased Premises other than that created by the Ground Lease, any lien for taxes, or as may be otherwise created or provided by law.
5. Landlord hereby covenants and agrees that Landlord shall deliver to Bank written notice of any default by Tenant under the Ground Lease, simultaneously with sending such notice to Tenant, that no notice of default given to Tenant, and no exercise of any remedy by Landlord as a result of any such default, shall be effective unless such notice shall have been delivered to Bank. Landlord agrees that Bank shall have the right, but not the obligation, to cure any default by Tenant under the Ground Lease and Bank shall be afforded 15 days to cure after receipt of such notice or within any longer period of time specified in such notice.
6. For the purposes of this letter, any notice to Bank may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in United States mail, postage prepaid, registered, or certified mail, return receipt requested, addressed to Bank at the above-described address.
7. If Bank succeeds to the interest of MSF in and to the condominium Unit leasehold interests by means of foreclosure under the Leasehold Deed of Trust, by means of a transfer in lieu of such foreclosure, or by any other lawful means due to an event of default under the terms of the Loan secured by the Leasehold Deed of Trust, Landlord shall thereafter accept, recognize and treat Bank as the "Owner" under the Declaration and Ground Lease and Landlord shall continue to perform all of its obligations under the Ground Lease subject, however, to the terms and conditions of the Ground Lease. Bank may thereafter, without the written consent of Landlord, assign its condominium Unit leasehold right, title, and interest provided such assignment or other conveyance is in accordance with and made subject to TUCA, the Declaration, and the Ground Lease.

8. To the actual knowledge of Landlord no rent has been paid more than thirty (30) days in advance of its due date.
9. Pursuant to the Ground Lease, Tenant has possessory rights to the Leased Premises as set forth in the Ground Lease prior to the Commencement Date of the Ground Lease (as the term "Commencement Date" is defined in the Ground Lease) while construction of improvements on the Leased Premises is being prosecuted (the period of time between the Effective Date of the Ground Lease (as "Effective Date" is defined in the Ground Lease) and the Commencement Date is referred to in the Ground Lease as the "Preliminary Period"), and Landlord acknowledges and agrees that those possessory rights are able to be included within the rights conveyed by Tenant to MSF with respect to the condominium Unit leasehold interests, as well as to the Bank in the Leasehold Deed of Trust, and should Bank acquire title to MSF's condominium Unit leasehold interests during the Preliminary Period, Bank shall have the right to enter into the Lease Premises, subject to the provisions of the Ground Lease, to complete or cause to be completed the contemplated construction.

Very truly yours,
United Community Bank, N.A. (BANK)

By: _____
_____ (Name and Title)

Acknowledged and consented to this the _____ day of _____, 2008.

TOWN OF ADDISON, TEXAS
a Texas home rule municipality

By: _____

Name: Ron Whitehead

Its: City Manager

cc: Real Estate Manager
Addison Airport
16051 Addison Road, Suite 220
Addison, Texas 75001