



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

AND / OR

WORK SESSION OF THE CITY COUNCIL

5:00 PM

JULY 13, 2010

TOWN HALL

5300 BELT LINE ROAD, DALLAS, TX 75254

WORK SESSION

Item Discussion regarding Leadership Metrocrest.
#WS1 -

Item Discussion regarding Tri-cities Public Safety Radio System.
#WS2 -

Item Discussion regarding various marketing, special event and
#WS3 - sponsorship topics.

REGULAR MEETING

Pledge of Allegiance

Item #R1- Consideration of Old Business

Introduction of Employees

Discussion of Events/Meetings

Item #R2- Consent Agenda.

#2a- Approval of the Minutes for:

5/11/2010 Regular City Council Meeting and Work Session

5/25/2010 Regular City Council Meeting and Work Session

6/8/2010 Regular City Council Meeting and Work Session

#2b- Approval of an interlocal agreement with North Central Texas Council of Governments (NCTCOG) for the most current digital aerial photography.

#2c- Approval of Change Order No. 1 in the amount of \$32,600.50 to install additional traffic signal equipment at several signalized traffic intersections as part of the Town Wide Signal Upgrade Project and approving final payment to Durable Specialties, Inc. in the amount of \$44,441.77 for the traffic signal upgrade project.

#2d- Approval of a contract with RCC Consultants, Inc., to study public safety communications system for Addison, Farmers Branch and Carrollton.

#2e- Approval of a resolution authorizing the City Manager to enter into an interlocal agreement with the cities of Carrollton and Farmers Branch for the reimbursement of a proportionate share of the cost of the radio communications needs assessment agreement with RCC Consultants, Inc.

#2f- Approval of a resolution confirming and ratifying the execution by the City Manager and Deputy City Manager of an "Application for Amendment to a Water Right" filed with the Texas Commission on Environmental Quality in November 2009.

Item #R3 PUBLIC HEARING on the Town of Addison's Annual
- Budget for the Fiscal Year ending September 30, 2011.

Item #R4 PUBLIC HEARING regarding possible changes to the
- Town Charter as recommended by the Charter Review Commission.

Item #R5 Presentation of the 2011 calendar concept.
-

Item #R6 Presentation, discussion and consideration of approval of
- an ordinance amending Chapter 62, Signs, of the Code of Ordinances, of the Town of Addison by providing for a Meritorious Exception to Division 4, Detached Signs, Section 62-186, Monument Signs, in order to provide for a monument sign that exceeds the height and area

requirements for a monument sign, located at 13900 block of Marsh Lane/3700 block of Vitruvian Way, on application from UDR, represented by Mr. Tom Lamberth.

Attachment(s):

1. Drawing of Vitruvian Park Monument sign

Recommendation:

Staff recommends approval.

Item #R7 Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances of the Town of Addison by providing for a Meritorious Exception to Division 4, Detached Signs, Sections 62-182, Premises signs, and Section 62-186, Monument Signs, in order to provide for an off-premises monument sign that exceeds the height and area requirements for monument signs, located at 3700-3800 Belt Line Road, on application from the Addison Town Center shopping center, represented by Mr. Bernard Shaw of Cencor Realty.

Attachment(s):

1. Drawings for Monument Sign

Recommendation:

Staff recommends denial of the request for the sign to be located within the Town's public right-of-way.

Staff recommends approval of the off-premises, multi-tenant monument sign on the Ashton Woods property.

Staff recommends denial of the monument sign proposed, as it exceeds the height and square footage allowed for multi-tenant monument signs.

Item #R8 Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances, of the Town of Addison by providing for a Meritorious Exception to Division 4, Detached Signs, Section 62-185, Specifications, in order to provide for 63 additional square feet of sign area to an existing pole sign located at 3700-3800 Belt Line Road, on application from the Addison Town Center shopping center, represented by Mr. Bernard Shaw of Cencor Realty.

Attachment(s):

1. Town Center Pole Sign

Recommendation:

Staff recommends approval.

Item #R9 PUBLIC HEARING Case 1601-SUP/ONCOR Electric Delivery Company. Public hearing, presentation, discussion and consideration of approval of an ordinance approving a Special Use Permit for an installation of a public utility (electric substation), either privately or publicly owned, located on .4388 acres of land just east of Inwood Road and south of Landmark Boulevard on application from ONCOR Electric Delivery Company, represented by Mr. Mark Housewright of Masterplan.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on June 24, 2010, voted to recommend approval of a Special Use Permit for an installation of a public utility, either privately or publicly owned, located on .4388 acres of land just east of Inwood Road and south of Landmark Boulevard., on application from ONCOR Electric Delivery Company represented by Mr. Mark Housewright of Masterplan, subject to no conditions.

Voting Aye: Arfsten, DeFrancisco, Doherty, Hewitt, Oliver, Wheeler, Wood Voting Nay: none Absent: none

Attachment(s):

1. docket map, staff report and commission findings

Item #R10 -

Presentation, discussion and consideration of approval of amendments and modifications to certain ground leases at Addison Airport between the Town, as landlord, and RR Investments, Inc. (d.b.a. Million Air FBO, Dallas), as tenant, including amendments related to proposed building improvements.

Attachment(s):

1. Airport Management Recommendation

Recommendation:

Staff recommends approval.

Item #R11 -

Presentation, discussion and consideration of approval of a Professional Services Agreement with Freese & Nichols, Inc., in an amount not to exceed \$97,500.00 for design services on the proposed 1.5 Million Gallon Elevated Storage Tank.

Attachment(s):

1. SECO Grant Feasibility Study

Recommendation:

Staff recommends approval.

Item #ES1 -

Closed (Executive) session of the Addison City Council pursuant to Section 551.072, Tex. Gov. Code, to deliberate the leases of certain real properties located within the

Town at Addison Airport, and pursuant to Section 551.087, Texas Government Code, to deliberate the offer of a financial or other incentive to a business prospect or business prospects that the City Council seeks to have locate, stay or expand in the territory of the Town of Addison and with which the City Council is conducting economic development negotiations.

Item
#R12 -

Consideration of any action regarding leases of certain real properties located within the Town at Addison Airport, and/or the offer of a financial or other incentive to a business prospect or business prospects that the City Council seeks to have locate, stay or expand in the territory of the Town of Addison and with which the City Council is conducting economic development negotiations.

Adjourn Meeting

Posted:

07/9/2010, Lea Dunn, 5:00PM

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.

Council Agenda Item: #WS1

AGENDA CAPTION:

Discussion regarding Leadership Metrocrest.

FINANCIAL IMPACT:

BACKGROUND:

N/A.

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #WS2

AGENDA CAPTION:

Discussion regarding Tri-cities Public Safety Radio System.

FINANCIAL IMPACT:

BACKGROUND:

N/A

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #WS3

AGENDA CAPTION:

Discussion regarding various marketing, special event and sponsorship topics.

FINANCIAL IMPACT:

Discussion only so no financial impact at this time.

BACKGROUND:

Staff would like to explore several marketing, special event and sponsorship strategies as it relates to the following:

- 1) Super Bowl 2011 promotions and events
- 2) Ways to expand the role of PPI Marketing to benefit to the community
- 3) Sponsorship opportunities for other Town of Addison assets

RECOMMENDATION:

COUNCIL GOALS:

Provide Superior Public Safety, Customer Service, Social and Health Services to the Community, Conduct the Business of the Town in a Fiscally Responsible Manner, Continue to Attract Visitors, Provide Quality Leisure Opportunities

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R 2a

AGENDA CAPTION:

Approval of the Minutes for:

5/11/2010 Regular City Council Meeting and Work Session

5/25/2010 Regular City Council Meeting and Work Session

6/8/2010 Regular City Council Meeting and Work Session

FINANCIAL IMPACT:

NA

BACKGROUND:

NA

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

- [05-11-2010 Minutes for Regular Meeting and Work Session](#)
- [05-25-2010 Minutes for Regular Meeting and Work Session](#)
- [06-08-2010 Minutes for Regular Meeting and Work Session](#)

Type:

Backup Material
Backup Material
Backup Material

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

May 11, 2010
6:30 PM - Town Hall
5300 Belt Line Road, Dallas, TX 75254
Upstairs Conference Room

Council Members Present:

Braun, Chow, Clemens, Daseke, Lay, Mellow, Noble

Absent:

None

Work Session

Item #WS1 - Presentation and discussion of Special Event Sponsorship and of a proposed Agreement for Services with PPI Marketing to provide sponsorship, marketing, promotional and related services to the Town.

Barbara Kovacevich introduced Kris Kumnock and Audra Staton with PPI who updated Council.

There was no action taken.

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

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

May 11, 2010
6:30 PM - Town Hall
5300 Belt Line Road, Dallas, TX 75254
Work Session started at 6:30PM. Regular Meeting started at 7:30PM. Executive

Session convened at 8:38PM. Executive Session ended at 10:02PM.

Council Members Present:

Braun, Chow, Clemens, Daseke, Lay, Mellow, Noble

Absent:

None

REGULAR MEETING

Item #R1 - Consideration of Old Business

The following employees were introduced:

Clyde Sanders, Fire Department; Lisa Khaleghipour, HR Department and Robert Coleman, General Services.

There was no action taken.

Item #R2 - Consent Agenda

#2a - Approval of a contract with PPI Marketing to provide sponsorship, marketing, promotional and related services to the Town of Addison, subject to the final review and approval of the City Manager and the City Attorney.

A motion to Approve was made by Councilmember Roger Mellow.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Braun, Chow, Clemens, Daseke, Lay, Mellow, Noble

Voting Nay: None

#2b - Approval of the purchase of police vehicle emergency lighting equipment for newly purchased patrol vehicles in the amount of \$36,654.00.

A motion to Approve was made by Councilmember Roger Mellow.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Braun, Chow, Clemens, Daseke, Lay, Mellow, Noble

Voting Nay: None

#2c - Approval of the award of a contract in the amount of \$126,058.22 to Jim Bowman Construction Co. L. P. for Miscellaneous Pavement Repairs to various streets.

A motion to Approve was made by Councilmember Roger Mellow.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Braun, Chow, Clemens, Daseke, Lay, Mellow, Noble

Voting Nay: None

#2d - Approval of an ordinance amending Code of Ordinances by updating and amending Chapter 78, Traffic and Vehicles, Article II, Division 3 (Traffic Control Signs, Signals, Devices and Markings), Section 78-79 (Location of Signals), Section 78-80 (Stop Signs) and Section 78-81 (Yield Signs).

A motion to Approve was made by Councilmember Roger Mellow.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Braun, Chow, Clemens, Daseke, Lay, Mellow, Noble

Voting Nay: None

Item #R3 - Presentation of Certificates of Election and Administration of Oath of Office for newly elected Council members. The new Council members for 2010-2012 are: Kimberly Lay, Roger S. Mellow and Neil Resnik

Mayor Chow recognized Council Member Tom Braun for his service to the Town.

Mayor Chow presented Certificates of Election and administered the Oath of Office for newly elected Council Members Kimberly Lay, Roger S. Mellow and Neil Resnik.

There was no action taken.

Item #R4 - Presentation, discussion and approval of appointment of Mayor Pro Tempore and Deputy Mayor Pro Tempore.

Blake Clemens was appointed Deputy Mayor Pro Tempore and Don Daseke was appointed Mayor Pro Tempore.

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Roger Mellow.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R5 - Presentation of Wipe Out Kids Cancer (WOKC) donations raised at the 2010 Raul Acevedo Bowl-A-Thon.

Angie Turner with the EAC (Employee Action Committee) presented a check to Evelyn Costolo with Wipe Out Kids Cancer (WOKC) for donations raised at the 2010 Raul Acevedo Bowl-A-Thon.

There was no action taken.

Item #R6 - PUBLIC HEARING Case 1596-SUP/Taco Diner. Public hearing, discussion

and consideration of approval of an ordinance amending an existing zoning Special Use Permit for a restaurant and an existing zoning Special Use Permit for the sale of alcoholic beverages for on-premises consumption, on property located at 4933 Belt Line Road, on application from M Crowd Restaurant, represented by Mr. Lance E. Raney of Droese Raney Architecture.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on April 22, 2010, voted to recommend approval of the 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, subject to no conditions.

Council Member Don Daseke recused himself from this item.

Mayor Chow opened the meeting as a Public Hearing.
No one spoke.
Mayor Chow closed the meeting as a Public Hearing.

A motion to Approve was made by Councilmember Roger Mellow.
The motion was seconded by Councilmember Kimberly Lay.
The motion result was: Passed
Voting Aye: Chow, Clemens, Lay, Mellow, Noble, Resnik
Voting Nay: None
Abstain: Daseke

Item #ES1 - Closed (Executive) session of the Addison City Council pursuant to Section 551.074, Texas Government Code, to deliberate the evaluation of the City Manager.

Item #R7 - Discussion and consideration of a Resolution approving compensation for the City Manager.

A 3% increase to the City Manager's base salary was approved retroactive to January 1, 2010.

A motion to Approve was made by Councilmember Roger Mellow.
The motion was seconded by Councilmember Don Daseke.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

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

May 25, 2010
6:30 PM - Town Hall
5300 Belt Line Road, Dallas, TX 75254
Upstairs Conference Room

Council Members Present:

Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Absent:

None

Work Session

Item #WS1 - Bunny Summerlin, Executive Director, Metrocrest Social Services, led a discussion and gave a presentation.

There was no action taken.

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

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

May 25, 2010
6:30 PM - Town Hall
5300 Belt Line Road, Dallas, TX 75254
Posted: 5/21/2010, 5:00 PM Lea Dunn City Secretary - Starting Times: Work Session
6:30PM, Regular Meeting 7:30PM.

Council Members Present:

Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Absent:

None

REGULAR MEETING

Item #R1 - Consideration of Old Business

Item #R2 - Consent Agenda

#2a - Minutes for approval: March 23, 2010 Work Session and Regular Meeting April 13, 2010 Regular Meeting April 27, 2010 Work Session and Regular Meeting

Minutes for approval:

March 23, 2010 Work Session and Regular Meeting - approved

April 13, 2010 Regular Meeting - approved with corrections

April 27, 2010 Work Session and Regular Meeting - approved

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Don Daseke.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2b - Consideration of a Resolution re-appointing Mr. Ray Noah to represent the Town of Addison on the Dallas Area Rapid Transit (DART) Board of Directors.

Mr. Ray Noah was re-appointed to represent the Town of Addison on the Dallas Area Rapid Transit (DART) Board of Directors.

Resolution R10-008 was approved.

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Don Daseke.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2c - Consideration of a Resolution re-appointing John Murphy, Council Member, City of Richardson, as the Town's representative to the Regional Transportation Council, effective June 1, 2010 to May 31, 2012.

John Murphy, Council Member, City of Richardson, was re-appointed the Town's representative to the Regional Transit Council.

Resolution R10-009 was approved.

A motion to Approve was made by Mayor Joe Chow.
The motion was seconded by Councilmember Don Daseke.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

#2d - Approval of an ordinance of the Town of Addison, Texas providing for the abandonment without warranty of the Town's interest in a portion of Celestial Road, as described herein, near the intersection of Celestial Road and Winnwood Road within the Town; authorizing as may be necessary a conveyance of such abandoned portion to the abutting property owner; providing an effective date.

A motion to Approve was made by Mayor Joe Chow.
The motion was seconded by Councilmember Don Daseke.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

#2e - Approval of a contract with TBG Partners totaling \$27,235 for landscape architecture design services relating to the demonstration garden proposed for the Surveyor Blvd. Elevated Storage Tank site.

A motion to Approve was made by Mayor Joe Chow.
The motion was seconded by Councilmember Don Daseke.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R3 - Approval of an agreement between the Town of Addison and Metrocrest Social Services in the amount of \$50,000 regarding the provision of services by Metrocrest Social Services to the Town.

A motion to Approve was made by Councilmember Kimberly Lay.
The motion was seconded by Councilmember Don Daseke.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R4 - Chief Ron Davis presented a Police department Certificate of Merit award to Mike Hardin, Police Officer and Mike Meharg, Detention Supervisor.

There was no action taken.

Item #R5 - Jennifer Hewitt was re-appointed to the Planning and Zoning Commission.

A motion to Approve was made by Councilmember Blake Clemens.
The motion was seconded by Councilmember Kimberly Lay.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R6 - Presentation of the Charter Review Commission's Final Report by Ms. Linda Groce, Charter Review Commission Chairman.

There was no action taken.

Item #R7 - Consideration and approval authorizing the City Manager to enter into a Professional Services Agreement with Halff Associates, Inc. in the amount not to exceed \$159,780 for engineering design and general construction services for the widening of Spring Valley Road from Woodway Drive to the east limit of the DISD Loos property.

A motion to Approve was made by Councilmember Roger Mellow.
The motion was seconded by Councilmember Bianca Noble.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R8 - Approval to apply for the Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY 2010.

Resolution R10-010 was approved.
A motion to Approve was made by Councilmember Don Daseke.
The motion was seconded by Councilmember Blake Clemens.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R9 - Randy Moravec, presented the 2nd Quarter Financial Review.

There was no action taken.

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
WORK SESSION

June 8, 2010
6:30 PM - Town Hall
5300 Belt Line Road, Dallas, TX 75254
Upstairs Conference Room

Council Members Present:

Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Absent:

None

Work Session

Item #WS1 - Presentation and discussion regarding the Town's participation in the Texas Comptroller's Leadership Circle Program.

Work Session Item #WS2 was presented first, followed by #WS1.

There was no action taken.

Item #WS2 - Presentation and discussion of the 2010 America In Bloom "Package Your Community for Success" Beautification Program.

There was no action taken.

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
REGULAR MEETING

June 8, 2010

6:30 PM - Town Hall

5300 Belt Line Road, Dallas, TX 75254

Work Session started at 6:30PM Regular Session started at 7:30PM

Posted:06/04/2010, Lea Dunn, 5:00PM

Council Members Present:

Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Absent:

None

REGULAR MEETING

Item #R1 - Consideration of Old Business

The following employees were introduced:

Clay Barnett with the Public Works Department, Jerry Lewandowski with the Financial Services Department, Christopher McMurtry with the Special Events Department and Jared Schreher with the Fire Department.

There was no action taken.

Item #R2 - Consent Agenda

#2a - Consideration and approval to award a bid for an annual service agreement in an amount estimated to be \$65,000.00, with the ability to review for four additional one-year terms at the same terms and conditions, to Illumination by Greenlee to provide for parks outdoor lighting maintenance.

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2b - Consideration and approval of the purchase of Special Response Team body armor in an amount not to exceed \$29,000.00.

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2c - FINAL PLAT/Lot 1 and Lot 2, Addison Water Station addition. Requesting approval of a final plat for two lots on 2.903 acres, located at the northeast and southeast corners of Arapaho Road and Surveyor Boulevard, on application from the Town of Addison, represented by Mr. Clay Barnett.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on May 27, 2010, voted to recommend approval of the request for Final Plat approval for Lots 1 and 2, Addison Water Station Addition, subject to no conditions.

Voting Aye: Arfsten, DeFrancisco, Doherty, Oliver, Wheeler Voting Nay: none Absent: Hewitt, Wood

Item #2c was pulled for clarification by Mayor Chow.

Mayor Chow requested the "Staff Report Recommendation" be corrected to show the "Loos Field Addition" as the "Addison Water Station."

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R3 - Presentation by Non-Profit Organizations requesting funding for Fiscal Year 2011 for: Dance Council; Richardson Symphony Orchestra; Second Thought Theatre; WaterTower Theatre; Communities in Schools Dallas, Inc.; CONTACT Crisis Line; The Family Place; LaunchAbility (formerly Special Care and Career Services); Metrocrest Chamber of Commerce; Metrocrest Family Medical Clinic; Metrocrest Social Services and Senior Adult Services; United Basketball League - Texas Wranglers

All Non-Profit Organizations made presentations to Council.

There was no action taken.

Item #R4 - Public Hearing on the Town of Addison's Annual Budget for the Fiscal Year ending September 30, 2011.

The Mayor opened the Meeting as a Public Hearing.

The following residents spoke:

Fran Powell, 14796 Lochinvar
Bill Perry, 3837 Azure

The Mayor closed the Meeting as a Public Hearing.

There was no action taken.

Item #R5 - Public Hearing regarding the proposed Charter Review Commission's Final Report.

The Mayor opened the Meeting as a Public Hearing.

The following people spoke:

Larry McCallum
Greg Wansmos
Scott Vansome
Tim Reeve
Andy Segal
John Le

Residents:

Fran Powell, 14796 Lochinvar
Bill Perry, 3837 Azure
Jeff Parnell, 4038 Rive

The Mayor closed the Meeting as a Public Hearing.

There was no action taken.

Item #R6 - PUBLIC HEARING Case 1598-SUP/Texadelphia. Consideration of approval of a Special Use permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5000 Belt Line Road, Suite 310, on application from Mr. John Le, of John Le, Advisors, LLC.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on May 27, 2010, voted to recommend approval of a Special Use Permit for a restaurant, and a Special use Permit for the sale of beverages for on-premises consumption only, subject to the following conditions:-A fire sprinkler system shall be installed in the space prior to the issuance of a Certificate of Occupancy.-The applicant shall not have any signs on the exterior of the restaurant that contain the term "bar", "saloon", or other alcohol-related terms.

Voting Aye: Arfsten, DeFrancisco, Doherty, Oliver, Wheeler Voting Nay: none Absent: Hewitt, Wood

The Mayor opened the Meeting as a Public Hearing. No one spoke. The Mayor closed the Meeting as a Public Hearing.

Carmen Moran noted a correction on the COMMISSION FINDINGS. Commissioner Alan Wood should be shown as Present.

Ordinance 010-013 was approved.

A motion to Approve w/ Conditions was made by Councilmember Kimberly Lay.

The motion was seconded by Councilmember Bianca Noble.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R7 - PUBLIC HEARING Case 1599-SUP/14801 Quorum. Consideration of approval of a Special Use Permit for a restaurant, located at 14801 Quorum Drive, on application from JP- Quorum LP, represented by Mr. David Margetts.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on May 27, 2010, voted to recommend approval of a Special Use Permit for a restaurant, on application from 14801 Quorum Deli, subject to no conditions.

Voting Aye: Arfsten, DeFrancisco, Doherty, Oliver, Wheeler Voting Nay: none Absent: Hewitt, Wood

Mayor Chow opened the Meeting as a Public Hearing. No one spoke. Mayor Chow closed the Meeting as a Public Hearing.

Carmen Moran noted a correction on the COMMISSION FINDINGS. Commissioner Alan Wood should be shown as Present.

Ordinance 010-014 was approved.

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R8 - PUBLIC HEARING Case 1597-SUP/Tutti Frutti Yogurt. Consideration of approval of a Special Use Permit for a restaurant (yogurt shop), located in the Village on the Parkway shopping center at 5100 Belt Line Road, Suite 800, on application from Mr. Kim Pham, represented by James Harris of HARC Design Group.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on May 27, 2010, voted to recommend approval of a Special Use Permit for a restaurant, on application from Tutti Frutti Yogurt, subject to no conditions.

Voting Aye: Arfsten, DeFrancisco, Doherty, Oliver, Wheeler Voting Nay: none Absent: Hewitt, Wood

Mayor Chow opened the Meeting as a Public Hearing. No one spoke. Mayor Chow closed the meeting as a Public Hearing.

Mr. Kim Pham should have been written as Ms. Kim Pham.

Ordinance 010-015 was approved.

A motion to Approve was made by Councilmember Blake Clemens.
The motion was seconded by Councilmember Don Daseke.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R9 - Presentation, discussion and consideration of approval of an Ordinance amending the Town's Code of Ordinances by adding thereto a new Chapter 72 establishing regulations regarding illicit discharges to the storm water drainage system, subject to final review by the City Attorney.

Ordinance 010-016 was approved.

A motion to Approve w/ Conditions was made by Councilmember Don Daseke.
The motion was seconded by Councilmember Blake Clemens.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R10 - Presentation, discussion, and consideration of approval of an Ordinance amending the Town's Code of Ordinances by adding thereto a new Chapter 71 regarding erosion control, subject to final review by City Attorney.

Ordinance 010-017 was approved.

A motion to Approve w/ Conditions was made by Councilmember Don Daseke.
The motion was seconded by Councilmember Neil Resnik.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Attest:

Mayor-Joe Chow

City Secretary-Lea Dunn

Council Agenda Item: #R 2b

AGENDA CAPTION:

Approval of an interlocal agreement with North Central Texas Council of Governments (NCTCOG) for the most current digital aerial photography.

FINANCIAL IMPACT:

Anticipated cost will be \$1,250.52 and will be funded through the Utility Fund.

BACKGROUND:

The last updated aerial maps from NCTCOG are from 2007. In order to have access to the newly updated aerial photographs, the Town must enter into an interlocal agreement with NCTCOG. The 2010 update will allow the Town of Addison to have new aerial photography for our GIS (Geographic Information System) maps and allow us to use them for planning, engineering, public safety and municipal management purposes.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Promote Quality Transportation Services

ATTACHMENTS:

Description:

Type:

Council Agenda Item: #R 2c

AGENDA CAPTION:

Approval of Change Order No. 1 in the amount of \$32,600.50 to install additional traffic signal equipment at several signalized traffic intersections as part of the Town Wide Signal Upgrade Project and approving final payment to Durable Specialties, Inc. in the amount of \$44,441.77 for the traffic signal upgrade project.

FINANCIAL IMPACT:

Budgeted Amount: NCTCOG Project Federal Participation
\$465,129

SH 121 Subaccount - TxDOT \$324,313

Local Participation \$155,043

Total \$944,172

Dallas County Project (upgrade signals on Midway road only)

Dallas County Participation \$196,000

Local Participation \$196,000

Total \$392,000

Total Signalization Project funding \$1,336,180

LED lights (allocated by RTR funds) \$56,910.00

LED light monies spent \$21,740.40

Available funds \$35,169.60

Funds are available for this change order in the monies allocated for LED's that were not spent. The Project Manager is Nancy S. Cline, P.E.

BACKGROUND:

The complete project includes upgrading traffic signal controllers (new equipment) progression timing, video detection, and the creation of a traffic signal communication system. These upgrades standardize our traffic signal system hardware, allow for remote management of traffic signal operations from a central control center, and update all traffic signal timing plans.

On February 24, 2009, the Town approved the purchase of traffic signal equipment from Paradigm. On March 10, 2009, the Town authorized a contract with Durable Specialties for the construction of the traffic signal system. Change Order No. 1 authorizes the purchase of eleven additional traffic signal controllers, relocates a signal controller at Belt Line/Surveyor and constructs a retaining wall at Midway/Proton. The final payment of \$44,441.77 includes payment for last invoice, change order and previously held retainages.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Promote Quality Transportation Services

ATTACHMENTS:

Description:

[Change Order Signals 1](#)

Type:

Backup Material



TOWN OF ADDISON CHANGE ORDER FORM

Change Order Number 1
 Project Name: Traffic Signal System Improvements
 Project Number(s): 2005-04
 Project Manager: Nancy Cline
 Date: 6/30/2010

A. INTENT OF CHANGE ORDER

Fund the purchase of additional traffic signal controllers and modify equipment placement at two intersecitons.

B. DESCRIPTION OF CHANGE

Purchase 11 additional traffic signal controllers, relocate signal controller and Belt Line/Surveyor and construct a retaining wall at Midway/Proton.

C. REASON FOR CHANGE

Additional controllers were not in scope of original project, signal cabinet at Belt Line/Surveyor larger than existing cabinet and too large for existing location, and retaining wall at Midway/Proton also necessary for placement of larger cabinet

D. EFFECT OF CHANGE ON CONTRACT PRICE

This change order will have the following effect on the cost of this project:

Item Number/Description	Quantity	Amount
Additions		
11 controllers- \$1660	11.00	\$18,260.00
Controller cabinet relocation - \$8840	1.00	\$8,840.00
Retaining wall - \$5500	1.00	\$5,500.00
Deletions		
Total	13.00	\$32,600.00
Original Contract Amount		\$367,900.00
Total Contract Amount (Including Previous Change Orders)		\$367,900.00
Amount of this Change Order		\$32,600.00
Revised Contract Amount		\$400,500.00
Total % Increase/Decrease (Including Previous Change Orders)		8.86%

E. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change will add the following time to the contract:

Original Contract Time (in days)	0
Total Contract Time Including Previous Change Orders (in days)	0
Increase/Decrease in Time from this Change Order (in days)	
Revised Contract Time (in days)	0

F. AGREEMENT

By the signatures below, duly authorized agent of the Town of Addison, Texas and Durable Specialties, Inc. (insert company name) do hereby agree to append this Change Order Number 1 to the original contract between themselves, dated March 10, 2009 (insert original contract date).

Company Name

Address

City State Zip

Phone Fax

Project Manager

Contractor's Signature

Department Director

Design Engineer's Signature

Fin. & Strat. Services Representative

Design Engineer's Signature

City Manager

Copies: Contractor (2)
Department
City Secretary
Strategic Services Manager

Council Agenda: Agenda Date _____
(if applicable) Item Number _____
Approved _____

Council Agenda Item: #R 2d

AGENDA CAPTION:

Approval of a contract with RCC Consultants, Inc., to study public safety communications system for Addison, Farmers Branch and Carrollton.

FINANCIAL IMPACT:

In order to expedite the needs assessment process for all three cities Addison has agreed to contract with RCC Consultants Inc., and pay the initial cost of all the work performed on behalf of Addison, Carrollton and Farmers Branch (\$170,869.22). Addison will then bill Carrollton and Farmers Branch for each of those cities' share of the work performed. Each city is therefore responsible for one-third of the cost of the work performed, which is approximately \$60,000.

BACKGROUND:

In 2001 the cities of Addison, Carrollton and Farmers Branch entered into an agreement entitled the "Metrocrest Radio System Interlocal Cooperation Agreement" (the Tri-Cities Consortium). The agreement allowed the three cities to fund and operate a Motorola four-site nine-channel 800Mhz Trunked Simulcast Public Safety Radio System. The Simulcast system has performed very well since it began operation. The ongoing maintenance cost and management of the system which all three cities participate in has likewise worked very for all concerned. However, the three cities have been notified of two significant changes that will impact the system; the phasing out of technical and replacement parts support by Motorola (our radio equipment provider) and the Federal Governments P25 interoperability initiative. The implication for the Tri-Cities Consortium is that before 2014 the Consortium members must decide to either retain or replace the existing system. To assist with the decision making process the Consortium is recommending we hire a public safety communications consultant.

Current Communications System

In 2009 the Consortium was advised that Motorola will no longer support our existing radio system beginning in 2014. Replacing the

current system is estimated at \$13 to \$15 million divided three ways; however, there are many options that are available that could significantly reduce the cost of an outright replacement. Some of these options include keeping the existing system, leasing radio space from another agency or expanding the number of cities who own and operate the radio system, thus lowering the purchase and maintenance costs. \

Impact of P25 Initiative

Another factor is the Federal Government's P25 Initiative. Following the communications problems that plagued emergency responders during the 9-1-1 Twin Towers attack, the Federal Government is focused on developing standards that allow radios and other components to interoperate regardless of manufacturer, enabling emergency responders to exchange critical communications. Known as the P25 Initiative, the goal of P25 is to specify formal standards for interfaces between the various components of a land mobile radio (LMR) system commonly used by emergency responders in portable handheld and mobile vehicle-mounted devices. Our current radio system does not meet the standards of a P25 compliant system and as such, in the event of a wide-scale disaster or emergency, we could face significant interoperability issues.

Hiring a Consultant

To ensure all viable options are explored, the Tri-Cities Consortium members recommend we hire a consultant that specializes in public safety communications systems. A competent consulting group can evaluate our communications needs and provide options as to what solution(s) can best meet our needs. The consulting group we are recommending is RCC Consultants who assisted us with our last radio replacement process. The scope of work which RCC has proposed will include a needs assessment, development of conceptual system alternatives, budgetary cost estimates and a Master Plan.

To facilitate this process the Consortium members have elected to have one city, Addison, be designated as the contact point for RCC. To this end, our staff has negotiated a contract with RCC whereby Addison is the signatory on the contract. RCC will bill

Addison as they reach specific benchmarks in the assessment process. Addison will then bill Farmers Branch and Carrollton for their share of the work performed. Both City Councils of Farmers Branch and Carrollton have passed interlocal agreements to repay Addison as billed by us for their respective shares of the work performed.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Provide Superior Public Safety, Customer Service, Social and Health Services to the Community

ATTACHMENTS:

Description:

[RCC Consultants Resolution](#)

Type:

Backup Material

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT BETWEEN THE TOWN OF ADDISON AND RCC CONSULTANTS, INC. REGARDING THE PROVISION OF CERTAIN SERVICES BY RCC CONSULTANTS, INC. IN CONNECTION WITH THE METROCREST PUBLIC SAFETY SYSTEMS PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAID AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the "Town") heretofore entered into an agreement with the City of Carrollton, Texas ("Carrollton") and the City of Farmers Branch, Texas ("Farmers Branch") regarding the operation and funding by the Town, Carrollton and Farmers Branch of a Motorola four-site nine-channel 800Mhz Trunked Simulcast Public Safety Radio System (the "Radio System"); and

WHEREAS, two impending changes will impact the Radio System, one of which is the phasing out of technical and replacement parts support by Motorola (the Radio System equipment provider), and the other which is a federal government initiative known as the P25 interoperability initiative; and

WHEREAS, as a result of these impending changes, the Town, Carrollton and Farmers Branch must decide to either retain or replace the existing Radio System, and to facilitate that decision it is beneficial to retain the services of RCC Consultants, Inc., a public safety communications consultant, to study, evaluate, and make a recommendation regarding the same; and

WHEREAS, the City Council desires to retain the services of RCC Consultants, Inc. to perform such study, evaluation, and recommendation.

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

Section 1. The above and foregoing premises are true and correct and are incorporated into and made a part of this Resolution for all purposes.

Section 2. The City Council of the Town of Addison, Texas does hereby approve an agreement between the Town of Addison, Texas and RCC Consultants, Inc. entitled "Consultant Services Agreement" (the "Agreement") regarding the provision of consulting services for the Radio System as described hereinabove, a true and correct copy of which Agreement is attached hereto as Exhibit A. The City Manager is authorized to execute the Agreement on behalf of the Town.

Section 3. This Resolution 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 _____, 2010.

Joe Chow, Mayor

ATTEST:

By: _____
Lea Dunn, City Secretary

APPROVED TO FORM:

By: _____
John Hill, City Attorney

EXHIBIT A
TO RESOLUTION NO. _____

[Attach copy of Agreement with RCC Consultants, Inc.]

Council Agenda Item: #R 2e

AGENDA CAPTION:

Approval of a resolution authorizing the City Manager to enter into an interlocal agreement with the cities of Carrollton and Farmers Branch for the reimbursement of a proportionate share of the cost of the radio communications needs assessment agreement with RCC Consultants, Inc.

FINANCIAL IMPACT:

The total cost of the project is \$170,869.22. RCC Consultants, Inc. will bill Addison for the work performed in all three cities. Addison will then bill Carrollton and Farmers Branch for their shares of the cost of the project. Final fiscal impact on Addison is approximately \$60,000.

BACKGROUND:

The needs assessment is Phase I of a potential three-phased process to explore options to replace or upgrade the shared public safety radio system used by Addison, Carrollton and Farmers Branch. Phases II and II, should they become necessary, will be contracted individually.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Provide Superior Public Safety, Customer Service, Social and Health Services to the Community

ATTACHMENTS:

Description:

[Interlocal Agreement for Radio Communications](#)

Type:

Backup Material

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN OF ADDISON, THE CITY OF CARROLLTON, TEXAS, AND THE CITY OF FARMERS BRANCH, TEXAS REGARDING THE PROVISION OF CERTAIN SERVICES BY RCC CONSULTANTS, INC. IN CONNECTION WITH THE METROCREST PUBLIC SAFETY SYSTEMS PROJECT AND THE PAYMENT FOR SUCH SERVICES BY THE SAID CITIES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAID AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the "Town") heretofore entered into an agreement with the City of Carrollton, Texas ("Carrollton") and the City of Farmers Branch, Texas ("Farmers Branch") regarding the operation and funding by the Town, Carrollton and Farmers Branch of a Motorola four-site nine-channel 800Mhz Trunked Simulcast Public Safety Radio System (the "Radio System"); and

WHEREAS, two impending changes will impact the Radio System, one of which is the phasing out of technical and replacement parts support by Motorola (the Radio System equipment provider), and the other which is a federal government initiative known as the P25 interoperability initiative; and

WHEREAS, as a result of these impending changes, the Town, Carrollton and Farmers Branch (collectively, the "Cities") must decide to either retain or replace the existing Radio System, and to facilitate that decision it is beneficial to retain the services of RCC Consultants, Inc., ("RCC") a public safety communications consultant, to study, evaluate, and make a recommendation regarding the same; and

WHEREAS, regarding the retention of the services of RCC, the Cities have proposed, as set forth in the attached agreement between the Cities entitled "Radio System Interlocal Agreement," that the Town will seek to enter into an agreement with RCC for the services of RCC, with the cost thereof to be shared equally by the Cities as set forth in the said Agreement.

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

Section 1. The above and foregoing premises are true and correct and are incorporated into and made a part of this Resolution for all purposes.

Section 2. The City Council of the Town of Addison, Texas does hereby approve an agreement between the Town of Addison, Texas, the City of Carrollton, Texas, and the City of Farmers Branch, Texas, which agreement is entitled "Radio System Interlocal Agreement" (the

“Agreement”), regarding the provision of consulting services for the Radio System and the payment therefor as described hereinabove. A true and correct copy of the Agreement is attached hereto as Exhibit A. The City Manager is authorized to execute the Agreement on behalf of the Town.

Section 3. This Resolution 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 _____, 2010.

Joe Chow, Mayor

ATTEST:

By: _____
Lea Dunn, City Secretary

APPROVED TO FORM:

By: _____
John Hill, City Attorney

EXHIBIT A
TO RESOLUTION NO. _____

[Attach copy of Radio System Interlocal Agreement]

Council Agenda Item: #R 2f

AGENDA CAPTION:

Approval of a resolution confirming and ratifying the execution by the City Manager and Deputy City Manager of an “Application for Amendment to a Water Right” filed with the Texas Commission on Environmental Quality in November 2009.

FINANCIAL IMPACT:

None

Project Manager: Clay Barnett, P.E.

BACKGROUND:

The Town of Addison has awarded the construction of Vitruvian Park – Phase 1C for the construction of park improvements to North Texas Contracting, Inc. The engineering design for the park includes the construction of an additional weir structure in the creek just downstream of Ponte which will impound water on the site. The weir that is located further south on the property was previously on private property that has been dedicated to the Town by plat and it is necessary to transfer the ownership of the weir and the water rights it impacts to the Town also. The City Manager, Ron Whitehead and the Deputy City Manager, Lea Dunn signed the “Application for Amendment to a Water Right” in November 2009 that was filed with the Texas Commission on Environmental Quality (TCEQ), and the TCEQ has requested an affirmative statement that the City Manager and the Deputy City Manager were authorized to sign the Application.

This resolution acknowledges the filing of the Application for Amendment to a Water Right with the TCEQ and the execution of the Application by the City Manager, Ron Whitehead and the Deputy City Manager Lea Dunn and confirms the authority of them to execute the Application.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Provide Quality Leisure Opportunities

ATTACHMENTS:

Description:

[TCEQ Resolution](#)

Type:

Backup Material

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS CONFIRMING AND RATIFYING THE EXECUTION BY THE CITY MANAGER AND DEPUTY CITY MANAGER OF AN APPLICATION FOR AMENDMENT TO A WATER RIGHT FILED WITH THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY IN DECEMBER, 2009; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the “City”) is in the process of constructing, in phases, certain public improvements, including public streets, water and sanitary sewer facilities, drainage facilities, and parks within that area of the City generally known as Vitruvian Park; and

WHEREAS, at a regular meeting of the City Council held on February 9, 2010, the City Council approved a contract for a phase of such construction designated as “Vitruvian Park Public Infrastructure Phase 1C” (the “Phase 1C Construction”); and

WHEREAS, the Phase 1C Construction necessitated the City’s filing in November, 2009 of an “Application for Amendment to a Water Right” (the “Application,” a copy of which is attached hereto as Exhibit A) with the Texas Commission on Environmental Quality (“TCEQ”); and

WHEREAS, the City Manager, Ron Whitehead, and the Deputy City Manager, Lea Dunn, signed the Application on behalf of the City; and

WHEREAS, the City Council desires by this Resolution to confirm the authority of each of the City Manager and the Deputy City Manager to sign the Application on behalf of the City.

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

Section 1. The above and foregoing recitals to this Resolution are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. The City Council hereby acknowledges the filing of the Application for Amendment to a Water Right with the TCEQ and the execution of the Application by each of the City Manager, Ron Whitehead, and the Deputy City Manager, Lea Dunn. The City Council does hereby confirm the authority of the City Manager and the Deputy City Manager to execute the Application on behalf of the City, and does hereby ratify their execution of the Application.

Section 3. This Resolution 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 _____, 2010.

Joe Chow, Mayor

ATTEST:

By: _____
Lea Dunn, City Secretary

APPROVED TO FORM:

By: _____
John Hill, City Attorney

EXHIBIT A
TO RESOLUTION NO. _____

[Attach copy of Application for Amendment to a Water Right]

Council Agenda Item: #R3

AGENDA CAPTION:

PUBLIC HEARING on the Town of Addison's Annual Budget for the Fiscal Year ending September 30, 2011.

FINANCIAL IMPACT:

BACKGROUND:

A Public Hearing is provided to hear any comments from the public regarding the Fiscal Year 2011 Budget.

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R4

AGENDA CAPTION:

PUBLIC HEARING regarding possible changes to the Town Charter as recommended by the Charter Review Commission.

FINANCIAL IMPACT:

No financial impact.

BACKGROUND:

The Council is holding public hearings to allow anyone who wishes to speak on possible amendments to the Charter. The first public hearing was held on May 25, 2010. There were also hearings held on June 8 and June 22.

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R5

AGENDA CAPTION:

Presentation of the 2011 calendar concept.

FINANCIAL IMPACT:

Expenses split between Hotel Fund and General Fund. \$50,000 budgeted in Marketing Department (614) and another \$45,000 in City Managers Department (111) to produce the calendar.

BACKGROUND:

Each year the Town produces a 12-month calendar to distribute to residents and businesses in Addison. The calendar serves the dual purpose of promoting our community attractions, events, hotels and restaurants to residents and visitors as well as presenting an abbreviated Annual Report to the community. Currently, the Town contracts with Krause Advertising to provide this product development and execution for us. Mr. Jim Krause will be in attendance to present the 2011 calendar concept to the City Council.

RECOMMENDATION:

N/A

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R6

AGENDA CAPTION:

Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances, of the Town of Addison by providing for a Meritorious Exception to Division 4, Detached Signs, Section 62-186, Monument Signs, in order to provide for a monument sign that exceeds the height and area requirements for a monument sign, located at 13900 block of Marsh Lane/3700 block of Vitruvian Way, on application from UDR, represented by Mr. Tom Lamberth.

FINANCIAL IMPACT:

No budget impact

BACKGROUND:

The ordinance limits a single-tenant monument sign to an overall height of six feet and a maximum sign face area of 48 square feet.

The applicant is requesting an exception to construct a monument sign that has a portion of the sign that is 16 feet in height, and a sign face of 90 square feet.

UDR has designed the sign to include extensive landscaping and a water feature. In addition, the area around the sign will include significant landscape improvements to the property. The applicant has also added "in Addison" to the sign. The Town had a Town of Addison entry sign at this location (on the southeast corner) but it was removed a few years ago. The Town and applicant have discussed having this sign serve as a marker for the Town, and the staff feels that the sign will serve as an attractive entry marker to both Vitruvian Park and Addison.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

[Drawing of Vitruvian Park Monument sign](#)

Type:

Backup Material

MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE STAFF REPORT

ME 2010-3

Location of Request: 13900 BLK MARSH LN/ 3700 BLK

VITRUVIAN WAY

Date: July 2, 2010

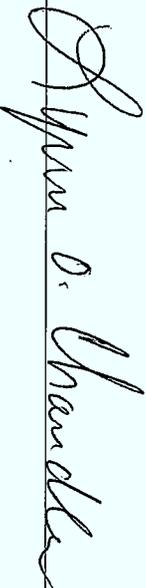
Business Name: UNITED DOMINION REALTY (UDR)

<u>Ordinance Requirements:</u>	<u>Request</u>	<u>Variance</u>
<p>Sec. 62-186. Monument signs.</p> <p>Monument signs shall be built on a monument base as opposed to a pole base with no separation between the base of the sign and the natural grade. A monument sign contains only the name, logo, address and product or service of the establishment. No advertising or promotional information is permitted thereon. Such signs may be single or double faced. Plastic faces may be used on monument signs provided only the letters, numbers or logo elements emit light. The monument sign shall be located a minimum of 20 feet from the back of the curb. Such signs shall be constructed as follows:</p> <ol style="list-style-type: none"> (1) The sign base shall not exceed six feet in overall height above the natural or average grade and the actual sign face shall not exceed 48 square feet in area per side. (2) Multitenant monument signs shall not exceed eight feet in overall height above the natural grade, the actual size of the sign face shall not exceed 72 square feet in area per side, and no single tenant shall occupy more than 36 square feet of sign area per façade. 	<p>The applicant is requesting an exception to construct a monument sign 16' in height with an effective area of approximately 90 sq ft.</p>	<p>The ordinance limits a single-tenant monument sign at this location to an overall height of 6' and a maximum sign face area of 48 sq ft.</p>

STAFF RECOMMENDATION: UDR has designed the sign to include extensive landscaping and a water feature. In addition they have made significant landscape improvements to the property on this corner by installing numerous trees and an irrigation system. Therefore staff recommends approval of the sign as requested.

STAFF:

Lynn Chandler, Building Official



Council Agenda Item: #R7

AGENDA CAPTION:

Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances of the Town of Addison by providing for a Meritorious Exception to Division 4, Detached Signs, Sections 62-182, Premises signs, and Section 62-186, Monument Signs, in order to provide for an off-premises monument sign that exceeds the height and area requirements for monument signs, located at 3700-3800 Belt Line Road, on application from the Addison Town Center shopping center, represented by Mr. Bernard Shaw of Cencor Realty.

FINANCIAL IMPACT:

No financial impact

BACKGROUND:

The ordinance prohibits off-premises signs. The applicant asked the Town for permission to place the sign in the Town's public right-of-way (Sign 3, Location 1), but the staff does not support placing the sign within the Town's public right-of-way. However, the applicant obtained permission from Ashton-Woods to place a sign on its property (Sign 3, Location 2).

The ordinance limits a multi-tenant monument sign to an overall height of 8 feet and a maximum sign face area of 72 sq. ft. The applicant's proposed sign is 11.5 feet in height with a sign face area of 92 square feet.

RECOMMENDATION:

Staff recommends denial of the request for the sign to be located within the Town's public right-of-way.

Staff recommends approval of the off-premises, multi-tenant monument sign on the Ashton Woods property.

Staff recommends denial of the monument sign proposed, as it exceeds the height and square footage allowed for multi-tenant monument signs.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

[Drawings for Monument Sign](#)

Type:

Backup Material

MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE STAFF REPORT
ME 2010-2

Date: April 28, 2010
Business Name: Addison Town Center/Ashton Woods Homes

Location of Request: 3870 Belt Line

<u>Ordinance Requirement</u>	<u>Request</u>	<u>Variance</u>
<p>Sec. 62-182. Premises signs.</p> <p>Detached signs must be premises signs only. Off-premises signs are prohibited.</p> <p>Sec. 62-186. Monument signs.</p> <p>Monument signs shall be built on a monument base as opposed to a pole base with no separation between the base of the sign and the natural grade. A monument sign contains only the name, logo, address and product or service of the establishment. No advertising or promotional information is permitted thereon. Such signs may be single or double faced. Plastic faces may be used on monument signs provided only the letters, numbers or logo elements emit light. The monument sign shall be located a minimum of 20 feet from the back of the curb. Such signs shall be constructed as follows:</p>	<p>The applicant is requesting an exception to construct an off premises multi-tenant monument sign that is 11'6" in height with a sign face area of 92 sq ft.</p>	<p>The ordinance prohibits off premises signs.</p> <p>The ordinance limits a multi-tenant monument sign to an overall height of 8' and a maximum sign face area to 72 sq ft.</p>
<p>(1) The sign base shall not exceed six feet in overall height above the natural or average grade and the actual sign face shall not exceed 48 square feet in area per side.</p> <p>(2) Multitenant monument signs shall not exceed eight feet in overall height above the natural grade, the actual size of the sign face shall not exceed 72 square feet in area per side, and no single tenant shall occupy more than 36 square feet of sign area per façade.</p>		

STAFF RECOMMENDATION: Staff recommends approval of the off premises multi-tenant monument sign on the Ashton Woods property but recommends denial for it to be located in the city right of way and an increase in height and area.

STAFF: 
Lynn Chandler, Building Official

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: 4-26-10

Filing Fee: \$200.00

Applicant: Bernard Shaws for Cencor Realty Services

Address: 3102 Maple Ave Suite#: 520

Dallas ~~Addison~~ Tx 75201 Phone#: (214) 720-6607
City State Zip Fax#:

Status of Applicant: Owner _____ Tenant _____ Agent

Location where exception is requested:
Addison Town Center -

Reasons for Meritorious Exception:
See letter attached

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 4-27-10 Check # 637 Receipt # _____

CENCOR REALTY SERVICES

Bernard Shaw
Assistant Vice President

bshaw@cencorrealty.com

April 14, 2010

Mr. Lynn Chandler
Building Official
Town of Addison
5300 Beltline Road
Addison, Texas 75001

RE: Sign Variance at Addison Town Center Shopping Center

Dear Lynn:

I hope all is well. As we have discussed in our recent meetings, we find ourselves in interesting times as the downturn in the economy is making its impact felt everywhere. Nowhere is this more evident than in the world of retail and our tenants at Addison Town Center are feeling the brunt of it. In good times, the lack of visibility of our tenants from Beltline Road is a challenge at best. This environment compounds our tenants' ability to be competitive. Babies R Us, PetSmart and Office Depot are further impacted by the new Ashton Woods development. Furthermore, we are having a difficult time attracting other national credit tenants to occupy the suite next to Babies R Us. The sightlines coming from the east (on Beltline) are nonexistent.

As you know, these tenants are unique retailers in the Town of Addison and Addison Town Center is a unique shopping center in Addison; especially in West Addison. We need for the shopping center [and especially these retailers] not only to survive, but also to thrive. Therefore, on behalf of the Landlord, we respectfully ask for a *Meritorious Exception* to modify the two existing pylon signs on Beltline Road. The modification would entail extending the cabinet lower by approximately 56 inches to allow the junior anchors to have a more prominent presence on the pylon signs as noted in the before and after pictures reflected in Sections 2 & 3 respectively. In addition, we ask that the Landlord be allowed to construct a monument sign that roughly approximates the dimensions noted in Section 4. This monument sign would be placed on the property owned by Ashton Woods. The preference would be to place this sign in the median noted as "Sign 3 Location 1". However, if we have to place the sign in "Sign 3 Location 2", we would propose placing this sign as close to the street as possible. As evidenced by the picture, the sightlines to Babies R Us and the adjacent suite are nonexistent. Therefore, to have a reasonable chance of Babies R Us surviving and attracting another national credit tenant to occupy the adjacent suite, we desperately need this monument sign.

We have gotten verbal approval from Ashton Woods to allow us to place the monument sign on their property and are awaiting the formal letter. However, we did not want to hold up our request to enhance the signage package any more as our tenants really need the additional exposure to the tens of thousands of potential customers driving along Beltline. We fear if we do not make these enhancements immediately and improve the sales of these valuable tenants, there will be an

3102 Maple Avenue Suite 500 Dallas, Texas 75201 214/954-0300 FAX 214/953-0860

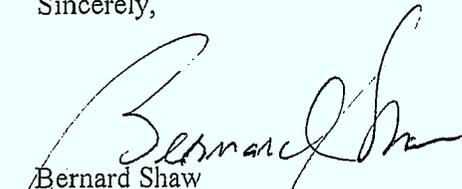
www.cencorrealty.com

irreversible decision made by the respective corporate offices and that decision will not bode well for Addison Town Center.

Thank you for your consideration in this very important matter. Your expedited approval would be most appreciated under the circumstances.

If you have any questions, please do not hesitate to contact me immediately at 214.886.4424.

Sincerely,



Bernard Shaw
Assistant Vice President, Cencor Realty Services
Agent for Portfolio Addison Town Center Retail, L.P., a Delaware limited partnership

Attachments

CC: Carmen Moran, Director of Development Services
Ron Whitehead, City Manager

3102 Maple Avenue Suite 500 Dallas, Texas 75201 214/954-0300 FAX 214/953-0860

www.cencorrealty.com

Cencor Realty Services is the management and development division of Weitzman Management Corporation, a regional realty corporation that also does business through its brokerage division, The Weitzman Group.

April 23, 2010

Bernard Shaw
Assistant Vice President
Cencor Realty Services
3102 Maple Avenue, Suite 500
Dallas, TX 75201

Dear Bernard,

Re: Monument Sign, Asbury Circle

We approve the construction of an additional monument sign at Asbury Circle. The included exhibits are marked as A, B and we approve construction in the general area of exhibit B, location 2. We require that the sign be of stone construction consistent with neighborhood features and that Ashton Woods Homes / Asbury Circle be provided space on the sign.

Respectfully,


Bryce Slade
VP of Operations

SECTION 4



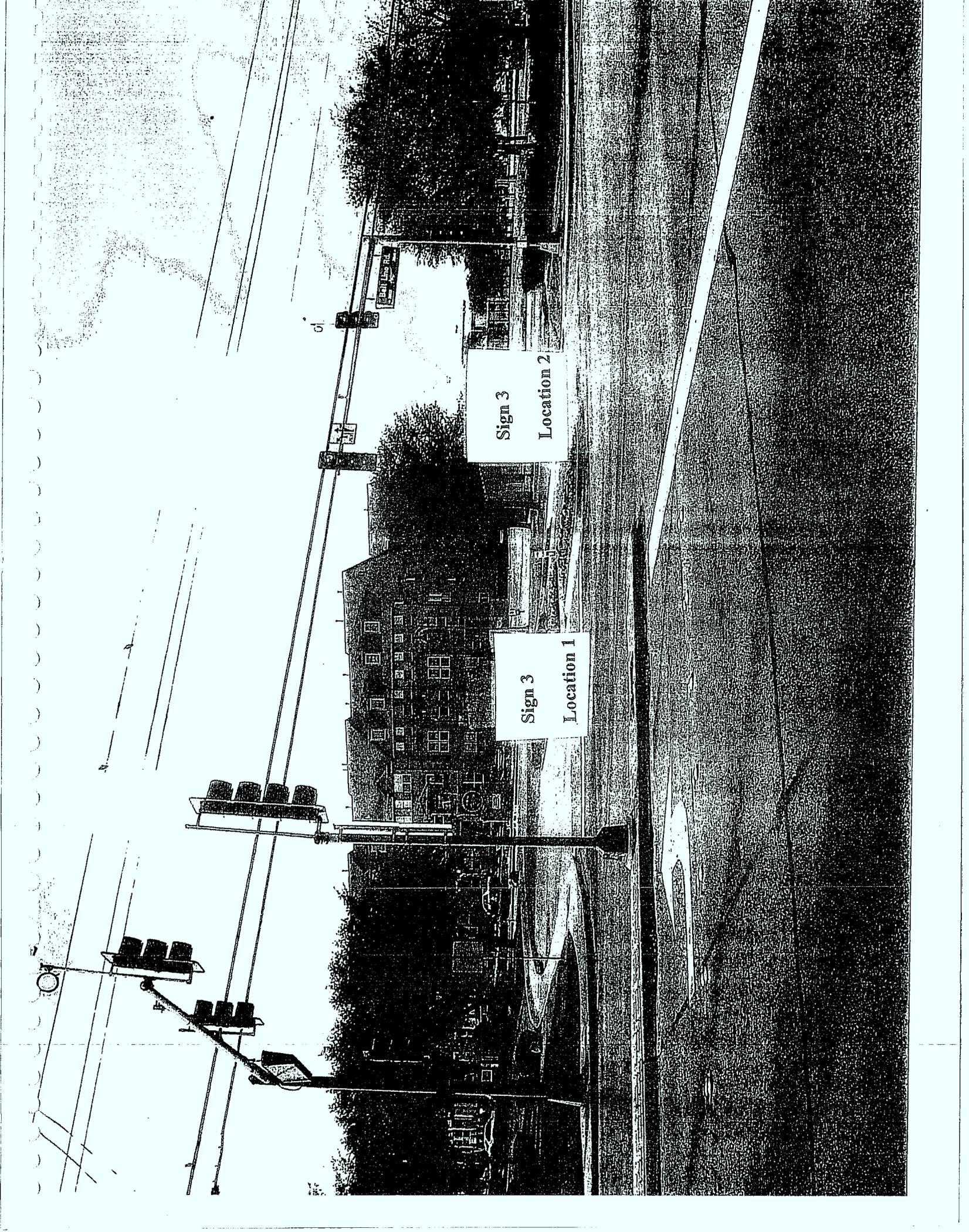
AUSTIN

DALLAS/FORT WORTH

HOUSTON

SAN ANTONIO



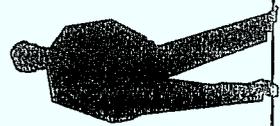
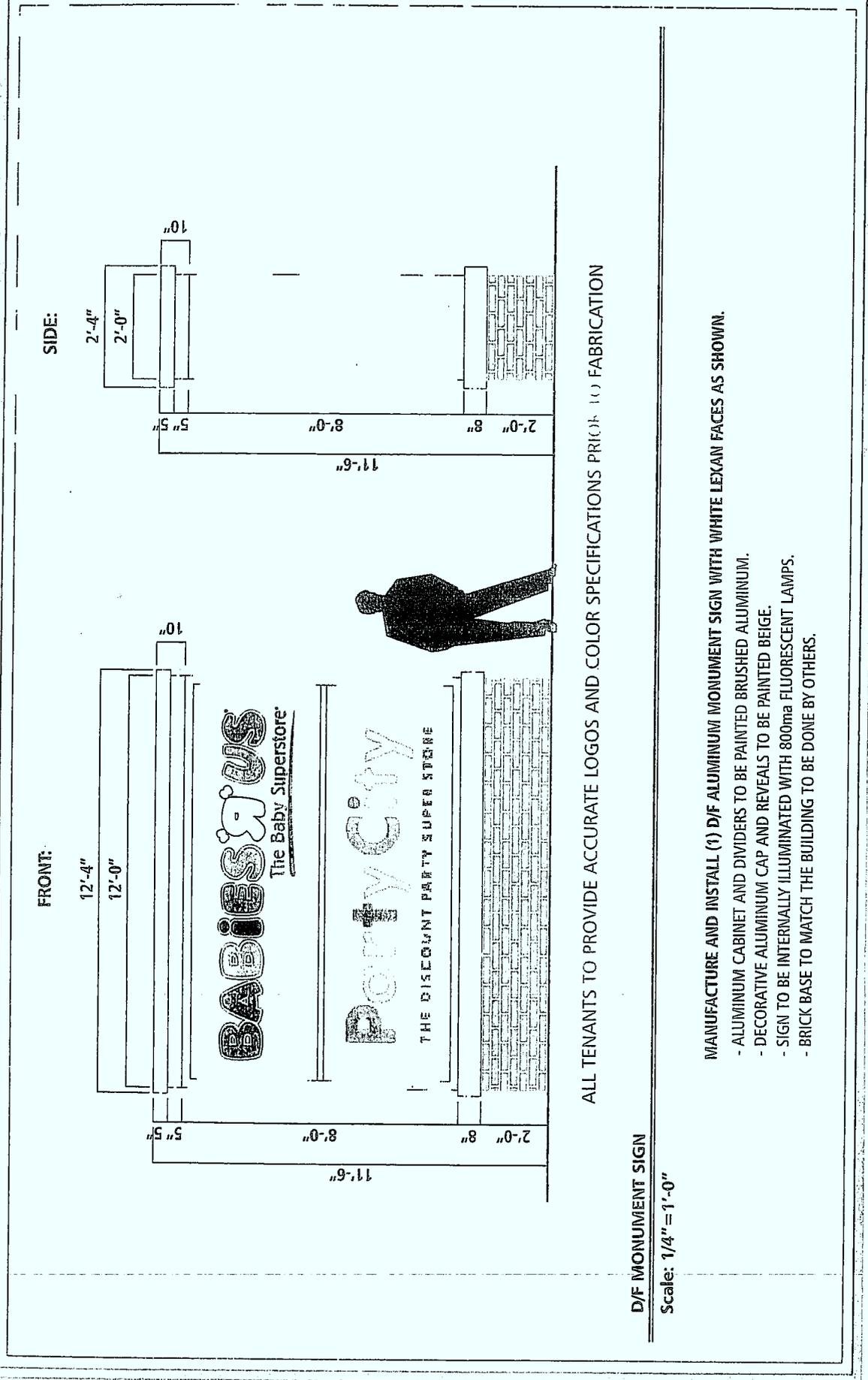


Sign 3

Location 2

Sign 3

Location 1



ALL TENANTS TO PROVIDE ACCURATE LOGOS AND COLOR SPECIFICATIONS PRIOR TO FABRICATION

D/F MONUMENT SIGN

Scale: 1/4" = 1'-0"

MANUFACTURE AND INSTALL (1) D/F ALUMINUM MONUMENT SIGN WITH WHITE LEXAN FACES AS SHOWN.

- ALUMINUM CABINET AND DIVIDERS TO BE PAINTED BRUSHED ALUMINUM.
- DECORATIVE ALUMINUM CAP AND REVEALS TO BE PAINTED BEIGE.
- SIGN TO BE INTERNALLY ILLUMINATED WITH 800ma FLUORESCENT LAMPS.
- BRICK BASE TO MATCH THE BUILDING TO BE DONE BY OTHERS.

GLOBAL SIGNS
INCORPORATED
 5105 E. CALIFORNIA PKWY. FT. WORTH, TX. 76119 (817) 634-1123 FAX: (817) 595-3805
LET US HELP BUILD YOUR IMAGE

Design #: 6465A-09 Date: 6-22-09
 Design By: TIM DAVIS
 File Name: ADDISON TOWN CENTER
 Sales Rep. RICK ROBERTSON
 Phone: _____ Rev. _____

Company: ADDISON TOWN CENTER
 Address: 3740-3850 BELTLINE RD
 City: ADDISON State: TEXAS Zip: 75001

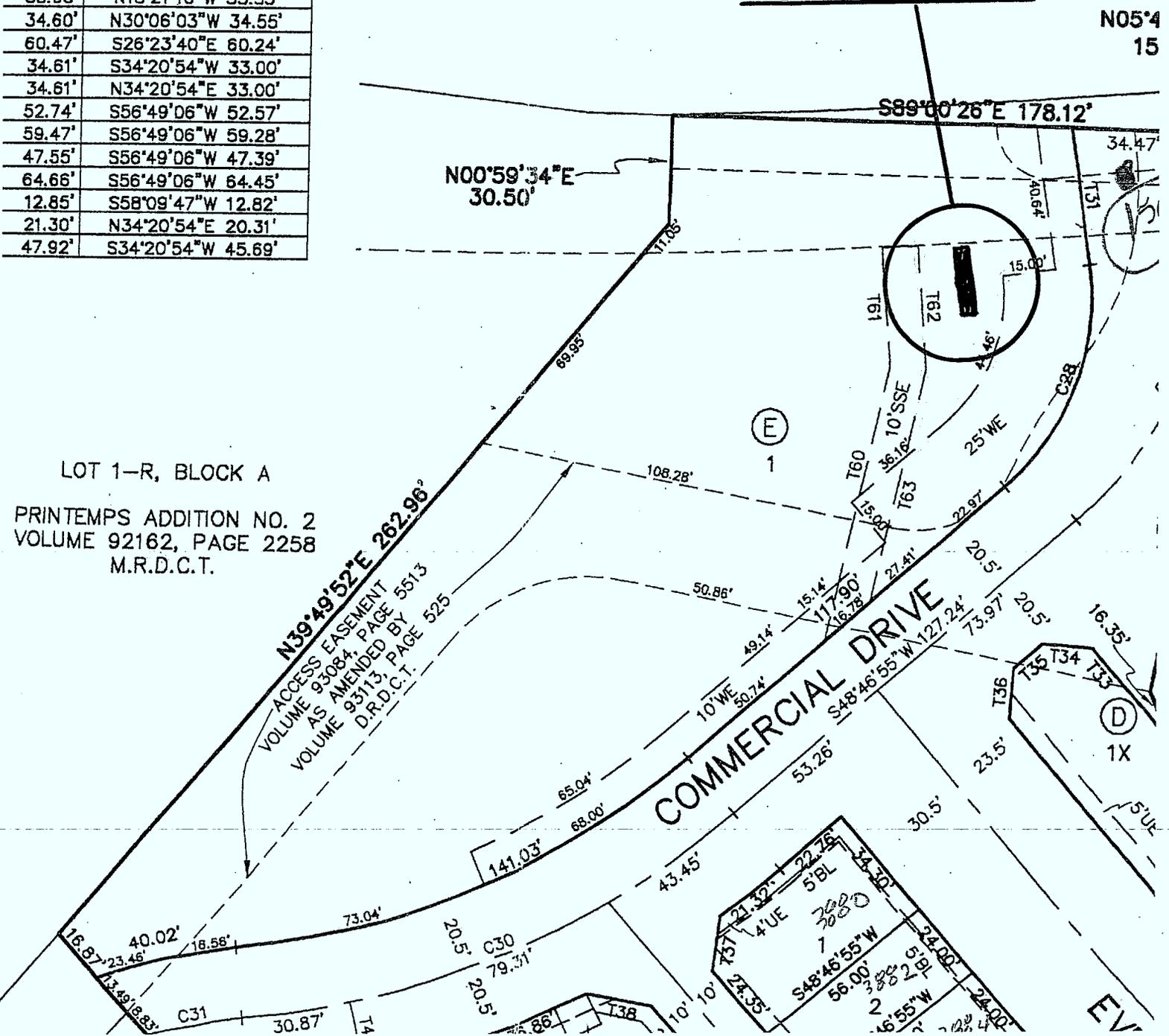
THIS DRAWING IS THE PROPERTY OF GLOBAL SIGN COMPANY AND HAS BEEN FURNISHED IN CONFIDENCE FOR BID PURPOSES. NO PART HEREOF SHALL BE COPIED, REPRODUCED, DISTRIBUTED, MADE AVAILABLE TO OTHERS, OR USED TO ANY EXTENT, WITHOUT WRITTEN PERMISSION BY GLOBAL SIGNS, INC. ANY PERSON, FIRM, OR CORPORATION RECEIVING THIS DOCUMENT, HOWEVER OBTAINED, WILL HAVE AGREED TO THESE RESTRICTIONS.

12.25'	N66°19'54"E 12.06'
56.10'	S56°49'06"W 55.92'
59.69'	N19°51'17"E 53.74'
11.91'	N51°43'45"E 11.81'
56.10'	S56°49'06"W 55.92'
43.50'	N31°10'36"E 41.04'
43.47'	N13°49'24"W 43.19'
35.60'	N13°21'16"W 35.35'
34.60'	N30°06'03"W 34.55'
60.47'	S26°23'40"E 60.24'
34.61'	S34°20'54"W 33.00'
34.61'	N34°20'54"E 33.00'
52.74'	S56°49'06"W 52.57'
59.47'	S56°49'06"W 59.28'
47.55'	S56°49'06"W 47.39'
64.66'	S56°49'06"W 64.45'
12.85'	S58°09'47"W 12.82'
21.30'	N34°20'54"E 20.31'
47.92'	S34°20'54"W 45.69'

BELT LINE ROAD
(VARIABLE WIDTH RIGHT-OF-WAY)

**STAFF RECOMMENDED
SIGN LOCATION.**

N05°4
15



LOT 1-R, BLOCK A

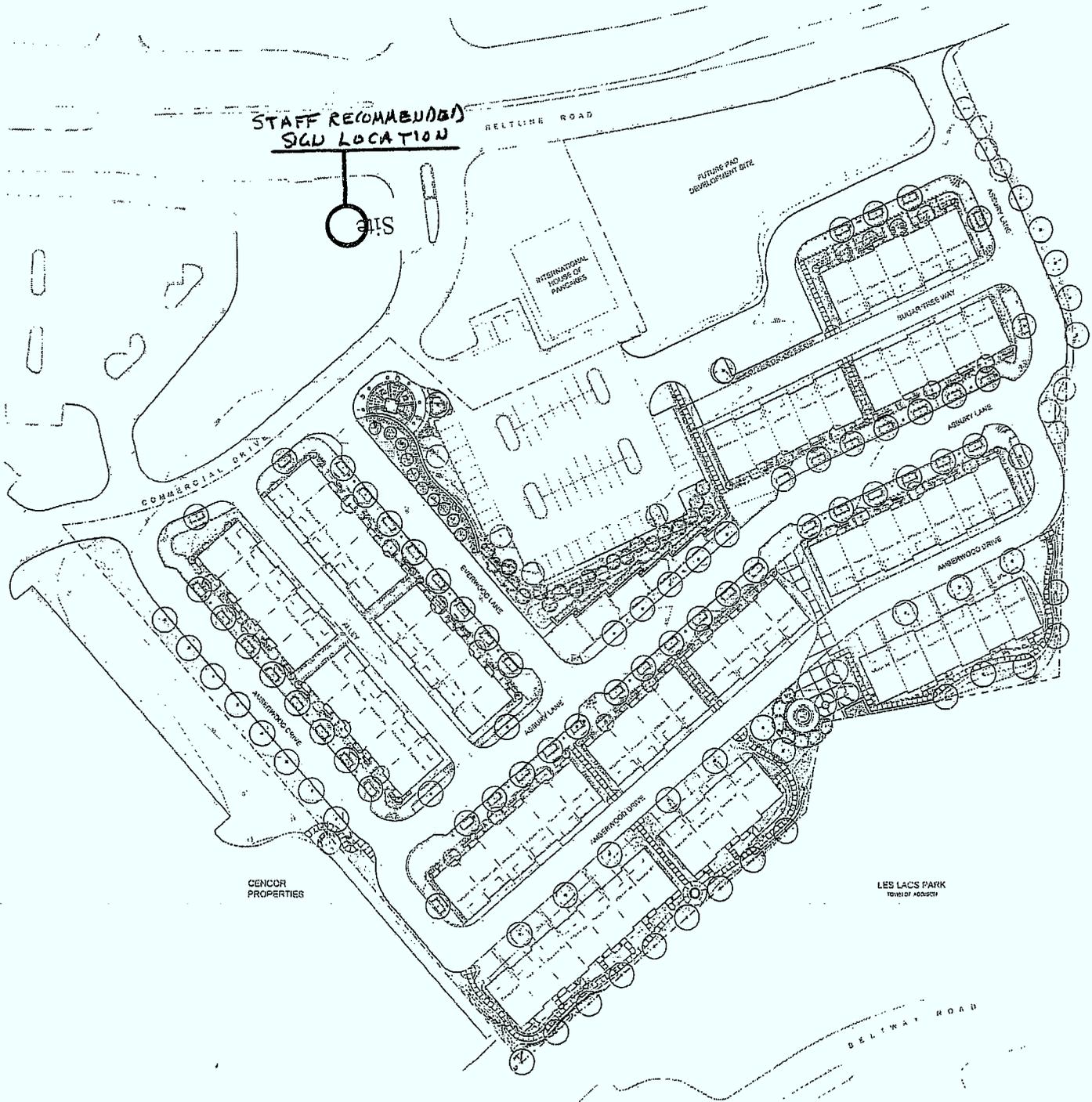
PRINTEMPS ADDITION NO. 2
VOLUME 92162, PAGE 2258
M.R.D.C.T.

ACCESS EASEMENT
VOLUME 93084, PAGE 5513
AS AMENDED BY
VOLUME 93113, PAGE 525
D.R.D.C.T.

COMMERCIAL DRIVE

ASBURY CIRCLE

ADDISON, TEXAS



SITE PLAN

PROJECT NAME
 ASHTON WOODS HOMES
 51111 D Freeway Suite 1200
 Dallas, Texas 75221

DESIGNED AND DRAWN BY
 DAVID C. BALDWIN INC.
 LANDSCAPE ARCHITECTURE & PLANNING
 370 East Park Boulevard, Suite 100
 Plano, TX 75074



APRIL 11, 2007

DAVID C.
 BALDWIN
 INCORPORATED



LANDSCAPE
 ARCHITECTURE
 PLANNING

Council Agenda Item: #R8

AGENDA CAPTION:

Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances, of the Town of Addison by providing for a Meritorious Exception to Division 4, Detached Signs, Section 62-185, Specifications, in order to provide for 63 additional square feet of sign area to an existing pole sign located at 3700-3800 Belt Line Road, on application from the Addison Town Center shopping center, represented by Mr. Bernard Shaw of Cencor Realty.

FINANCIAL IMPACT:

No financial impact.

BACKGROUND:

The ordinance requires a multi-tenant pole sign to have an exact sign face area of 72 square feet, sign supports of 8" x 8" structural steel tubing and a height of 20'. This sign has a height of 27' 9" and an area of 164.4 square feet each.

A Meritorious Exception (Ordinance 002-048) was previously approved for the four existing pole signs on the property. However, this request is for an exception for only the pole sign located at the entrance adjacent to Humperdink's Restaurant. In his letter, the applicant requested exceptions for two of the four pole signs. However, several years ago, the center sold the property that the other requested sign is located on to Capital One Bank, which makes that sign now off-premises. The applicant does not have approval from Capital One Bank to make changes to the other existing sign.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

[Town Center Pole Sign](#)

Type:

Backup Material

MERTORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE STAFF REPORT
ME 2010-1

Date: June 18, 2010
Business Name: Addison Town Center

Location of Request: 3700 - 3800 Belt Line

<u>Ordinance Requirement</u>	<u>Request</u>	<u>Variance</u>
<p>Sec. 62-185. Specifications. Both single-tenant and multi-tenant pole signs shall be allowed and shall be governed by the design standards and regulations as set forth in this section.</p> <p>(1) Single-tenant pole signs must be exactly 36 square feet in effective area and must be exactly 20 feet in height measured from ground elevation to the top of the sign.</p> <p>(2) Multi-tenant pole signs must be exactly 72 square feet in effective area and must be exactly 20 feet in height measured from ground elevation to the top of the signs. No single-tenant shall occupy more than 36 square feet of sign area on a multi-tenant sign.</p> <p>(3) Design standards shall be as follows:</p> <p>a. <i>Sign supports:</i> 8"X 8" structural steel tubing. Structural steel tubing shall be installed in accordance with Figure 62-185A for single-tenant signs and 62-185B for multi-tenant signs.</p> <p>b. <i>Sign cabinet:</i> Paint grip sheet metal on angle iron frame with angle retaining rim to secure sign face.</p> <p>1. Single-tenant sign cabinet dimensions: 6'10" wide x 5'10" high X 12" deep.</p> <p>2. Multi-tenant sign cabinet dimensions: 6'10" wide X 11'6" high X 12" deep.</p> <p>c. <i>Sign face:</i> plastic sheet.</p> <p>d. <i>Sign finish:</i> Degrease, prime, and finish coat all exposed metal surfaces as required.</p> <p>e. <i>Sign support and cabinet color:</i> Pantone 404(c). Painted surfaces are to match special color; color swatch will be provided by the town. Color number Pantone #404(c).</p> <p>f. <i>Internal illumination:</i> Internal illumination provided by fluorescent lamps spaced no further than 12 inches on center.</p> <p>g. <i>Overall sign height:</i> All signs are to be 20 feet in height.</p>	<p>The applicant is requesting an exception to add 63 sq ft to an existing pole sign.</p>	<p>The ordinance requires a multi-tenant pole sign to have an exact sign face area of 72 square feet, sign supports of 8" X 8" structural steel tubing and a height of 20'.</p> <p>ORD NO. 002-048 was granted for the two existing pole signs the applicant is requesting the exception for. The existing signs have a height of 27'9" and an area of 164.4 sq. ft. each.</p>

STAFF RECOMMENDATION: Staff recommends approval.



STAFF: Lynn Chandler, Building Official

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: 4-26-10

Filing Fee: \$200.00

Applicant: Bernard Shaw for Cencor Realty Services

Address: 3102 Maple Ave Suite#: 520

Dallas ~~Addison~~ Tx 75201 Phone# (214) 720-6607
City State Zip Fax#:

Status of Applicant: Owner _____ Tenant _____ Agent

Location where exception is requested:
Addison Town Center -

Reasons for Meritorious Exception:
See letter attached

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 4-27-10 Check # 637 Receipt # _____

CENCOR REALTY SERVICES

Bernard Shaw
Assistant Vice President

bshaw@cencorrealty.com

April 14, 2010

Mr. Lynn Chandler
Building Official
Town of Addison
5300 Beltline Road
Addison, Texas 75001

RE: Sign Variance at Addison Town Center Shopping Center

Dear Lynn:

I hope all is well. As we have discussed in our recent meetings, we find ourselves in interesting times as the downturn in the economy is making its impact felt everywhere. Nowhere is this more evident than in the world of retail and our tenants at Addison Town Center are feeling the brunt of it. In good times, the lack of visibility of our tenants from Beltline Road is a challenge at best. This environment compounds our tenants' ability to be competitive. Babies R Us, PetSmart and Office Depot are further impacted by the new Ashton Woods development. Furthermore, we are having a difficult time attracting other national credit tenants to occupy the suite next to Babies R Us. The sightlines coming from the east (on Beltline) are nonexistent.

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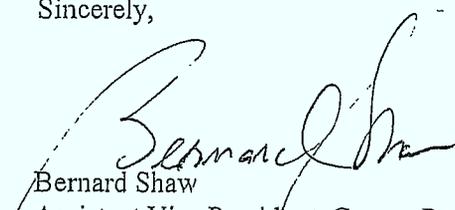
www.cencorrealty.com

irreversible decision made by the respective corporate offices and that decision will not bode well for Addison Town Center.

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Sincerely,



Bernard Shaw

Assistant Vice President, Cencor Realty Services

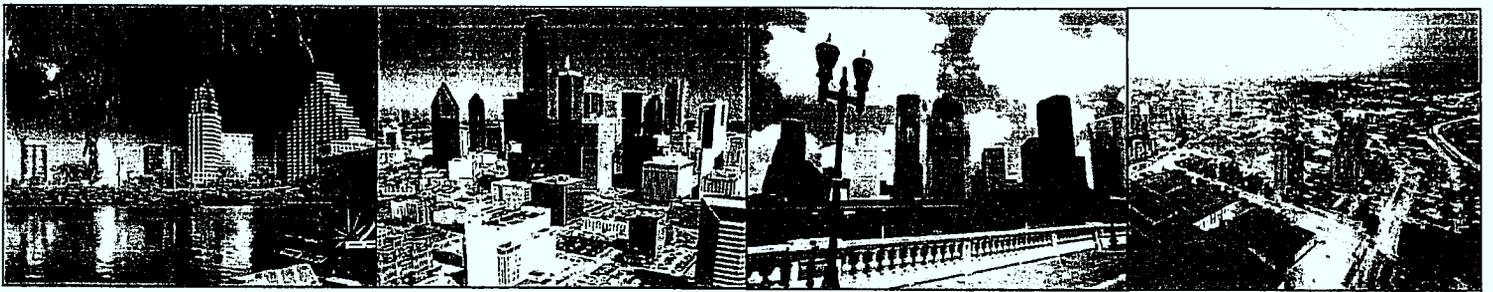
Agent for Portfolio Addison Town Center Retail, L.P., a Delaware limited partnership

Attachments

CC: Carmen Moran, Director of Development Services

Ron Whitehead, City Manager

SECTION 2

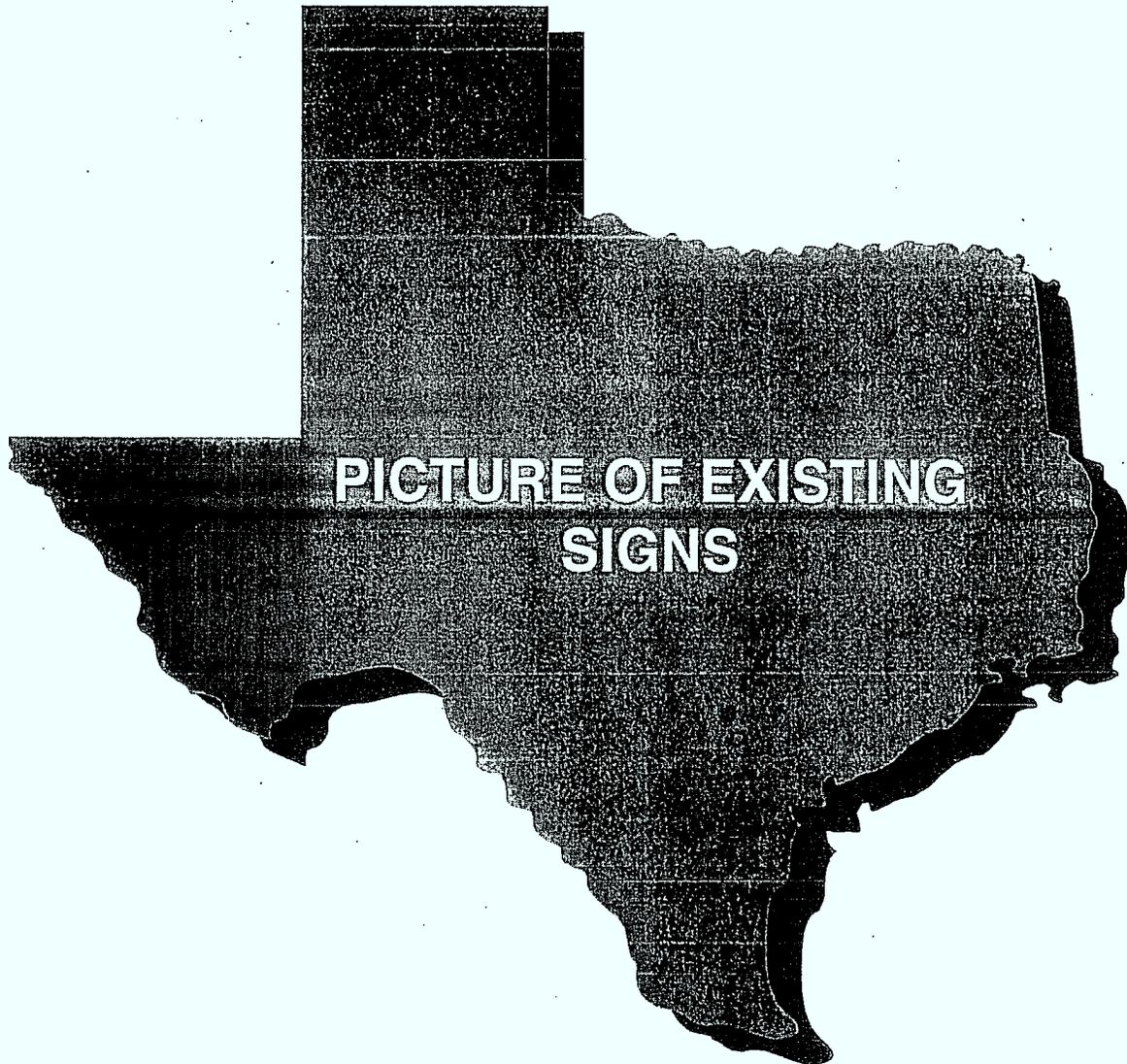


AUSTIN

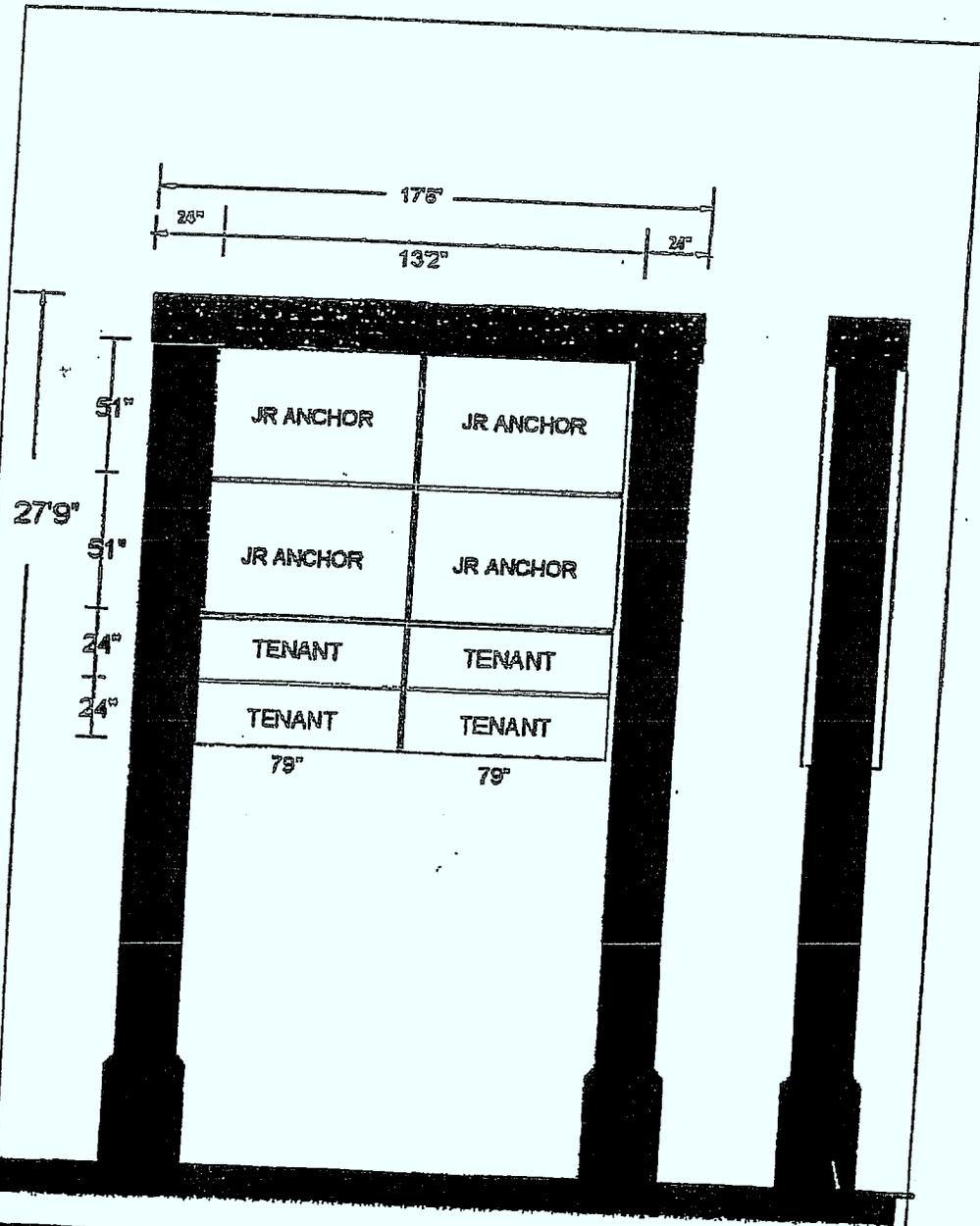
DALLAS/FORT WORTH

HOUSTON

SAN ANTONIO



EXISTING
DEVELOPER SIGN #2



EAST ENTRY-BELTLINE

DEVELOPER SIGN #2

2003031 10657

5

Sign 2
Before



SECTION 3



AUSTIN

DALLAS/FORT WORTH

HOUSTON

SAN ANTONIO



Sign 2
After

3610 BUS

Office DEPOT

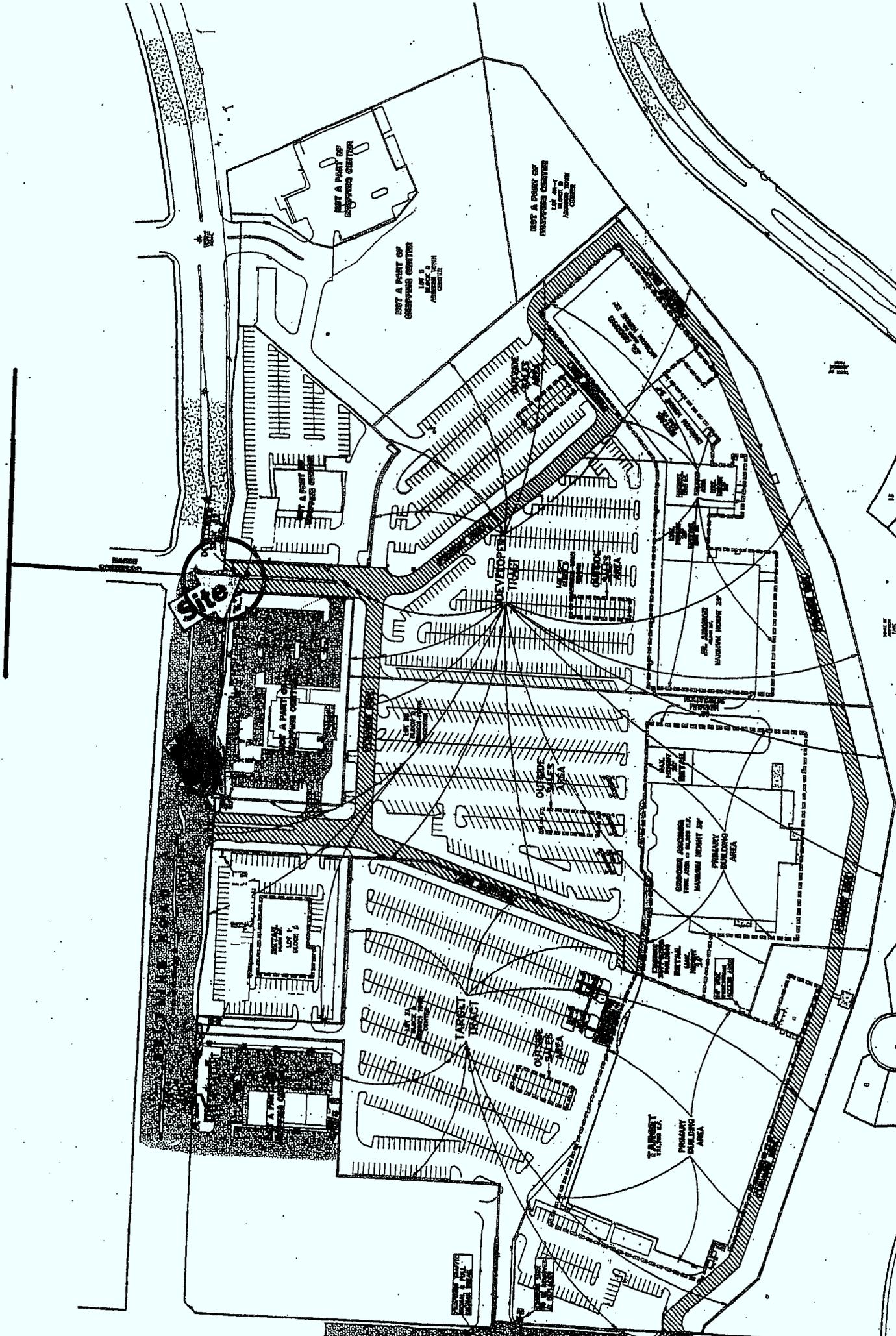
PETSMART

ONE-STOP ALL SUPPLY

THE JEWELRY SHOP



LOCATION OF EXISTING
POLE SIGN



Council Agenda Item: #R9

AGENDA CAPTION:

PUBLIC HEARING Case 1601-SUP/ONCOR Electric Delivery Company. Public hearing, presentation, discussion and consideration of approval of an ordinance approving a Special Use Permit for an installation of a public utility (electric substation), either privately or publicly owned, located on .4388 acres of land just east of Inwood Road and south of Landmark Boulevard on application from ONCOR Electric Delivery Company, represented by Mr. Mark Housewright of Masterplan.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on June 24, 2010, voted to recommend approval of a Special Use Permit for an installation of a public utility, either privately or publicly owned, located on .4388 acres of land just east of Inwood Road and south of Landmark Boulevard., on application from ONCOR Electric Delivery Company represented by Mr. Mark Housewright of Masterplan, subject to no conditions.

Voting Aye: Arfsten, DeFrancisco, Doherty, Hewitt, Oliver, Wheeler, Wood Voting Nay: none Absent: none

FINANCIAL IMPACT:

No Financial Impact

BACKGROUND:

NA

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

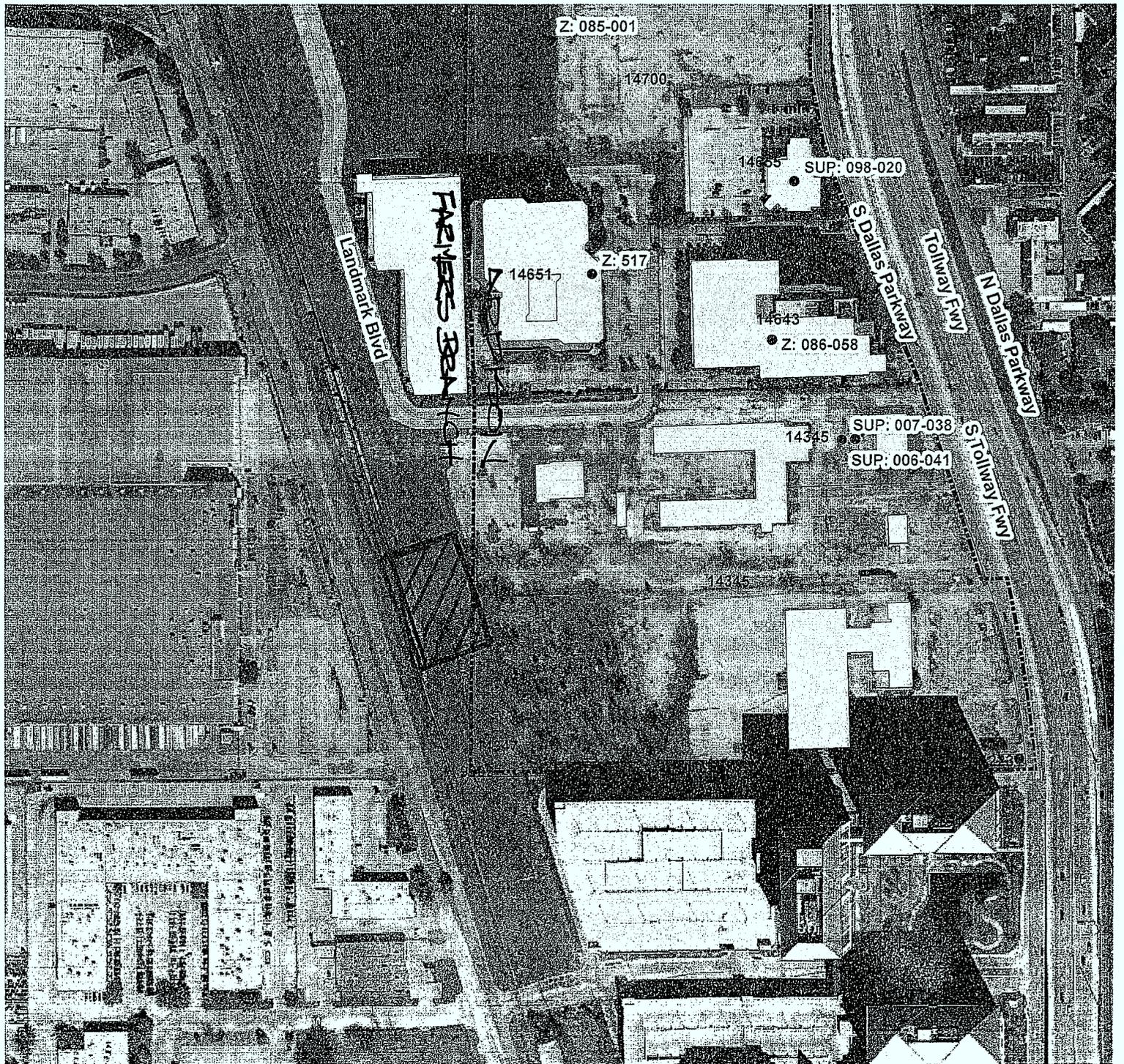
[docket map, staff report and commission findings](#)

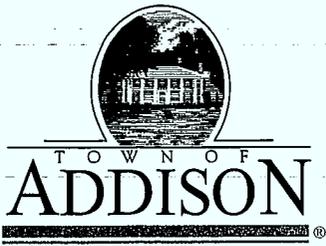
Type:

Backup Material

1601-SUP

PUBLIC HEARING Case 1601-SUP/ONCOR Electric Delivery Company. Requesting approval of a Special Use permit for an installation of a public utility, either privately or publicly owned, located on .4388 acres of land just east of Inwood Road and south of Landmark, Blvd. on application from ONCOR Electric Delivery Company, represented by Mr. Mark Housewright of Masterplan.





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

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

June 16, 2010

RE: Case 1601-SUP/ONCOR Electric Delivery Company

LOCATION: .4388 acres of land just east of Inwood Road and south of Landmark Blvd.

REQUEST: Approval of a Special Use Permit for an Installation of a public utility, either privately or publicly owned

APPLICANT: ONCOR Electric Delivery Company, Represented by Mr. Mark Housewright of Masterplan

DISCUSSION:

Background. The staff has been working with ONCOR and Masterplan for some time on an effort to site this electric substation facility. ONCOR needs to boost electric power in this area, and therefore needs to add a substation. ONCOR has a power transmission line that runs north and south adjacent to the St. Louis and Southwestern railroad right-of-way that parallels Inwood Road. ONCOR actually owns the land as a right-of-way as opposed to simply having an easement for the transmission line. The right of way is 100 feet wide, which is wide enough to allow for the installation of the station. The ONCOR right-of-way is right on the border between Addison and Farmers Branch and goes into both cities.

The actual site ONCOR has chosen for the substation is about 20% in Addison and about 80% in Farmers Branch. In Addison, the installation of an electric substation requires a Special Use Permit as an installation of a public utility, either privately or publicly owned. In Farmers Branch, the property is zoned Industrial-1, which allows the installation of an electric substation as a "by right" use.

Proposed Plan. The staff first started meeting with ONCOR and Masterplan several months ago in an effort to site the substation. ONCOR wants to use the land that it already owns so that it does not have to purchase land. It also needs to position the substation between the existing towers that carry the transmission line. Given those criteria, the substation can be in one of two locations: the location as shown on the

plan, or a location 150 feet north of the location shown on the plan. It has to be in one of those two locations to fit between the two transmission towers.

ONCOR wanted to avoid the time and expense of going through a Special Use Permit process in Addison, and it tried diligently to slide the substation to the north 150 feet so that it could be located in Farmers Branch, and therefore be allowed by right. If ONCOR could locate the facility entirely within the City of Farmers Branch, it would not require any zoning actions by the Town of Addison.

However, when ONCOR placed the substation 150 feet to the north, it caused it to encroach into an existing street right-of-way that ONCOR granted to the Town several years ago for the extension of Landmark Boulevard (drawing attached). Right now, Landmark Boulevard turns and goes east and the street right-of-way is not being used. However, in the future, the Town would like to extend Landmark Boulevard south so that it can connect into the street that Farmers Branch has built adjacent to Inwood Road. If Addison can extend Landmark to the south and tie into the existing Farmers Branch street, it will have another route into and out of the South Quorum office park, which would be highly desirable.

The Town's engineering staff did not want to give up the right-of-way, so ONCOR then had two choices: it could go through an eminent domain process and condemn the right-of-way back from the Town, or it could move the substation to the south, which placed a portion of the facility within the city limits of Addison and thus required a Special Use Permit. ONCOR chose to move the substation south to the location shown on the plans and file an application for a Special Use Permit.

Fencing. ONCOR is proposing to fence around the facility with a chain-link fence. The staff asked ONCOR if it was planning to construct a solid wall, and ONCOR stated that the site was met the bare minimum for width and did not allow for the additional thickness of a solid wall around the site. In addition, ONCOR needs room to maneuver equipment in and out, and since this site is so narrow, ONCOR felt that there may be times when it will have to take the fence out to allow equipment to work on the site. Therefore, it does not want to put in a wall that would have to be taken out and replaced.

Landscaping. The staff saw the note on the plans which reads: "Landscape buffer by license agreement provided by the City of Farmers Branch." The staff talked to the applicant about the note to determine if Farmers Branch was going to pay to landscape around the substation. The applicant stated that the City of Farmers Branch is going to plant landscaping within its street right-of-way along Inwood Road to screen the substation from the Farmers Branch (west) side. The staff talked to the applicant about planting landscaping against the Addison (east) side, but the applicant noted that there was not room on the site for landscaping, which was why Farmers Branch was willing to plant landscaping on its own land along Inwood Road to screen the substation. Addison does not own any land adjacent to the east side of this site to use for landscaping.

RECOMMENDATION:

The staff has talked through this item for several months with ONCOR. The staff recognizes the need to add electrical power in order to serve the Addison businesses in this area. However, the staff also realizes that an electric substation is not a wonderful neighbor for the adjacent property owner.

If Addison does not grant the Special Use Permit, ONCOR will have to go back to its other choice, which is to move the substation 150 feet to the north and condemn the road right-of-way back from the Town. The staff realizes that the city limit line between Addison and Farmers Branch is an invisible line, and that if the substation moves 150 feet to the north, it is still just as visible on the Addison side.

Therefore, the Town has two choices. It can approve the Special Use Permit or deny the permit and force ONCOR to move 150 feet to the north and place the facility entirely within the City of Farmers Branch. If ONCOR moves 150 feet to the north, the substation is no less visible to Addison's property owners, but the Town will lose a piece of right-of-way that it might eventually need.

The staff tries diligently to work with ONCOR to provide efficient electric service to Addison's residents and businesses. The Town and ONCOR have worked successfully on sharing rights-of-way in other locations, such as the Redding Trail, which lies in an ONCOR right-of-way in the Midway Meadows neighborhood. The staff recognizes the need for additional electric capacity in this area of Town and recommends approval of the Special Use Permit for an installation of a public utility, either privately or publicly owned, 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

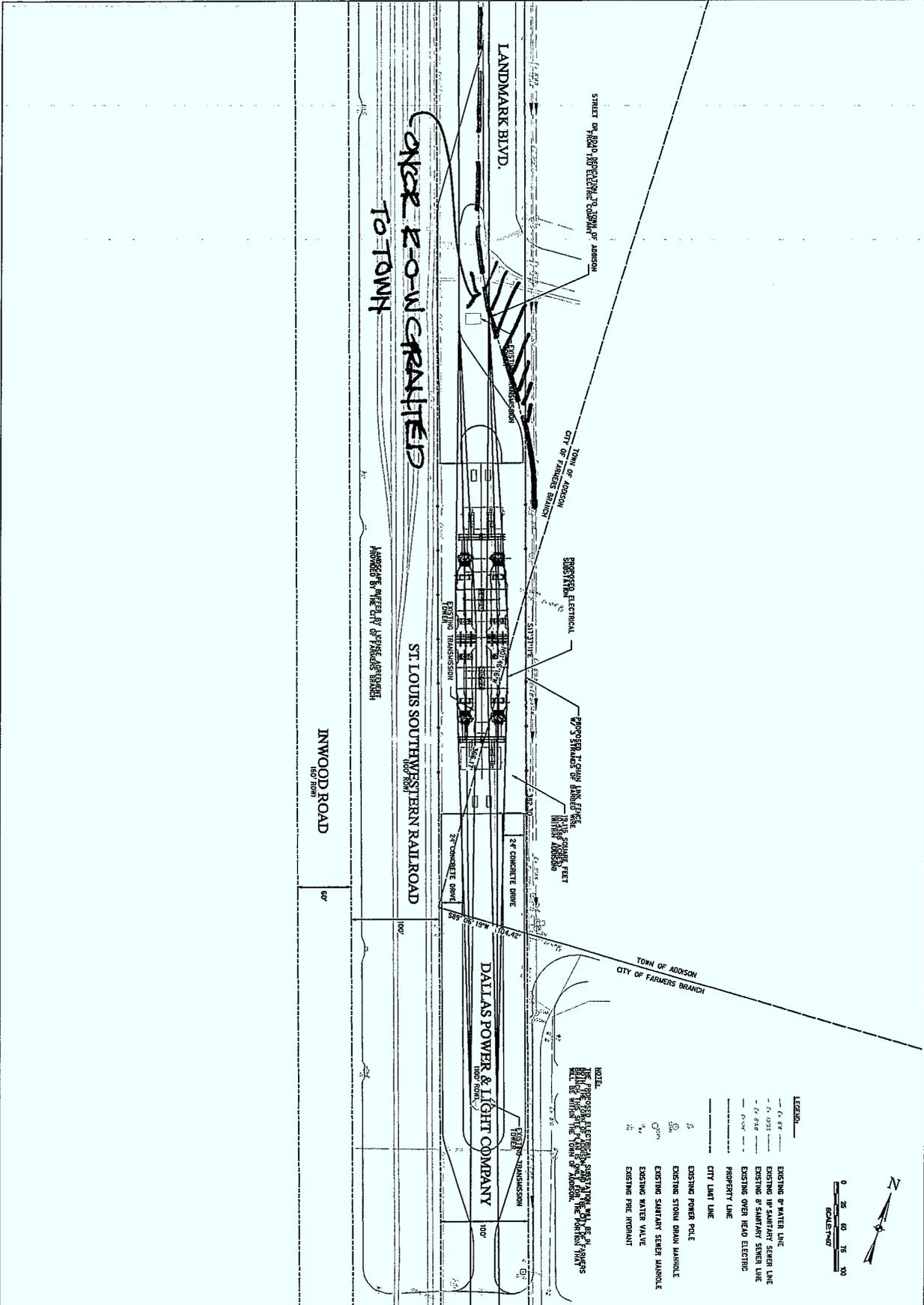
COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on June 24, 2010, voted to recommend approval of a Special Use Permit for an installation of a public utility, either privately or publicly owned, located on .4388 acres of land just east of Inwood Road and south of Landmark Blvd., on application from ONCOR Electric Delivery Company, represented by ONCOR Electric Delivery Company, represented by Mr. Mark Housewright of Masterplan, subject to no conditions.

Voting Aye: Arfsten, DeFrancisco, Doherty, Hewitt, Oliver, Wheeler, Wood

Voting Nay: none

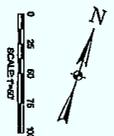
Absent: none



LEGEND

- 0.69 — EXISTING WATER LINE
- 12.00 — EXISTING 8" SANITARY SEWER LINE
- 12.00 — EXISTING 12" SANITARY SEWER LINE
- 12.00 — EXISTING OVER HEAD ELECTRIC
- 12.00 — PROPERTY LINE
- 12.00 — CITY LIMIT LINE
- 12.00 — EXISTING POWER POLE
- 12.00 — EXISTING STORM DRAIN MANHOLE
- 12.00 — EXISTING SANITARY SEWER MANHOLE
- 12.00 — EXISTING WATER VALVE
- 12.00 — EXISTING FIRE HYDRANT

NOTE:
 1. ALL PROPOSED ELECTRICAL SUBSTATION WILL BE IN THE CITY OF FARMERS BRANCH. THE CITY OF FARMERS BRANCH WILL BE WITHIN THE TOWN OF ADDISON.



Revision No.	Date	Description
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

PRELIMINARY

FOR INTERNAL REVIEW ONLY

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DATE: 8/11/2010

SCALE: AS SHOWN

C1:00

SITE PLAN

HALFF

3800 FARMWOOD BLVD. SUITE 200
 FARMERS BRANCH, TEXAS 75236
 TEL: 972.462.1000
 FAX: 972.462.1001
 WWW.HALFF.COM

ONCOR

ONCOR ELECTRIC DELIVERY COMPANY
 INWOOD ROAD SUBSTATION
 ADDISON, TEXAS

Carmen Moran

From: Clay Barnett
Sent: Monday, June 14, 2010 10:14 AM
To: Carmen Moran
Cc: Nancy Cline
Subject: Comments on Case 1601-SUP

Carmen,

On Case 1601-SUP/ONCOR, please indicate the limits of the public right-of-way on the site plan. Additionally, no portion of the facility can be located within the public right-of-way.

If you have any questions, please let me know.

Thanks,
Clay Barnett, P.E.
Town Engineer
Town of Addison
16801 Westgrove Drive
Addison, TX 75001-2818
Office: (972) 450-2857

 Please consider the environment before printing this e-mail.

[Learn more at AddisonGreen.info](http://www.addisongreen.info)

Council Agenda Item: #R10

AGENDA CAPTION:

Presentation, discussion and consideration of approval of amendments and modifications to certain ground leases at Addison Airport between the Town, as landlord, and RR Investments, Inc. (d.b.a. Million Air FBO, Dallas), as tenant, including amendments related to proposed building improvements.

FINANCIAL IMPACT:

N/A

BACKGROUND:

RR Investment, Inc. is proposing to construct approximately \$3.5M in new building improvements (40,000 SF new hangar with charter terminal, pilot lounge, limited office space, parking and aircraft ramp) on airport land currently leased by RR Investment, which are to be operated in connection with their Million Air Dallas FBO and charter operations.

In consideration of these and other improvements recently made to their existing facilities Airport Management is requesting the Town Council to consider and give its consent to the following actions:

1. Consent to the site plan and proposed building improvements (subject to permitting and final review by Town staff) which RR Investments intends to construct on their leased premises located 4350 Westgrove Rd (attached as Exhibit 1).
2. Early terminate RR Investment Ground Lease GL #070A-6001 pursuant to the proposed Ground Lease Early Termination Agreement (attached hereto as Exhibit 2) and; by way of amendment (as described below) simultaneously merge the land comprising its demised premise into the adjacent ground lease known as GL #070A-5601 (a.k.a 4350 Westgrove Rd)
3. Amend the terms and conditions of the three remaining RR Investment ground leases:

Second Amendment to Ground Lease for GL #070A-5601 (attached hereto as Exhibit 3);

Second Amendment to Ground Lease for GL #070A-5201
(attached hereto as Exhibit 4)

Second Amendment to Ground Lease for GL#0690-5901
(attached hereto as Exhibit 5).

The terms and conditions to each of these amendments include but are not limited to:

Provided the building improvements are constructed as agreed, each of the three RR Investment lease terms are to be extended to a forty-year term from the date of substantial completion of the building improvements. If the new improvements are not completed as agreed the term extension does not take effect and each will expire at the end of their existing term;

The rental rate for each lease will be adjusted equal the annual rate of \$.5451/SF times the respective land area. This rate is intended to equal the current average rate for all their leases combined;

Next CPI rental adjustment to be effective 12/31/2013 and every two years thereafter using the amended annual rental as the base rent for adjustment;

Bring other terms and conditions up to date with the Town's current standard language including but not limited to the permitted use of the demised premises, securing governmental approvals and complying with law, limitations to the assignment and subletting of the leasehold interests, insurance requirements, property taxes, airport rules and regulations, indemnity, exculpations and release and, environmental compliance

Additionally, the Second Amendment to Ground Lease for GL #070A-5601 further provides:

1. that the description of the leased premises is to be modified to include the demised premises from Ground Lease GL #070A-6001;
2. if the construction of the proposed building improvements do not

commence before 12/31/2013, the Town has the right to early terminate GL# 070A-5601 (the vacant lot at 4850);

3. incorporate the proposed building improvements to be included as part of the permitted use of the demised premises.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Develop and utilize the Addison Airport as an engine to drive economic growth in the community

ATTACHMENTS:

Description:

[Airport Management Recommendation](#)

Type:

Backup Material



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@addisonairport.net

- M E M O R A N D U M -

To: Mark Acevedo, Director of General Services
From: Bill Dyer, Real Estate Manager
cc: Joel Jenkinson, Airport Director
Date: July 6, 2010
Re: Requested Consideration and Consent by the Town Council Relating to
RR Investments, Inc.'s (RR Investments) Proposed Ground Lease Development

RR Investments is proposing to construct approximately \$3.5M in new building improvements on airport land currently leased by RR Investments, which improvements are to be operated in connection with their Million Air Dallas FBO and charter operations. The proposed improvements include nearly 40,000 square feet of new corporate hangar space, an exclusive charter terminal, pilot lounge, limited office space, parking and dedicated aircraft ramp.

In consideration of these and other improvements recently made to their existing facilities, Airport Management is requesting the Town Council to consider and give its consent to the following actions:

1. Consent to the site plan and proposed building improvements which RR Investments intends to construct on their leased premises located 4350 Westgrove Drive (see Exhibit 1);
2. Early terminate RR Investments' Ground Lease GL #070A-6001 pursuant to the proposed Ground Lease Early Termination Agreement (to be substantially in the form of Exhibit 2 attached hereto) and, by way of amendment (as described below), simultaneously merge the land comprising its demised premises into the adjacent ground lease known as GL #070A-5601 (also referred to as 4350 Westgrove Drive);
3. Amend the terms and conditions of the three remaining RR Investments ground leases:

- Second Amendment to Ground Lease GL #070A-5601 (to be substantially in the form of Exhibit 3 attached hereto);
- Second Amendment to Ground Lease GL #070A-5201 (to be substantially in the form of Exhibit 4 attached hereto); and
- Second Amendment to Ground Lease GL #0690-5901 (to be substantially in the form of Exhibit 5 attached hereto).

The terms and conditions of each of these amendments include but are not limited to:

- Provided the building improvements are constructed as agreed to, the terms of each of the three underlying ground leases are to be extended to forty (40) years from the date substantial completion of the proposed building improvements is achieved. If the new improvements are not completed as agreed to, the term extension does not take effect and each lease will expire at the end of its existing term;
- The rental rate for each lease will be adjusted to equal the annual rate of \$.5451 per square gross square foot of the respective demised premises land area. This rate is intended to equal the current average rate per gross square foot of land area for all RR Investments' leases combined;
- The next CPI rental adjustment for each lease is to be 12/31/2013 and every two years thereafter using the amended annual rental as the base rent for adjustment;
- Modify other various terms and conditions of each lease to be consistent with the Town's current lease standards including, but not limited to:
 - description of the permitted use of the demised premises;
 - securing governmental approvals and complying with law;
 - limitations to the assignment and subletting of the leasehold interests;
 - insurance requirements;
 - property taxes;
 - airport rules and regulations;
 - indemnity, exculpations and release; and
 - environmental compliance

Additionally, the Second Amendment to Ground Lease GL #070A-5601 further provides:

1. that the description of the leased premises is to be modified to include the demised premises from Ground Lease GL #070A-6001;
2. if the construction of the proposed building improvements does not commence before 12/31/2013, the Town has the right to early terminate GL# 070A-5601 (being the unimproved lot at 4350 Westgrove Drive); and
3. incorporate the proposed building improvements as part of the permitted use of the demised premises.

Airport Management recommends the Town Council give its consent to the proposed actions, authorizing the City Manager to execute on behalf of the Town the proposed amendments and termination agreement subject to the City Attorney's final review and approval of same.

Background Information:

RR Investments, Inc. is a Texas corporation wholly owned by Richard Rogers, the Executive Chairman of Addison-based Mary Kay, Inc. RR Investments was founded in 1984 for the purpose of doing business as Million Air Dallas, one of the first upscale, full-service fixed-base operations of its kind. In addition to its FBO operations, Million Air Dallas is widely recognized for its exclusive charter services, aircraft management, aircraft sales and acquisition services. It is also widely recognized as a leader within its industry having received the FAA Diamond Award for Excellence for the fourth consecutive year, WyVern's Wingman Status and is continually rated Platinum by Aviation Research Group (ARG)/US.

RR Investments entered into its first ground lease with the Town in 1983 which called for the construction of what now serves as Million Air Dallas' main facility at 4300 Westgrove Drive. Between 1994 and 1997, RR Investments acquired and took assignment of three existing ground leases situated adjacent to their main facility that currently make up their nearly 11.5 acres of ground leased holdings at Addison Airport (see Figure 1 - Aerial View of Ground Leases).

	070A-5201 4300 Westgrove	0690-5901 4310 Amelia Earhart	070A-5601 4350 Westgrove	070A-6001 4375 Westgrove	Totals
Original Tenant	RR Investments, Inc.	Pharris – Miller, Inc.	Personal Way Aviation	16300 Addison Joint Venture	
Assignment Date	NA	3/19/1997	12/15/1994	12/15/1994	
Land Area	158,109	183,509	100,006	58,009	499,633 11.47 Acs.
Bldg. Area	50,800	55,772	NA	NA	106,572
Ramp Area	61,150	102,705	NA	NA	163,855
Year Built	1983	1985	NA	NA	
Lease Start	12/1/1983	6/1/1984	4/1/1984	10/1/1984	
Lease Expire	11/30/2023	5/31/2024	3/31/2024	9/30/2024	
Years Remain	13.64	14.15	13.98	14.48	14.6 yrs (average)
Monthly Rent	\$6,935.95	\$7,986.63	\$5,207.21	\$2,557.46	\$22,687
Annual Rent	\$83,231.40	\$95,839.56	\$62,486.52	\$30,689.52	\$272,247
Rent /SFL	\$.53	\$.52	\$.62	\$.53	\$.545 (average)

Of the three ground leases acquired, only the leased premises at 4310 Amelia Earhart had building improvements already made to the site (the building is currently occupied primarily by Flex Jet). Although the other two ground leases called for the construction of certain building improvements, the leases failed to specify a “drop-dead” completion date. These two sites have remained vacant and unimproved since the inception of the leases.

RR Investments currently operates over 106,000 square feet of hangar and office space facilities in connection with their fixed-base operations. Although their facilities were constructed in the mid-1980s, they have been very well maintained over the years. In fact, since 2004, RR Investments has expended over \$2.5 million on roof and window replacements, renovations to their main lobby, ramp repairs and replacement, and the installation of a security video system.

As the flagship operator for Addison Airport, RR Investments pays over \$270,000 in annual ground rent. As a holder of a public fuel permit, Million Air Dallas has averaged over 4.2 million gallons of fuel received over the past four years representing 62% of the Airport's total volume, yielding the Airport nearly \$550,000 in fuel flowage and licensing fees each year. In addition, Million Air Dallas subleases several mid-size hangars at the Airport from other ground tenants. All considered, RR Investments and its Million Air Dallas operations account for nearly 20% of the Airport's total annual revenue.

Requested Action:

Proposed Improvements: RR Investments, Inc. is seeking the Town's consent to their proposal to construct a high-end aircraft charter terminal and hangar facility on what is the remaining portion of their ground leasehold that is presently vacant and unimproved. As represented in Exhibit 1, the company proposes to construct a 40,000 square foot conventional hangar with 28' high clear-span space designed to accommodate most Group 3 aircraft. Adjacent to the hangar - and almost a mirror image of the existing terminal building - they propose to construct an exclusive charter terminal building with a drive-up entrance with porte-cochere, lobby with concierge desk, multi-level lounges, glass vestibule and see-through curtain wall, offices, conference room and restroom facilities. All to be carefully appointed with stone, metal and wood veneer finishes. The hangar's exterior façade will be of architectural metal clad over a massive structural frame accented with stone and stucco to complement both Million Air Dallas' main building as well as the Mission Air building just to the east (4400 Westgrove Drive). Additionally, the site plan calls for 78,000 square feet of dedicated aircraft ramp constructed of 8" reinforced concrete with a full connection to Taxiway Victor. There is to be sufficient off-street parking provided to meet or exceed ordinance requirements. The estimated \$3.5 million project conveys the company's commitment toward quality, luxury, exclusivity and excellence in customer service, all being trademarks of Million Air Dallas.

RR Investments' development team includes Ron Fredrick, President of the Mission Companies, as developer/contractor and Bill Leggett, President of William Leggett Associates, as architect and interior designer. Ron Fredrick is also a principal of Mission Air IV, LP (ground tenant of 4600 Claire Chennault) and Mission Air V, LP (ground tenant of 4400 Westgrove). William Leggett Associates' offices are located at Addison Airport and they have been instrumental in the development and redevelopment of various properties, most recently the PlaneSmart! Properties, LLC redevelopment on 15841 Addison Rd.

Termination of Ground Lease 070A-6001: In order to best facilitate RR Investments' request, Airport Management is proposing that the Town and tenant agree to early terminate Ground Lease 070A-6001 and merge the underlying land into adjacent Ground Lease 070A-5601. Since the building improvements will straddle the demised premises for the two leases, this action will likely avoid unwanted administrative and title problems over the term and will facilitate the eventual disposition of the property at some later date.

Modification and Amendments to the Surviving Leases: In consideration of the proposed improvements and other modifications and amendments to the leases outlined below, Airport Management is recommending the Town agree to extend the lease term for each of the remaining ground leases to the statutory limit of forty (40) years, provided RR Investments completes the proposed building improvements as agreed. Once RR Investments achieves substantial completion (or the issuance of a certificate of occupancy), the Town and tenant will execute and publicly record a Memorandum of Lease memorializing the extended term. However, should RR Investments fail to complete the building improvements as agreed, the respective term for each lease will remain the same prior to the amendments.



Figure 1: Aerial View of Ground Leases

Additionally, at the request of RR Investments for administrative purposes, the tenant desires the lease rate and the date of all future adjustment to be the same for each lease. Therefore, it is recommended each lease be amended to make the rental rate equal the annual rate of \$.545 per square gross square foot of the respective leased area. This rate

equals the current average rate per gross square foot of land area for all RR Investments leases combined (\$272,247/499,633 SFL = \$.545/SFL). All subsequent biennial adjustments shall be made effective January 1, every other year beginning in 2013.

Other Modifications Consistent with the Town's Current Lease Standards: It is further recommended that each lease be amended to bring various other terms and conditions contained therein up-to-date and consistent with the Town's current lease standards including, but not limited to:

- description of the permitted use of the demised premises;
- securing governmental approvals and complying with law;
- limitations to the assignment and subletting of the leasehold interests;
- insurance requirements;
- property taxes;
- airport rules and regulations;
- indemnity, exculpations and release; and
- environmental compliance

The Second Amendment to Ground Lease GL #070A-5601 requires some additional provisions to provide for and to take into consideration the proposed building improvements and the merging of the land from Ground Lease GL#070A-6001:

- the description of the leased premises is to be modified to include the demised premises under Ground Lease GL #070A-6001;
- if the construction of the proposed building improvements does not commence before 12/31/2013, the Town has the right to early terminate GL #070A-5601 (being the unimproved lot at 4350 Westgrove Drive);
- incorporate the proposed building improvements to be a part of the permitted use of the demised premises.

Recommendation and Justification:

Airport Management is recommending the Town give its consent to RR Investments, Inc.'s proposed building improvements and amendments to each of the respective ground leases as outlined above, authorizing the City Manager to execute on behalf of the Town the proposed amendments subject to the City Attorney's review.

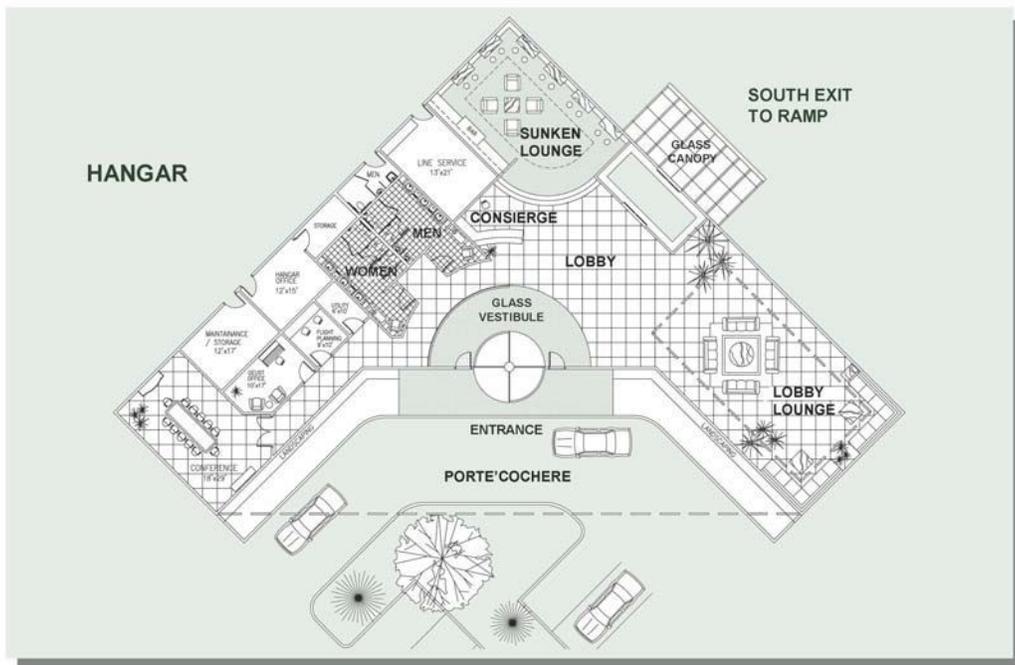
RR Investments is the flagship operator for Addison Airport. Its operations account for nearly 20% of the Airport's total annual revenue. Although the proposal does not represent any direct financial increase or benefit for the Airport, it does include the construction of nearly \$3.5 million in state-of-the-art, high-end quality aeronautical facilities on land that has been generally non-productive for the past 25 years. The proposed improvements will provide continue growth and support for Million Air Dallas' commitment to quality and excellence in customer service and will be highly regarded nationwide.

Exhibit 1



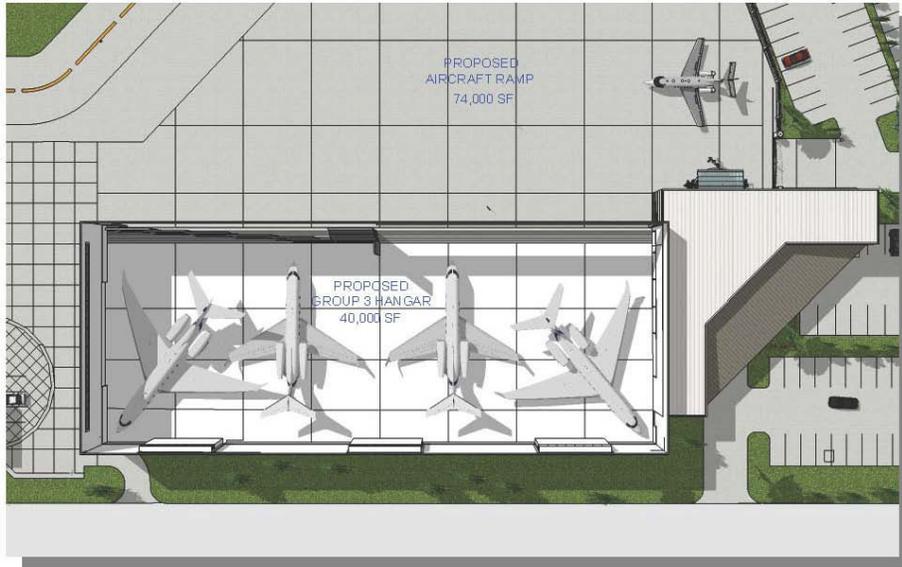
MASTER SITE PLAN

Existing and Proposed



CHARTER TERMINAL

Arrangement Plan



PROPOSED HANGAR

Aerial View



WESTGROVE ELEVATION

View east



BOULEVARD ENTRY

View east

Exhibit 2

Early Termination Agreement

Ground Lease #070A-6001

WHEREAS, a true and correct copy of the said Ground Lease, together with all amendments and modifications thereto, is attached to this Ground Lease Early Termination Agreement as Exhibit “A” (and is referred to herein as the “Ground Lease”, “Ground Lease #070A-6001”, or “Ground Lease #60”); and

WHEREAS, by virtue of such assignments, RR Investments, Inc. d/b/a/ Million Air Dallas is the current Tenant under the Ground Lease; and

WHEREAS, on February 20, 1984, another, separate ground lease affecting unimproved real property located adjacent to the #70A-6001 Demised Premises and including similar terms and conditions as the Ground Lease (save and except, among other things, the legal description of the demised premises and the respective rental) was executed between the City of Addison, Texas and Addison Airport of Texas, Inc., as Landlord, and Personal Way Aviation, Inc., as Tenant (identified as “Ground Lease #070A-5601” or “Ground Lease #56” in the administrative archives and records of the City), by the terms of which certain unimproved real property as described in Ground Lease #56 (referred to herein as the “#70A-5601 Demised Premises”) located on Addison Airport, within the Town of Addison, Texas and owned by the City was leased to Personal Way Aviation, Inc; and

WHEREAS, Ground Lease #56 was then amended by that Amendment to Ground Lease dated August 15, 1990 wherein (i) the description of the #70A-5601 Demised Premises was modified to contain a certain 2.2958 acres as described as “Tract 4” in Exhibit “C” of said Amendment, and (ii) the monthly rental was increased to Two Thousand Nine Hundred Twenty-Seven and 19/100 (\$2,927.19) (subject to adjustment as provided for in Ground Lease #56), and, (iii) all other terms and conditions of Ground Lease #56 remained in full force and effect; and

WHEREAS, Ground Lease #56 was thereafter assigned by that certain Assignment of Leases and Assumption Agreement dated May 6, 1992 from Personal Way Aviation, Inc., as assignor, to HI Services Enterprises, Inc., a Texas corporation as assignee (as recorded in Book and Volume 93183, Page 1651, Instrument # 199301835241 of the OPR); and

WHEREAS, HI Services Enterprises, Inc. thereafter merged into Carter-Crowley Properties, Inc, a Texas corporation, and by way of that certain Guaranty and Assumption of Lease Agreement dated November 2, 1992, Carter-Crowley assumed and guaranteed the performance of HI Services Enterprises, Inc.'s obligations under Ground Lease #56; and

WHEREAS, said Ground Lease #56 was then assigned by Carter-Crowley Properties, Inc. (the successor by merger to HI Services Enterprises, Inc.) to Personal Way Aviation, Inc. by that Assignment of Leases and Assumption Agreement made and entered into February 28, 1993, a Texas corporation as recorded in Book and Volume 93207, Page 3142, Instrument #199302074590 of the OPR; and

WHEREAS, Ground Lease #56 was then assigned by Personal Way Aviation, Inc. to RR Investments, Inc. dba Million Air Dallas by that certain Assignment of Lease dated December 15, 1994 and, by virtue of all such assignments pertaining to Ground Lease #56, RR Investments, Inc. dba Million Air Dallas is the current Tenant under Ground Lease #56; and

WHEREAS, a true and correct copy of the said Ground Lease #56, together with all amendments and modifications thereto, is attached to this Agreement as Exhibit "B" (and is referred to herein as the "Ground Lease #56" or "Ground Lease #070A-5601"); and

WHEREAS, Ground Lease #60 and Ground Lease #56 (collectively hereinafter referred as the "Ground Leases") provide that, upon the expiration or termination of that certain agreement referred to and defined in the Ground Leases as the "Base Lease" (and being an Agreement for Operation of the Addison Airport between the City and Addison Airport of Texas, Inc.), the City is entitled to all of the rights, benefits and remedies, and will perform the duties, covenants and obligations of the Landlord under the Ground Leases; and

WHEREAS, the said Base Lease has expired and the City is the Landlord under the Ground Leases; and

WHEREAS, Tenant has proposed to construct certain building improvements on, that will extend across the boundary lines of the #70A-6001 Demised Premises and the #70A-5601 Demised Premises, and in order to best facilitate these new building improvements, Landlord and Tenant mutually desire by this instrument to provide for the early termination of Ground Lease #60, and by separate instrument entitled "Second Amendment to Ground Lease" to amend Ground Lease #56 to, among other things, combine the #70A-6001 Demised Premises with the #70A-5601 Demised Premises.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

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

Section 2. Termination. Landlord and Tenant agree that, subject to the parties entering into and executing that instrument entitled "Second Amendment to Ground Lease" for Ground Lease #56 (the "Second Amendment") as may be mutually agreed to by the parties, Ground Lease #60 shall terminate as of the effective date of the Second Amendment (the "Termination Date") as if such date was the stated expiration date of Ground Lease #60. In accordance therewith, the Termination Date is _____ (*to be completed upon execution of the Second Amendment to Ground Lease #56*). In the event the Second Amendment is not agreed to and executed by the authorized representatives of both parties on or before _____, 2010, this Ground Lease Early Termination Agreement shall be null and void ab initio, shall have no force or effect whatsoever, and Ground Lease #60 shall be and remain in full force and effect. The early termination of Ground Lease #60 shall not release Tenant from any of its obligations, duties, liabilities or responsibilities that Tenant would otherwise have if Ground Lease #60 had expired in accordance with its terms and provisions.

Section 3. Continued Performance. Landlord and Tenant agree that each shall continue to perform their respective obligations contained in Ground Lease #60 including, but not limited to, Tenant's obligation to pay rent, through the Termination Date. If the Termination Date is other than the last day of the month, then the parties agree that the rent attributable to that part of the month through the Termination Date shall be prorated on a per diem basis.

Section 4. Binding Effect. This Agreement shall be for the benefit of, and shall be binding upon, the parties hereto and their respective heirs, executors, administrators, successors, and assigns (as the same may be permitted by Ground Lease #60).

Section 5. Applicable Law; Venue; Recording. The Agreement shall be construed under and governed by the laws of the State of Texas, without regard to choice of law rules, and all obligations of the parties created by this Agreement are performable in Dallas County, Texas. Venue for any action under this Agreement shall lie exclusively in Dallas County, Texas. Landlord may record this Agreement or a memorandum hereof in the real property records of Dallas County, Texas.

Section 6. Final Agreement; No Other Amendments. This Agreement shall constitute the final agreement and understanding of the parties on the subject matter hereof and can only be modified by further written instrument signed and executed by both parties. Except to the extent modified or amended herein, all other terms, conditions, standards, and obligations of Ground Lease #60 shall remain unchanged and in full force and effect.

Section 7. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the Effective Date first given above.

LANDLORD:

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

TENANT:

**RR INVESTMENTS, INC. dba
MILLION AIR DALLAS**

By: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me, the undersigned authority, on _____, 2010 by Ron Whitehead, City Manager for the Town of Addison, Dallas County, Texas, a Texas municipal corporation, on behalf of the said municipal corporation.

Notary Public, State of Texas

My Commission Expires:

(Printed Name of Notary)

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me, the undersigned authority, on _____, 2010 by _____, _____ of RR Investments, Inc. dba Million Air Dallas, a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

My Commission Expires:

(Printed Name of Notary)

Exhibit "A"

a true and correct copy of the Ground Lease #070A-6001 as amended and modified

Exhibit "B"

a true and correct copy of the Ground Lease #070A-5601 as amended and modified

Exhibit 3

Second Amendment To Ground Lease

GL #070A-5601

STATE OF TEXAS §
 § **SECOND AMENDMENT TO GROUND LEASE**
COUNTY OF DALLAS §

This Second Amendment to Ground Lease (hereinafter referred to as the "Second Amendment") is entered into and effective as of _____, 2010 (the "Effective Date"), between the Town of Addison, Texas, a home-rule municipality (hereinafter sometimes referred to as the "Landlord" or the "City"), and RR Investments, Inc. d/b/a Million Air Dallas, a Texas corporation ("Tenant").

WHEREAS, a Ground Lease was executed on February 20, 1984 between the City of Addison (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as Landlord, and Personal Way Aviation, Inc., as tenant (identified as Ground Lease #070A-5601 or Ground Lease #56 in the administrative archives and records of the City), by the terms of which certain real property commonly known to be located at 4350 Westgrove Drive, Addison, Texas 75001 (the "Demised Premises" and as more fully described in the said Ground Lease) in the Addison Airport (the "Airport") within the Town of Addison, Texas (the "City") and owned by the City was leased to Personal Way Aviation, Inc.; and

WHEREAS, the Ground Lease was thereafter amended by that Amendment to Ground Lease dated August 15, 1990 wherein (i) the description of the Demised Premises was modified to contain a certain 2.2958 acres of land described as "Tract 4" in Exhibit "C" of said amendment, and; (ii) the monthly rental was increased to Two Thousand Nine Hundred Twenty-Seven and 19/100 (\$2,927.19) (subject to adjustment as provided for in the Ground Lease), and; (iii) all other terms and conditions of the Ground Lease remained in full force and effect; and

WHEREAS, the Ground Lease was thereafter assigned by that certain Assignment of Leases and Assumption Agreement dated May 6, 1992 from Personal Way Aviation, Inc., as assignor, to Hi Services Enterprises, Inc., a Texas corporation as assignee (the assignment being recorded in Book and Volume 93183, Page 1651, Instrument # 199301835241 of the Official Public Records of Dallas County, Texas (the "OPR")); and

WHEREAS, Hi Services Enterprises, Inc. thereafter merged into Carter-Crowley Properties, Inc, a Texas corporation ("Carter-Crowley"), and by way of that certain Guaranty and Assumption of Lease Agreement dated November 2, 1992, Carter-Crowley assumed and guaranteed the performance of Hi Services Enterprises, Inc.'s obligations under the Ground Lease; and

WHEREAS, the said Ground Lease was thereafter assigned by Carter-Crowley (the successor by merger to Hi Services Enterprises, Inc.) to Personal Way Aviation, Inc. by that Assignment of Leases and Assumption Agreement made and entered into February 28, 1993, a Texas corporation as recorded in Book and Volume 93207, Page 3142 Instrument #199302074590 of the OPR; and

WHEREAS, the Ground Lease was thereafter assigned by Personal Way Aviation, Inc. to RR Investments, Inc. d/b/a/ Million Air Dallas by that certain Assignment of Lease dated

December 15, 1994 and by virtue of said assignment the Tenant is the current tenant under the Ground Lease; and

WHEREAS, the Base Lease (as defined in the Ground Lease) between the Town of Addison, Texas and Addison Airport of Texas, Inc. has expired, and the Town of Addison, Texas alone is the Landlord under the Ground Lease; and

WHEREAS, a true and correct copy of the said Ground Lease, together with all amendments and modifications thereto, is attached to this Second Amendment as Exhibit "A" (and is referred to herein as the "Ground Lease", the "Lease" or "Ground Lease #070A-5601"), and

WHEREAS, Tenant is also the tenant under another ground lease at the Airport that is identified in the administrative archives and records of the City as Ground Lease #070A-6001, in which ground lease Tenant leases from the City certain land that abuts the Demised Premises (the "#070A-6001 Premises"); and

WHEREAS, Landlord and Tenant desire by this Second Amendment to, among other things, amend the Demised Premises to add thereto the #070A-6001 Premises, and in connection therewith and as a result of such addition, Landlord and Tenant have agreed to terminate Ground Lease #070A-6001 as reflected in that instrument entitled "Termination of Ground Lease Agreement" of even date herewith.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town of Addison, Texas and RR Investments, Inc. d/b/a Million Air Dallas, a Texas corporation, do hereby agree as follows:

Section 1. Incorporation of Premises; Tenant Representations. The above and foregoing premises and recitals are true and correct and are incorporated herein and made a part hereof.

In connection with the Ground Lease and this Second Amendment and as a part thereof, Tenant represents and warrants to Landlord that Tenant: (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; and, (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of the Tenant.

Section 2. Amendments and Modifications to Ground Lease. The Ground Lease, as described in the above and foregoing recitals, is hereby amended and modified as follows:

A. Amendment to Description of Demised Premises.

1. The description of the Demised Premises leased to Tenant as set forth in the Ground Lease is hereby amended so that the Demised Premises shall hereafter comprise the land described in **Exhibit B** attached to this Second Amendment and incorporated herein (the “Demised Premises”); provided, however, the said Demised Premises described in the attached **Exhibit B** and the lease thereof are subject to any and all (i) federal, state, and local laws, statutes, constitutional provisions, charters, ordinances, codes, rules, regulations, directives, policies, permits, standards, and orders (including, without limitation, court orders) of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, and the Texas Department of Transportation), whether in existence or hereafter enacted, adopted or imposed, and including, without limitation, any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed, (ii) restrictive covenants, mortgages, taxes, easements, licenses, encroachments, leases, deeds of trust, liens, mortgages, restrictions, and all other encumbrances or title exceptions, whether of record or not, and including, without limitation, items or matters which are visible or apparent from an inspection, which affect the Demised Premises.

B. Term Adjustment. Section 3 of the Ground Lease is modified in accordance with the following:

1. The term of this Lease is currently scheduled to and shall end on March 31, 2024, subject, however, to the termination provisions of the Lease, including, without limitation, the termination provisions set forth in this Second Amendment, and all other terms, conditions, and provisions of this Lease. However, if:

(a) Tenant satisfies and completes to Landlord's satisfaction all of the terms, conditions, and provisions of this Lease, as amended, regarding construction of the Building Improvements (as defined and described herein) set forth in the amendments to Section 6 of this Lease (which amendments are included in Section 2.E. of this Second Amendment, below) (including, without limitation, satisfaction of the time period for achievement of Substantial Completion and Final Completion (as such terms are defined herein) of the Building Improvements),

(b) the Construction Costs Evidence (as defined herein) is timely submitted by Tenant to Landlord and the same equals or exceeds the Construction Cost Value (as defined herein), and

(c) Tenant is not in default of any provision of this Lease,

then the Term hereof shall be extended so that it shall end four hundred and eighty (480) full calendar months following the date of Substantial Completion (as defined herein) (the "Lease Extension Period"), but subject, however, to the termination provisions and all other terms, conditions, and provisions of the Lease. Example: If the date of Substantial Completion of the Building Improvements is April 15, 2014, the Lease Extension Period will end at the end of May, 2054.

2. Notwithstanding the foregoing or any other provision of this Lease, it is the intent of the parties that the remaining Term, as may be extended, shall not at any time exceed forty (40) years in duration.

3. Within fifteen (15) calendar days after Final Completion of the Building Improvements is achieved by Tenant as defined in Section 6, Landlord and Tenant agree to execute a Memorandum of Lease, in substantially the form attached hereto as Exhibit D, which Memorandum may be publicly recorded by either party in the Official Public Records of Dallas County, Texas evidencing this Lease and its Term reflecting the Lease Extension Period.

C. Amendment to Rental. Section 4 of the Ground Lease is modified in accordance with the following:

1. Rent for the Demised Premises as amended hereby shall be in an annual amount equal to the product of the number of gross square feet of the Demised Premises (the number of gross square feet of the Demised Premises as set forth in Exhibit B to this Second Amendment being 157,866 square feet) multiplied by \$0.5451 per gross square foot (157,866 square feet times \$0.5451 per gross square foot equals annual rent amount of \$86,052.76) (the "Rent" or "Annual Rent"), which Rent is subject to adjustment as set forth in the Ground Lease. Without offset or deduction, Rent shall be paid in advance in monthly installments on or before the first day of each calendar month, each such installment determined by dividing the Annual Rent amount by twelve (12), with the first such installment due on or before the first day of the first calendar month following the Effective Date of this Second Amendment. Landlord and Tenant agree that the Rent rate of \$0.5451 per gross square foot is that Rent rate as adjusted in accordance with the Ground Lease and amendment since the commencement of the Ground Lease and is subject to further and future adjustment as set forth in the Ground Lease.

D. Amendment to Adjustment of Rental – Section 5 of the Ground Lease is amended in its entirety to read as follows:

Adjustment of Rental: Commencing on January 1, 2013 and on every second anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the Annual Rent due under Section 4, as amended herein, shall be adjusted as follows:

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

B. Beginning with the first full month following the then applicable Adjustment Date, the Annual Rent shall be adjusted so that it equals the product of the Annual Rent amount during the first year of this Second Amendment (such amount being \$86,052.76) multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index, but in no event shall such Annual Rent ever be decreased below the Annual Rent set forth in Section 4., as amended (such Annual Rent being \$86,052.76). Without offset or deduction, Annual Rent shall be paid in advance in monthly installments on or before the first day of each calendar month, determined by dividing the Annual Rental amount by twelve (12), with the first such installment due on or before the first day of the first calendar month following the Adjustment Date

C. In the event that the Consumer Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Consumer Price Index as closely as feasible (as reasonably determined by Landlord) shall be substituted therefor.

E. Amendment to Use of Demised Premises and Construction of Improvements.
Section 6 of the Ground Lease is amended in its entirety to read as follows:

A. Use of the Demised Premises:

1. The Demised Premises shall be used and occupied by Tenant only for the following purposes: sale of aircraft and aircraft parts; aircraft maintenance and repair, aircraft storage; aircraft training, aircraft charter; aircraft rentals; Fixed Base Operations: hangars, shops, aircraft ramps and vehicle parking; the sale of aircraft services to the public, including dispensing fuel in accordance with and subject to the authority issued by and ordinances, rules, standards and regulations of the City; and not otherwise without the prior written consent of Landlord.

2. The Demised Premises shall not be used for any purpose or activity that (i) constitutes a violation of any federal, state, or local laws, ordinances, orders, directives, charters, rules, regulations, standards or policies), (ii) in Landlord's opinion, creates or would create a nuisance or waste, or unreasonably disturb, annoy or interfere with other tenants or users of the Airport, or (iii) increases insurance costs for Landlord.

3. Tenant shall not at any time leave the Demised Premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Demised Premises the type of operations or use for which the Demised Premises are leased, except during periods in which the Demised Premises may not be occupied as a result of fire or other casualty, or during any commercially reasonable period necessary for making repairs and alterations, all such repairs and alterations to be diligently pursued to completion.

4. Tenant acknowledges that Landlord is bound by, and this Ground Lease is subject to, the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements,

grant assurances and regulations regarding the Airport, including, without limitation, any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Tenant agrees not to act or fail to act in any way or manner that would cause Landlord to be in violation of any of the foregoing.

5. Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (i) no person on the grounds of race, creed, color, national origin, sex, age or handicap shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Demised Premises; (ii) that in the construction of any improvements on, over or under the Demised Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (iii) that the Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

6. Tenant agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

B. Construction of Improvements.

1. In connection with the use and occupancy of the Demised Premises by Tenant, Tenant shall cause to be constructed on the Demised Premises buildings and other improvements (together, the "Building Improvements"), at Tenant's sole cost, expense and risk (except as may be otherwise agreed to between Landlord and Tenant), in accordance with plans and specifications which shall be submitted to and subject to the approval of Landlord. The term "Building Improvements" shall mean those improvements described in Exhibit C attached hereto and incorporated herein. Except as provided for in this Agreement, Tenant may not construct, locate, install, place or erect any other improvements upon the Demised Premises without the prior written consent of Landlord. The construction cost (separate and apart from the cost of design and any other costs or expenses (including, without limitation, those costs sometimes referred to as "soft costs") of the Building Improvements shall exceed three million dollars (\$3,000,000) (the "Construction Cost"), and Tenant shall submit to Landlord evidence of such Construction Cost (the "Construction Cost Evidence"); such Construction Cost Evidence shall include true and correct copies of all receipts or other documents or records indicating the nature of the construction work performed, the cost thereof, the amount paid for the construction work and the

Building Improvements, and such other records or information as Landlord may request to substantiate the Construction Cost.

2. The Building Improvements shall be constructed on the Demised Premises in accordance with plans and specifications prepared by an architect and/or engineer selected and retained by Tenant (the "Design Plan"), which shall be submitted to Landlord for Landlord's consideration of approval (which approval, if any, shall be in writing). Any architect or engineer shall be duly licensed and authorized as may be required by law to practice architecture or engineering, as the case may be, in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages (including, without limitation, consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage or destruction, or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction, and **TENANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS, INCLUDING SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS WHICH ARE CAUSED BY OR RESULT FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LANDLORD OR MANAGER (OR THEIR RESPECTIVE OFFICIALS, OFFICER, EMPLOYEES, AND AGENTS).** It is expressly understood and agreed that Tenant's construction of the Building Improvements shall include the finish-out of such building and improvements in accordance with the plans and specifications for the finish-out of the Building Improvements as submitted by Tenant to Landlord and approved in writing by Landlord.

3. Landlord's approval of the Design Plan or any other plans and specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility.

4. If construction of the Building Improvements has not commenced before December 31, 2013, Landlord may terminate this Ground Lease or terminate Tenant's right to possession of the Demised Premises (without terminating this Ground Lease) by written notice to Tenant.

5. For purposes hereof, construction of Building Improvements shall be deemed to have commenced when all of the following events have occurred: (i)

approval of the Design Plan by Landlord, (ii) Tenant has been issued the required building permit(s) or licenses necessary to construct the Building Improvements on the Demised Premises, (iii) Tenant shall have received (and shall have provided a true and correct copy to Landlord of) the Federal Aviation Administration's ("FAA's") determination to Tenant's filing of Form 7460 Notice of Proposed Construction or Alteration, (iv) execution of a contract to perform the work set forth in the Design Plan with a qualified general contractor, (v) proof of required Builder's Risk Insurance Policy and Payment Bond and Performance Bond required under Section 13 herein, and (vi) the initiation of actual mobilization of construction equipment on the Demised Premises (to perform the initial steps of construction of the Building Improvements, such as excavation for a foundation).

6. After commencement of construction, Tenant shall complete construction of the Building Improvements with reasonable diligence, without material deviation from the Design Plan, and any deviation from the Design Plan shall be subject to the review and approval of Landlord. If (i) construction of the Building Improvements is not Substantially Complete ("Substantial Completion" being defined in subsection 10 of this Section 6.B) on or before July 31, 2013, and Final Completion ("Final Completion" being defined in subsection 10 of this Section 6.B) achieved no later than ninety (90) days after the date of Substantial Completion, and if (ii) the Construction Costs of the Building Improvements do not exceed the Construction Cost as established by the Construction Costs Evidence which Tenant shall submit to Landlord on or before the Final Completion date, such failure and/or omission constitutes a default or breach of this Agreement for which Landlord may pursue all rights and remedies available to Landlord under this Ground Lease or at law, in equity or otherwise (including, without limitation, termination of this Ground Lease and/or Tenant's right to possession of the Demised Premises). If Landlord terminates this Lease, Tenant shall at Landlord's request remove any portion of the Building Improvements requested by Landlord and leave the Demised Premises in a good condition.

7. Tenant agrees that any construction or modification of the Building Improvements or any other improvements (authorized to be constructed in writing by Landlord) on the Demised Premises shall comply with all standards, codes, and rules adopted by Landlord or Manager, including, but not limited to, any rules relating to construction and maintenance standards and specifications, will comply with the Town of Addison, Texas building code and zoning requirements, and will meet or exceed all applicable State and Federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time). Tenant recognizes that such construction/maintenance standards and specifications, Town of Addison building code and zoning requirements, and all applicable State and Federal standards, and other applicable standards, codes, and rules may be modified or amended from time to time and that compliance will be

measured by such standards in effect at the time of a particular construction or modification of improvements.

8. Tenant will properly and timely submit to the Federal Aviation Administration (FAA), the Texas Department of Transportation (TxDOT), and any other governmental entity or agency having jurisdiction regarding Addison Airport, a Notice of Proposed Construction or Alteration (FAA Form 7460-1), a TxDOT Airport Construction Emission Inventory, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over Addison Airport.

9. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises, and all parts thereof, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, Substantial Completion, Final Completion, and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises.

10. "Substantial Completion" of the construction of the Building Improvements shall be deemed to have occurred upon (i) the issuance of a written certification by Tenant's architect (or other authorized design professional) who designed the Building Improvements in writing to Landlord that said Building Improvements are complete in accordance with the Design Plan (e.g., a certificate of substantial completion), and (ii) the issuance by the Town of Addison, Texas of a final, unconditional certificate of occupancy for said Building Improvements. "Final Completion" of the construction of the Building Improvements shall be deemed to occur upon the issuance by Tenant's architect (or other authorized design professional) who designed the Building Improvements of such documentation as may be necessary to establish the final completion (closeout) of the construction of the Building Improvements, the delivery of a true and correct copy of such documentation to Landlord, and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed by Tenant's architect (or other authorized design professional) reflecting all approved changes and modifications to the originally approved Design Plan.

11. Failure of Tenant to observe and comply with the requirements of this Section shall be an Event of Default.

F. Amendment to Section 7 of the Ground Lease. Section 7 of the Ground Lease is amended in its entirety to read as follows:

7. Acceptance of Demised Premises: **TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE DEMISED PREMISES AND ACCEPTS THE DEMISED PREMISES AND THAT THE DEMISED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", AND**

LANDLORD HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE DEMISED PREMISES FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES, DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO ACKNOWLEDGES AND AGREES THAT TENANT'S INSPECTION AND INVESTIGATION OF THE DEMISED PREMISES HAVE BEEN ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE DEMISED PREMISES, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES, DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS SECTION ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE DEMISED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS SECTION. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE LEASED PREMISES. TENANT WAIVES ANY IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES THAT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY, PROVIDING A COPY OF THE RESULTS TO LANDLORD, ALL AS SPECIFIED IN MORE DETAIL IN SECTION 21.1 BELOW WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide Rent to Landlord on a Net Return Basis, as set out in Section 30, below.

G. Amendment to Section 8 of the Ground Lease. Section 8 of the Ground Lease is amended in its entirety to read as follows:

8. Securing Governmental Approvals and Compliance with Law; Noise Abatement.

A. Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the Demised Premises. This Lease is subject to and Tenant shall comply at all times with all federal, state, and local laws, statutes, ordinances, rules, regulations, directives, orders, permits, standards, codes (including, without limitation, building codes and standards), zoning requirements, grant assurances, grant agreements, the Charter of the Town of Addison, all court orders, opinions and decisions, and all interpretations of the foregoing, of and by any governmental authority, entity, branch, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, the Texas Department of Transportation, the United States Environmental Protection Agency, and the Texas Commission on Environmental Quality, and any successor entities thereto) applicable or related to, whether directly or indirectly, this Lease, the Addison Airport, the Demised Premises, and the use and occupancy thereof, and whether in existence or hereafter enacted, adopted or imposed (collectively, "Laws" and "Law" means any of the foregoing). Tenant shall promptly comply with all governmental orders and directives and all other Laws for the correction, prevention and abatement of nuisances in or upon, or connected with, the Demised Premises, all at Tenant's sole cost and expense, and shall comply with and be subject to (and this Lease is made and entered into subject to) any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed and to the terms of a grant, loan, or agreement under Section 22.055 of the Texas Transportation Code (and as the same may be amended or superseded).

Tenant agrees that any new construction or modification of existing improvements on the Demised Premises will comply with all standards and rules published by the Landlord or by any person or entity authorized by Landlord to manage and/or operate the Airport or any portion thereof or any function related thereto (such person and or entity, whether one or more, being the "Airport Manager" or "Manager"), including, but not limited to, the Airport's published "Construction/Maintenance Standards and Specifications," will comply with the Town of Addison building codes and zoning requirements or any other laws, ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or regulations, and will otherwise comply with all Laws. Tenant recognizes that the referenced Construction/Maintenance Standards and Specifications, Town of Addison building codes and zoning requirements and other laws, ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations, and any other Laws, may be modified or amended from time to time and that

compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements. Tenant will properly and timely submit to the Federal Aviation Administration, the Texas Department of Transportation, and any other governmental entity or agency having jurisdiction regarding or related to Addison Airport, a Notice of Proposed Construction, when and as required. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises, and all parts thereof, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises. Failure of Tenant to observe and comply with any provision or requirement of this Section 8 shall be an Event of Default.

B. Tenant shall comply with noise abatement standards at the Airport at all times and shall notify any aircraft operator using any portion of the Demised Premises of such standards.

H. Amendment to Section 9 of the Ground Lease. Section 9 of the Ground Lease, subparagraphs A., B., and E. of the Ground Lease are amended in their entirety to read as follows:

9. Assignment, Subletting and Mortgaging of Leasehold Estates:

A. 1. Without the prior written consent of Landlord, Tenant shall have no power to and shall not, either voluntarily or involuntarily, by operation of law or otherwise, (i) assign, sell, pledge, encumber, mortgage, license, transfer, or otherwise convey (each being referred to herein as "assign" or "assignment" and any person or entity to whom an assignment is made being an "assignee") this Lease, or any interest, rights, duties, liabilities, or obligations of Tenant hereunder, or any part of the Demised Premises, (except to a leasehold mortgagee as hereinbelow provided and in accordance with and subject to all of the terms and conditions of this Lease), or (ii) sublet the whole or any part of the Demised Premises, and any such assignment and any subletting shall be null and void and may be deemed by Landlord (in Landlord's sole discretion) a default under Section 22 of this Lease.

2. Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's subletting of the Leased Premises for the purpose of renting aircraft storage and office space only, provided that each sublease is evidenced by written agreement (to be made available for Landlord's review and inspection upon Landlord's written request within 3 business days), signed and executed by Tenant and sublessee and fairly states:

(i) each sublessee agrees to be bound by the terms and provisions of this Ground Lease, including, without limitation, the provisions of Section 6 pertaining to the use of the Demised Premises, and in the event of any conflict between the terms

of the Ground Lease and the terms of the sublease, the terms of the Ground Lease shall control;

- (ii) no such subletting shall constitute a novation;
- (iii) in the event of occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights or remedies provided herein or by law, in equity, or otherwise, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such subletting and apply such rent against any sums due to Landlord hereunder;
- (iv) sublessee shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Ground Lease;
- (v) any such sublease is to automatically terminate upon termination of the Ground Lease notwithstanding any other provision of the sublease to the contrary;
- (vi) Landlord shall have no responsibility or obligation for the performance by Tenant of its obligations under the sublease;
- (vii) neither this consent, the exercise by Landlord of its rights hereunder, nor the sublease or any other instrument shall give sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of sublessee.

Furthermore, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under the Ground lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under the Ground Lease; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under the Ground Lease, including, without limitation, the duty to make any and all payments of rent; that any violation of any terms and conditions of the Ground Lease by a sublessee will constitute a default under the Ground Lease.

3. If consent by Landlord to an assignment is required hereunder, Tenant shall request, in writing, Landlord's consent to a proposed assignment and such request must include: (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) all material terms of the proposed assignment; and (iv) audited financial statements or other evidence of the proposed assignee's creditworthiness and ability to assume Tenant's obligations.

For the purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, Landlord may, in Landlord's sole discretion, withhold its consent when any one or more of the following apply:

- (i) the proposed assignee is of a character or of a reputation or is engaged in a business, which is not consistent with the master or strategic plan of Addison Airport as determined by Landlord;

- (ii) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the Tenant under this Lease at the time when the consent is requested;
- (iii) the proposed assignee's intended use of the Leased Premises is inconsistent with the Lease;
- (iv) the proposed assignment would cause Landlord to be in violation of another lease or agreement to which Landlord is a party or to which Landlord or the Addison Airport is subject (including, without limitation, any grant agreements or grant assurances of the Federal Aviation Administration or any other governmental entity or agency);
- (v) if at any time consent is requested or at any time prior to the granting of consent, Tenant is in default under the Lease or would be in default under the Lease but for the pendency of a grace or cure period; or
- (vi) the proposed assignee does not intend to occupy the entire Demised Premises as described in the Lease and conduct its business there from for a substantial portion of the then remaining term of the Lease.

Any assignment will be deemed to occur if the person or persons who own or have control of more than 50% of Tenant on the date of this Second Amendment to Ground Lease cease to own or have control of more than 50% of Tenant at any time during the Term. Tenant shall provide to Landlord from time to time, as requested by Landlord and in a form acceptable to Landlord, a written certification as to the ownership and/or control of Tenant. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise.

Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including, without limitation, the provisions of Section 6 pertaining to the use of the Demised Premises. Tenant shall not assign this Lease or any right, duty, liability, or obligation of Tenant hereunder, or sublet the Demised Premises or any portion of the Demised Premises, without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to and shall be bound by and comply with all of the terms and provisions of this Lease (and Tenant shall provide a copy of such written agreement to Landlord). No assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, in equity, or otherwise, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee, transferee, pledgee, or person or entity to whom this Lease is otherwise conveyed or to such subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Upon written request, Tenant shall promptly provide to Landlord the names and addresses of any subtenants

and the make, model, aircraft type and "N" number of any aircraft stored, located or generally regarded to be "based" on or in the Demised Premises.

B. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of (i) obtaining funds for the construction of the Building Improvements described in Section 6, or (ii) for other construction upon the Demised Premises approved from time to time by Landlord in writing, or (iii) for other purposes which may be approved from time to time by Landlord in writing. In the event that Tenant, pursuant to mortgages or deeds of trust, mortgages the leasehold estate of Tenant created hereby, the leasehold mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the rental due hereunder and otherwise fully perform the terms and conditions of this Lease.

E. Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such mortgagee and its successors and assigns after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such mortgagee or its successors and assigns performs all of the obligations of Tenant hereunder; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such mortgagee shall not and does not have the right and shall not and does not have the power to assign, sell, transfer, pledge, encumber, mortgage, license, or otherwise convey this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, or sublet the whole or any part of the Demised Premises without the prior written approval of the Landlord, and any such assignment, sale, transfer, pledge, encumbrance, mortgage, license, or other conveyance and any such subletting without the prior written consent of Landlord shall be null and void and may be deemed a default under Section 22.B. of this Lease, it being the intent of this provision that such mortgagee shall have no greater right than Tenant to assign, sell, transfer, pledge, encumber, mortgage, license, or otherwise convey this Lease (or any right, interest, obligation, or liability hereunder), or to sublet the Demised Premises (or any portion thereof), or to use the Demised Premises. Landlord also agrees to consider the execution and delivery to such proposed leasehold mortgagee any other documents which such proposed leasehold mortgagee may reasonably request concerning the mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the Demised Premises to the mortgagee of such proposed leasehold mortgage.

I. Amendment to Section 10 of the Ground Lease. Section 10 of the Ground Lease is amended its entirety to read as follows:

10. Property Taxes and Assessments: Tenant shall pay, before they become delinquent, any and all property taxes or assessments, and any other governmental charges, fees or expenses (collectively, the “Taxes”), levied or assessed on any improvements on the Demised Premises, the personal property and fixtures on the Demised Premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord “paid receipts” or other written evidence that all such Taxes have been paid by Tenant. In the event Tenant fails to pay any such Taxes, Landlord shall have the right (but not the obligation) to pay or cause to be paid such Taxes, and the reasonable costs thereof expended by or caused to be expended by Landlord plus interest thereon as provided in Section 37 of the Ground Lease shall be paid by Tenant on demand.

If any buildings or other improvements located upon the Demised Premises are determined to be subject to property taxation by the Dallas Central Appraisal District (or any successor entity or agency thereto or other agency with the authority to make such determination) (“DCAD”), Tenant will not contest any such determination. Additionally, if a final (non-appealable) determination is rendered by DCAD or a court of appropriate and competent jurisdiction that any such buildings or other improvements are not subject to property taxation, the rent (as the same may be adjusted) for the year in which such final determination becomes effective shall be increased by an amount equal to the property tax revenue from such buildings and improvements that Tenant would have paid to the Town of Addison, Texas in that year but for such final determination (and such initial increased amount shall be paid to Landlord on or before December 31 of such year, unless otherwise agreed to by Landlord); thereafter, the rent (as the same may be adjusted) as so increased shall continue, subject to adjustment as set forth in this Lease.

J. Amendment to Section 13 of the Ground Lease. Section 13 of the Ground Lease is amended in its entirety to read as follows:

13. Insurance; Bonds.

A. At all times Tenant shall during the term hereof purchase and maintain at Tenant’s sole cost and expense and in a company or companies lawfully authorized to do business in Texas such insurance relating to the Demised Premises as follows:

(i) Insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the Demised Premises and any and all improvements thereon. The term “full insurable value” as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be effected.

(ii) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$1,000,000 general aggregate for bodily injury, death or property damage or destruction occurring on, in or about the Demised Premises, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. Coverage must include contractual liability.

(iii) Statutory limits of workers compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.00 each-occurrence each accident/\$1,000,000.00 by disease each-occurrence/\$1,000,000.00 by disease aggregate.

(iv) If applicable, boiler and pressure vessel insurance on all steam boilers, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$500,000.00 for damage to or destruction of property resulting from such perils.

(v) Such other insurance on improvements in such amounts and against such other insurable hazard which at the time are commonly obtained in the case of property similar to such improvements.

(vi) Hangarkeepers Legal Liability insurance, at limits of \$1,000,000.00 per-occurrence is required if Tenant is engaged in maintenance, repair, or servicing of aircraft belonging to a third-party, or if Tenant is otherwise involved in any operation in which Tenant has care, custody, or control of an aircraft that belongs to a third-party.

(vii) During any period of construction, a Builder's Risk Completed Value policy with an all risks endorsement in an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments or change orders thereto. The policy shall provide "All Risk" Builder's Risk Insurance (extended to include the perils of wind, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure).

(viii) Aircraft liability insurance against third party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000.00 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any subtenant).

Tenant shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:

(i) The Town of Addison, Texas, and the Airport Manager and their respective past and present officials, officers, employees and agents shall be named as additional insureds;

(ii) All insurance policies which name the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) as additional insureds must be endorsed to read as primary coverage regardless of the application of other insurance;

(iii) A waiver of subrogation in favor of the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) shall be contained in each policy required herein,;

(iv) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas and the Airport Manager of any material change in the insurance coverage;

(v) All insurance policies shall be endorsed to the effect that the Town of Addison, Texas and the Airport Manager will receive at least sixty (60) days written notice prior to cancellation or non-renewal of the insurance,;

(vi) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison or the Airport Manager;

(vii) Tenant may maintain reasonable and customary deductibles; and

(viii) Insurance must be purchased from insurers that are financially acceptable to Landlord and licensed to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, satisfactory to Landlord, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Landlord and updated as may be appropriate, and shall:

(i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and

(ii). Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison and the Airport Manager.

Upon request, Tenant shall furnish Landlord with complete copies of all insurance policies certified to be true and correct by the insurance carrier. Landlord reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by Landlord.

B. In connection with any construction on the Demised Premises, Tenant shall obtain and keep in full force and effect at its sole cost and expense a Performance Bond and a Payment Bond guaranteeing, respectively, the faithful performance of all construction

work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the penal sum of one-hundred percent (100%) of the Construction Costs. Tenant shall pay or cause to have paid the premiums for such bonds. Bonds shall be issued by a surety company satisfactory to the Landlord, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All forms shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to Landlord. Such bonds shall be in conformance with the provisions of Chapter 2253, Tex. Gov. Code, and any successor statute thereto.

K. Amendment to Section 18 of the Ground Lease. Section 18 of the Ground Lease is amended its entirety to read as follows:

18. Rules and Regulations. Landlord has adopted *Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers* (also commonly referred to as the “Minimum Standards” or “Airport Minimum Standards”) and *Addison Airport Rules and Regulations* (also commonly referred to as the “Rules and Regulations” or “Airport Rules and Regulations”), which shall govern Tenant in the use of the Demised Premises and all Common Facilities, a copy of which has been furnished to Tenant. The Minimum Standards and Rules and Regulations are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with these governing documents. Landlord, in its sole discretion, shall have the right to amend, modify and alter these Minimum Standards and Rules and Regulations from time to time in any manner or may introduce other regulations as deemed necessary for the purpose of assuring the safety, welfare, convenience and protection of property of Landlord, Tenant and all other tenants and customers of the Airport.

L. Amendment to Section 21 of the Ground Lease. Section 21 of the Ground Lease is amended in its entirety to read as follows:

21. Indemnity and Exculpation and Release.

A. **Exculpation.** **The Town of Addison, Texas and all other Addison Persons and the Manager Persons (for purposes of this subparagraph A, as the terms “Addison Persons” and “Manager Persons” are defined in Subsection B below), shall not be liable to Tenant or to any Tenant Persons (for purposes of this subparagraph A, as the term “Tenant Persons” is defined in Subsection B below), or to any other person whomsoever, for any death or injury to persons or damage to or destruction of property or any other harm on or about the Demised Premises or any adjacent area owned by Landlord caused by or resulting from any act or omission of Tenant or any Tenant Persons or any other person entering the Demised Premises under express or implied invitation of Tenant or any Tenant Persons, or arising out of the use or occupation of the Demised Premises by Tenant or by any Tenant Persons, in the performance of Tenant’s obligations hereunder.**

B. TENANT'S INDEMNITY OBLIGATION. Tenant agrees to and shall fully DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY AND HOLD HARMLESS (i) the Town of Addison, Texas, and the elected officials, the officers, employees, agents, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons") and (ii) Airport Manager and Airport Manager's owners, officers, employees and agents (Airport Manager and Airport Manager's owners, officers, employees and agents each being a "Manager Person" and collectively the "Manager Persons"), from and against any and all claims, actions, proceedings, causes of action, demands, losses, liens, harm, damages, penalties, fines, liabilities, expenses, lawsuits, judgments, costs, and fees (including reasonable attorney fees and court costs) of any kind and nature whatsoever made upon, incurred by, suffered by, or asserted against any Addison Person or any Manager Person or the Demised Premises, whether directly or indirectly, (collectively for purposes of this Section, "Damages"), that result from, relate to, or arise out of, in whole or in part, (i) any condition of the Demised Premises caused in whole or in part by Tenant or by any of Tenant's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, concessionaires, or any other person or entity for whom Tenant is legally responsible, and their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires, or any other person acting by or under the authority or with the permission of Tenant, Tenant's tenants, or any other person entering the Demised Premises under express or implied invitation of Tenant during the Lease Term (collectively, "Tenant Persons"), (ii) any construction on or repair to the Demised Premises, or the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant Persons, for any reason including by failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling, (iii) representations or warranties by Tenant under this Lease, and/or (iv) any act or omission of Tenant or any Tenant Persons under, in connection with, or in the performance of, this Lease. SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Tenant shall promptly advise Landlord in writing of any claim or demand against the Town of Addison, any other Addison Person, any Manager Person, or Tenant or any Tenant Person related to or arising out of Tenant's activities under this Lease and shall see to the investigation and defense of such claim or demand at Tenant's sole cost and expense. The Addison Persons and Manager Persons, as the case may be, shall have the right, at the Addison Persons' or Manager Persons' (as the case may be) option and at their own expense, to participate in such defense without relieving Tenant of any of its obligations hereunder.

C. Release. Tenant hereby **RELEASES** the Town of Addison, Texas and all other Addison Persons (as the term "Addison Persons" is defined in subsection B. of this Section) and Airport Manager and all other Manager Persons (as the term "Manager Persons" is defined in subsection B. of this Section) from, and agrees that the Town of Addison, Texas and all other Addison Persons, and Airport Manager and all other Manager Persons, shall not be liable to Tenant or any Tenant Persons (as the term "Tenant Persons" is defined in subsection B. of this Section) for (i) any death or injury to any person or persons or damage to or destruction of property of any kind resulting from the Demised Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever, and for (ii) any loss or damage that may be occasioned by or through the acts or omissions of other tenants of Landlord or caused by operations in construction of any private, public or quasi-public work.

D. The provisions of this Section 21 shall survive the expiration or termination of this Lease.

M. Amendment to Section 21.1 of the Ground Lease. Section 21.1 of the Ground Lease is inserted in its entirety to read as follows:

Section 21.1. Environmental Compliance.

A. Tenant shall not install, store, use, treat, transport, discharge or dispose (or permit, allow, or acquiesce in the installation, storage, use, treatment, transportation, discharge or disposal by Tenant's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, concessionaires, or any other person or entity for whom Tenant is legally responsible, and/or their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires) on the Demised Premises or any portion of the common facilities (described in Section 17), any: (a) asbestos in any form; (b) urea formaldehyde foam insulation; (c) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million; or (d) any other chemical, material, air pollutant, toxic pollutant, waste, or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by the

Resource Conservation Recovery Act (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq., as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act or any other federal, state, county, regional, local or other governmental authority law, rule, regulation, order, standard, permit, directive or policy, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the Demised Premises and/or any portions of the common facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, regulation, order, standard, permit, directive or policy, or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, regulation, order, standard, permit, directive or policy. (The substances referred to in (a), (b), (c) or (d) herein are collectively referred to hereinafter as "Hazardous Materials").

B. Cleanup Laws; Tenant's Indemnity Obligation.

1. Tenant shall, at Tenant's own expense, comply with any presently existing or hereafter enacted laws, rules, regulations, orders, standards, directives, permits, or notices relating to Hazardous Materials (collectively, "Cleanup Laws"). In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Cleanup Laws. Should any Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of the existence of Hazardous Materials which were installed, stored, used, treated, transported, disposed of or discharged on the Demised Premises and/or any portion of the common facilities (as described in Paragraph 17) by (i) Tenant, or by (ii) any of Tenant's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, concessionaires, or any other person or entity for whom Tenant is legally responsible, and/or their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires, or by (iii) any person acting by or under the authority or with the permission of Tenant, Tenant's tenants, or any other person entering the Demised Premises under express or implied invitation of Tenant during the Term of this Lease, Tenant shall, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances and carry out the approved plans in accordance with such Cleanup Laws and to Landlord's satisfaction. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord for preparation of affidavits or other documents required by Landlord to determine the applicability of the Cleanup Laws to the Demised Premises and/or any portion of the common facilities, as the case may be, and shall sign the affidavits promptly when requested to do so by Landlord.

2. Tenant's Indemnity Obligation. Without limiting any other indemnity, hold harmless, and defense obligation of Tenant set forth in this Lease, Tenant agrees to and shall fully DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and all other

Addison Persons (as the term “Addison Persons” is defined in subsection B of Section 21, above), and the Manager Persons (as the term “Manager Persons” is defined in subsection B of Section 21, above), from and against, and reimburse the Town of Addison, Texas, all other Addison Persons, the Airport Manager and all other Manager Persons (as the case may be) for, any and all obligations, damages, injunctions, fines, penalties, demands, claims, costs, fees, charges, expenses, actions, causes of action, judgments, liabilities, suits, proceedings, harm, and losses of whatever kind or nature (including, without limitation, attorneys' fees and court costs), and all cleanup or removal costs and all actions of any kind arising out of or in any way connected with the installation, storage, use, treatment, transporting, disposal or discharge of Hazardous Materials in, on, under, above, or to the Demised Premises and/or any portion of the common facilities or any portion of the Airport or adjacent properties by Tenant or by any Tenant Persons (as the term “Tenant Persons” is defined in subsection B of Section 21, above); and from all fines, penalties, suits, judgments, procedures, proceedings, claims, actions, and causes of action of any kind whatsoever arising out of Tenant's or any of Tenant Persons' failure to provide all information, make all submissions and take all steps required by the Authority under the Cleanup Laws or any other law, rules, regulation, standard, order, or policy (environmental or otherwise). SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSONS, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSONS, OR BY ANY ACT OR OMISSION OF OR BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSONS, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Tenant's obligations and liabilities under this subparagraph shall continue (and survive the termination or expiration of this Lease) so long as there may be Hazardous Materials at the Demised Premises and/or any portion of the common facilities or any portion of the Airport or adjacent properties, that were installed, stored, used, treated, transported, disposed of or discharged during the Lease Term by Tenant or any of Tenant Persons. In addition to and not in limitation of Landlord's other rights and remedies, Tenant's failure to abide by the terms of this Section shall be restrainable by injunction.

C. Tenant shall promptly supply Landlord and Airport Manager with copies of any notices, correspondence and submissions made by Tenant to or received by Tenant from any governmental authorities of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the FAA, TxDOT, or any other local, state or federal authority that requires submission of any information concerning environmental matters or Hazardous Materials.

D. Tenant's obligations and liability pursuant to the terms of this Section 21.1 shall survive the expiration or earlier termination of this Lease.

N. Amendment to Section 39 of the Ground Lease - Section 39 of the Ground Lease is amended in its entirety to read as follows:

Section 39. Force Majeure.

- A. In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Landlord, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord is so delayed or prevented.
- B. Except for the payment of any rent or any other payment to be made by, or any other monetary obligation of, Tenant under this Lease, and the provision of insurance by Tenant under this Lease, in the event performance by Tenant of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, the delay of any governmental approvals, civil riot, flood, or any other cause not within the control of Tenant, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Tenant is so delayed or prevented.

Section 3. No Other Amendments; Other Provisions. Except to the extent modified or amended herein, all other terms and obligations of the Ground Lease shall remain unchanged and in full force and effect. For purposes hereof this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

Section 4. Applicable Law; Venue. In the event of any action under this Second Amendment, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Second Amendment; and, with respect to any conflict of laws provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Second Amendment. All obligations of the parties created by this Second Amendment are performable in Dallas County, Texas.

Section 5. No Third Party Beneficiaries. This Second Amendment and the Ground Lease and each of their provisions are solely for the benefit of the parties hereto and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.

Section 6. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Amendment on behalf of the parties hereto, and each party hereby certifies to the other that

any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, the undersigned parties execute this Agreement this _____ day of _____, 2010

LANDLORD:

TENANT:

TOWN OF ADDISON, TEXAS

**RR INVESTMENTS, INC. D/B/A/
MILLION AIR DALLAS**

By: _____
Ron Whitehead, City Manager

By: _____

Name (*Print*): _____

Its: (*Title*): _____

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

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

[SEAL] Given under my hand and seal of office this _____ day of _____, 2010.

Notary Public, State of Texas

Print Name:_____

My commission expires:_____

STATE OF TEXAS §

COUNTY OF DALLAS §

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

[SEAL] Given under my hand and seal of office this _____ day of _____, 2010.

Notary Public, State of Texas

Print Name:_____

My commission expires:_____

EXHIBIT A

COPY OF GROUND LEASE AS AMENDED AND MODIFIED

EXHIBIT B

**PROPERTY SURVEY AND LEGAL DESCRIPTION
OF DEMISED PREMISES**

EXHIBIT C

Description of the Building Improvements

To include and incorporate herein the Design Plan approved by Landlord

EXHIBIT D

MEMORANDUM OF LEASE

This Memorandum of Lease is dated as of _____, 20____, and executed by and between the Town of Addison, Texas (“Landlord” or “City”) and RR Investments, Inc., a Texas corporation d/b/a/ Million Air Dallas (“Tenant”).

A Ground Lease was entered into as of February 20, 1984 between the Town (City) of Addison, Texas, as landlord, and Personal Way Aviation, Inc., as tenant (identified as Ground Lease #070A-5601 or Ground Lease #56 in the administrative archives and records of the City) in which certain real property commonly known as 4350 Westgrove Drive, Addison, Texas 75001 (“Demised Premises” and as more fully described in the said Ground Lease) within the Addison Airport (the “Airport”) was leased by Landlord to Personal Way Aviation, Inc. The said Ground Lease was thereafter:

- amended by that Amendment to Ground Lease dated August 15, 1990; and thereafter
- assigned as of May 6, 1992 by Personal Way Aviation, Inc. to Hi Services Enterprises, Inc., a Texas corporation (such assignment being filed of record in Book and Volume 93183, Page 1651, Instrument # 199301835241 of the Official Public Records of Dallas County, Texas (the “OPR”)); and thereafter
- assumed and guaranteed as of November 2, 1992 by Carter-Crowley Properties, Inc, a Texas corporation, successor to Hi Services Enterprises, Inc.; and thereafter
- assigned as of February 28, 1993 by Carter-Crowley Properties, Inc. to Personal Way Aviation, Inc. (such assignment being filed of record in Book and Volume 93207, Page 3142 Instrument #199302074590 of the OPR); and thereafter
- assigned as of December 15, 1994 by Personal Way Aviation, Inc. to RR Investments, Inc. d/b/a/ Million Air Dallas,

so that RR Investments, Inc. d/b/a/ Million Air Dallas is the current tenant under the Ground Lease.

Now let it be known, the said Ground Lease is further amended by that Second Amendment to Ground Lease, entered into and made effective _____. 2010, which, among other things, amends the description of the Demised Premises so that the Demised Premises shall thereafter comprise the land described in Exhibit A attached hereto, and amends the term of the Ground Lease so that it shall end on _____, 20____, subject, however, to the termination and all other provisions of the Ground Lease.

This Memorandum of Lease is solely for recording and notice purposes and shall not be construed to alter, modify, expand, diminish or supplement the provisions of the Ground Lease, as amended. In the event of any inconsistency between the provisions of this Memorandum of Lease and the provisions of the Ground Lease (as amended), the provisions of the Ground Lease, as amended, shall govern. Reference should be made to the Ground Lease (and all amendments thereto) for the full description of the rights and duties of Landlord and Tenant thereunder, and

this Memorandum of Lease shall in no way affect the terms and conditions of the Ground Lease (including all amendments thereto) or the interpretation of the rights and duties of Landlord and Tenant thereunder.

Upon the expiration or earlier termination of the Ground Lease, Landlord and Tenant agree that they shall execute and record a termination of this Memorandum of Lease.

IN WITNESS WHEREOF, the undersigned parties execute this Memorandum of Lease this ____ day of _____, 20__.

LANDLORD:

TENANT:

TOWN OF ADDISON, TEXAS

RR INVESTMENTS, INC.

By: _____
Ron Whitehead, City Manager

By: _____

Typed name: _____

Title: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

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

Given under my hand and seal of office this _____ day of _____, 20__.

[SEAL]

By: _____
Notary Public, State of Texas

My commission expires: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

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

[SEAL]

By: _____
Notary Public, State of Texas

My commission expires: _____

EXHIBIT A
to Memorandum of Lease

[Insert description of Demised Premises]

Exhibit 4

Second Amendment To Ground Lease

GL #070A-5201

STATE OF TEXAS §
 § **SECOND AMENDMENT TO GROUND LEASE**
COUNTY OF DALLAS §

This Second Amendment to Ground Lease (hereinafter referred to as the "Second Amendment") is entered into and effective as of _____, 2010 (the "Effective Date"), between the Town of Addison, Texas, a home-rule municipality (hereinafter sometimes referred to as the "Landlord" or the "City"), and RR Investments, Inc., a Texas corporation ("Tenant").

WHEREAS, a Ground Lease was executed on April 6, 1983 between the City of Addison (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as Landlord, and RR Investments, Inc., as tenant (identified as Ground Lease #070A-5201 or Ground Lease #52 in the administrative archives and records of the City), by the terms of which certain real property commonly known to be located at 4300 Westgrove Drive, Addison, Texas 75001 (the "Demised Premises" and as more fully described in the said Ground Lease) in the Addison Airport (the "Airport") within the Town of Addison, Texas (the "City") and owned by the City was leased to RR Investments, Inc.; and

WHEREAS, the Ground Lease was then amended by that Amendment to Ground Lease dated April 1, 1984 (the "1984 Amendment") wherein (i) the description of the Demised Premises was modified to contain a certain 3.627 acres of land as described in Exhibit "A-1" of said amendment (being a copy of the property survey prepared by Ginn, Inc. entitled "3.627 Acres Air Fleet~Dallas Addison Municipal Airport" revised 5/1/1984), and (ii) the monthly rental was increased to Three Thousand Six Hundred Sixty and 79/100 Dollars (\$3,660.79) (subject to adjustment as provided for in the Ground Lease), and (iii) all other terms and conditions of the Ground Lease remained in full force and effect; and

WHEREAS, the Base Lease (as defined in the Ground Lease) between the Town of Addison, Texas and Addison Airport of Texas, Inc. has expired, and the Town of Addison, Texas alone is the Landlord under the Ground Lease; and

WHEREAS, a true and correct copy of the said Ground Lease, together with the 1984 Amendment, is attached to this Second Amendment as Exhibit "A" (and is referred to herein as the "Ground Lease", the "Lease" or "Ground Lease #070A-5201"), and

WHEREAS, Tenant is also the tenant under three other ground leases at the Airport that are identified in the administrative archives and records of the City as:

- Ground Lease #0690-5901, in which Tenant leases from the City approximately 4.2128 acres of land commonly known as 4310 Amelia Earhart,
- Ground Lease #070A-5601, in which Tenant leases from the City approximately 3.6241 acres of land commonly known as 4350 Westgrove (the "#070A-5601 Premises"), and

- Ground Lease #070A-6001, in which Tenant leases from the City approximately 1.33 acres of land commonly known as 4375 Westgrove (the “#070A-6001 Premises”); and

WHEREAS, with respect to Ground Lease #070A-5601, Landlord and Tenant have entered into an amendment thereto entitled “Second Amendment to Ground Lease” of even date herewith (the “#070A-5601 Second Amendment”), which, among other things, (i) amends the demised premises described therein to include both the #070A-5601 Premises and the #070A-6001 Premises (together, the “Amended #070A-5601 Premises”), and (ii) provides for the construction by Tenant of certain building and related improvements upon the Amended #070A-5601 Premises; and

WHEREAS, with the addition of the #070A-6001 Premises to Ground Lease #070A-5601, Landlord and Tenant have agreed to terminate Ground Lease #070A-6001 as reflected in that instrument entitled “Termination of Ground Lease Agreement” of even date herewith and

WHEREAS, Landlord and Tenant desire and mutually agree to amend the Ground Lease to modify the provisions affecting the Term and other terms and conditions of the Ground Lease as set forth herein.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town of Addison, Texas and RR Investments, Inc., a Texas corporation, do hereby agree as follows:

Section 1. Incorporation of Premises; Tenant Representations. The above and foregoing premises and recitals are true and correct and are incorporated herein and made a part of this Second Amendment for all purposes.

In connection with the Ground Lease and this Second Amendment and as a part thereof, Tenant represents and warrants to Landlord that Tenant: (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; and, (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of the Tenant.

Section 2. Amendments and Modifications to Ground Lease. The Ground Lease, as described in the above and foregoing recitals, is hereby amended and modified as follows:

A. Term Adjustment. Section 3 of the Ground Lease is modified in accordance with the following:

- (1) The term of this Lease is currently scheduled to and shall end on November 30, 2023, subject, however, to the termination provisions of the Lease, including, without

limitation, the termination provisions set forth in this Second Amendment, and all other terms, conditions, and provisions of this Lease. However, if:

(a) Tenant timely satisfies and completes to Landlord's satisfaction all of the terms, conditions, obligations, and provisions of the #070A-5601 Second Amendment regarding the construction of those improvements described in the #070A-5601 Second Amendment as "Building Improvements" (and so called herein) (which terms, conditions, obligations, and provisions are set forth in Section 2.E. of the #070A-5601 Second Amendment, the same including an amendment to Section 6.B. of Ground Lease #070A-5601 (and including, without limitation, satisfaction of the time period for achievement of "Substantial Completion" and "Final Completion" (as such terms are defined in the #070A-5601 Second Amendment) of the Building Improvements)),

(ii) so that the lease extension period described in Section 2.B. of the #070A-5601 Second Amendment becomes effective (e.g., so that the term of Ground Lease #070A-5601 is extended as described in Section 2.B. of the #070A-5601 Second Amendment),

then the Term of this Ground Lease shall be extended to end four hundred and eighty (480) full calendar months following the date of Substantial Completion of the Building Improvements (the "Lease Extension Period"), but subject, however, to the termination provisions and all other terms, conditions, and provisions of the Lease. Example: If the date of Substantial Completion of the Building Improvements is April 15, 2014, the Lease Extension Period will end at the end of May, 2054.

2. Notwithstanding the foregoing or any other provision of this Lease, it is the intent of the parties that the remaining Term, as may be extended, shall not at any time exceed forty (40) years in duration.

3. Within fifteen (15) calendar days after Final Completion of the Building Improvements is achieved by Tenant as defined in the #070A-5601 Second Amendment, Landlord and Tenant agree to execute a Memorandum of Lease, in substantially the form attached to hereto as Exhibit C, which Memorandum may be publicly recorded by either party in the Official Public Records of Dallas County, Texas evidencing this Lease and its Term reflecting the Lease Extension Period.

B. Amendment to Rental. Section 4 of the Ground Lease is modified in accordance with the following:

1. Rent for the Demised Premises as amended hereby shall be in an annual amount equal to the product of the number of gross square feet of the Demised Premises (the number of gross square feet of the demised premises as set forth in Exhibit B to this Second Amendment being 158,020 square feet) multiplied by \$0.5451 per gross square foot (158,020 square feet times \$0.5451 per gross square foot equals annual rent amount of \$86,136.70) (the "Rent" or "Annual Rent"), which Rent is subject to adjustment as set forth in the Ground Lease. Without offset or deduction, Rent shall be paid in advance in

monthly installments on or before the first day of each calendar month, each such installment determined by dividing the annual rental amount by twelve (12), with the first such installment due on or before the first day of the first calendar month following the Effective Date of this Second Amendment. Landlord and Tenant agree that the Rent rate of \$0.5451 per gross square foot is that Rent rate as adjusted in accordance with the Ground Lease and by amendment since the commencement of the Ground Lease and is subject to further and future adjustment as set forth in the Ground Lease.

C. Amendment to Adjustment of Rental. Section 5 of the Ground Lease is amended in its entirety to read as follows:

Adjustment of Rental: Commencing on January 1, 2013 and on every second anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the Annual Rent due under Section 4, as amended herein, shall be adjusted as follows:

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

B. Beginning with the first full month following the then applicable Adjustment Date, the Annual Rent shall be adjusted so that it equals the product of the Annual Rent amount during the first year of this Second Amendment (such amount being \$86,136.70) multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index, but in no event shall such Annual Rent ever be decreased below the Annual Rent set forth in Section 4., as amended (such Annual Rent being \$86,136.70). Without offset or deduction, Annual Rent shall be paid in advance in monthly installments on or before the first day of each calendar month, determined by dividing the Annual Rental amount by twelve (12), with the first such installment due on or before the first day of the first calendar month following the Adjustment Date

C. In the event that the Consumer Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Consumer Price Index as closely as feasible (as reasonably determined by Landlord) shall be substituted therefor.

D. Amendment to Use of Demised Premises and Construction of Improvements.
Section 6 of the Ground Lease is amended in its entirety to read as follows:

A. Use of the Demised Premises:

1. The Demised Premises shall be used and occupied by Tenant only for the following purposes: sale of aircraft and aircraft parts; aircraft maintenance and repair, aircraft storage; aircraft training, aircraft charter; aircraft rentals; certain Fixed Base operations, as follows: hangars, shops, aircraft ramps, and vehicle parking, and the sale of aircraft services to the public, including dispensing fuel in accordance with and subject to the authority issued by and ordinances, rules, standards and regulations of the City; and not otherwise without the prior written consent of Landlord.

2. The Demised Premises shall not be used for any purpose or activity that (i) constitutes a violation of any federal, state, or local laws, ordinances, orders, directives, charters, rules, regulations, standards or policies), (ii) in Landlord's opinion, creates or would create a nuisance or waste, or unreasonably disturb, annoy or interfere with other tenants or users of the Airport, or (iii) increases insurance costs for Landlord.

3. Tenant shall not at any time leave the Demised Premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Demised Premises the type of operations or use for which the Demised Premises are leased, except during periods in which the Demised Premises may not be occupied as a result of fire or other casualty, or during any commercially reasonable period necessary for making repairs and alterations, all such repairs and alterations to be diligently pursued to completion.

4. Tenant acknowledges that Landlord is bound by, and this Ground Lease is subject to, the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, including, without limitation, any grant, loan, regulation, or agreement under Section 22.055 if the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Tenant agrees not to act or fail to act in any way or manner that would cause Landlord to be in violation of any of the foregoing.

5. Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (i) no person on the grounds of race, creed, color, national origin, sex, age or handicap shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Demised Premises; (ii) that in the construction of any improvements on, over or under the Demised Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall be excluded from participation in , denied the benefits of or otherwise be subjected to discrimination; (iii) that the

Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

6. The Tenant agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

B. Construction of Improvements.

1. In connection with the use and occupancy of the Demised Premises by Tenant, Tenant shall cause to be constructed on the Demised Premises buildings and other improvements (together, the “Building Improvements”), at Tenant’s sole cost, expense and risk (except as may be otherwise agreed to between Landlord and Tenant), in accordance with plans and specifications which shall be submitted to and subject to the approval of Landlord. The term “Building Improvements” shall mean those real property and structural improvements having been made and now exist as of the Effective Date of this Second Amendment or, any other such real property and structural improvements made to the Demised Premises any time during the Term. Except as provided for in this Agreement, Tenant may not construct, locate, install, place or erect any other improvements upon the Demised Premises without the prior written consent of Landlord.

2. The Building Improvements shall be constructed on the Demised Premises in accordance with plans and specifications prepared by an architect and/or engineer selected and retained by Tenant (the “Design Plan”), which shall be submitted to Landlord for Landlord’s consideration of approval (which approval, if any, shall be in writing). Any architect or engineer shall be duly licensed and authorized as may be required by law to practice architecture or engineering, as the case may be, in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages (including, without limitation, consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage or destruction, or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction, and **TENANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND**

OBLIGATIONS, INCLUDING SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS WHICH ARE CAUSED BY OR RESULT FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LANDLORD OR MANAGER (OR THEIR RESPECTIVE OFFICIALS, OFFICER, EMPLOYEES, AND AGENTS). It is expressly understood and agreed that Tenant's construction of the Building Improvements shall include the finish-out of such building and improvements in accordance with the plans and specifications for the finish-out of the Building Improvements as submitted by Tenant to Landlord and approved in writing by Landlord.

After commencement of construction, Tenant shall complete construction of any Building Improvements with reasonable diligence, without material deviation from the Design Plan, and any deviation from the Design Plan shall be subject to the review and approval of Landlord.

3. Landlord's approval of the Design Plan or any other plans and specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility.

4. For purposes hereof, construction of Building Improvements shall be deemed to have commenced when all of the following events have occurred: (i) approval of the Design Plan by Landlord, (ii) Tenant has been issued the required building permit(s) or licenses necessary to construct the Building Improvements on the Demised Premises, (iii) Tenant shall have received (and shall have provided a true and correct copy to Landlord of) the Federal Aviation Administration's ("FAA's") determination to Tenant's filing of Form 7460 Notice of Proposed Construction or Alteration, (iv) execution of a contract to perform the work set forth in the Design Plan with a qualified general contractor, (v) proof of required Builder's Risk Insurance Policy and Payment Bond and Performance Bond required under Section 13 herein, and (vi) the initiation of actual mobilization of construction equipment on the Demised Premises (to perform the initial steps of construction of the Building Improvements, such as excavation for a foundation).

5. Tenant agrees that any construction or modification of the Building Improvements or any other improvements (authorized to be constructed in writing by Landlord) on the Demised Premises shall comply with all standards, codes, and rules adopted by Landlord or Manager, including, but not limited to, any rules relating to construction and maintenance standards and specifications, will comply with the Town of Addison, Texas building code and zoning requirements, and will meet or exceed all applicable State and Federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules,

regulations, and guidelines promulgated under such laws, as amended from time to time). Tenant recognizes that such construction/maintenance standards and specifications, Town of Addison building code and zoning requirements, and all applicable State and Federal standards, and other applicable standards, codes, and rules may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements.

6. Tenant will properly and timely submit to the Federal Aviation Administration (FAA), the Texas Department of Transportation (TxDOT), and any other governmental entity or agency having jurisdiction regarding Addison Airport, a Notice of Proposed Construction or Alteration (FAA Form 7460-1), a TxDOT Airport Construction Emission Inventory, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over Addison Airport.

7. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises, and all parts thereof, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, substantial completion, final completion, and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises.

8. “Substantial Completion” of the construction of the Building Improvements shall be deemed to have occurred upon (i) the issuance of a written certification by Tenant's architect (or other authorized design professional) who designed the Building Improvements in writing to Landlord that said Building Improvements are complete in accordance with the Design Plan (e.g., a certificate of substantial completion), and (ii) the issuance by the Town of Addison, Texas of a final, unconditional certificate of occupancy for said Building Improvements. “Final Completion” of the construction of the Building Improvements shall be deemed to occur upon the issuance by Tenant’s architect (or other authorized design professional) who designed the Building Improvements of such documentation as may be necessary to establish the final completion (closeout) of the construction of the Building Improvements, the delivery of a true and correct copy of such documentation to Landlord, and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed by Tenant’s architect (or other authorized design professional) reflecting all approved changes and modifications to the originally approved Design Plan.

9. Failure of Tenant to observe and comply with the requirements of this Section shall be an Event of Default.

E. Amendment to Section 7 of the Ground Lease. Section 7 of the Ground Lease is amended in its entirety to read as follows:

7. Acceptance of Demised Premises: TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE DEMISED PREMISES AND ACCEPTS THE DEMISED PREMISES AND THAT THE DEMISED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", AND LANDLORD HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE DEMISED PREMISES FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES, DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO ACKNOWLEDGES AND AGREES THAT TENANT'S INSPECTION AND INVESTIGATION OF THE DEMISED PREMISES HAVE BEEN ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE DEMISED PREMISES, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES, DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS SECTION ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE DEMISED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS SECTION. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE LEASED PREMISES. TENANT WAIVES ANY IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES THAT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY, PROVIDING A COPY OF THE RESULTS TO LANDLORD, ALL AS SPECIFIED IN MORE DETAIL IN SECTION 21.1 BELOW

WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide Rent to Landlord on a Net Return Basis, as set out in Section 30, below.

F. Amendment to Section 8 of the Ground Lease. Section 8 of the Ground Lease is amended in its entirety to read as follows:

8. Securing Governmental Approvals and Compliance with Law; Noise Abatement.

A. Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the Demised Premises. This Lease is subject to and Tenant shall comply at all times with all federal, state, and local laws, statutes, ordinances, rules, regulations, directives, orders, permits, standards, codes (including, without limitation, building codes and standards), zoning requirements, grant assurances, grant agreements, the Charter of the Town of Addison, all court orders, opinions and decisions, and all interpretations of the foregoing, of and by any governmental authority, entity, branch, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, the Texas Department of Transportation, the United States Environmental Protection Agency, and the Texas Commission on Environmental Quality, and any successor entities thereto) applicable or related to, whether directly or indirectly, this Lease, the Addison Airport, the Demised Premises, and the use and occupancy thereof, and whether in existence or hereafter enacted, adopted or imposed (collectively, "Laws," and "Law" means any of the foregoing). Tenant shall promptly comply with all governmental orders and directives and all other Laws for the correction, prevention and abatement of nuisances in or upon, or connected with, the Demised Premises, all at Tenant's sole cost and expense, and shall comply with and be subject to (and this Lease is made and entered into subject to) any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed and to the terms of a grant, loan, or agreement under Section 22.055 of the Texas Transportation Code (and as the same may be amended or superseded).

Tenant agrees that any new construction or modification of existing improvements on the Demised Premises will comply with all standards and rules published by the Landlord or by any person or entity authorized by Landlord to manage and/or operate the Airport or any portion thereof or any function related thereto (such person and or entity, whether one or more, being the "Airport Manager" or "Manager"), including, but not limited to, the Airport's published "Construction/Maintenance Standards and Specifications," will comply with the Town of Addison building codes and zoning requirements or any other laws, ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or

regulations, and will otherwise comply with all Laws. Tenant recognizes that the referenced Construction/Maintenance Standards and Specifications, Town of Addison building codes and zoning requirements and other laws, ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations, and any other Laws, may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements. Tenant will properly and timely submit to the Federal Aviation Administration, the Texas Department of Transportation, and any other governmental entity or agency having jurisdiction regarding or related to Addison Airport, a Notice of Proposed Construction, when and as required. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises, and all parts thereof, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises. Failure of Tenant to observe and comply with any provision or requirement of this Section 8 shall be an Event of Default.

B. Tenant shall comply with noise abatement standards at the Airport at all times and shall notify any aircraft operator using any portion of the Demised Premises of such standards.

G. Amendment to Section 9 of the Ground Lease. Section 9 of the Ground Lease, subparagraphs A., B., and E. of the Ground Lease are amended in their entirety to read as follows:

9. Assignment, Subletting and Mortgaging of Leasehold Estates:

A. 1. Without the prior written consent of Landlord, Tenant shall have no power to and shall not, either voluntarily or involuntarily, by operation of law or otherwise, (i) assign, sell, pledge, encumber, mortgage, license, transfer, or otherwise convey (each being referred to herein as "assign" or "assignment" and any person or entity to whom an assignment is made being an "assignee") this Lease, or any interest, rights, duties, liabilities, or obligations of Tenant hereunder, or any part of the Demised Premises, (except to a leasehold mortgagee as hereinbelow provided and in accordance with and subject to all of the terms and conditions of this Lease) or (ii) sublet the whole or any part of the Demised Premises, and any such assignment and any subletting shall be null and void and may be deemed by Landlord (in Landlord's sole discretion) a default under Section 22 of this Lease.

2. Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's subletting of the Leased Premises for the purpose of renting aircraft storage and office space only, provided that each sublease is evidenced by written agreement (to be made available for Landlord's review and inspection upon Landlord's written request within 3 business days), signed and executed by Tenant and sublessee and fairly states:

- (i) each sublessee agrees to be bound by the terms and provisions of this Ground Lease, including, without limitation, the provisions of Section 6 pertaining to the use of the Demised Premises, and in the event of any conflict between the terms of the Ground Lease and the terms of the sublease, the terms of the Ground Lease shall control;
- (ii) no such subletting shall constitute a novation.
- (iii) in the event of occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights or remedies provided herein or by law, in equity, or otherwise, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such subletting and apply such rent against any sums due to Landlord hereunder;
- (iv) sublessee shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Ground Lease;
- (v) any such sublease is to automatically terminate upon termination of the Ground Lease notwithstanding any other provision of the sublease to the contrary;
- (vi) Landlord shall have no responsibility or obligation for the performance by Tenant of its obligations under the sublease;
- (vii) neither this consent, the exercise by Landlord of its rights hereunder, nor the sublease or any other instrument shall give sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of sublessee.

Furthermore, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under the Ground lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under the Ground Lease; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under the Ground Lease, including, without limitation, the duty to make any and all payments of rent; that any violation of any terms and conditions of the Ground Lease by a sublessee will constitute a default under the Ground Lease;

3. If consent by Landlord to an assignment is required hereunder, Tenant shall request, in writing, Landlord's consent to a proposed assignment and such request must include: (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) all material terms of the proposed assignment; and (iv) audited financial statements or other evidence of the proposed assignee's creditworthiness and ability to assume Tenant's obligations.

For the purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, Landlord may, in Landlord's sole discretion, withhold its consent when any one or more of the following apply:

- (i) the proposed assignee is of a character or of a reputation or is engaged in a business, which is not consistent with the master or strategic plan of Addison Airport as determined by Landlord;
- (ii) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the Tenant under this Lease at the time when the consent is requested;
- (iii) the proposed assignee's intended use of the Leased Premises is inconsistent with the Lease;
- (iv) the proposed assignment would cause Landlord to be in violation of another lease or agreement to which Landlord is a party or to which Landlord or the Addison Airport is subject (including, without limitation, any grant agreements or grant assurances of the Federal Aviation Administration or any other governmental entity or agency);
- (v) if at any time consent is requested or at any time prior to the granting of consent, Tenant is in default under the Lease or would be in default under the Lease but for the pendency of a grace or cure period; or
- (vi) the proposed assignee does not intend to occupy the entire Demised Premises as described in the Lease and conduct its business there from for a substantial portion of the then remaining term of the Lease.

Any assignment will be deemed to occur if the person or persons who own or have control of more than 50% of Tenant on the date of this Second Amendment to Ground Lease cease to own or have control of more than 50% of Tenant at any time during the Term. Tenant shall provide to Landlord from time to time, as requested by Landlord and in a form acceptable to Landlord, a written certification as to the ownership and/or control of Tenant. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise.

Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including, without limitation, the provisions of Section 6 pertaining to the use of the Demised Premises. Tenant shall not assign this Lease or any right, duty, liability, or obligation of Tenant hereunder, or sublet the Demised Premises or any portion of the Demised Premises, without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to and shall be bound by and comply with all of the terms and provisions of this Lease (and Tenant shall provide a copy of such written agreement to Landlord). No assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, in equity, or otherwise, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee, transferee, pledgee, or person or entity to

whom this Lease is otherwise conveyed or to such subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder.

Upon written request, Tenant shall promptly provide to Landlord the names and addresses of any subtenants and the make, model, aircraft type and "N" number of any aircraft stored, located or generally regarded to be "based" on or in the Demised Premises.

B. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of (i) obtaining funds for the construction of the improvements described in Section 6, or (ii) for other construction upon the Demised Premises approved from time to time by Landlord in writing, or (iii) for other purposes which may be approved from time to time by Landlord in writing. In the event that Tenant, pursuant to mortgages or deeds of trust, mortgages the leasehold estate of Tenant created hereby, the leasehold mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the rental due hereunder and otherwise fully perform the terms and conditions of this Lease.

E. Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such mortgagee and its successors and assigns after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such mortgagee or its successors and assigns performs all of the obligations of Tenant hereunder; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such mortgagee shall not and does not have the right and shall not and does not have the power to assign, sell, transfer, pledge, encumber, mortgage, license, or otherwise convey this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, or sublet the whole or any part of the Demised Premises without the prior written approval of the Landlord, and any such assignment, sale, transfer, pledge, encumbrance, mortgage, license, or other conveyance and any such subletting without the prior written consent of Landlord shall be null and void and may be deemed a default under Section 22.B. of this Lease, it being the intent of this provision that such mortgagee shall have no greater right than Tenant to assign, sell, transfer, pledge, encumber, mortgage, license, or otherwise convey this Lease (or any right, interest, obligation, or liability hereunder), or to sublet the Demised Premises (or any portion thereof), or to use the Demised Premises. Landlord also agrees to consider the execution and delivery to such proposed leasehold mortgagee any other documents which such proposed leasehold mortgagee may reasonably request concerning the mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to

subordinate Landlord's interest in the Demised Premises to the mortgagee of such proposed leasehold mortgage.

H. Amendment to Section 10 of the Ground Lease. Section 10 of the Ground Lease is amended its entirety to read as follows:

10. Property Taxes and Assessments: Tenant shall pay, before they become delinquent, any and all property taxes or assessments, and any other governmental charges, fees or expenses (collectively, the "Taxes"), levied or assessed on any improvements on the Demised Premises, the personal property and fixtures on the Demised Premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such Taxes have been paid by Tenant. In the event Tenant fails to pay any such Taxes, Landlord shall have the right (but not the obligation) to pay or cause to be paid such Taxes, and the reasonable costs thereof expended by or caused to be expended by Landlord plus interest thereon as provided in Section 37 of the Ground Lease shall be paid by Tenant on demand.

If any buildings or other improvements located upon the Demised Premises are determined to be subject to property taxation by the Dallas Central Appraisal District (or any successor entity or agency thereto or other agency with the authority to make such determination) ("DCAD"), Tenant will not contest any such determination. Additionally, if a final (non-appealable) determination is rendered by DCAD or a court of appropriate and competent jurisdiction that any such buildings or other improvements are not subject to property taxation, the rent (as the same may be adjusted) for the year in which such final determination becomes effective shall be increased by an amount equal to the property tax revenue from such buildings and improvements that Tenant would have paid to the Town of Addison, Texas in that year but for such final determination (and such initial increased amount shall be paid to Landlord on or before December 31 of such year, unless otherwise agreed to by Landlord); thereafter, the rent (as the same may be adjusted) as so increased shall continue, subject to adjustment as set forth in this Lease.

I. Amendment to Section 13 of the Ground Lease. Section 13 of the Ground Lease is amended in its entirety to read as follows:

13. Insurance; Bonds.

A. At all times Tenant shall during the term hereof purchase and maintain at Tenant's sole cost and expense and in a company or companies lawfully authorized to do business in Texas such insurance relating to the Demised Premises as follows:

(i) Insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the Demised Premises and any and all improvements thereon. The

term “full insurable value” as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be effected.

(ii) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$1,000,000 general aggregate for bodily injury, death or property damage or destruction occurring on, in or about the Demised Premises, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. Coverage must include contractual liability.

(iii) Statutory limits of workers compensation insurance and employer’s liability with limits of liability of not less than \$1,000,000.00 each-occurrence each accident/\$1,000,000.00 by disease each-occurrence/\$1,000,000.00 by disease aggregate.

(iv) If applicable, boiler and pressure vessel insurance on all steam boilers, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$500,000.00 for damage to or destruction of property resulting from such perils.

(v) Such other insurance on improvements in such amounts and against such other insurable hazard which at the time are commonly obtained in the case of property similar to such improvements.

(vi) Hangarkeepers Legal Liability insurance, at limits of \$1,000,000.00 per-occurrence is required if Tenant is engaged in maintenance, repair, or servicing of aircraft belonging to a third-party, or if Tenant is otherwise involved in any operation in which Tenant has care, custody, or control of an aircraft that belongs to a third-party.

(vii) During any period of construction, a Builder’s Risk Completed Value policy with an all risks endorsement in an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments or change orders thereto. The policy shall provide "All Risk" Builder's Risk Insurance (extended to include the perils of wind, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure).

(viii) Aircraft liability insurance against third party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000.00 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any subtenant).

Tenant shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:

(i) The Town of Addison, Texas, and the Airport Manager and their respective past and present officials, officers, employees and agents shall be named as additional insureds;

(ii) All insurance policies which name the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) as additional insureds must be endorsed to read as primary coverage regardless of the application of other insurance;

(iii) A waiver of subrogation in favor of the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) shall be contained in each policy required herein,;

(iv) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas and the Airport Manager of any material change in the insurance coverage;

(v) All insurance policies shall be endorsed to the effect that the Town of Addison, Texas and the Airport Manager will receive at least sixty (60) days written notice prior to cancellation or non-renewal of the insurance,;

(vi) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison or the Airport Manager;

(vii) Tenant may maintain reasonable and customary deductibles; and

(viii) Insurance must be purchased from insurers that are financially acceptable to Landlord and licensed to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, satisfactory to Landlord, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Landlord and updated as may be appropriate, and shall:

(i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and

(ii). Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison and the Airport Manager.

Upon request, Tenant shall furnish Landlord with complete copies of all insurance policies certified to be true and correct by the insurance carrier. Landlord reserves the

right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by Landlord.

B. In connection with any construction on the Demised Premises, Tenant shall obtain and keep in full force and effect at its sole cost and expense a Performance Bond and a Payment Bond guaranteeing, respectively, the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the penal sum of one-hundred percent (100%) of the Construction Costs. Tenant shall pay or cause to have paid the premiums for such bonds. Bonds shall be issued by a surety company satisfactory to the Landlord, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All forms shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to Landlord. Such bonds shall be in conformance with the provisions of Chapter 2253, Tex. Gov. Code, and any successor statute thereto.

J. Amendment to Section 18 of the Ground Lease Section 18 of the Ground Lease is amended its entirety to read as follows:

18. Rules and Regulations. Landlord has adopted *Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers* (also commonly referred to as the “Minimum Standards” or “Airport Minimum Standards”) and *Addison Airport Rules and Regulations* (also commonly referred to as the “Rules and Regulations” or “Airport Rules and Regulations”), which shall govern Tenant in the use of the Demised Premises and all Common Facilities, a copy of which has been furnished to Tenant. The Minimum Standards and Rules and Regulations are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with these governing documents. Landlord, in its sole discretion, shall have the right to amend, modify and alter these Minimum Standards and Rules and Regulations from time to time in any manner or may introduce other regulations as deemed necessary for the purpose of assuring the safety, welfare, convenience and protection of property of Landlord, Tenant and all other tenants and customers of the Airport.

K. Amendment to Section 21 of the Ground Lease. Section 21 of the Ground Lease is amended in its entirety to read as follows:

21. Indemnity and Exculpation and Release.

A. **Exculpation.** **The Town of Addison, Texas and all other Addison Persons and the Manager Persons (for purposes of this subparagraph A, as the terms “Addison Persons” and “Manager Persons” are defined in Subsection B below), shall not be liable to Tenant or to any Tenant Persons (for purposes of this subparagraph A, as the term “Tenant Persons” is defined in Subsection B below), or to any other person whomsoever, for any death or injury to persons or damage to or destruction of property or any other harm on or about the Demised Premises or any adjacent area owned by Landlord caused by or resulting from any act or omission**

of Tenant or any Tenant Persons or any other person entering the Demised Premises under express or implied invitation of Tenant or any Tenant Persons, or arising out of the use or occupation of the Demised Premises by Tenant or by any Tenant Persons, in the performance of Tenant's obligations hereunder.

B. TENANT'S INDEMNITY OBLIGATION. Tenant agrees to and shall fully DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY AND HOLD HARMLESS (i) the Town of Addison, Texas, and the elected officials, the officers, employees, agents, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons") and (ii) Airport Manager and Airport Manager's owners, officers, employees and agents (Airport Manager and Airport Manager's owners, officers, employees and agents each being a "Manager Person" and collectively the "Manager Persons"), from and against any and all claims, actions, proceedings, causes of action, demands, losses, liens, harm, damages, penalties, fines, liabilities, expenses, lawsuits, judgments, costs, and fees (including reasonable attorney fees and court costs) of any kind and nature whatsoever made upon, incurred by, suffered by, or asserted against any Addison Person or any Manager Person or the Demised Premises, whether directly or indirectly, (collectively for purposes of this Section, "Damages"), that result from, relate to, or arise out of, in whole or in part, (i) any condition of the Demised Premises caused in whole or in part by Tenant or by any of Tenant's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, concessionaires, or any other person or entity for whom Tenant is legally responsible, and their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires, or any other person acting by or under the authority or with the permission of Tenant, Tenant's tenants, or any other person entering the Demised Premises under express or implied invitation of Tenant during the Lease Term (collectively, "Tenant Persons"), (ii) any construction on or repair to the Demised Premises, or the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant Persons, for any reason including by failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling, (iii) representations or warranties by Tenant under this Lease, and/or (iv) any act or omission of Tenant or any Tenant Persons under, in connection with, or in the performance of, this Lease. SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR

OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Tenant shall promptly advise Landlord in writing of any claim or demand against the Town of Addison, any other Addison Person, any Manager Person, or Tenant or any Tenant Person related to or arising out of Tenant's activities under this Lease and shall see to the investigation and defense of such claim or demand at Tenant's sole cost and expense. The Addison Persons and Manager Persons, as the case may be, shall have the right, at the Addison Persons' or Manager Persons' (as the case may be) option and at their own expense, to participate in such defense without relieving Tenant of any of its obligations hereunder.

C. Release. Tenant hereby **RELEASES** the Town of Addison, Texas and all other Addison Persons (as the term "Addison Persons" is defined in subsection B. of this Section) and Airport Manager and all other Manager Persons (as the term "Manager Persons" is defined in subsection B. of this Section) from, and agrees that the Town of Addison, Texas and all other Addison Persons, and Airport Manager and all other Manager Persons, shall not be liable to Tenant or any Tenant Persons (as the term "Tenant Persons" is defined in subsection B. of this Section) for (i) any death or injury to any person or persons or damage to or destruction of property of any kind resulting from the Demised Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever, and for (ii) any loss or damage that may be occasioned by or through the acts or omissions of other tenants of Landlord or caused by operations in construction of any private, public or quasi-public work.

D. The provisions of this Section 21 shall survive the expiration or termination of this Lease.

L. Amendment to Section 21.1 of the Ground Lease. Section 21.1 of the Ground Lease is inserted in its entirety to read as follows:

Section 21.1. Environmental Compliance.

A. Tenant shall not install, store, use, treat, transport, discharge or dispose (or permit, allow, or acquiesce in the installation, storage, use, treatment, transportation, discharge or disposal by Tenant's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, concessionaires, or any other person or entity for whom Tenant is legally responsible, and/or their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires) on the Demised Premises or any portion of the common facilities (described in Section 17) any: (a) asbestos in any form; (b) urea formaldehyde foam

insulation; (c) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million; or (d) any other chemical, material, air pollutant, toxic pollutant, waste, or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by the Resource Conservation Recovery Act (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq, as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act or any other federal, state, county, regional, local or other governmental authority law, rule, regulation, order, standard, permit, directive or policy, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the Demised Premises and/or any portions of the common facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, regulation, order, standard, permit, directive or policy, or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, regulation, order, standard, permit, directive or policy. (The substances referred to in (a), (b), (c) or (d) herein are collectively referred to hereinafter as "Hazardous Materials").

B. Cleanup Laws; Tenant's Indemnity Obligation

1. Tenant shall, at Tenant's own expense, comply with any presently existing or hereafter enacted laws, rules, regulations, orders, standards, directives, permits, or notices relating to Hazardous Materials (collectively, "Cleanup Laws"). In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Cleanup Laws. Should any Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of the existence of Hazardous Materials which were installed, stored, used, treated, transported, disposed of or discharged on the Demised Premises and/or any portion of the common facilities (as described in Paragraph 17) by (i) Tenant, or by (ii) any of Tenant's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, concessionaires, or any other person or entity for whom Tenant is legally responsible, and/or their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires, or by (iii) any person acting by or under the authority or with the permission of Tenant, Tenant's tenants, or any other person entering the Demised Premises under express or implied invitation of Tenant during the Term of this Lease, Tenant shall, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances and carry out the approved plans in accordance with such Cleanup Laws and to Landlord's satisfaction. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord for preparation of affidavits or other documents required by Landlord to determine the applicability of the Cleanup Laws to the Demised Premises and/or any portion of the common facilities, as the case may be, and shall sign the affidavits promptly when requested to do so by Landlord.

2. Tenant's Indemnity Obligation. Without limiting any other indemnity, hold harmless, and defense obligation of Tenant set forth in this Lease, Tenant agrees to and shall fully DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY, AND HOLD HARMLESS the Town of Addison, Texas and all other Addison Persons (as the term "Addison Persons" is defined in subsection B of Section 21, above), and the Manager Persons (as the term "Manager Persons" is defined in subsection B of Section 21, above), from and against, and reimburse the Town of Addison, Texas, all other Addison Persons, the Airport Manager and all other Manager Persons (as the case may be) for, any and all obligations, damages, injunctions, fines, penalties, demands, claims, costs, fees, charges, expenses, actions, causes of action, judgments, liabilities, suits, proceedings, harm, and losses of whatever kind or nature (including, without limitation, attorneys' fees and court costs), and all cleanup or removal costs and all actions of any kind arising out of or in any way connected with the installation, storage, use, treatment, transporting, disposal or discharge of Hazardous Materials in, on, under, above, or to the Demised Premises and/or any portion of the common facilities or any portion of the Airport or adjacent properties by Tenant or by any Tenant Persons (as the term "Tenant Persons" is defined in subsection B of Section 21, above); and from all fines, penalties, suits, judgments, procedures, proceedings, claims, actions, and causes of action of any kind whatsoever arising out of Tenant's or any of Tenant Persons' failure to provide all information, make all submissions and take all steps required by the Authority under the Cleanup Laws or any other law, rules, regulation, standard, order, or policy (environmental or otherwise). SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSONS, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSONS, OR BY ANY ACT OR OMISSION OF OR BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSONS, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Tenant's obligations and liabilities under this subparagraph shall continue (and survive the termination or expiration of this Lease) so long as there may be Hazardous Materials at the Demised Premises and/or any portion of the common facilities or any portion of the Airport or adjacent properties, that were installed, stored, used, treated, transported, disposed of or discharged during the Lease Term by Tenant or any of Tenant Persons. In addition to and not in limitation of Landlord's other rights and remedies, Tenant's failure to abide by the terms of this Section shall be restrainable by injunction.

C. Tenant shall promptly supply Landlord and Airport Manager with copies of any notices, correspondence and submissions made by Tenant to or received by Tenant from any governmental authorities of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the FAA, TxDOT, or any

other local, state or federal authority that requires submission of any information concerning environmental matters or Hazardous Materials.

D. Tenant's obligations and liability pursuant to the terms of this Section 21.1 shall survive the expiration or earlier termination of this Lease.

M. Amendment to Section 39 of the Ground Lease. Section 39 of the Ground Lease is amended in its entirety to read as follows:

Section 39. Force Majeure.

- A. In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Landlord, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord is so delayed or prevented.
- B. Except for the payment of any rent or any other payment to be made by, or any other monetary obligation of, Tenant under this Lease, and the provision of insurance by Tenant under this Lease, in the event performance by Tenant of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, the delay of any governmental approvals, civil riot, flood, or any other cause not within the control of Tenant, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Tenant is so delayed or prevented.

Section 3. No Other Amendments; Other Provisions. Except to the extent modified or amended herein, all other terms and obligations of the Ground Lease shall remain unchanged and in full force and effect. For purposes hereof this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

Section 4. Applicable Law; Venue. In the event of any action under this Second Amendment, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Second Amendment; and, with respect to any conflict of laws provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Second Amendment. All obligations of the parties created by this Second Amendment are performable in Dallas County, Texas.

Section 5. No Third Party Beneficiaries. This Second Amendment and the Ground Lease and each of their provisions are solely for the benefit of the parties hereto and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.

Section 6. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Amendment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, the undersigned parties execute this Agreement this _____ day of _____, 2010

LANDLORD:

TENANT:

TOWN OF ADDISON, TEXAS

RR INVESTMENTS, INC.

By: _____
Ron Whitehead, City Manager

By: _____

Name (*Print*): _____

Its: (*Title*): _____

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

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

[SEAL] Given under my hand and seal of office this _____ day of _____, 2010.

Notary Public, State of Texas

Print Name:_____

My commission expires:_____

STATE OF TEXAS §

COUNTY OF DALLAS §

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

[SEAL] Given under my hand and seal of office this _____ day of _____, 2010.

Notary Public, State of Texas

Print Name:_____

My commission expires:_____

EXHIBIT A

COPY OF GROUND LEASE AS AMENDED AND MODIFIED

EXHIBIT B

**PROPERTY SURVEY AND LEGAL DESCRIPTION
OF DEMISED PREMISES**

EXHIBIT C

MEMORANDUM OF LEASE

This Memorandum of Lease is dated as of _____, 2010, and executed by and between the Town of Addison, Texas (“Landlord” or “City”) and RR Investments, Inc., a Texas corporation d/b/a/ Million Air Dallas (“Tenant”).

A Ground Lease was entered into as of April 6, 1983 between the Town (City) of Addison, Texas, as landlord, and RR Investments, Inc., as tenant (identified as Ground Lease #070A-5201 or Ground Lease #52 in the administrative archives and records of the City) in which certain real property commonly known as 4300 Westgrove Drive, Addison, Texas 75001 (“Demised Premises” and as more fully described in the said Ground Lease) within the Addison Airport (the “Airport”) was leased by Landlord to RR Investments, Inc. The said Ground Lease was thereafter amended by that Amendment to Ground Lease dated April 1, 1984

Now let it be known, the said Ground Lease is further amended by that Second Amendment to Ground Lease, entered into and made effective _____. 2010, which, among other things, amends the term of the Ground Lease so that it shall end on _____, 20____, subject, however, to the termination and all other provisions of the Ground Lease.

This Memorandum of Lease is solely for recording and notice purposes and shall not be construed to alter, modify, expand, diminish or supplement the provisions of the Ground Lease, as amended. In the event of any inconsistency between the provisions of this Memorandum of Lease and the provisions of the Ground Lease (as amended), the provisions of the Ground Lease, as amended, shall govern. Reference should be made to the Ground Lease (and all amendments thereto) for the full description of the rights and duties of Landlord and Tenant thereunder, and this Memorandum of Lease shall in no way affect the terms and conditions of the Ground Lease (including all amendments thereto) or the interpretation of the rights and duties of Landlord and Tenant thereunder.

Upon the expiration or earlier termination of the Ground Lease, Landlord and Tenant agree that they shall execute and record a termination of this Memorandum of Lease.

IN WITNESS WHEREOF, the undersigned parties execute this Memorandum of Lease this ____ day of _____, 2010.

LANDLORD:

TENANT:

TOWN OF ADDISON, TEXAS

RR INVESTMENTS, INC.

By: _____
Ron Whitehead, City Manager

By: _____

Typed name: _____

Title: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

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

Given under my hand and seal of office this _____ day of _____, 20__.

[SEAL]

By: _____
Notary Public, State of Texas

My commission expires: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

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

[SEAL]

By: _____
Notary Public, State of Texas

My commission expires: _____

EXHIBIT A
to Memorandum of Lease

[Insert description of Demised Premises]

Council Agenda Item: #R11

AGENDA CAPTION:

Presentation, discussion and consideration of approval of a Professional Services Agreement with Freese & Nichols, Inc., in an amount not to exceed \$97,500.00 for design services on the proposed 1.5 Million Gallon Elevated Storage Tank.

FINANCIAL IMPACT:

Professional Services:

\$97,500.00 Funds are available in the account established to coordinate the funding by State Energy Conservation Office (SECO) in an amount not to exceed \$100,000.

Project Manager: Nancy S. Cline, P.E.

BACKGROUND:

On November 11, 2008, Council approved a professional design services contract with Freese & Nichols for design services for the proposed 1.5 million gallon elevated storage tank (EST). The scope for the proposed EST included a hemisphere painted carbon steel bowl on a 46 ft diameter concrete pedestal, a stainless steel veneer at bottom of pedestal, 10 solar wind turbines mounted on top of the tank bowl, one demonstration wind turbine, and ground floor storage with roll-up door.

At the June 22, 2010 Council meeting, the City Manager was authorized to complete the grant agreement for the Distributed Renewable Energy Technology Program funding made available through the American Recovery and Reinvestment Act of 2009, funded through the US Department of Energy, being allocated by the State Energy Conservation office to fund a study in an amount not to exceed \$100,000. Freese & Nichols has submitted a proposal to provide professional services to complete a feasibility study and environmental assessment, including an Engineering, Wind Study, Avian Study, EIS Form, Permitting and Clearances, project documentation, data, site planning, study compilation and project narrative. These items should complete the work requested by the state by the requested date of August 31, 2010. Staff has requested Freese & Nichols review current technology available in the wind turbine energy field in the completion of this report to be

submitted to SECO.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Provide Superior Public Safety, Customer Service, Social and Health Services to the Community

ATTACHMENTS:

Description:

[SECO Grant Feasibility Study](#)

Type:

Backup Material

**AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS Agreement for Professional Services ("Agreement") is entered into the ____ day of _____, 2010, by and between the TOWN OF ADDISON, TEXAS, hereinafter referred to as the "City", and Freese and Nichols, Inc., hereinafter referred to as "Company".

WHEREAS, the City desires Company to perform certain work and services set forth in the Scope of Services, attached hereto as Exhibit A and incorporated herein (the "Scope of Services") (the work and services to be provided by the Company under this Agreement, including all plans, drawings, specifications, designs, reports, records, and other work product, and estimates, set forth in the Scope of Services and otherwise described or referred to herein are referred to in this Agreement as the "Services"); and

WHEREAS, the Company has expressed a willingness to perform the Services, and enumerated under Article II, of this Agreement.

NOW, THEREFORE, the Town of Addison, Texas and Freese and Nichols, Inc. contract and agree as follows:

ARTICLE I

GENERAL

The Company shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform all Services set forth in Article II hereof for the City in accordance with the terms, conditions and provisions of the Scope of Services, attached hereto as Exhibit "A" and incorporated herein for all purposes. The City may, at any time, stop any Services by the Company upon giving the Company written notice. Company

shall be bound to City by the terms, conditions and responsibilities toward the City for Company's services set forth in this Agreement.

Company shall serve as City's design professional and engineering representative for the project for which the Services are being provided by Company, providing professional engineering services, consultation and advice with respect thereto. Company's services consist of those services performed by Company and its owners, directors, officers, employees, agents, contractors, subcontractors, representatives, and consultants.

Company shall perform all work hereunder in a manner satisfactory and acceptable to City in accordance with the terms and conditions of this Agreement, including (without limitation) the standard of care set forth in this Agreement. Company shall perform all of its services in a timely and professional manner, utilizing at all times an economical and expeditious manner for performing such services. No less than monthly, Company shall keep City informed, orally or in writing (as requested by City), as to the status of all services of Company in process. All oral information shall be subsequently confirmed in writing.

Company shall not begin work on any Services described herein or other work until City directs Company in writing to proceed.

Company will use its professional skill, judgment and abilities in the performance of its services hereunder, and services performed under this Agreement shall be conducted in a manner consistent with that level of care and skill ordinarily exercised by reputable members of the engineering profession currently practicing in the same locality in which the work and services hereunder are being provided under similar conditions. Company shall re-perform and otherwise remedy any services provided by or for Company not meeting or satisfying this standard of care without additional compensation. Further, Company shall perform all services in accordance with, and Company's Work Product shall comply with, any applicable law, rule, statute,

ordinance, regulation, standard, policy or order of any federal, state or local governmental entity or agency having jurisdiction over any matter related to this Agreement or the project. Company shall be wholly and solely responsible for any services provided by any officer, employee, agent, representative, contractor or subcontractor of Company.

Company represents that it is authorized to practice civil engineering in the State of Texas and that any necessary licenses, permits or other authorization to practice civil engineering and professional surveying and to provide the Services set forth herein have been heretofore acquired as required by law, rule or regulation. Company agrees and acknowledges that City is entering into this Agreement in reliance on Company's professional abilities with respect to performing the Services set forth herein.

Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture, a joint enterprise relationship, or to allow the City to exercise discretion or control over the professional manner in which the Company performs the Services which are the subject matter of this Agreement; provided always however that the services to be provided by Company shall be provided in a manner consistent with all applicable laws, standards, rules and regulations governing such services. The method and manner in which Company's services hereunder shall be performed shall be determined by Company in its sole discretion. The officers, employees, agents, and representatives of, and the methods, equipment and facilities used by, the Company shall at all times be under the Company's exclusive direction and control.

ARTICLE II

SERVICES

A. The following services, when authorized in writing by a Notice to Proceed, shall be performed by the Company in accordance with the City's requirements:

PREPARATION OF SECO GRANT FEASIBILITY STUDY DESCRIBED IN THE SCOPE OF SERVICES ATTACHED HERETO AS EXHIBIT "A".

B. Company shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, plans and other services furnished by Company under this Agreement. Company shall, without additional compensation, correct or revise any errors or deficiencies in the design, drawings, specifications, plans and other services.

C. Neither City's review, approval or acceptance of, nor payment for any of the Services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement or a release of the responsibility and liability of Company, its owners, officers, employees, subcontractors, agents and consultants for the accuracy and competency of the same, and Company shall be and remain liable to City in accordance with applicable law for all damages to City caused by Company's negligent performance of or willful misconduct in connection with any of the Services or any other services or work furnished by or on behalf of Company under or in connection with this Agreement, nor shall such review, approval, acceptance, or payment be deemed to be an assumption of or an indemnification for such responsibility or liability by City for any defect, error or omission in the same, it being understood that City at all times is relying on Company's skill and knowledge in preparing and providing the Services.

D. The rights and remedies of City under this Agreement are as provided by law.

E. Notwithstanding City's review, approval, or acceptance of, or payment for, any plans, drawings, specifications, or any other work product or Services of Company, Company warrants and represents that (i) such plans, drawings, specifications, and other work product or Services, as the same may be amended or supplemented by Company, (i) shall be sufficient and adequate for the project and fit for the purposes for which they are intended, and (ii) shall, to the best of Company's knowledge, information and belief as a civil engineer performing the practice of civil engineering in accordance with the standards, duties, and obligations set forth herein, be free from material error, and shall be satisfactory to City. In accordance with the standard of care set forth herein, Company agrees that if it shall recommend unsuitable materials in connection with the project or this Agreement or if the design of the project should be defective in any way, Company will assume sole responsibility for any damages, loss, claims, or expenses to the extent caused by Company's recommendation of unsuitable materials or defective design.

ARTICLE III

PAYMENT

A. City shall pay Company for all Services authorized in writing and properly performed by Company on the basis herein described, subject to additions or deletions for changes or extras agreed upon in writing, and subject to the City's right to withhold payment pursuant to the terms of this Agreement.

B. Partial payment will be as stipulated in Exhibit "B" attached hereto and incorporated herein. Company shall submit to City monthly invoices for its Services under this Agreement. Each invoice shall be accompanied by such documentation as the City may require to verify the accuracy of the invoice, including an itemized statement of reimbursable costs incurred (if any), and the sum of all prior payments under this Agreement. Company shall not be

entitled to any compensation for any services or work not actually performed or for any lost profits as a result of any abandonment or suspension of any work by the City.

Any provision hereof to the contrary notwithstanding, City shall not be obligated to make payment to Company hereunder if:

1. Company is in default of any of its obligations under this Agreement or any other documents in connection with the Services or the project (and payment may be withheld to the extent of any such default);

2. Any part of such payment is attributable to any services of Company which are not performed in accordance with this Agreement;

3. Company has failed to make payment promptly to subcontractors or consultants or other third parties used by Company in connection with Company's Services or other work hereunder for which the City has made payment to Company; or

4. If City, in its good faith judgment and after consultation with Company, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Company's Services or other work under this Agreement, no additional payments will be due Company hereunder unless and until Company performs a sufficient portion of its services so that such portion of the compensation remaining unpaid is determined by City to be sufficient to complete the Company's Services or other work.

C. Upon complete performance of this Agreement by Company and final approval and acceptance of Company's Services by City, City will make final payment to Company of the balance due under this Agreement within thirty (30) days of the following month after final payment for such Services has been billed by Company.

D. City may deduct from any amounts due or to become due to Company any sum or sums owing by Company to City. In the event of any breach by Company of any provision or

obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against City, or the City's premises or property, arising out of Company's performance of this Agreement, City shall have the right to retain out of any payments due or to become due to Company an amount sufficient to completely protect the City from any and all loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by the Company.

E. Company shall not be entitled to any compensation for any services or work not actually performed or for any lost profits as a result of any abandonment or suspension of any services or other work by the City.

ARTICLE IV

TIME FOR PERFORMANCE

A. Company shall perform all Services and any other work as provided for under this Agreement in a proper, efficient and professional manner. Both parties have agreed to the provisions of this Agreement in anticipation of the orderly and continuous progress of the Services through completion of the Scope of Services specified in Exhibit "A", attached hereto.

B. In the event Company's performance of this Agreement is delayed or interfered with by acts of the City or others, Company may request an extension of time for the performance of same as hereinafter provided, but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays unless such delays are a result of acts of the City and exceed 90 days.

C. No allowance of any extension of time, for any cause whatever, shall be claimed by or made to the Company, unless Company shall have made written request upon City for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless City and Company have agreed in writing upon the allowance of additional time to be made.

ARTICLE V

DOCUMENTS

A. All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer programs, estimates, surveys, other data or work items, etc.) prepared by or for Company under or in connection with this Agreement shall be submitted for approval of the City. All instruments of service shall be professionally sealed as may be required by law or by City.

B. Such documents of service, together with necessary supporting documents, shall be delivered to City, and City shall have unlimited rights, for the benefit of City, in all instruments of service, including the right to use same on any other work of City without additional cost to City. If, in the event City negligently uses such instruments of service on any work of City other than that specified in the Scope of Services and which Company has not authorized, attached as Exhibit "A", provided Company completes this Agreement, under those circumstances City hereby agrees to indemnify and hold harmless the Company from and against suits, actions, claims, losses, liability or damage on account of injury to any person or damage to property arising from such unauthorized, negligent use of such instruments of service with respect to such other work, except where Company participates in such other work; provided, however, that this indemnity and hold harmless is given by City subject to and without waiving any defenses, any immunity, and any tort limitation available or applicable to the City, and further is given subject to and shall not exceed the monetary limitations of damages for municipalities set forth in the Texas Tort Claims Act (Chapter 101, Tex. Civ. Prac. & Rem. Code, as amended) or any successor statute thereto.

C. Company agrees to and does hereby grant to City a royalty-free, perpetual license to all such instruments of service in which Company may have a copyright or other intellectual

property interest, and to all designs as to which Company may assert any rights or establish any claim under patent, copyright, or other intellectual property laws. Company, after completion of the Services, agrees to furnish the originals of all such instruments of service to the City.

D. All documents or other instruments of service supplied by or on behalf of Company to City as provided herein shall be in Word 97 or compatible with Word 97.

ARTICLE VI

TERMINATION

A. City may suspend or terminate this Agreement at any time and for any reason, in its sole discretion, by giving written notice to the Company. In the event of such suspension or termination by City, Company shall have no recourse against City, except for payment for the Services of Company, in accordance with the terms of this Agreement, reasonably determined by the City to have been properly performed hereunder prior to the suspension or termination and for which Company has not been paid. Such payment will be due upon delivery of all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports photographs or other items, or any other instruments of service, in whatever form or format, prepared by, for, or on behalf of Company in connection with this Agreement, to City.

B. Either City or Company may suspend or terminate this Agreement because of a breach of this Agreement by the other party, such suspension or termination to be effective ten (10) days after receipt by the breaching Party of a written notice specifying such breach, unless the breaching party corrects such breach or presents a mutually agreeable plan to cure such breach within such time. In the event of such suspension or termination, payment to the Company, in accordance with the terms of this Agreement, will be made on the basis of Services reasonably determined by City to be satisfactorily performed prior to the date of suspension or termination. Such payment will be due upon delivery of all finished or unfinished documents,

data, studies, surveys, drawings, maps, models, reports photographs or other items, or any other instruments of service, in whatever form or format, prepared by, for, or on behalf of Company in connection with this Agreement, to City.

C. Should the City require a modification of this Agreement, and in the event City and Company fail to agree upon such modification, either City or Company shall have the option in their respective sole discretion of terminating this Agreement. In the event of such termination, payment to Company shall be made by the City in accordance with the terms of this Agreement, for the services mutually agreed upon by the City and the Company to be properly performed by the Company prior to such termination date. Such payment will be due upon delivery of all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports photographs or other items, or any other instruments of service, in whatever form or format, prepared by, for, or on behalf of Company in connection with this Agreement, to City.

D. In the event of termination of this Agreement for any reason, Company shall promptly deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports photographs or other items, or any other instruments of service, in whatever form or format, prepared by, for, or on behalf of Company in connection with this Agreement, to City.

ARTICLE VII

INSURANCE

A. In connection with this Agreement, Company shall provide and maintain the minimum insurance coverages set forth below:

1. Company shall provide and maintain Workers Compensation at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

2. Company shall provide and maintain in full force and effect during the time of this Agreement, commercial automobile liability insurance (including, but not limited to, insurance covering the operation of owned, non-owned, and hired automobiles, trucks and other vehicles) protecting Company and City as an additional Insured at minimum combined single limits of \$1,000,000 per occurrence for bodily injury and property damage.

3. Company shall provide Commercial General Liability Insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate) and contractual liability. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance.

4. Company shall also provide and maintain Professional Liability coverage at minimum limits of \$2,000,000.00 covering claims resulting from engineering errors and omissions. Such insurance shall be kept in effect for at least four (4) years after the completion of the Services and this Agreement. If Company fails to maintain the insurance covered during that time, City may pay the premiums to keep the insurance in effect and recover the cost from the Company. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Agreement (or earlier) must be maintained during the full term of this Agreement and for the four year period thereafter.

B. With reference to the foregoing insurance, Company shall specifically endorse applicable insurance policies as follows:

1. The Town of Addison, Texas shall be named as an additional insured with respect to General Liability and Automobile Liability.

2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.

3. A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the Workers Compensation and all liability policies.

4. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any material change in the insurance coverage.

5. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.

6. All insurance policies, which name The Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

8. Company may maintain reasonable and customary deductibles, subject to approval by the Town of Addison, Texas

9. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison, Texas.

C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to the City simultaneously with the execution of this Agreement, and shall contain provisions representing and warranting the following:

1. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.

2. Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison, Texas.

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

D. City reserves the right to review the insurance requirements contained herein and to adjust coverages and limits when deemed necessary and prudent by City.

ARTICLE VIII

INDEMNIFICATION FOR INJURY AND PERFORMANCE

Company further specifically obligates itself to City in the following respects, to-wit:

THE COMPANY HEREBY AGREES TO PROTECT, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, OFFICERS, AGENTS, SERVANTS AND EMPLOYEES (HEREINAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, LOSSES, JUDGMENTS, LIABILITY, PENALTIES, FINES, OR DAMAGE OF ANY CHARACTER, AND FROM AND AGAINST COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY FEES INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS, CLAIMS, LOSSES, JUDGMENTS, DAMAGES, PENALTIES, FINES, OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO OR DESTRUCTION OF ANY PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM, (I) ARISING FROM ANY NEGLIGENT ACT, ERROR, OR OMISSION OR ANY WILLFUL MISCONDUCT OF THE COMPANY, OR OF THE COMPANY'S OFFICERS, EMPLOYEES, REPRESENTATIVES,

SERVANTS, AGENTS, CONTRACTORS OR SUBCONTRACTORS, OR ANYONE ELSE UNDER THE COMPANY'S DIRECTION AND CONTROL (TOGETHER, "COMPANY PERSONS"), AND (II) ARISING OUT OF, RESULTING FROM, OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY WORK OR SERVICES CALLED FOR BY THIS AGREEMENT, OR FROM CONDITIONS CREATED BY THE PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES. IN THE EVENT ONE OR MORE OF THE INDEMNITEES IS DETERMINED BY A COURT OF LAW TO BE CONCURRENTLY NEGLIGENT WITH THE COMPANY OR COMPANY PERSONS FOR SUCH DAMAGE OR INJURY, THE COMPANY SHALL BE OBLIGATED TO INDEMNIFY INDEMNITEE(S) AS PROVIDED HEREIN ON A PROPORTIONATE BASIS IN ACCORDANCE WITH THE FINAL JUDGMENT, AFTER ALL APPEALS ARE EXHAUSTED, DETERMINING SUCH CONCURRENT NEGLIGENCE.

The Company is not responsible for construction of the improvements which are to be constructed by the contractor pursuant to the plans and specifications to be provided by Company pursuant to this Agreement.

Acceptance and approval of the final plans by the City shall not constitute nor be deemed a release of this responsibility and liability of Company, its employees, associates, agents and consultants for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the City for any defect in the designs, working drawings and specifications, or other documents prepared by Company, its employees, contractor, agents and consultants.

ARTICLE IX

INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

Company agrees that it is an independent contractor and not an agent of the City, and that Company is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve City of any responsibility or liability from treating Company's employees as employees of City for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. COMPANY FURTHER AGREES TO INDEMNIFY AND HOLD CITY HARMLESS AND REIMBURSE IT FOR ANY EXPENSES OR LIABILITY INCURRED UNDER SAID STATUTES IN CONNECTION WITH EMPLOYEES OF COMPANY.

ARTICLE X

INDEMNIFICATION FOR PERFORMANCE

COMPANY SHALL DEFEND AND INDEMNIFY INDEMNITEES AND HOLD INDEMNITEES AND THE PREMISES HARMLESS FROM ANY AND ALL CLAIMS, SUITS OR LIENS BASED UPON OR ALLEGED TO BE BASED UPON THE NON-PAYMENT OF LABOR, TOOLS, MATERIALS, EQUIPMENT, SUPPLIES, TRANSPORTATION, AND MANAGEMENT COSTS INCURRED BY COMPANY IN PERFORMING OR IN CONNECTION WITH THIS AGREEMENT.

ARTICLE XI

ASSIGNMENT

Company shall not assign, transfer, or otherwise convey, or subcontract, this Agreement or any part thereof, without the prior written consent of City. Sale of more than 50% ownership of Company shall be construed as an assignment, transfer, or other conveyance.

ARTICLE XII

APPLICABLE LAWS

Company shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and building codes, including but not limited to the Americans With Disabilities Act and Chapter 469 of the Texas Government Code (relating to elimination of architectural barriers), relating or applicable to services to be performed under this Agreement.

This Agreement is performable in the State of Texas and shall be governed by the laws of the State of Texas; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. Venue on any suit or matter hereunder shall be in Dallas County, Texas.

ARTICLE XIII

DEFAULT OF COMPANY

In the event Company fails to comply or is otherwise unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within ten (10) days after written notice by City to Company, City may, at its sole discretion without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to Company except for all work determined by City to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of Company to and from meetings called by City at which Company is required to attend, but shall not include any loss of profit of Company. In the event of such termination, City may proceed to complete the services in any manner

deemed proper by City, either by the use of its own forces or by resubmitting to others. In either event, the Company shall be liable for all costs in excess of the total contract price under this Agreement incurred to complete the services herein provided for and the costs so incurred may be deducted and paid by the owner out of such monies as may be due or that may thereafter become due to Company under and by virtue of this Agreement.

B. City may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of the Company.

ARTICLE XIV

ADJUSTMENTS IN SERVICES

No claims for extra services, additional services or changes in the services will be made by Company without a written agreement with City prior to the performance of such services.

ARTICLE XV

EXECUTION BECOMES EFFECTIVE

This Agreement will be effective upon the last of the representatives of the parties to execute this Agreement, as set forth below.

ARTICLE XVI

AGREEMENT AMENDMENTS

This Agreement contains the entire and integrated understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by duly authorized representatives of the parties, except as may be otherwise provided therein.

ARTICLE XVII

GENDER AND NUMBER

The use of any gender in this Agreement shall be applicable to all genders, and the use of singular number shall include the plural and conversely.

ARTICLE XVIII

NOTICES AND AUTHORITY

A. The Company agrees to send all notices required under this Agreement to the City Manager of the Town of Addison at 5300 Belt Line Road, Dallas, Texas 75254.

B. The City agrees to send all notices required under this Agreement to the Company at: 4055 International Plaza, Suite 200, Fort Worth, Texas 76109

C. The undersigned officers and/or agents of each of the parties hereto are the properly authorized officials or representatives and have the necessary authority to execute this Agreement on behalf of each of the respective parties.

ARTICLE XIX

MISCELLANEOUS

A. No Third Party Benefits. This Agreement and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

B. The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise. The failure by either party to exercise any right, power, or authority given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this

Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

C. The terms and provisions of this Agreement are severable, and if any term or provision is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties agree to seek to negotiate the insertion of a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible, with the intent that such added provision is legal, valid and enforceable.

D. Company shall not divulge or release any information concerning the project or this Agreement to the public, including any the media representative, without City's prior written consent.

E. Neither party is liable to the other for any damages for delay in performance caused by acts of God, strikes, lockouts, accidents, fire, casualty, labor trouble, failure of power, governmental authority, riots, insurrections, war, acts or threatened of terrorism, or other events or reasons of a like nature which are beyond the control of the party obligated to perform and not avoidable by the diligence of that party ("Event of Force Majeure"); in such event, the party obligated to perform give the other party prompt notice of such delay and the performance of this Agreement shall be excused for the period of such delay. If such an event necessitates a change in the time required for performance of any act or services hereunder, the parties shall make an equitable adjustment of the schedule and price; provided, however, that the party obligated to

perform shall continue to promptly perform all of its obligations under this Agreement while the Parties are determining the nature and extent of any such adjustments.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

TOWN OF ADDISON, TEXAS

FREESE AND NICHOLS, INC.

By: _____
Ron Whitehead, City Manager

By:  _____

Typed name: Thomas Haster, P.E.

Date: _____

Title: Principal

ATTEST:

By: _____
Lea Dunn, City Secretary

Exhibit "A"
Scope of Services
Town of Addison
Prepare SECO Grant Feasibility Study for Wind Turbines
At the Proposed Surveyor Blvd 1.5 MG Elevated Storage Tank

ARTICLE I

BASIC SERVICES: The following Basic Services shall be performed upon written notice to proceed from the City. These Basic Services are intended to address deliverables 1, 2, and 3 of the City's contract with SECO. It is assumed that the City will provide the monthly progress reports and final report associated with deliverables 4 and 5 of the City's contract with SECO.

Section 1 - Engineering, Wind Study, Avian Study, EIS Form, Permitting & Clearances

FNI will perform the following services:

- A. Prepare engineering details for placement and attachment of ten 3.5KW Cleanfield Energy Wind Turbines (3.5KW) on the Water Tower. These details are intended to include a plan view of the turbine unit layout atop the tank and shop drawing level details of a base plate for attachment of turbine units to the roof.
- B. Prepare a siting study to discuss the rationale and supporting information for location of the wind turbines at the selected site.
- C. Perform a wind measurement study at the selected site.
- D. Perform an Avian Study at the selected site to document the level of risk to the avian population generated by the proposed wind turbines at the selected site.
- E. Conduct an on-site environmental review to make observations necessary to complete Form 617.20, Appendix A, State Environmental Quality Review, FULL ENVIRONMENTAL ASSESSMENT FORM provided to the City by SECO.
- F. Obtain a permit clarification letter from the City. It is anticipated that this letter will indicate that the proposed wind turbine units are permitted at the selected site.
- G. Include the FAA "DETERMINATION OF NO HAZARD TO AIR NAVIGATION" in the information to be provided in the study.
- H. U.S. Fish and Wildlife Clearance – it is our understanding that the City has requested and has received a letter of clearance from the U.S. Fish and Wildlife Service. This letter will be included in the study submittal. No additional correspondence or coordination with the U.S. Fish and Wildlife Service is included in these Basic Services. Correspondence or coordination with the U.S. Fish and Wildlife Service will be considered additional services which can be provided upon written authorization by the City.
- I. U.S. Army Corps of Engineers Clearance - it is our understanding that the City has requested and has received a letter of clearance from the U.S. Army Corps of Engineers. This letter will be included in the study submittal. No additional correspondence or coordination with the U.S. Army Corps of Engineers is included in these Basic Services. Correspondence or coordination with the U.S. Army Corps of Engineers will be

considered additional services which can be provided upon written authorization by the City.

- J. Cultural Resources Survey/Clearance –Prepare a letter to the Texas Historical Commission (THC) requesting review and concurrence that no significant historical or archeological resources are likely to be affected by the proposed project. In addition to requesting clearance from the THC, obtain a Professional Archeologist's opinion of the potential effect, if any, of the proposed project on cultural resources listed or eligible for listing on the National Register of Historic Places
- K. Obtain a clearance letter from ONCOR indicating that interconnection of the wind turbine energy to ONCOR's power grid will be allowed.

Section 2 - Project Documentation, Data, Site Planning

FNI will collect the following data and information for inclusion in the feasibility study:

- A. Prepare a summary write-up of the project history and evolution of the proposed water tower and wind turbines, including figures from previous presentations of the project.
- B. Summarize and include data/reports on the wind turbine technology review performed for this project, including selection criteria and history of turbine selection.
- C. Collect Cleanfield Energy data sheets and product information for inclusion in the study submittal.
- D. Prepare a description of the proposed learning/technology center, including applicable figures from the architect's previous presentations.
- E. Include the 60% design plans submittal in the study submittal.

Section 3 – Study Compilation and Project Narrative

FNI will compile the collected data and information into a submittal package, including a summary project narrative:

- A. A description of the iconic water tower design.
- B. An overview of the wind energy system on the top of the water tower.
- C. A review of the technology and the rationale for selection.
- D. A summary of the engineering plans necessary to attach the wind energy system to the top of the elevated storage tank.
- E. A summary of the wind measurement study at the site.
- F. A summary of the Avian Study to document the level of risk to Avian population.
- G. A summary of permitted use clearances obtained from the City and ONCOR.
- H. An overview of the results of the FULL ENVIRONMENTAL ASSESSMENT FORM as well as a completed FORM.
- I. An overview of the clearance letters received from the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the Texas Historical Commission (THC) if

received prior to the report deadline. A copy of the THC response will be provided as an addendum if it is not received in time to incorporate into the original report.

- J. A summary of the Cultural Resources Survey/Clearance based on Professional Archeologist's opinion as well as THC correspondence if received prior to the report deadline.
- K. Provide the City with up to 10 copies of the Feasibility Study, for the City's records and for the City's submittal to SECO.

Section 4 – Project Meetings

- A. Attend one project kickoff meeting with the City.
- B. Attend one meeting with the City to present the Feasibility Study.

ARTICLE II

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by City, which are not included in the above described basic services, are described as follows:

- A. Meetings and site visits in excess of the number indicated in Article I, including any that might be requested by regulatory agencies.
- B. Field layouts or the furnishing of construction line and grade surveys.
- C. GIS mapping services or assistance with these services.
- D. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by City.
- E. Providing renderings, model, and mock-ups requested by the City.
- F. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by City or 2) due to other causes not solely within the control of FNI.
- G. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required in connection with the replacement of such Work.
- H. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by City.
- I. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.

- J. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- K. Conducting pilot plant studies or tests.
- L. Preparing Operation and Maintenance Manuals or conducting operator training.
- M. Preparing data and reports for assistance to City in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- N. Furnishing Special Inspections required under chapter 17 of the International Building Code. These Special Inspections are often continuous, requiring an inspector dedicated to inspection of the individual work item, and they are in addition to General Representation and Resident Representation services noted elsewhere in the contract. These continuous inspection services can be provided by FNI as an Additional Service.
- O. Preparation of Conformed or "As Bid" plans and specifications for use during the construction phase. These documents shall involve the incorporation of addenda items into the Contract Documents through modification of the electronic files and reprinting of the plans and specifications inclusive of the incorporated changes.
- P. Assisting City in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- Q. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- R. Assisting City in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- S. Providing environmental support services, other than those described under Basic Services, including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- T. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- U. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.

- V. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- W. Services required to resolve bid protests or to rebid the projects for any reason.
- X. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- Y. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- Z. Providing services after the completion of the construction phase not specifically listed in Article I.
- AA. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the City.
- BB. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- CC. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.
- DD. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- EE. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- FF. Provide follow-up professional services during Contractor's warranty period.
- GG. Consult with any agency other than the Texas Historical Commission.
- HH. Participate in or prepare for public meetings.
- II. Prepare documentation, such as a Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement, to address National Environmental Policy Act compliance.

ARTICLE III

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

Provide 10 copies of the Feasibility Study to City by July 28, 2010.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this AGREEMENT and in Attachment CO.

ARTICLE IV

RESPONSIBILITIES OF City: City shall perform the following in a timely manner so as not to delay the services of FNI:

- A. City recognizes and expects that certain Change Orders may be required. Unless noted otherwise, the City shall budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.

Further, City recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omission, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, City agrees to pay for Change Orders and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the aggregate costs of all such approved Covered Change Orders exceed 2% for new construction and 4% for reconstruction. Any responsibility of Engineer for the costs of Covered Changed Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include:

- any costs that City would have incurred if the Covered Change Order work had been included originally in the Contract Documents and without any other error or omission of Engineer related thereto,
- Any costs that are due to unforeseen site conditions, or
- Any costs that are due to changes made by the City.
- Any costs that are due to the Contractor

Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percent of Construction Cost stated above or for any other Change Order.

Wherever used in this document, the term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineers Consultants.

- B. Designate in writing a person to act as City's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have contract authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to FNI's services for the Project.
- C. Provide all criteria and full information as to City's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which City will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this AGREEMENT.
- F. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as City deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- G. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- H. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as City may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as City may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as City may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- I. City shall determine, prior to receipt of construction bid, if FNI is to furnish Resident Project Representative service so the Bidders can be informed.
- J. If City designates a person to serve in the capacity of Resident Project Representative who is not FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in an Attachment attached to and made a part of this AGREEMENT before the Construction Phase of the Project begins. Said attachment shall also set forth appropriate modifications of the

Construction Phase services as defined in Attachment SC, Article I, C, together with such adjustment of compensation as appropriate.

- K. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- L. Give prompt written notice to FNI whenever City observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- M. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this AGREEMENT or other services as required.
- N. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and City designate the following representatives:

City's Designated Representative – Nancy Cline, Director of Public Works, 16801 Westgrove Dr., P.O. Box 9010, Addison, Texas 75001-9010; phone 972-450-2878; fax 972-450-2837; e-mail ncline@addisontx.gov

City's Accounting Representative - (Name, address, telephone number, fax number, and e-mail)

FNI's Project Manager – Ron King, P.E., 2220 San Jacinto Blvd., Suite 330, Denton, Texas 76205; phone 940-220-4350; fax 940-387-4677; email rgk@freese.com

FNI's Accounting Representative – Jana Collier, 4055 International Plaza, Suite 200, Fort Worth, Texas 76109; phone 817-735-7354 (direct); fax 817-735-7496; email jvc@freese.com

**COMPENSATION
COST TIMES MULTIPLIER WITH MAXIMUM FEE LIMIT OPTION**

A. **Not to Exceed:** The total fee for Basic Services in Attachment SC shall be computed on the basis of the Schedule of Charges but shall not exceed **Ninety-Seven Thousand Five Hundred Dollars (\$97,500.00)**. If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify City for City's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

B. **Schedule of Charges for Additional Work:**

Staff Member Salary Cost Times Multiplier of 2.144

Resident Representative Salary Cost Times Multiplier of 2.0

Salary Cost is defined as the cost of payroll of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc., for the time directly chargeable to the project, plus social security contributions, unemployment compensation insurance, retirement benefits, medical and insurance benefits, longevity payments, sick leave, vacation and holiday pay applicable thereto.

Other Direct Expenses Actual Cost Times Multiplier of 1.10

Other direct expenses shall include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from Fort Worth and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

Rates for In-house Services

Printing

Black and White

\$0.10 per copy

Plotter

Bond \$ 2.50 per plot

Special \$ 5.00 per plot

Testing Apparatus

Density Meter \$700.00 per month

Gas Detection \$ 20.00 per test

Color

\$0.50 per copy

Binding

\$5.75 per book

Council Agenda Item: #ES1

AGENDA CAPTION:

Closed (Executive) session of the Addison City Council pursuant to Section 551.072, Tex. Gov. Code, to deliberate the leases of certain real properties located within the Town at Addison Airport, and pursuant to Section 551.087, Texas Government Code, to deliberate the offer of a financial or other incentive to a business prospect or business prospects that the City Council seeks to have locate, stay or expand in the territory of the Town of Addison and with which the City Council is conducting economic development negotiations.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R12

AGENDA CAPTION:

Consideration of any action regarding leases of certain real properties located within the Town at Addison Airport, and/or the offer of a financial or other incentive to a business prospect or business prospects that the City Council seeks to have locate, stay or expand in the territory of the Town of Addison and with which the City Council is conducting economic development negotiations.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description: Type:
No Attachments Available