



REGULAR WORK SESSION & MEETING OF THE CITY COUNCIL

August 22, 2017

ADDISON TOWN HALL
5300 BELT LINE RD., DALLAS, TX 75254

5:00 PM DINNER & EXECUTIVE SESSION
6:00 PM WORK SESSION
7:30 PM REGULAR MEETING

Executive Session

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1. Closed (executive) session of the Addison City Council pursuant to:

Section 551.071, Tex. Gov. Code, to conduct a private consultation with its attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Tex. Gov. Code, pertaining to:

- **The ponds or lakes at Vitruvian Park located within the vicinity and east of the intersection of Vitruvian Way and Ponte Ave., and Farmers Branch Creek.**

Section 551.072, Tex. Gov. Code, to deliberate the purchase, exchange, lease, or value of real property.

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2. **RECONVENE INTO REGULAR SESSION:** In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matter discussed in Executive Session.

WORK SESSION

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3. Present And Discuss **A Training Session On The Purpose And Development Of Addison's Comprehensive Asset Management Plan.**

 4. Present And Discuss **Revisions To City Council Procedures.**

 5. Present And Discuss **Process And Implications For Potential Withdrawal From The Dallas Area Rapid Transit (DART) System.**
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REGULAR MEETING

Pledge of Allegiance

Announcements and Acknowledgements regarding Town and Council Events and Activities

Discussion of Events/Meetings

6. Public Comment.
The City Council invites citizens to address the City Council on any topic not on this agenda. Please fill out a **City Council Appearance Card** and submit it to a city staff member prior to Public Participation. Speakers are allowed **up to three (3) minutes per speaker** with **fifteen (15) total minutes** on items of interest or concern and not on items that are on the current agenda. In accordance with the Texas Open Meetings Act, the City Council cannot take action on items not listed on the agenda. The Council may choose to place the item on a future agenda.
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Consent Agenda:

All items listed under the Consent Agenda are considered routine by the City Council and will be enacted by one motion with no individual consideration. If individual consideration of an item is requested, it will be pulled from the Consent Agenda and discussed separately.

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7. Consider Approval Of The **July 17, 2017 Special Meeting Minutes And The August 8, 2017 Regular Meeting Minutes.**

 8. Consider Action On A **Resolution To Approve A Non-Exclusive Food And Beverage Vending Agreement With The Marriott Quorum And Authorize The City Manager To Execute The Agreement To Provide Food And Beverage Services To Event Patrons At Oktoberfest 2017.**

 9. Consider Action On A **Resolution To Approve A Non-Exclusive Food And Beverage Vending Agreement With Crown Plaza Hotels And Authorize The City Manager To Execute The Agreement To Provide Food And Beverage Services To Event Patrons At Oktoberfest 2017.**

 10. Consider Action On A **Resolution To Approve A Non-Exclusive Food And Beverage Vending Agreement With The Taste Of Cuba Food Truck And Catering, LLC (Concessionaire) And Authorize The City Manager To Execute The Agreement To Provide Food And Beverage Services To Event Patrons At Oktoberfest 2017.**

 11. Consider Action On A **Resolution To Approve A Non-Exclusive Food And Beverage Vending Agreement With Prime Steak Management, Inc., (DBA Chamberlain's Brau Haus) And Authorize The City Manager To Execute The Agreement To Provide Food And Beverage Services To Event Patrons At Oktoberfest 2017.**

Regular Items

12. Present, Discuss, And Consider Action **On The Addison Citizens Assisting Police (ACAP) Program.**

13. Present, Discuss, And Consider Action On **An Ordinance Amending Chapter 70 Of The Code Of Ordinances Related To The Management Of The Town Of Addison Right-Of-Way; Establishing Regulations And Fees For Permitting, Construction, Placement, And Excavation In Rights-Of-Way And Public Easements; Providing For The Regulation Of Network Nodes And**

Node Support Poles Pursuant To Chapter 284 Of The Texas Local Government Code; Adopting A Wireless Services Design Manual; Designating Underground Districts; Designating Design Districts; And Providing Restrictions On Placement Of Network Nodes And Node Support Poles In Municipal Parks, Residential Areas, Underground Districts And Design Districts.

14. Present And Discuss **The Kellway Lift Station Assessment And Capital Improvement Program Report.**

15. Present, Discuss And Consider Action On **An Update Of Recent Activity Relating To The Dallas Area Rapid Transit (DART) Board Of Directors And How The Town Might Communicate And Promote Addison's DART Priorities Regarding The Cotton Belt.**

Adjourn Meeting

NOTE: The City Council reserves the right to meet in Executive Session closed to the public at any time in the course of this meeting to discuss matters listed on the agenda, as authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551, including §551.071 (private consultation with the attorney for the City); §551.072 (purchase, exchange, lease or value of real property); §551.074 (personnel or to hear complaints against personnel); §551.076 (deployment, or specific occasions for implementation of security personnel or devices); and §551.087 (economic development negotiations). Any decision held on such matters will be taken or conducted in Open Session following the conclusion of the Executive Session.

Posted:

Laura Bell, 08/17/2017, no later than 7:00 pm

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS WITH DISABILITIES.
PLEASE CALL (972) 450-7017 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

AI-2349

1.

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: City Manager

AGENDA CAPTION:

Closed (executive) session of the Addison City Council pursuant to:

Section 551.071, Tex. Gov. Code, to conduct a private consultation with its attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Tex. Gov. Code, pertaining to:

- **The ponds or lakes at Vitruvian Park located within the vicinity and east of the intersection of Vitruvian Way and Ponte Ave., and Farmers Branch Creek.**

Section 551.072, Tex. Gov. Code, to deliberate the purchase, exchange, lease , or value of real property.

BACKGROUND:

N/A

RECOMMENDATION:

N/A

AI-2350

2.

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: City Manager

AGENDA CAPTION:

RECONVENE INTO REGULAR SESSION: In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matter discussed in Executive Session.

BACKGROUND:

N/A

RECOMMENDATION:

N/A

AI-2283

3.

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: Infrastructure- Development Services

AGENDA CAPTION:

Present And Discuss **A Training Session On The Purpose And Development Of Addison's Comprehensive Asset Management Plan.**

BACKGROUND:

On May 23, 2017, the Council approved a contract with Kayuga Solution, Inc., for the development of a comprehensive Asset Management Plan (AMP) for the Town of Addison. Since that time, Kayuga has been working with staff members from various departments to gather information related to the inventory and condition of the Town's buildings, parks, utilities, streets, and fleet. These are the first steps of the development of the AMP.

On June 15, 2017, Kayuga conducted a training session for staff that provided an introduction to the what, why, who, and how of asset management planning. The training covered such topics such as what is an asset and what is the condition of that asset; what is a level of service and why is it important; what is a critical asset and how is it defined; and what is an asset management strategy, why is it important, and how one is developed.

Because asset management is an important stated goal of the Council, it is important to give Council the opportunity to learn the basics of asset management planning and how Addison's AMP is being developed. The goal of the training and information session is to aid Council's understanding of the condition of the Town's assets to help set priorities for the future.

Staff and Kayuga Solution will provide a briefing and training session on asset management planning for Council.

RECOMMENDATION:

Information only, no action required.

Attachments

Presentation - Asset Management Training



The Importance of Infrastructure Asset Management

Town of Addison: Asset Management Overview

City Council Briefing
August 22, 2017



Agenda



- Introduction
- Asset Management
 - What – What is asset management? What is an asset?
 - Why – Why is asset management planning important?
 - Who – Who will be involved?
 - How – How will the asset management plan and the core processes be developed?
 - When – When will the asset management plan be completed?
- Addison's Asset Management Plan and Program





What is Asset Management?



3



Asset Management Definition – ISO 55000

“Asset Management is the set of coordinated activities that an organization uses to realize value from assets in the delivery of its outcomes or objectives.

Realization of value requires the achievement of a balance of costs, risks and benefits, often over different time scales.”



4

Asset Management Definition Simplified 

Managing assets to minimize the total cost of owning, operating, and maintaining those assets while delivering the desired service level at an acceptable level of risk.



Optimized Sustainable Stewardship



5

Asset Management is About... 

- Achieving balance

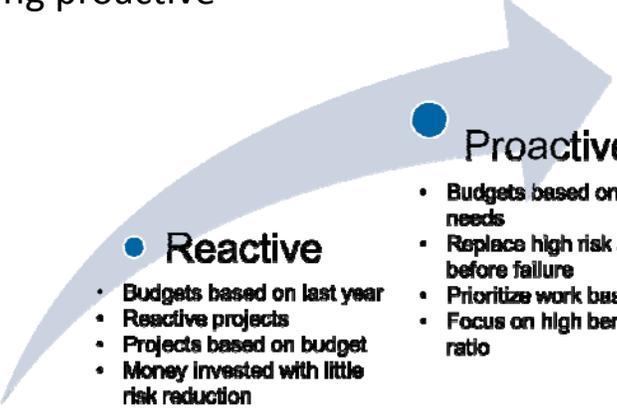
Resident Expectations	+	Cost of Service	+	Level of Service	+	Risk
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6

Asset Management is About...

• Being proactive



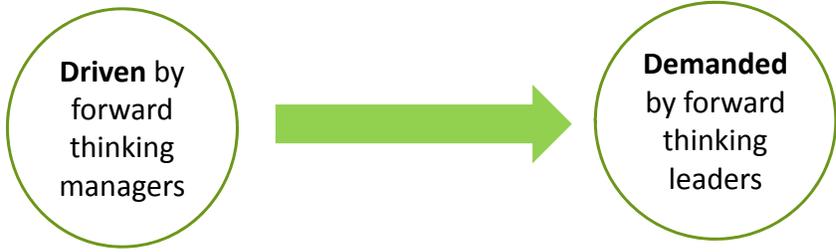
- Reactive**
 - Budgets based on last year
 - Reactive projects
 - Projects based on budget
 - Money invested with little risk reduction
- Proactive**
 - Budgets based on future needs
 - Replace high risk assets before failure
 - Prioritize work based on risk
 - Focus on high benefit to cost ratio

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7

Asset Management Planning



Driven by forward thinking managers → **Demanded by forward thinking leaders**

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8



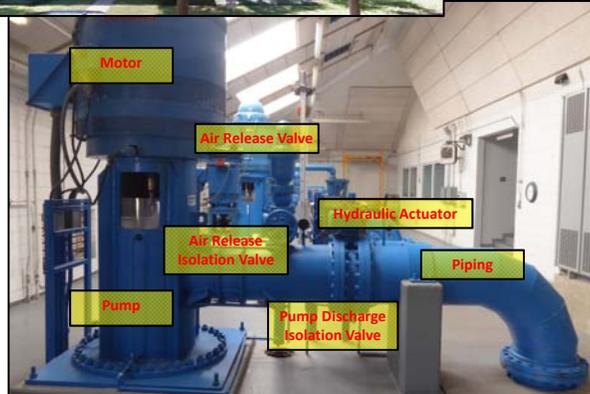
What is an Asset?



What is an Asset?



What Is An Asset?



11



Why Asset Management?



12

State of America's Infrastructure

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2017 INFRASTRUCTURE REPORT CARD

MAKING THE GRADE AMERICA'S GRADES STATE BY STATE SOLUTIONS THE IMPACT GET INVOLVED

ASCE

America's Infrastructure Scores a **D+**

GET THE FULL STORY

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13

Failing Assets

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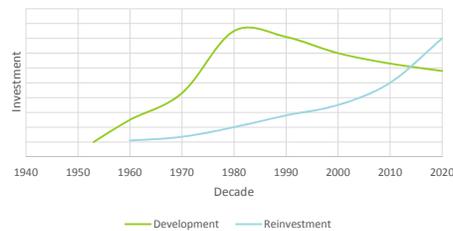
14

Addison's Transition from *Development* to *Management*



- Addison - Established in 1953, with peak development taking place from the late 70s to mid-90s
- Many assets when reaching 40+ years require replacement or rehabilitation
- As Addison transitions from development to redevelopment, the need for reinvestment into Addison infrastructure puts pressure on current residents and businesses

Development vs. Reinvestment



15

Why Asset Management?



- Aging assets in need of rehabilitation or replacement
- Limited budget and limited work force
- Need to understand the cost and timing of infrastructure maintenance, refurbishment, and replacement
- Need to understand the risk if assets are not maintained properly
- Need data backed justification to plan and prioritize infrastructure needs
- Need to transition from reactive to proactive state of infrastructure management
- Need to understand the cost to provide service
- Need to communicate the infrastructure needs to taxpayers
- Need to have a consistent and transparent decision making process
- Need to develop a sound foundation for continuous improvement



A Managed and Defendable Solution is Needed

16



Addison Needs - Asset Management

- To invest in and manage infrastructure to ensure Accountability, Transparency, and Consistency
- To have an integrated vision for infrastructure – residents, businesses, Council
- To educate and communicate need for infrastructure reinvestment
- To consider life-cycle costs, future renewal needs, and risk
- To develop a long-term planning horizon, based on risk assessment and priorities
- To demonstrate that funds are being spent effectively and efficiently


17



Asset Management Framework (Five Core Questions)

1. What is the current state of the assets?
2. What is the required level of service?
3. Which assets are critical?
4. What are the optimized management strategies?
5. What is needed to fund it?


18

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Who is Involved with Asset Management?

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19

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Who's Involved in the Asset Management Process?

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graph TD; Engage[Engage Consultant] --> Inventory[Inventory]; Inventory --> Condition[Condition Assessment]; Condition --> Define[Define Service Levels]; Define --> Critical[Critical Assets]; Critical --> Strategy[Asset Management Strategy]; Strategy --> Funding[Funding Strategy]; Funding --> Plan[Asset Management Plan]; Plan --> Engage; Plan --> Engage; Consultant[Consultant and Staff]; Council[Council Input];
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Consultant and Staff

Council Input

Engage Consultant

Inventory

Condition Assessment

Define Service Levels

Critical Assets

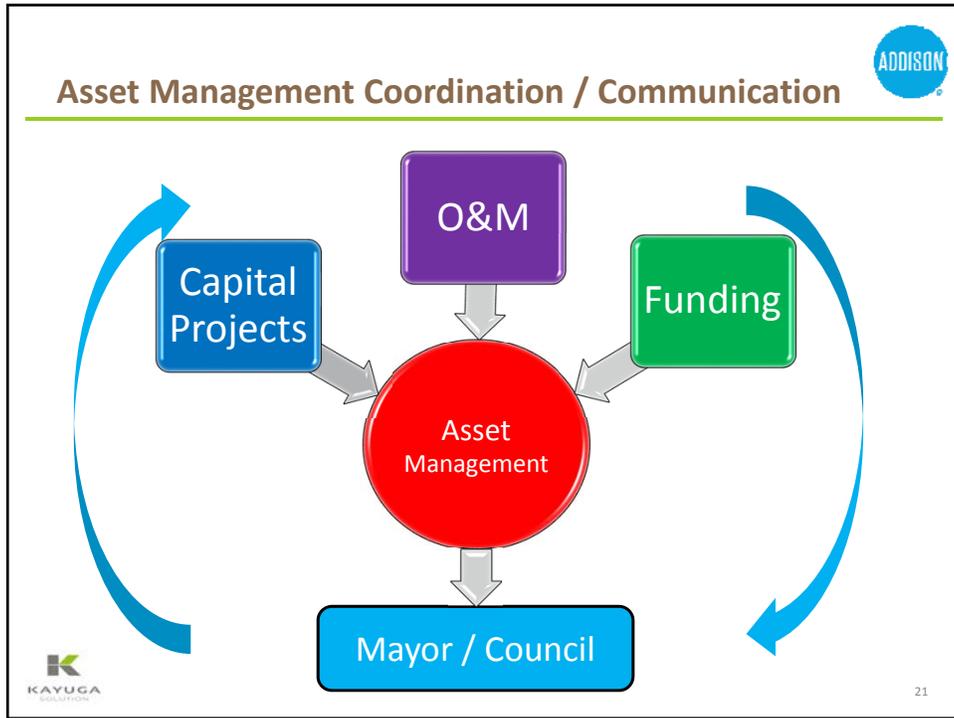
Asset Management Strategy

Funding Strategy

Asset Management Plan

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20



How - Asset Management Process

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23

What assets does Addison own? How do we manage them?



- Develop a database (asset register) to document all assets owned and managed → Asset data foundation
 - Define an asset
 - Inventory asset
 - Understand asset attributes required to support asset management decisions
 - Establish an asset hierarchy to organize the asset
 - Assign asset classes to group similar assets



23

What is the Current State of The Asset?



- Visual condition assessment
 - Identify immediate needs
 - Identify future needs



24

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Condition Assessment Scale

- Inspection based

Scale	Description
1	New or nearly new condition
2	Very good condition or better than expected
3	Good or as expected condition
4	Poor or recommended replacement within 2 years
5	Failed or nearing failure, need immediate attention
- Age based

25

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What is the agreed level of service?

- Roadway Level of Service (Pavement Condition Index)

Excellent Condition (PCI >90)

Breedlove Place

Good Condition (PCI 80-90)

Buckingham Court

Fair Condition (PCI 70-80)

Quorum Drive

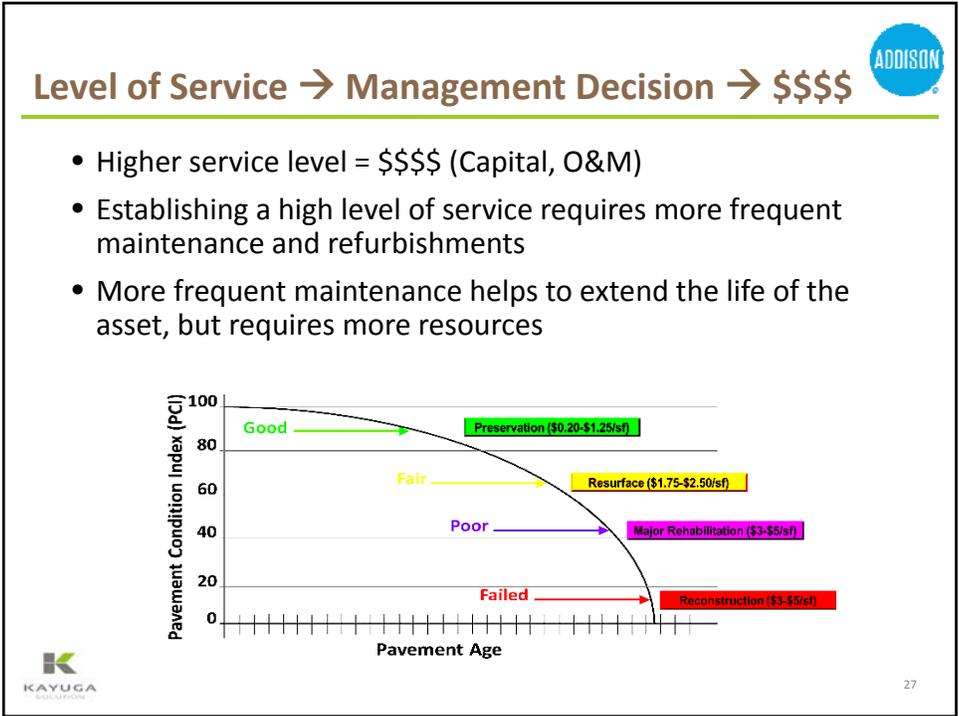
Poor Condition (PCI 60-70)

Airport Parkway

Failed Condition (<60)

Midway Road

26



Life Cycle Cost (LCC) Example: Parkview Park






Assets	Quantity
Artwork	1
Backflow Preventer	1
Brick Pavers	1
Chair	12
Electrical Outlet	10
Gravel	3
Irrigation Control Valve	12
Irrigation Controller	1
Lighting – Double Headed Pole	6
Lighting – Down Light	8
Lighting – Up Light	3
Lighting – Retaining Wall Lights	12
Meter	3
Panel	1
Park Monument	1
Pergola	1
Pet Waste Station	2
Table	6
Pedestrian Ramp	4
Signage	3
Trash Can	4
Trellis	6
Retaining Wall	2
	103


28

LCC Example: Parkview Park



Assets	Quantity	Replacement	Activity
Artwork	1	Replace in 30 years	
Backflow Preventer	1	Replace in 20 years	Inspect yearly
Brick Pavers	1	Replace in 50 years	
Chair	12	Replace in 3 years	
Electrical Outlet	10	Replace in 10 years	
Gravel	3	Replenish yearly	
Irrigation Control Valve	12	Replace in 20 years	
Irrigation Controller	1	Replace in 10 years	
Lighting – Double Headed Pole	6	Replace in 30 years	Paint every 5 years
Lighting – Down Light	8	Replace in 5 years	
Lighting – Up Light	3	Replace in 3 years	
Lighting – Retaining Wall Lights	12	Replace in 5 years	
Meter	3	Replace in 20 years	
Panel	1	Replace in 20 years	
Park Monument	1	Replace in 20 years	
Pergola	1	Replace in 50 years	Paint every 5 years
Pet Waste Station	2	Replace in 5 years	
Table	6	Replace in 3 years	
Pedestrian Ramp	4	Replace in 50 years	
Signage	3	Replace in 5 years	
Trash Can	4	Replace in 10 years	
Trellis	6	Replace in 30 years	Paint every 5 years
Retaining Wall	2	Replace in 80 years	
103			



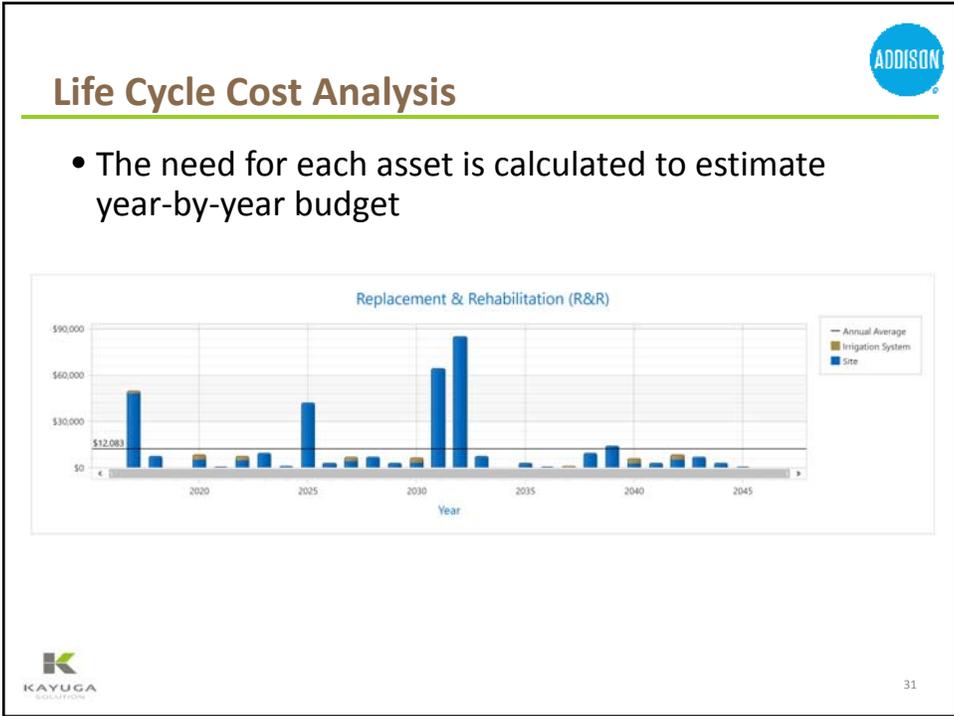
29

LCC Example: Parkview Park



Assets	Quantity	Replacement	Cost	Activity	Cost
Artwork	1	Replace in 30 years	\$80,000	Paint every 4 years	\$2,000
Backflow Preventer	1	Replace in 20 years	\$2,000	Inspect yearly	\$300
Brick Pavers	1	Replace in 50 years	\$5/SF		
Chair	12	Replace in 3 years	\$100		
Electrical Outlet	10	Replace in 10 years	\$200		
Gravel	3	Replace in 80 years	\$2/SF	Replenish yearly	\$0.50/SF
Irrigation Control Valve	12	Replace in 20 years	\$200		
Irrigation Controller	1	Replace in 10 years	\$3,000		
Lighting – Double Headed Pole	6	Replace in 30 years	\$5,000	Paint every 5 years	\$800
Lighting – Down Light	8	Replace in 5 years	\$200		
Lighting – Up Light	3	Replace in 3 years	\$200		
Lighting – Retaining Wall Lights	12	Replace in 5 years	\$300		
Meter	3	Replace in 20 years	\$800		
Panel	1	Replace in 20 years	\$1,500		
Park Monument	1	Replace in 20 years	\$4,000		
Pergola	1	Replace in 50 years	\$25,000	Paint every 5 years	\$4,000
Pet Waste Station	2	Replace in 5 years	\$500		
Table	6	Replace in 3 years	\$250		
Pedestrian Ramp	4	Replace in 50 years	\$6,000		
Signage	3	Replace in 5 years	\$200		
Trash Can	4	Replace in 10 years	\$800		
Trellis	6	Replace in 30 years	\$2,000	Paint every 5 years	\$400
Retaining Wall	2	Replace in 80 years	\$25/SF		
103					

30



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Target Level of Service

Metric	Definition	Target
Asset Accountability	The percentage of assets that are properly recorded in the asset registry	98 – 100%
Asset Availability	The portion of time that an asset is delivering its service level	95 – 99%
Maintenance Backlog	The percentage of work orders that are open as a percent of total work orders	5 – 10%
Failure Analysis	The portion of equipment downtime events that undergo a thorough analysis of failure modes, effects, and root causes	85 – 100%
Planned Work	The portion of corrective maintenance work hours that are planned and scheduled in advance	85 – 95%
Overtime	The portion of maintenance work hours that are performed at an overtime rate	5 – 8%
Relative Maintenance Cost	Maintenance spending as a percentage of asset replacement value of the plant being maintained	1.5 – 2.5%
Technician Productivity	The percentage of work hours spent on productive activities versus nonproductive (e.g., rework, waiting for parts)	70 – 85%
Rework	The portion of maintenance work that has to be redone due to poor installation, shoddy workmanship or incorrect diagnosis	2 – 5%

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32

Assets are Prioritized According to Risk of Failure

- With limited budget and resources, asset needs are prioritized using risk
- Risk considers not only timing to an asset failure, but also the impact of an asset failure
- Every asset receives a risk score



Probability of Failure
(Timing to Failure)

- Mortality
- Capacity
- Level of Service
- Financial Efficiency

Consequence of Failure
(Impact of a failure)

- Economic
- Environment
- Social

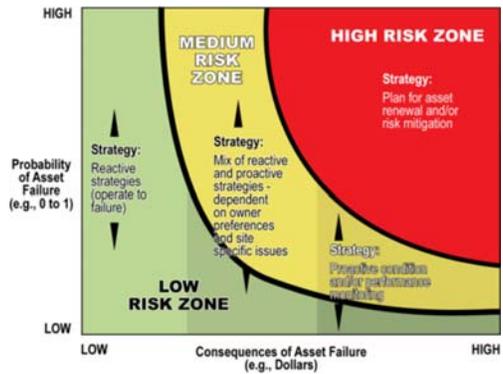
Multi-Tiered Asset Criticality Methodology

- For asset criticality, multi-tiered methodology is used
 - By facility (e.g., warehouse vs. City Hall)
 - By asset (e.g., play structure vs. bench)
- Same asset in a more critical facility will receive a higher consequence of failure score

Risk-Based Strategy



- The goal of the AMP is to identify assets in the red zone and to correct them before assets in the yellow and green zones



When - Timeline





Timeline

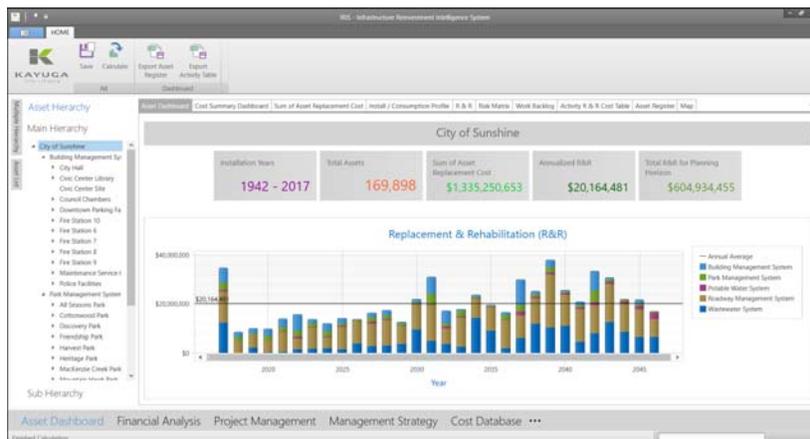
- Asset management plans for buildings, water, wastewater, parks, landscape areas, trails, roadway, and fleet will be completed by March 2018

Tasks	Description	2017						2018			
		6	7	8	9	10	11	12	1	2	3
0	Project Management										
1	Project Kick-off Meeting / AM Training										
2	Asset Management Plan Development										
2.1	Buildings										
2.2	Water/Wastewater										
2.3	Parks, Landscape Areas, and Trails										
2.4	Roadway										
2.5	Fleet										
3	Communication										



Asset Management Decision Support System

- IRIS (Infrastructure Reinvestment Intelligence System)





Thank you!



AI-2339

4.

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: City Manager

AGENDA CAPTION:

Present And Discuss Revisions To City Council Procedures.

BACKGROUND:

At its February 28, 2017, regular Council meeting, City Council reviewed and discussed City Council Procedures. As a result, a motion was passed to request the City Attorney to present a worksession to discuss the items for revision.

Additionally, at its May 23, 2017, regular Council meeting, City Council discussed the appointment process for Boards and Commissions. As a result, a motion was passed that each Councilmember has a right to make an appointment to the board or commission and, if needed or requested, the discussion can be done in Executive Session. The City Attorney is requesting direction from Council on whether or not to include the process to nominate, discuss, and appointment members to Boards and Commissions in the City Council Procedures.

The red-lined version of the City Council Procedures is attached.

RECOMMENDATION:

Staff requests direction from Council.

Attachments

Council Procedures - Amended

Council Procedures - Red-lined

CITY COUNCIL PROCEDURES

SECTION 1. MEETINGS

Three types of meetings are recognized:

A. Regular Meetings will be held on the second and fourth Tuesday of each month. Meetings will be held at Town Hall in the Council Chambers commencing at 7:30 p.m., unless otherwise posted.

B. Special Meetings are subject to call by the Mayor, City Manager, or three members of the City Council with written notice to the City Secretary. These meetings will be held at Town Hall unless otherwise posted, at a stated time.

(Note: Section 2.10 of the Charter states that Special Meetings “may be called by the Mayor or four (4) Council members.” As long as this provision is LESS restrictive than the Charter, it is not in conflict. For example, this provision may not be amended to require five (5) members to call a Special meeting.)

C. Work Session Meetings are subject to call by the Mayor, City Manager, or three members of the City Council with written notice to the City Secretary. The time, place, and purpose will be stated in each instance. Ordinarily, no official Council action will be taken at a work session meeting.

SECTIONS 2. AGENDAS

The following procedures relate to the agenda for meetings of the Council.

A. The Mayor, working with the City Manager, will determine what items of business should come before the Council. If, at a meeting of the Council, a member of the Council (i.e., the Mayor and each Council member) or the public inquires about a subject for which notice has not been given as required by law, only the following may be provided unless otherwise allowed by law: (1) a statement of specific factual information given in response to the inquiry, or (2) a recitation of existing policy in response to the inquiry. Unless otherwise allowed by law, any deliberation of or decision about the subject of such inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

B. Any Council member may ask the Mayor to place an item on the agenda for discussion.

C. An item will be placed on the agenda at the request of two or more Council members. The Council members requesting the agenda item may present or participate in the presentation of the item at the meeting. Any Town staff assistance should be requested through the City Manager’s Office. Such agenda items must reach the City Secretary’s office at Town Hall by 1:00 p.m., Tuesday, of the week preceding the meeting for which the request is made.

D. Any member of the Town staff wishing to have an item placed on the agenda shall submit that item to the City Manager's Office for approval. The City Manager may establish procedures for submission of routine items without his approval.

E. The agenda packets for all Regular Meetings will be delivered electronically by Town staff to members of the Council no later than the Thursday preceding the meetings.

F. The City Secretary's office is responsible for seeing that notices for all meetings of the Council comply with the Open Meetings Law.

SECTION 3. COUNCIL MEETING PROCEDURES

The Council will use the following procedures as a general guide for parliamentary procedure, and may consult Robert's Rules of Order as a guide in instances not addressed by these procedures.

A. The Mayor shall be the presiding officer at all meetings. The Mayor Pro- Tempore shall preside at meetings in the absence of the Mayor, and the Deputy Mayor Pro- Tempore shall preside at meetings in the absence of the Mayor and Mayor Pro-Tempore.

B. The Mayor shall have a voice in all matters before the Council and may vote on all matters.

C. When an item is presented to the Council, the Mayor (or presiding officer) shall recognize the presenter(s) and the order of presentation. During City Council discussion of an item, the Mayor shall recognize members of the Council who desire to ask questions or speak on an item. When two or more members desire to speak on an item, the Mayor shall choose which member is to speak first. Each member of the Council, including the Mayor, will be given an opportunity to ask questions following presentation of an agenda item. Each member will be given an initial 10 minutes for questions until all members have had an opportunity to ask questions. Then, members shall be given the opportunity to ask additional questions in the same manner until no member has additional questions. During discussion of an item, each member will be given an initial 10 minutes to speak until all members have had an opportunity to ask questions. Following the initial round of discussion, the Mayor (or presiding officer) shall recognize a member desiring to make a motion. If a motion is made and seconded, the discussion of the motion shall follow the procedure outlined above. If no motion is made, the discussion will continue in the same manner outlined above. There shall be no limit on the number of times the Mayor or a member may speak. The procedure described herein is intended to give each member a timely opportunity to speak and to avoid one member monopolizing the floor for an extended period of time before others have an opportunity to speak.

D. The Mayor (or presiding officer) shall preserve order and shall require Council members engaged in debate to limit discussion to the question under consideration.

E. The Mayor (or presiding officer) will give all members of the Council a full opportunity to speak on an item.

F. Should a conflict arise between Council members, the Mayor (or presiding officer) shall serve as the mediator. If the Mayor or presiding officer is a part of the conflict, the Council shall determine the procedure to conclude the matter.

G. Members of the Council shall confine their remarks to the item under consideration and shall avoid references to personality, integrity, or motives of any other members of the Council or Town staff.

H. Any Council member may ask the Mayor (or presiding officer) to enforce the procedures established by the Council. Should the Mayor (or presiding officer) fail to do so, a majority of the Council may direct him/her to enforce the procedures.

I. All personal communication devices should be placed in a silent mode during any City Council meetings. Personal communication devices shall not be used for communicating or conducting Town-related business during any City Council meetings. Town-provided iPads may be used to access agenda items but shall not be used to access social media or research items being discussed during the meeting. If an emergency arises, the Mayor or Council member shall excuse themselves from the dais or meeting room to engage in that communication.

SECTION 4. CODE OF CONDUCT FOR MAYOR AND COUNCIL MEMBERS

J. During Council meetings, Members of the Council shall preserve order and decorum, shall not interrupt or delay proceedings, and shall not refuse to obey the orders of the Mayor (or presiding officer) or the rules of the Council. Members of the Council shall demonstrate respect and courtesy to each other, Town staff, and citizens appearing before the Council. Members of the Council shall refrain from rude and derogatory remarks.

K. The Mayor and Council members should comply with the Town's Code of Ethics (included in Chapter 2, Article III, Division 2 of the Town's Code of Ordinances and attached hereto as Appendix A) and with all conflict of interest laws.

L. In accordance with the Town's Code of Ethics and with applicable law, the Mayor and Council members shall abstain from participating in or voting on items in which they have a conflict of interest as set forth in the Code of Ethics or applicable law. If the Mayor or a Council member has such a conflict of interest, he or she shall file a "Conflict of Interest Affidavit" with the City Secretary's office. Upon introduction of the agenda item in which the Mayor or Council member has a conflict of interest, the Mayor or Council member should announce that he or she has a conflict of interest, and must refrain from participation in or voting on the agenda item, and shall be required to leave the meeting room.

M. The Mayor and Council members are encouraged to conduct themselves above reproach. In the event that the Mayor or a Council member determines that it is necessary to abstain from participating in a matter to avoid a perceived conflict of interest or to avoid the

appearance of impropriety, as soon as the Mayor or Council member makes such a determination, the Mayor or Council member shall declare the nature of the matter causing the abstention, abstain from participation in the matter and leave the meeting room.

- N. The Mayor shall be recognized as head of the Town government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties. If the Mayor is absent, the Mayor Pro-Tempore, and in the absence of the Mayor and Mayor Pro-Tempore the Deputy Mayor Pro-Tempore, shall be so recognized.

SECTION 5. CITIZEN PARTICIPATION AT MEETINGS

A. The Council is, in certain instances (e.g., changes in zoning), required to hold public hearings. If an item is identified on the agenda of a Council meeting as a public hearing, persons attending the Council meeting will be given the opportunity to speak regarding the item after being recognized by the Mayor (or presiding officer). The Mayor (or presiding officer) may set time limits on persons who speak at a public hearing.

B. Except as set forth in paragraph A of this Section, as a general rule, persons attending a meeting of the Council may not participate in the discussions of the Council.

SECTION 6. COUNCIL AND STAFF RELATIONS

A. Members of the Council should attempt to ask questions to the City Manager about the Council agenda packet issued for a Council meeting prior to the meeting. This will allow the Town staff time to respond to the Council member's questions and, if necessary, to provide additional information to all members of the Council.

B. The City Manager shall designate the appropriate Town staff member to address each agenda item and shall see that each presentation informs the Council on the issues which require Council action. The presentations should be professional and timely, and should list options available for resolving any issue.

C. The City Manager is directly responsible for providing information to all members of the Council concerning any inquiries by a specific member of the Council. Should the City Manager find his or his staff's time being dominated by a single member, he should inform the Mayor of the concern.

D. If the Mayor or a Council member seeks a written legal opinion from the City Attorney, the City Attorney's legal opinion shall be provided to all members of the Council.

E. Any conflicts between the staff and the Council, the Mayor will speak with the City Manager regarding the conflict but will not address the conflict directly with any staff member. The City Manager will then address the matter with the appropriate staff member(s).

F. The City Manager is responsible for the professional and ethical behavior of themselves and their staff. He is also responsible for seeing that his staff remains educated and informed on the issues facing municipal government.

G. All members of the Council and Town staff members shall show respect and courtesy to each other and citizens at all times.

H. The City Manager is responsible for seeing that all newly-elected members of the Council are provided with a thorough orientation on Town staff procedures, municipal facilities, and other information of interest to municipal officials. All members of the Council are invited to attend the orientation.

SECTION 7. COUNCIL AND MEDIA RELATIONS

A. Agenda packets shall be provided upon request to all interested news media in advance of the Council meetings.

B. Responses to media inquiries concerning Town matters will be made as determined by the Mayor (or Mayor Pro-Tempore in the absence of the Mayor, or in the absence of the Mayor and the Mayor Pro-Tempore, the Deputy Mayor Pro-Tempore) and the City Manager.

CITY COUNCIL PROCEDURES

SECTION 1. MEETINGS

Three types of meetings are recognized:

A. Regular Meetings will be held on the second and fourth Tuesday of each month. Meetings will be held at Town Hall in the Council Chambers commencing at 7:30 p.m., unless otherwise posted.

B. Special Meetings are subject to call by the Mayor, City Manager, or three members of the City Council with written notice to the City Secretary. These meetings will be held at Town Hall unless otherwise posted, at a stated time.

(Note: Section 2.10 of the Charter states that Special Meetings “may be called by the Mayor or four (4) Council members.” As long as this provision is LESS restrictive than the Charter, it is not in conflict. For example, this provision may not be amended to require five (5) members to call a Special meeting.)

C. Work Session Meetings are subject to call by the Mayor, City Manager, or three members of the City Council with written notice to the City Secretary. The time, place, and purpose will be stated in each instance. Ordinarily, no official Council action will be taken at a work session meeting.

SECTIONS 2. AGENDAS

The following procedures relate to the agenda for meetings of the Council.

A. The Mayor, working with the City Manager, will determine what items of business should come before the Council. If, at a meeting of the Council, a member of the Council (i.e., the Mayor and each Council member) or the public inquires about a subject for which notice has not been given as required by law, only the following may be provided unless otherwise allowed by law: (1) a statement of specific factual information given in response to the inquiry, or (2) a recitation of existing policy in response to the inquiry. Unless otherwise allowed by law, any deliberation of or decision about the subject of such inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

B. Any Council member may ask the Mayor to place an item on the agenda for discussion.

C. An item will be placed on the agenda at the request of two or more Council members. The Council members requesting the agenda item may present or participate in the presentation of the item at the meeting. Any Town staff assistance should be requested through the City Manager’s Office. Such agenda items must reach the City Secretary’s office at Town Hall by 1:00 p.m., Tuesday, of the week preceding the meeting for which the request is made.

D. Any member of the Town staff wishing to have an item placed on the agenda shall submit that item to the City Manager's Office for approval. The City Manager may establish procedures for submission of routine items without his approval.

E. The agenda packets for all Regular Meetings will be delivered electronically by Town staff to members of the Council no later than the Thursday preceding the meetings.

F. The City Secretary's office is responsible for seeing that notices for all meetings of the Council comply with the Open Meetings Law.

SECTION 3. COUNCIL MEETING PROCEDURES

The Council will use the following procedures as a general guide for parliamentary procedure, and may consult Robert's Rules of Order as a guide in instances not addressed by these procedures.

A. The Mayor shall be the presiding officer at all meetings. The Mayor Pro- Tempore shall preside at meetings in the absence of the Mayor, and the Deputy Mayor Pro- Tempore shall preside at meetings in the absence of the Mayor and Mayor Pro-Tempore.

B. The Mayor shall have a voice in all matters before the Council and may vote on all matters.

C. When an item is presented to the Council, the Mayor (or presiding officer) shall recognize the appropriate individual to present presenter(s) and the item order of presentation. During City Council discussion of an item, the Mayor shall recognize members of the Council who desire to ask questions or speak on an item. When two or more members are presenting desire to speak on an item, the Mayor shall choose which member is to speak first. Each member of the Council, including the Mayor, will be given an opportunity to ask questions following presentation of an agenda item. Each member will be given an initial 10 minutes for questions until all members have had an opportunity to ask questions. Then, members shall be given the opportunity to ask additional questions in the same manner until no member has additional questions. During discussion of an item, each member will be given an initial 10 minutes to speak until all members have had an opportunity to ask questions. Following the initial round of discussion, the Mayor (or presiding officer) shall recognize a member desiring to make a motion. If a motion is made and seconded, the discussion of the motion shall follow the procedure outlined above. If no motion is made, the discussion will continue in the same manner outlined above. There shall be no limit on the number of times the Mayor or a member may speak. The procedure described herein is intended to give each member a timely opportunity to speak and to avoid one member monopolizing the floor for an extended period of time before others have an opportunity to speak.

D. The Mayor (or presiding officer) shall preserve order and shall require Council members engaged in debate to limit discussion to the question under consideration.

E. The Mayor (or presiding officer) will give all members of the Council a full

opportunity to speak on an item.

F. Should a conflict arise between Council members, the Mayor (or presiding officer) shall serve as the mediator. If the Mayor or presiding officer is a part of the conflict, the Council shall determine the procedure to conclude the matter.

~~G. The Mayor shall be recognized as head of the Town government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties. If the Mayor is absent, the Mayor Pro Tempore, and in the absence of the Mayor Pro Tempore the Deputy Mayor Pro Tempore, shall be so recognized.~~

~~H.G.~~ Members of the Council shall confine their remarks to the item under consideration and shall avoid references to personality, integrity, or motives of any other members of the Council or Town staff ~~members~~.

~~H.H.~~ Any Council member may ask the Mayor (or presiding officer) to enforce the procedures established by the Council. Should the Mayor (or presiding officer) fail to do so, a majority of the Council may direct him/her to enforce the procedures.

I. All personal communication devices should be placed in a silent mode during any City Council meetings. Personal communication devices shall not be used for communicating or conducting Town-related business during any City Council meetings. Town-provided iPads may be used to access agenda items but shall not be used to access social media or research items being discussed during the meeting. If an emergency arises, the Mayor or Council member shall excuse themselves from the dais or meeting room to engage in that communication.

SECTION 4. CODE OF CONDUCT FOR MAYOR AND COUNCIL MEMBERS

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~~D.E.~~ Any conflicts between the staff and the Council, the Mayor will ~~be addressed by the Mayor and~~ speak with the City Manager ~~regarding the conflict but will not address the conflict directly with any staff member.~~ The City Manager will then address the matter with the appropriate staff member(s).

~~E.F.~~ The City Manager is responsible for the professional and ethical behavior of ~~himself~~ themselves and ~~his~~ their staff. He is also responsible for seeing that his staff remains educated and informed on the issues facing municipal government.

~~F.G.~~ All members of the Council and Town staff members shall show respect and courtesy to each other and citizens at all times.

~~G.H.~~ The City Manager is responsible for seeing that all newly ~~(first time)~~ elected members of the Council are provided with a thorough orientation on Town staff procedures, municipal facilities, and other information of interest to municipal officials. All members of the Council are invited to attend the orientation.

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AI-2348

5.

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: City Manager

AGENDA CAPTION:

Present And Discuss **Process And Implications For Potential Withdrawal From The Dallas Area Rapid Transit (DART) System.**

BACKGROUND:

In 1983, Addison voters approved the creation of funding for the Dallas Area Rapid Transit (DART) regional transit agency with a dedicated one-cent local sales tax to support the development of a multi-modal regional system. The original 1983 service plan included a multi-modal service plan for rail, bus, paratransit, high occupancy vehicles (HOV) lanes, and in some instances, street repair funding to support the bus network within cities which voted to become part of the DART Service Area. Bus service began operating in Addison in the fall of 1985, followed by the opening of the Addison Transit Center in June 1999.

From 1984 to 2016, Addison has paid \$257,263,739.04 into DART. Council has requested staff to present an overview of the process and implications for potential withdrawal from DART.

RECOMMENDATION:

Information only, no action required.

Attachments

Presentation - Process and Implications of Potential Withdrawal from DART

Process and Implications of Potential Withdrawal from DART

City Council Work Session
August 22, 2017



ADDISON

Agenda



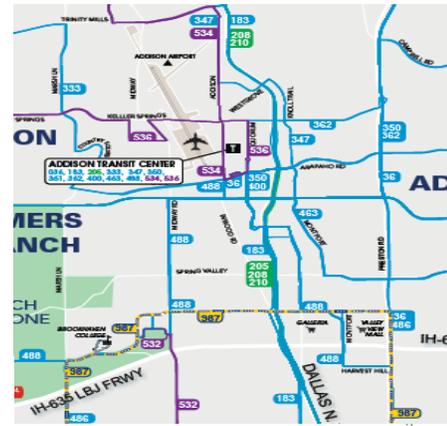
ADDISON

- DART in Addison
- Cotton Belt History
- Addison Sales Tax Payments
- Withdrawal Process
- Real Estate
- Projected Financial Obligation

DART in Addison

ADDISON

- **August 13, 1983:** Addison voters approved a dedicated one-cent local sales tax to fund DART
 - 13 fixed bus routes with 118 bus stops that operate directly within the Town
- **Fall 1985:** Bus Services begins operating
- **June 1999:** Addison Transit Center opens



000 Local Bus Route
 000 Rail Feeder & Transit Center Bus Route
 000 Express Bus Route

Cotton Belt History

ADDISON

- Original **1983** service plan included a multi-modal service plan for rail, bus, paratransit, high occupancy vehicle (HOV) lanes, and in some instances, street repair funding to support the bus network
- **1989:** New Directions Transit System Plan is adopted
 - Cotton Belt corridor right-of-way is identified and recommended for purchase to preserve it for “transportation purposes”
- **1990:** DART completes purchase of 54 miles of the Cotton Belt corridor

Cotton Belt History



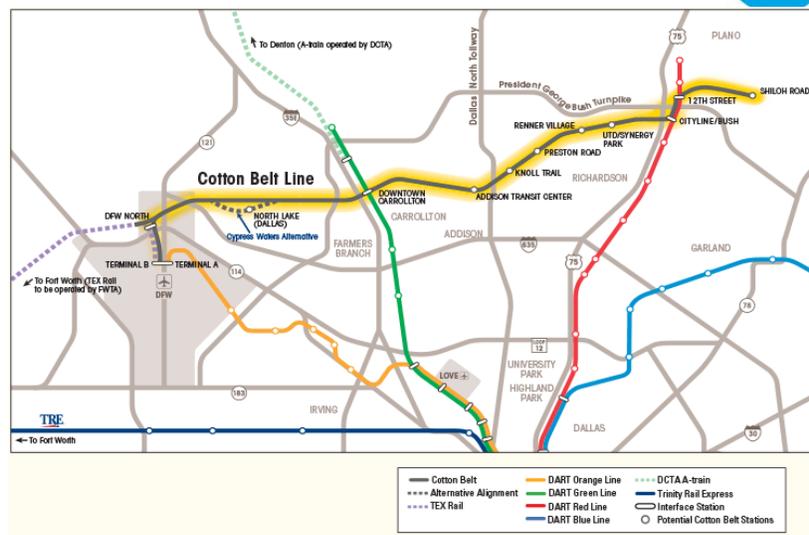
- **1995:** Addison Transit Center included in Transit System Plan Update
- **2000:** DART long-term Bond financing initiative approved – Cotton Belt project is not included
- **2006:** 2030 Transit System Plan Update adopted – Cotton Belt recommended as the preferred east-west alignment
 - DART's Twenty-Year Financial Plan reflected funding and addition of the Cotton Belt project to the Transit System Plan as one of a group of projects
- **2011:** DART amends FY2011 Financial Plan to delay Cotton Belt project seven years from FY2028 to FY2035 due to recession

5

Cotton Belt History



- **2016:** DART advanced implementation of the Cotton Belt to the year 2022 in its Fiscal Year 2017 Twenty-Year Financial Plan
- **2017:** DART Board denies ability to apply for \$1 billion in low-interest federal loans to pay for the Cotton Belt



6

Addison Sales Tax Payments



- As of September 30, 2016:

Year	Sales Tax Collection	Year	Sales Tax Collection
1984-1999	89,684,917.78	2009	8,827,700.98
2000	9,430,392.49	2010	8,853,958.78
2001	9,060,346.29	2011	9,140,005.70
2002	8,186,132.88	2012	10,681,577.88
2003	8,073,825.27	2013	12,020,476.20
2004	8,546,276.53	2014	13,082,857.92
2005	8,733,350.40	2015	12,671,040.66
2006	8,765,382.04	2016	12,485,439.59
2007	9,406,503.75	Total	\$257,263,739.04
2008	9,936,553.89		

7

Withdrawal Process



- A participating municipality has the right to **call an election** every 6th calendar year (2020). This process can be initiated by either official action of the governing body or by citizen petition (8% of the number of registered voters in Addison)
- If the withdrawal election is held and voters approve, all of DART's public transportation services to and within the withdrawing municipality **must cease on the day following** the canvassing of election returns
 - Withdrawal does not affect DART's right to travel through Addison
- Calculation and payment of financial obligation
 - Calculation based around Addison's share of DART's outstanding debt, which is prorated for each city by their population

8

Withdrawal Process – Timeline



Date	Action
February 28, 2020	Last day to order election
March 20, 2020	Issue notice of withdrawal to DART Board, Texas Department of Transportation, and State Comptroller
May 9, 2020	Election Day
May 18, 2020	Canvass election results
May 19, 2020	DART service to Addison ceases
Fall/Winter 2023	Addison outstanding obligation repaid and certified by the DART Board

9

Real Estate



- Title to all real estate in Addison (including DART improvements but excluding right-of-way or improvements to right-of-way) vests with Addison if claimed by resolution within 30 days of the election's effective date
- However, if the real estate and improvements are "necessary for the continuation of service to the remaining units of election," DART can retain the use for not longer than 15 years. If they elect to do so, DART would be responsible for all maintenance and operations costs for the facility

10

Projected Financial Obligation



- As of September 30, 2016:
 - Net Obligation: \$46,270,927
 - Repayment: 3.5 years
 - Comptroller will continue to collect transit sales tax within Town until the full debt payment has been satisfied
- For 2020:
 - To be answered in early October after the Board has adopted its Fiscal Year 2018 Financial Plan

AI-2346

7.

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: City Secretary

AGENDA CAPTION:

Consider Approval Of The July 17, 2017 Special Meeting Minutes And The August 8, 2017 Regular Meeting Minutes.

BACKGROUND:

The City Secretary has prepared the minutes for review and approval.

RECOMMENDATION:

Administration recommends approval.

Attachments

July 17 2017 DRAFT Minutes

August 8 2017 DRAFT Minutes

DRAFT

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

July 17, 2017

Addison Town Hall, 5300 Belt Line Rd., Dallas, TX 75254

4:00 PM Special Meeting

Present: Mayor Chow; Mayor Pro Tempore Hughes; Deputy Mayor Pro Tempore Duffy; Councilmember Angell; Councilmember Braun; Councilmember Walden; Councilmember Ward

SPECIAL MEETING

1. Presentation And Discussion Regarding The **Texas Municipal Retirement System**.

Human Resources Director Passion Hayes introduced Eric Davis, Deputy Executive Direction of the Texas Municipal Retirement System (TMRS). Eric Davis began the presentation with a brief overview of TMRS. Council Member Tom Braun asked how many inactive members exist. Mr. Davis responded that there are about 52,000 inactive members that either have a vested benefit that are not eligible to retire or are non-vested. Mr. Davis then discussed the funding basics of TMRS and the optional updated service credit provision that the Town has adopted. Mayor Pro Tempore Ivan Hughes asked what interest rate is used when calculating the hypothetical balance for the updated service credit. Mr. Davis responded that it is 3%.

Mr. Davis then discussed TMRS' investment return assumption at 6.75% and the smoothing policy that occurs if the return comes in higher or lower than the assumption. Council Member Walden asked the reason for the delta between the Town's contribution of 14% and the 10% that TMRS charges the Town. Mr. Davis responded that not everyone that works for the city retires with the city, but the Town contributes every year. If someone is has not reached the vesting milestone when they leave and take a refund, the city's money is left

on the table, and the actuarial gain is redistributed among those that are still in the plan and it can help lower the cost, unless the individual goes to another city that participates in TMRS.

Mr. Davis stated that an employee account balances grow at 5% annually whether TMRS returns 5% or not.

Mr. Davis then gave an overview of Addison benefits through TMRS. Mayor Pro Tempore Hughes clarified that the average of last 3 years at 3% interest included prior service from other cities in calculating the updated service credit. Mayor Joe Chow stated that for two years the Town did not have any COLA for 2016 and 2017. Mr. Davis confirmed that this was correct.

Mr. Davis then discussed a comparison with the Town's comparator cities. He stated that not a lot of diversity existed in benefits due to all cities competing on a benefit level.

Mr. Davis then explained the calculation of the COLA. It is calculated by measuring the change in the CPI from the December prior to the individual's retirement to the December that is 13 months prior to the effective date. Council Member Walden asked if Mr. Davis could speak to how many times Social Security has not granted a COLA. Mr. Davis did not know the answer but confirmed that it is not automatic every year. Mr. Davis then discussed the difference in funding between the ad-hoc and annual repeating COLA. Council Member Walden asked if Mr. Davis could speak to the list of comparison cities and how many of them have opted out of Social Security. Mr. Davis stated that Plano, Irving, and Coppell have.

Mayor Pro Tempore Hughes stated an outstanding question he still had was how some of the other Metroplex cities are able to have both TMRS and Social Security and their percentage of cost spent on personnel is equivalent to Addison. He questioned how the other cities are able to achieve that.

City Manager Wes Pierson stated that staff was looking into how those cities were able to accomplish that and if there are any benefit differences to fund that option.

Mr. Davis continued the presentation and stated the TMRS Advisory Committee studied the COLA during the past Interim. He stated the committee suggested no changes to the COLA as it stands, but the opportunity for a "no catch-up" COLA is still discussed as an option for future legislation.

TMRS still encourages cities who wish to provide COLA's to do so on an annual repeating basis.

Mr. Davis discussed the pension plan in Dallas and the investment strategy used there, the "drop-plan" option for employees and payments that were not made in full in the past.

Mr. Pierson asked if the "drop-plan" was an option for employees as the TMRS system exists today.

Mr. Davis stated that option is not available through the TMRS system. There is a partial lump sum distribution that is available to employees. This option allows an employee to take a portion of their individual reserve in cash at retirement. TMRS has never had a forward-drop or reverse-drop option which are present in the plans in Dallas as discussed previously.

Mayor Pro Tempore Hughes asked if the lump sum amount is a modest amount.

Mr. Davis stated the lump sum could be up to 75% of the employee's balance. Depending on the length of service and the reserve total accumulated, the benefit differs. The total benefit is reduced by the amount of the lump sum taken.

Mr. Davis presented information on the Ad Hoc COLA adoptions and how the city contributions changes with different options.

Mr. Davis stated TMRS has a sound funding policy to ensure sustainable and secure retirement benefits over all generations of workers. He stated the 3 keys to a strong fund policy are: actuarial cost method, asset smoothing method and amortization policy. Mr. Davis stated the amortization policy is the only key that may change. He stated the change would be moving the policy from 25 years to 20 years.

Councilmember Walden asked what would be the affect of reducing the policy from 25 to 20 years.

Mr. Davis stated the change has already been in effect. TMRS had been making the change as part of the normal flow of the plan. Mr. Davis stated the change would not be significant at all. He stated if it was done all at once, the effect would be more significant but since TMRS was already trending that way with the contributions and returns, the effect will not be as noticeable to cities and employees.

Mr. Davis gave the funding information for the Town of Addison.

Councilmember Walden asked Mr. Davis to speak to the funding ratio.

Mr. Davis stated the funding ratio is a point in time measurement. The critical part of the number is the direction. Mr. Davis stated Addison was going in the right direction with a number improvement. He stated 96% at any single point of time is great. He stated it was fairly unrealistic to think a funding level at 100% should be attainable in the long run.

Council discussed options with funding levels of COLA's at various levels, how the changes affect the Town's contribution rate and the unfunded liability and options to other TMRS benefits.

Council agreed the information was informative and would be helpful when making a decision on the COLA later this year. Council stated they would like to see the information staff gathers from other cities funding levels and benefits.

2. **Present, Discuss And Consider Action On Recent Actions Taken By The Dallas Area Rapid Transit (DART) Board Of Directors And How The Town Might Communicate And Promote Addison's DART Priorities Regarding The Cotton Belt.**

City Manager Wes Pierson gave a review of the timeline over the last year of the actions of the DART Board in regards to the Cotton Belt project. Mr. Pierson stated recently some issues had arisen for the timeline for the Cotton Belt project to move forward. There were concerns that both the Cotton Belt project and the Dallas D2 project would be able to be completed as first indicated.

Mr. Pierson stated the meetings in August and September would be very important for the future of the project. He stated decisions would be made concerning the project and funding. Mr. Pierson stated that staff would attend the meetings on behalf of the town. If needed, the Council would attend the DART meetings to voice concern on behalf of the Town and its' citizens. Many times the meetings are on the same day as regularly scheduled Council meetings. If needed, the Council meetings will be rescheduled to accommodate Council attending the DART meetings as necessary. Mr. Pierson stated a bus would be available for citizens if a Town

presence is needed.

Council agreed the plan mentioned by the City Manager is acceptable at this time.

Adjourn Meeting

NOTE: The City Council reserves the right to meet in Executive Session closed to the public at any time in the course of this meeting to discuss matters listed on the agenda, as authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551, including §551.071 (private consultation with the attorney for the City); §551.072 (purchase, exchange, lease or value of real property); §551.074 (personnel or to hear complaints against personnel); §551.076 (deployment, or specific occasions for implementation of security personnel or devices); and §551.087 (economic development negotiations). Any decision held on such matters will be taken or conducted in Open Session following the conclusion of the Executive Session.

Mayor-Joe Chow

Attest:

City Secretary-Laura Bell

DRAFT

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

August 8, 2017

Addison Town Hall, 5300 Belt Line Rd., Dallas, TX 75254

5:00 PM Executive Session

5:30 PM Work Session

7:30 PM Regular Meeting

Present: Mayor Chow; Mayor Pro Tempore Hughes; Deputy Mayor Pro Tempore Duffy; Councilmember Braun; Councilmember Walden; Councilmember Ward

Absent: Councilmember Angell

Executive Session

1. Closed (executive) session of the Addison City Council pursuant to:

Section 551.071, Tex. Gov. Code, to conduct a private consultation with its attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Tex. Gov. Code, pertaining to:

- **The ponds or lakes at Vitruvian Park located within the vicinity and east of the intersection of Vitruvian Way and Ponte Ave., and Farmers Branch Creek.**

Section 551.072, Tex. Gov. Code, to deliberate the purchase, exchange, lease, or value of real property, pertaining to

- **Potential Development at Southeast Quadrant Of Addison Airport**

Council convened into Executive Session at 5:04 pm.

2. **RECONVENE INTO REGULAR SESSION:** In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matters discussed in Executive Session.

Council recessed from Executive Session at 6:15 pm.

No action on the ponds at Vitruvian item.

Mayor Pro Tempore Hughes moved to authorize the City Manager to sign the lease amendment with AJC as discussed in Executive Session. Councilmember Braun seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

WORK SESSION

3. Present and Discuss **Texas Local Government Code Chapter 284: Deployment Of Network Nodes In Public Right-of-Way And The Town's Response.**

Assistant Director Charles Goff presented the item to Council. Mr. Goff stated during the 2017 Regular Legislative Session, the Texas Legislature passed Senate Bill 1004. This bill created Chapter 284 in the Texas Local Government Code to regulate the placement of wireless network infrastructure within public rights-of-way. Chapter 284 allows wireless network providers such as AT&T, Verizon and Sprint to place cellular network antennas (known as network nodes), support poles and other related infrastructure in the right-of-way and on municipal streetlight and signal poles with little municipal oversight or regulation. This infrastructure is allowed in all rights-of-way except along certain residential streets and municipal parks.

The Town would be limited in restricting the placement or camouflaging of this infrastructure unless the areas are designated as described in the new legislation as an undergrounding district or a design district.

Chapter 284 also limits the fees that cities may charge wireless network providers, and requires cities to review and consider applications within certain time frames.

Mr. Goff presented an overview of Chapter 284 and discussed steps

the Town may consider in response to these regulatory changes. Mr. Goff also discussed other steps that the Town could take to regulate the placement and appearance of this infrastructure in certain areas. The new guidelines go into affect on September 1, 2017 so staff wishes to get the Council direction into policy before then to help alleviate any issues with current codes that may arise from the new legislation.

Council agreed to be as aggressive as possible in regards to restricting where the nodes could be placed within the Town. Council agreed that the underground districts and design districts would be areas they wanted to restrict the placement in accordance with the new guidelines created in Chapter 284.

Council requested staff update the map with color coding for the areas now discussed as those to include in the restricted sections. Council directed staff to look into the parks as a design district due to decorative poles in those areas.

Staff will bring an ordinance back to Council at the next meeting for discussion and possible approval.

4. Present And Discuss **The Boards & Commission Application And Appointment Process.**

City Secretary Laura Bell presented the item to Council. Ms. Bell stated the summer of each year is designated as the time period to accept applications for the upcoming Boards and Commissions terms set to expire on December 31, 2017. The process was changed in early 2016 to move terms for P&Z and BZA members to run concurrently with the Councilmember or Mayor who appointed them. Terms begin on January 1 of each year and run for 2 years. Ms. Bell stated this year the process would include those wishing to be appointed to the Community Partners Bureau.

Ms. Bell stated the applications would go live online within a couple of days following the meeting. The deadline will be in October. Council will then discuss the appointments at the next available meeting and then appoint new members or reappoint members at the following meeting. This schedule would allow for an orientation done by the City Attorney and staff. Any new members would be sworn in and ready to attend their first meeting in January.

Ms. Bell reviewed the appointments that were up for applications this term.

Council thanked her for the presentation.

5. Present And Discuss **Revisions To City Council Procedures.**

Due to a time constraint, this item was tabled to the next Council meeting.

REGULAR MEETING

Pledge of Allegiance

Announcements and Acknowledgements regarding Town and Council Events and Activities

Discussion of Events/Meetings

Public Comment.

The City Council invites citizens to address the City Council on any topic not on this agenda. Please fill out a **City Council Appearance Card** and submit it to a city staff member prior to Public Participation. Speakers are allowed **up to three (3) minutes per speaker** with **fifteen (15) total minutes** on items of interest or concern and not on items that are on the current agenda. In accordance with the Texas Open Meetings Act, the City Council cannot take action on items not listed on the agenda. The Council may choose to place the item on a future agenda.

Sheila Barkofske, 4130 Proton, spoke regarding the DART Meetings and Town presence at those meetings.

Consent Agenda:

All items listed under the Consent Agenda are considered routine by the City Council and will be enacted by one motion with no individual consideration. If individual consideration of an item is requested, it will be pulled from the Consent Agenda and discussed separately.

Mayor Chow asked to pull item #7 for separate consideration.
Deputy Mayor Pro Tempore Duffy asked to pull item #18 for separate consideration.

Item # 7 (Minutes): Mayor Chow stated he agreed with the amendments to the June 29, 2017 minutes as provided by the City Secretary. Mayor Pro Tempore Hughes moved to approve Item

#7 as amended. Councilmember Ward seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

Item #18 (Fence Construction): Deputy Mayor Pro Tempore Duffy stated he pulled the item to discuss the cost for this project. He asked if staff knew why the engineering estimate was considerably lower than the bids collected. Director of Infrastructure and Development Lisa Pyles stated the construction business was booming right now and this was driving up prices. With this project, there are risks and restrictions that come with working on airport property. Brandon Beville, Garver representative, stated they (as the engineering consultant) considered utilizing the opportunity to use the buying conglomerates the Town has access to but the project amount would exceed those agreements. He stated the estimation process used for this project included calling contractors currently working with other projects on airports and taking in all variables and costs given by those contractors they come up with a number for the project. Staff offered to re-bid the item if needed. Deputy Pro Tempore Duffy stated he just wanted to bring attention to discrepancy.

Deputy Mayor Pro Tempore Duffy moved to approve Item #18 as submitted. Mayor Pro Tempore Hughes seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

Mayor Pro Tempore Hughes moved to approve Items #8-17 as submitted. Councilmember Ward seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

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7. Consider Approval Of The **Minutes For The June 29, 2017 Special Meeting And The July 11, 2017 Regular Meeting.**

 8. Consider Action On A **Resolution To Adopt The Town Of Addison's Strategic Planning Pillars And Milestones For Fiscal Year 2018.**

 9. Consider Action On A **Resolution To Amend The Community Partners Bureau Policy To Provide For Three Year Terms With An Option For An Additional Year And To Appoint Members To The Community Partners Bureau.**
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10. Consider Action On A **Resolution Appointing A Member To Fill An Unexpired Term On The Board Of Zoning Adjustment.**

11. Consider Action On A **Resolution To Adopt An Interlocal Cooperative Agreement With The City of Dallas For Library Services And Authorize The City Manager To Execute The Agreement.**

12. Consider Action On A **Resolution To Approve A Proposal For The Naming Rights To The Addison Theatre Centre Lobby.**

13. Consider Action On **A Resolution To Approve A Contract With Fugro Roadware, Inc. For Street Asset Management Services And Authorize The City Manager To Execute The Agreement For Phase II** In An Amount Not To Exceed \$33,454.

14. Consider Action On A **Resolution To Approve A Contract With Action Commercial Services LLC, For The 2017 Annual Street Pavement Markings Project And Authorize The City Manager To Execute The Agreement** In An Amount Not To Exceed \$71,346.

15. Consider Action On **A Resolution To Approve A Contract With Half Associates For The Design And Related Services For The Sherlock Drive Storm Drain Improvements Project And Authorize The City Manager To Execute The Agreement** In An Amount Not To Exceed \$153,250.

16. Consider Action On A **Resolution To Remove Scott Neils And Cheryl Delaney And Appoint Olivia Riley And Ashley Mitchell To The Board Of Directors Of The North Dallas County Water Supply Corporation And Affirming The Appointment Of Lisa Pyles.**

17. Consider Action To Approve The Award Of A **Contract For The Buildings, Pavement, And Utility Demolition On The Southeast Quadrant Of Addison Airport To Tactical Demolition, LLC And Authorize The City Manager To Execute The Agreement** In An Amount Not To Exceed \$111,253.

18. Consider Action On A **Resolution To Approve A Contract With A-1 American Fencing For The Construction Of A Fence Around The Development Site At The Addison Airport Southeast Quadrant And Authorize The City Manager To Execute The Agreement In An Amount Not To Exceed \$60,590.**

Regular Items

19. Present, Discuss, And Consider Action On A **Resolution To Establish A Potential Maximum Property Tax Rate Of 0.57 Cents Per \$100 Of Property Valuation For The Town's Fiscal Year Beginning October 1, 2017 And Ending September 30, 2018, And To Designate Dates For Public Hearings Regarding The Proposed Budget And Proposed Tax Rate For The 2017-2018 Fiscal Year.**

Chief Financial Officer Olivia Riley presented the item to Council. Ms. Riley stated the City Manager's proposed budget assumes a property tax rate of \$0.550000, which exceeds the effective tax rate but is lower than the Fiscal Year 2018 rollback rate and Fiscal Year 2017 adopted rate. Should the Council consider a rate higher than the effective rate, the Truth-in-Taxation law requires a vote of record, publication of the result of the vote of record and two public hearings.

The tax rate public hearings are scheduled for August 29, 2017 and September 5, 2017 at a meeting of the City Council commencing at 6:00 pm in Council Chambers. The final vote on the tax rate and adoption of the budget will be on September 13, 2017 at a meeting of the City Council commencing at 7:30 pm in Council Chambers.

Councilmember Walden moved to approve Item #19 as submitted. Deputy Mayor Pro Tempore Duffy seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

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20. Present, Discuss, And Consider Action To Approve The **Location For Two (2) Kinetic Butterfly Sculptures Within The Right-Of-Way On The Southeast Corner Of Spring Valley Road And Vitruvian Way.**

Mr. Jay Ihrig and Ms. Barbara Pappas from the Addison Arbor Foundation presented the item to Council. Mr. Ihrig stated the Addison Arbor Foundation has negotiated with sculptor David Hickman for the purchase of three (3) kinetic butterfly sculptures, approximately 16' tall. Mr. Ihrig stated the Foundation has funds to acquire and install two butterfly sculptures and are pursuing donations to install a possible third butterfly sculpture. They would like to install these sculptures within the right-of-way on the southeast corner of Spring Valley Road and Vitruvian Way. The Parks Department has coordinated with Infrastructure and Development Services department to ensure that there are no known conflicts with future development or existing utilities. proposed sculptures.

Council discussed the location of the sculpture, how many pieces of art the Addison Arbor Foundation has placed in Addison, costs associated with the placement of the sculptures and a timeline for the project.

Councilmember Walden moved to amend the number of butterfly sculptures to 3 and approve the placement of the sculptures as proposed by the Addison Arbor Foundation. Mayor Pro Tempore Hughes seconded the motion. The vote was cast 6-0 in favor of the item. Councilmember Angell was absent.

21. Present And Discuss **The Development Of A Financial Plan And Rate Model For Water And Sewer Utility Rates For The Town's Use With Raftelis Financial Consultants, Inc. (RFC).**

Chief Financial Officer Olivia Riley introduced Rocky Craley with Raftelis Financial Consultants, Inc. who presented the information regarding the project to Council.

Mr. Craley presented the item to Council. Mr. Craley reviewed the process the consultants will go through to look at the development of a financial plan and creating a rate model for water and sewer utility rates for the Town.

Council thanked Mr. Craley for the presentation and stated they look forward to hearing the information his team brings forward.

22. **Hold A Public Hearing, Discuss, And Consider Action To Approve An Ordinance Rezoning The Property Located At 5100 Belt Line Road, Suite 610, In Village On The Parkway, Which Is Zoned Planned Development District O12-001, By Approving A Special Use Permit For A Restaurant.** Case 1759-SUP/Creamistry

Assistant Director of Development Services Charles Goff presented the item to Council. Mr. Goff stated the SUP was for a new ice cream establishment coming to the Village on the Parkway area. Mr. Goff stated the Planning and Zoning Commission, met on July 18, 2017 and voted to recommend approval of an ordinance rezoning the property located at 5100 Belt Line Road, Suite 610, by approving a Special Use Permit for a restaurant, subject to no conditions.

Councilmember Braun asked if the plans allowed for a patio at the location. Mr. Goff stated the site plans did not include a patio and if the applicant wished to add one, they would have to come back for approval.

Mayor Chow opened the Public Hearing. There were no speakers. Mayor Chow closed the Public Hearing.

Councilmember Braun moved to approve Item #22 as submitted. Councilmember Walden seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

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23. **Hold A Public Hearing, Discuss, And Consider Action To Approve An Ordinance Rezoning The Property Located At 14131 Midway Road, Suite 116, A Ground Floor Retail Space At The Base Of The Greenhill Towers, Which Is Zoned Planned Development District O84-092, By Approving A Special Use Permit For A Restaurant.** Case 1760-SUP/84 Point Coffee

Assistant Director of Development Services Charles Goff presented the item to Council. Mr. Goff stated this location is a ground floor retail space at the base of the Greenhill Towers between Spring Valley Road and Hornet Road on the west side of Midway Road. The property is zoned as Planned Development O84-092, which allows for office, restaurant, and retail uses. 84 Point Coffee is a coffee shop associated with the Ascension brand, which has three locations in downtown Dallas. The shop is currently open. Under Addison's zoning requirements an office development can have a deli or coffee shop. A Special Use Permit is only required if the

business wants to be open to the broader public. 84 Point Coffee has indicated a desire to do so, and therefore is coming through the zoning process for approval. Mr. Goff stated the Planning & Zoning Commission met on July 18, 2017 and voted to recommend approval of an ordinance rezoning the property located at 14131 Midway Road, Suite 116, by approving a Special Use Permit for a restaurant, subject to no conditions.

Councilmember Walden asked if anyone could walk into the coffee shop and buy something there now.

Mr. Goff stated yes that was the case. However, the establishment wished to advertise and that is the trigger to require an SUP for the location.

Mayor Chow opened the Public Hearing. There were no speakers. Mayor Chow closed the Public Hearing.

Mayor Pro Tempore Hughes moved to approve Item #23 as submitted. Deputy Mayor Pro Tempore Duffy seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

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24. **Hold A Public Hearing, Discuss, And Consider Action To Approve An Ordinance Rezoning The Property Located At 5290 Belt Line Road, Suite 122A, Within The Prestonwood Place Shopping Center, Which Is Zoned As A Local Retail District Through Ordinance 385, By Approving A Special Use Permit For A Commercial Amusement And A Special Use Permit For The Sale Of Alcoholic Beverages For On-Premises Consumption Only.**
Case 1761-SUP/Pinot's Palette

Assistant Director of Development Services Charles Goff presented the item to Council. Mr. Goff stated the applicant has requested a Special Use Permit under the commercial amusement category for a paint and sip concept called Pinot's Palette. The concept is comparable to other paint and sip concepts, like Painting with a Twist, where people pay to attend painting classes. Pinot's Palette has many locations nationwide, including 20 in Texas. The applicant is requesting a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only. The applicant is proposing to occupy 2,412 square feet in a leased space between Sunstone Yoga and the Castle Nail Spa. The space would have two classrooms with seating for 72 guests total. Mr. Goff stated the

Planning & Zoning Commission met on July 18, 2017 and voted to recommend approval of an ordinance rezoning the property located at 5290 Belt Line Road, Suite 122A, by approving a Special Use Permit for a form of commercial amusement and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to no conditions.

Mayor Chow opened the Public Hearing. There were no speakers. Mayor Chow closed the Public Hearing.

Councilmember Ward moved to approve Item #24 as submitted. Councilmember Walden seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

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25. **Hold A Public Hearing, Discuss, And Consider Action To Approve An Ordinance Rezoning The Property Located At 17311 Dallas Parkway (The MYCON Building), Just South Of The City Limit Line With Dallas And Directly North Of The Methodist Hospital Property, Which Is Zoned As A Local Retail District Through Ordinance 269, By Granting A Zoning Change From Local Retail To Commercial-1.** Case 1762-Z/17311 Dallas Parkway

Assistant Director of Development Services Charles Goff presented the item to Council. Mr. Goff stated the property located at 17311 Dallas Parkway occupies 1.96 acres. Originally constructed in 1979, this 3-story office building totals 50,726 square feet. MYCON General Contractors recently purchased the property and conducted an extensive renovation of the interior, exterior, and landscaping. The property is currently zoned LR, Local Retail, which allows for office buildings. The property is bordered by the city limit line with Dallas to the north, Addison Road to the west, Dallas Parkway to the east, and the Methodist Hospital property to the south. Mr. Goff stated the property owner uses a portion of the building for its own office. However, the owner would like the flexibility to lease space within the building to medical and dental uses. These uses are not permitted within the LR district. Therefore, the property owner is requesting that the property be rezoned to the Commercial-1 district, which allows for such uses. Mr. Goff stated the Planning & Zoning Commission met on July 18, 2017 and voted to recommend approval of an ordinance rezoning the property located at 17311 Dallas Parkway, from LR, Local Retail, to C-1, Commercial-1, to allow medical and dental uses within the building, subject to no conditions.

Councilmember Braun stated for the record that he and the applicant use to be partners in the past, many years ago. He would abstain from voting due to the appearance of a conflict of interest.

Mayor Pro Tempore Hughes stated the conversation about appropriate places for the medical and dental uses would usually be a part of the discussion for similar requests to this one. He stated, however, the location of this building in close proximity to the hospital, is a different circumstance for this request. Mayor Pro Tempore Hughes stated he felt the extended uses were appropriate at this location.

Mayor Chow opened the Public Hearing. There were no speakers. Mayor Chow closed the Public Hearing.

Deputy Mayor Pro Tempore Duffy moved to approve Item #25 as submitted. Councilmember Ward seconded the motion. The vote was cast 5-0-1 in favor of the motion. Councilmember Braun abstained. Councilmember Angell was absent.

26. Present, Discuss, And Consider Action Regarding **Sponsorship Of Addison Residents And/Or Employees For The 29th Class Of Leadership Metrocrest.**

Assistant to the City Manager Caitlan Biggs presented the item to Council. Ms. Biggs stated yearly the Town has an opportunity to send employee and/or interested citizens to the Metrocrest Leadership Academy. The Town will pay the full tuition for the employee and based on the prior service to the Town of the citizen, a portion of the tuition can be covered by the Town also.

The proposed list as presented was employees Michael Kashuba, David Jones and Crystall Cho and residents Marlin Willesen and Lesli Gray.

Mayor Pro Tempore Hughes moved to approve the proposed list of employees and residents as presented by staff for the 2017-2018 Class of Metrocrest Leadership Academy. Councilmember Braun seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

27. Present, Discuss, And Consider Action On **A Council Member's Ability To Use Title And Official Position For Fundraising Purposes.**

Councilmember Angell entered the meeting at 8:40 pm.

City Manager Wes Pierson stated Council Member Tom Braun and Mayor Pro Tempore Ivan Hughes have requested this item be placed on the agenda to discuss and determine a Council Member's ability to use his or her title for fundraising purposes. Currently, Council Member Braun serves as one of two Education liaisons for the Town of Addison. He would like to use his official position as Council Member to assist in fundraising efforts to continue the current display honoring George Herbert Walker Bush at George Herbert Walker Bush Elementary School located at 3939 Spring Valley Road, Addison, TX 75001.

Councilmember Braun stated he was interested in doing fundraising for the George H.W. Bush Elementary School to allow for display cases to honor George H.W. Bush. Councilmember Braun stated he participated in the construction and initial round of fundraising for the school when he was on Council in the past. He would like to use his title to help raise funds for the second phase of the school display cases honoring the former President.

Council discussed the possibility for all members to help raise funds for the display cases at the elementary school.

Councilmember Walden moved to support Councilmember Brauns' desire to use the title as City Councilmember for the Town of Addison to help facilitate any fundraising efforts on behalf of George H.W. Bush Elementary School. Deputy Mayor Pro Tempore Duffy seconded the motion. The vote was cast 7-0 in favor of the motion.

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28. Present, Discuss And Consider Action On **An Update Of Recent Activity Relating To The Dallas Area Rapid Transit (DART) Board Of Directors And How The Town Might Communicate And Promote Addison's DART Priorities Regarding The Cotton Belt.**

City Manager Wes Pierson presented the item to Council. Mr. Pierson gave a brief update on the recent developments concerning the DART Board and the Cotton Belt Project.

Mr. Pierson stated the Mayors and City Managers of the suburban

DART cities met with himself and Mayor Chow along with Gary Thomas, CEO regarding the next steps for the Cotton Belt Project. Mr. Pierson stated the meeting was very informative and positive for the attendees. The group discussed the collective position as suburban cities and where each city stood in relation to the Cotton Belt Project, the D2 project and supporting DART as a regional entity. Mr. Pierson stated there was a unanimous support for DART to maintain a regional focus, a unanimous support from the suburban cities for both the Cotton Belt project and the D2 project and the fact that the cities agreed the two projects could not be separated or DART would cease to be a regional entity. Mr. Pierson stated the suburban DART cities agreed to act as necessary and to show a unified front for the Cotton Belt and D2 projects.

Mr. Pierson stated the DART Meeting on September 12 & September 26 are on the same evenings as the Town's regular Council meetings. In order to allow Council, staff and concerned citizens to attend the DART meetings, the Council meetings in September have been moved to September 13 and September 28. The meeting on the 28th may change dates if needed.

Mr. Pierson stated Deputy City Manager Ashley Mitchell attended the DART committee meeting held earlier in the day and reported back any pertinent information regarding the funding of the Cotton Belt Project.

Adjourn Meeting

NOTE: The City Council reserves the right to meet in Executive Session closed to the public at any time in the course of this meeting to discuss matters listed on the agenda, as authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551, including §551.071 (private consultation with the attorney for the City); §551.072 (purchase, exchange, lease or value of real property); §551.074 (personnel or to hear complaints against personnel); §551.076 (deployment, or specific occasions for implementation of security personnel or devices); and §551.087 (economic development negotiations). Any decision held on such matters will be taken or conducted in Open Session following the conclusion of the Executive Session.

Mayor-Joe Chow

Attest:

City Secretary-Laura Bell

AI-2352

8.

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: Special Events

AGENDA CAPTION:

Consider Action On A **Resolution To Approve A Non-Exclusive Food And Beverage Vending Agreement With The Marriott Quorum And Authorize The City Manager To Execute The Agreement To Provide Food And Beverage Services To Event Patrons At Oktoberfest 2017.**

BACKGROUND:

The Marriott Quorum, the Crowne Plaza Hotel, The Taste of Cuba Food Truck And Catering, LLC (Concessionaire) and Chamberlains Brau Haus are the major providers of food and beverages at the Town of Addison's Oktoberfest event. They collect Tasty Buck coupons from patrons who purchase food and beverages from them in the main tent and in satellite tents throughout the event site. The Town redeems their Tasty Bucks after the event and issues the hotels a check for 85% of the sales with the Town to retain 15% of the sales.

The food and beverage sales are expected to be in excess of \$100,000. Due to this number exceeding the signing authority allowed to the City Manager, this item requires Council approval. The Food and Beverage Vending Agreement is included as Exhibit A in the attached resolution.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Marriott Quorum

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A NON-EXCLUSIVE FOOD AND BEVERAGE VENDING CONTRACT BETWEEN THE TOWN OF ADDISON AND THE MARRIOTT QUORUM HOTEL ADDISON FOR MUSIC, BEVERAGE AND FOOD SERVICES DURING OKTOBERFEST, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The Non-Exclusive Food and Beverage Vending Contract between the Town of Addison and The Marriott Quorum Hotel Addison for music, beverage and food services during Oktoberfest, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved.
The City Manager is hereby authorized to execute the contract.

Section 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this The 22nd day of August, 2017.

Joe Chow, Mayor

ATTEST:

By: _____
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

Exhibit A

NON-EXCLUSIVE FOOD & BEVERAGE VENDING CONTRACT

STATE OF TEXAS #
COUNTY OF DALLAS #

THIS CONTRACT is entered into by and between the TOWN OF ADDISON, TEXAS (hereinafter referred to as "Addison"), and **MARRIOTT QUORUM HOTEL** (hereinafter referred to as "Hotel"), on the date indicated below.

W I T N E S S E T H

WHEREAS, a special event known as Oktoberfest (hereinafter referred to as "Event") shall take place within the Town of Addison on the following dates: **September 14, 15, 16, and 17, 2017;**

WHEREAS, Addison is sponsoring and hosting the Event in whole or in part; and

WHEREAS, Hotel desires to provide beverage and food service to patrons of the Event; and

WHEREAS, the Addison City Manager has heretofore authorized the Addison Director of Special Events to enter into Contracts with Hotels providing terms and conditions such service.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, Addison and Hotel do hereby agree and contract as follows:

1. The term of this Contract shall be for the following days and times:
September 14, 2017 6:00 pm to 11:00 pm
September 15, 2017 6:00 pm to 12:00 am midnight
September 16, 2017 12:00 pm to 12:00 am midnight
September 17, 2017 12:00 pm to 6:00 pm
2. The hours of operation of the Event shall be those scheduled by Addison. Hotel shall have a reasonable amount of time to set up prior to its commencement and to tear down after its conclusion. Addison reserves the right to regulate the hours that the concession(s) remain open. Concession hours shall end each day as follows:

<u>Date</u>	<u>Food Sales</u>	<u>Alcoholic Beverage</u>
Thursday, September 14, 2017	11:00 pm	10:00 pm
Friday, September 15, 2017	Midnight	11:00 pm
Saturday, September 16, 2017	Midnight	11:00 pm
Sunday, September 18, 2017	6:00 pm	5:00 pm

3. Hotel agrees that no representations have been made by Addison or by any of its agents, officers or employees that the preparation of the Event site shall be advanced to any particular stage upon any particular date, or that any warranty is being made as to the opening date of the Event. It is understood that Addison is making every reasonable effort to proceed with preparation of the Event site and construction so that the Event shall open as scheduled, and that Hotel shall have reasonable time prior to this date for the preparation of projects. If the Event does not open as scheduled or at all, Addison shall be under no liability to Hotel for any claims for damages.
4. Should the Event be postponed or canceled for an Act of God, public safety, welfare or for whatever reason, Hotel hereby releases Addison from any and all liability and claims for damages which result from such postponement or cancellation.

5. Hotel shall furnish and serve food and beverages to patrons of the Event. In addition, it shall provide decorations and signs appropriate to the Event subject to the provisions contained in paragraph 24. Hotel shall furnish food, food service items and a sufficient number of personnel to perform food service duties. Hotel understands and acknowledges that the rights granted to it hereunder by Addison are not exclusive and that other hotels and groups, including the Crowne Plaza, Taste of Cuba and certain German groups shall be granted a similar right to sell concessions, food, beverages and merchandise.
7. Hotel shall file with the Addison City Manager or his designee prior to **Friday, August 4, 2017** a detailed outline of the service the Hotel shall provide all staging requirements and all other information required by Addison personnel concerning the Event.
8. Any and all sales of concessions, food, beverages or merchandise shall be made through the use of tickets furnished by Addison. Hotel shall not sell any items for cash but only for tickets issued by Addison. Patrons shall purchase tickets from Addison personnel and redeem them in Hotel's tent(s). No later than (3) days after the close of the Event, Hotel shall present to Addison all tickets received during the Event. Prior to presentation to Addison, Hotel shall remove all stubs and staples from the tickets. Separate 2016 tickets from all other tickets. You do not need to bundle tickets, but please separate tickets from previous years. All tickets must be dry before they are weighed. In exchange for such tickets, Addison shall issue a check to Hotel in the amount of eighty-five percent (85%) of the face value of the tickets turned in, and Addison shall retain fifteen percent (15%) of the face value of tickets sold. Such check shall be mailed to Hotel within thirty (30) working days after the presentation of tickets to Addison.
9. Addison has contracted with Coca Cola (hereinafter referred to as "Coke") to be the official non-alcoholic beverage sponsor of the Event. Coca Cola shall be granted exclusive pouring rights and shall furnish all soft drinks and other non-alcoholic beverages that the Hotel shall offer for sale in their tent(s). Hotel shall sell no non-alcoholic beverages other than those furnished by such sponsor. Hotel shall purchase the Coke products directly from Coke.
10. Addison has contracted with Paulaner HP USA (hereinafter referred to as "Paulaner") to be the primary import beer sponsor of the Event. Through Ben E. Keith distributing, Paulaner shall furnish kegs of Oktoberfest Wiesen, Oktoberfest Märzen and Hefe-Weizen for the Hotel to sell in their tents at the Event. Hotel shall purchase the beverages directly from Ben E. Keith Distributing. Hotel may also purchase souvenir items from Ben E. Keith Distributing. Hotels shall be solely responsible for payment of beer and glassware sold at the Event and Addison shall not in any way be responsible for payment of beer, glassware or either of them. Note that this paragraph does not intend to and does not limit the types of beer that may be sold by Hotel at the Event
11. Addison shall furnish whatever tents, tables and chairs, bandstand, dance floor, utilities, lighting and fans it shall deem necessary. In addition, Addison shall provide police, fire, streets, ticket sales and accounting personnel.
12. Hotel shall not sublet or assign this Contract to any other person, or any of the privileges conveyed herein, except with the prior written approval of Addison. Any approved assignee shall be subject to all the provisions and requirements of this Contract.
13. During the course of the Event, Hotel shall maintain the areas inside their tent(s) and in the main tent seating areas designated to each Hotel for patrons in a clean and sanitary condition. Hotel shall pick-up all trash, food, etc. off of ground and shall keep tables clean ongoing during the Event. Addison shall empty full trash receptacles and remove from the main tent. Addison shall clean and maintain all areas outside the tents during the Event and shall clean the entire site of the Event after the Event has concluded.

14. Hotel agrees that its activities shall be conducted in a clean, orderly, and legitimate manner and in accordance with existing ordinances and laws. No rubbish, glass, or bottles of any kind shall be thrown upon the grounds or in any buildings by Hotel or anyone working under or for Hotel.
15. Addison shall have the right, but not the duty, to supervise the manner of exercising the operation of the activity by Hotel. However, in doing so Addison is expressly not accepting responsibility for such operations and conduct. Hotel shall remain liable for such operations and conduct.
16. Hotel agrees that its employees involved with the Event shall not drink any beer, wine or other alcoholic beverage while in performance of their duties under this Contract, and that all such employees who operate utility carts for the transportation of materials shall exercise the utmost caution when operating the carts.
17. HOTEL AGREES TO AND SHALL INDEMNIFY ADDISON, TEXAS, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS AGAINST, AND HOLD ADDISON, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM, ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LAWSUITS, LIABILITY, JUDGMENTS, DAMAGES, INJURIES, PENALTIES, LOSSES, COSTS OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES, ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, AND COSTS OF DEFENSE), FOR PERSONAL INJURY (INCLUDING WITHOUT LIMITATION, SICKNESS, EMOTIONAL AND PSYCHOLOGICAL INJURY, DISEASE OR DEATH), DAMAGE TO OR DESTRUCTION OF ANY PROPERTY (INCLUDING, WITHOUT LIMITATION, LOSS OF USE OF PROPERTY NOT OTHERWISE PHYSICALLY DAMAGED), BREACH OF CONTRACT, BREACH OF THE INSURANCE REQUIREMENTS SET FORTH IN SECTION 21 OF THIS CONTRACT, OR ANY OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR ORGANIZATION, THAT MAY ARISE OUT OF ANY ACT OR OMISSION OF HOTEL, ITS AGENTS, OFFICERS AND EMPLOYEES, INCLUDING WITHOUT LIMITATION ANY SUCH ACT OR OMISSION IN BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, IN THE PERFORMANCE OR UNDER THE PROVISIONS OF THIS CONTRACT (INCLUDING BUT NOT LIMITED TO THE PROVISION OR SERVING OF FOOD OR ALCOHOLIC BEVERAGES.) THIS INDEMNITY IS INTENDED TO PROTECT ADDISON, ITS AGENTS, OFFICERS AND EMPLOYEES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

HOTEL, ITS OFFICERS, AGENTS AND EMPLOYEES DO HEREBY WAIVE ANY AND ALL CLAIMS FOR DAMAGE, INJURY OR LOSS TO ANY PERSON OR PROPERTY, INCLUDING THE DEATH OF ANY PERSON THAT MAY BE CAUSED, IN WHOLE OR IN PART, BY THE ACT OR FAILURE TO ACT OF ADDISON, ITS OFFICERS, AGENTS OR EMPLOYEES. HOTEL, ITS OFFICERS, AGENTS AND EMPLOYEES ASSUME THE RISK OF ALL CONDITIONS, WHETHER DANGEROUS OR OTHERWISE, IN AND ABOUT THEIR TENTS, AND WAIVE ANY AND ALL SPECIFIC NOTICE OF THE EXISTENCE OF ANY DEFECTIVE OR DANGEROUS CONDITION IN OR ABOUT THEIR TENTS. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION, COMPLETION, OR EXPIRATION OF THIS CONTRACT.
18. HOTEL HEREBY RELEASES ADDISON FROM ANY ACTIONS FOR ANY LOSS OR DAMAGE SUSTAINED BY REASON OF ANY DEFECT OF ANY PART OF THE WATER SUPPLY SYSTEM, THE SEWAGE AND DRAINAGE SYSTEM, THE GAS SYSTEM, ELECTRICAL APPARATUS OR WIRING ON THE EVENT SITE OR TENT(S) OR ANY OTHER PREMISES OR BAND STAND, AND FOR ANY LOSS OR DAMAGE RESULTING FROM FIRE, THEFT, WATER, TORNADO, RAIN, SNOW, STRIKES, CIVIL COMMOTION OR RIOT, OR OTHERWISE, UNLESS CAUSED BY THE GROSS NEGLIGENCE OF ADDISON.
19. ADDISON ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED ON THE PREMISES, AND HOTEL HEREBY RELEASES ADDISON, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGES TO PERSON OR PROPERTY THAT ARE SUSTAINED BY REASON OF THE OCCUPANCY OF THE EVENT SITE UNDER THIS CONTRACT. ALL WATCHMEN OR OTHER PROTECTIVE SERVICE DESIRED BY HOTEL MUST BE ARRANGED FOR BY SPECIAL AGREEMENT WITH ADDISON.
20. Hotel may begin set up for the Event on **Monday, September 11, 2017 after 10:00 a.m.** All property of Hotel shall be removed from the Event site on or before **Monday, September 18, 2017 at 5:00 p.m.** (the "Time of Removal") or prior to the Time of Removal in the event of termination of this Contract. If any part of the Hotel's tent(s) is not vacated at or before the Time of Removal or within a reasonable time following the termination hereof, then Addison is authorized to remove from the premises and store, without resorting to any legal proceeding and

at the sole expense of Hotel, all property occupying a portion of the Hotel's tent(s) and shall not be liable for any damage to or loss of any property sustained during its removal and storage. Upon termination of this Contract, Hotel shall deliver the Hotel tent(s) area to Addison in as good condition as at the beginning of the terms of this Contract, except for ordinary wear and tear. The terms of this paragraph shall survive the termination of the Contract.

21. For purposes of this Contract and at all times during the Event, Hotel shall provide and maintain the minimum insurance coverages set forth below (and shall show proof of such coverages at the time of the execution of this Contract):

a) 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; \$1,000,000 for personal injury and advertising injury; and a \$2,000,000 annual aggregate for products/completed operations. Commercial General Liability coverage must include Premises, Operations, Contractual Liability, Products/Completed Operations, Independent Contractors, and Liquor Liability.

b) Workers Compensation insurance at statutory limits, including Employers Liability coverage at minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

d) Other Provisions.

1. The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess/umbrella is a "following form" policy, at a minimum.

2. All insurance policies that name the City as an additional insured must be endorsed to read as primary coverage regardless of the application of other insurance.

3. The Hotel is solely responsible for maintaining insurance coverage on its personal property.

4. In the event that the Hotel in any manner employs, hires, or makes use of any sub-contractor in the performance of any of its rights and duties in this Agreement, the Hotel shall require that each and every such sub-contractor maintain the following insurance coverages, and that such coverages are endorsed to include the Hotel and the City as additional insureds:

(a) Commercial General Liability coverages written on a standard and approved ISO form, with combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage; \$2,000,000 for personal injury; and a \$2,000,000 annual aggregate for Products/Completed Operations. Coverage must include Contractual Liability and Products/Completed Operations, and Liquor Liability.

(b) Workers' Compensation insurance at statutory limits, including Employers' Liability coverage at minimum limits of \$1,000,000 each occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including Owned, Non-Owned and Hired Car Coverage. This coverage must be written on a standard and approved ISO form.

5. With reference to the foregoing insurance requirements Hotel and its contractors shall specifically endorse applicable insurance policies as follows:

- a) The Town of Addison, Texas shall be named as an additional insured with respect to Commercial General Liability and Automobile Liability.
- b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- c) A waiver of subrogation in favor of the Town of Addison shall be contained in the Workers Compensation and all liability policies.
- d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- e) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- f) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- h) Hotel may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- i) Insurance must be purchased from insurers that meet the following requirements:
 - 1. A minimum financial rating of A- VII as currently assigned in *BEST'S KEY RATING GUIDE*.
 - 2. Licensed and admitted to do business by the Texas Department of Insurance. Non-Admitted carriers are acceptable only if the coverage is not available from an admitted carrier and the following criteria are satisfied:
 - (a) The carrier is approved by NAIC or is approved (or has not been disapproved) by the Texas Department of Insurance.
 - (b) The policy must include a Service of Suit Endorsement.
 - (c) All requirements of the Surplus Lines Stamping Office of Texas, including filing of all appropriate policy forms, and payment of all taxes and fees.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance, including the Surplus Lines Stamping Office of Texas, if applicable. Certificates of

Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

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

Upon request, Hotel shall furnish the City Manager with certified copies of all insurance policies.

The parties acknowledge and agree that in the event that Hotel, by its acts, omissions or conduct causes or contributes to any lapse, cancellation, denial of coverage, or any other prejudice to the applicability of any of the above referenced insurance coverages and requirements, that such acts, omissions, or conduct shall constitute a material breach of the terms of this Agreement.

22. This Contract does not include the use of broadcasting or television facilities or the use of the Hotel's tent(s) for any activities other than those described herein, arrangements for which must be made with Addison. Addison shall advertise and promote the Event at its cost and shall choose the media for such advertisement.
23. Hotel hereby gives to Addison the permission and a limited and non-exclusive license to use any copyrighted material to which Hotel may own a right in connection with the Event. Provided Addison is not in default of this section of the Agreement, then Hotel agrees not to sue Addison for any potential infringement thereof.
24. Hotel shall use and display only those signs which pertain to the Event and which have been approved by Addison prior to **August 31, 2017**. Hotel shall comply with any and all sign permit requirements for the display of such signs. Hotel shall not use or otherwise mention the Event in any advertising or promotion without the prior written consent of Addison.
25. Hotel shall not park any vehicle on or near the location of the Event in other than designated parking areas. Personal vehicles may be used to make deliveries to Hotel tent(s), but must be parked in the designated area immediately after unloading.
26. Hotel agrees to pay promptly all taxes and applicable fees and to take out all permits and licenses, municipal, state or federal, required for the permitted usage. Hotel agrees to furnish Addison, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees and showing that all required permits and licenses are in effect.
27. Addison may designate certain of its agents, officers or employees as inspectors and Hotel agrees that the inspectors have the right, at any time and as often as Addison may consider necessary, to inspect any property, services or activities of Hotel on the premises. Hotel shall give the inspectors free access to any space used by Hotel or under its control for the inspection and shall, upon request of an inspector, operate any machinery, mechanical devices, or electrical appliances owned, maintained, or in the possession of Hotel on the premises, or operate any process or activities carried on by Hotel. The police and fire force or other authorized agents of Addison shall be given free access in accordance with the rules and regulations of Addison at any time to any space used by Hotel or under its control, for the purpose of maintaining order and safety or of enforcing any rule or regulation of Addison.
28. Addison reserves the right to (i) control and manage the entire Event location, (ii) enforce all

necessary and proper rules for its management and operation, and (iii) have its authorized representatives enter the Hotel's tent(s) at any time and on any occasion. Addison also shall have the right, but not the duty, through its duly appointed representatives, to eject any objectionable person(s) from the Event site and Hotel's tent(s), and Hotel waives any claims for damages against Addison or any of its officers, agents or employees resulting from the reasonable exercise of this authority. Addison reserves the right to manage and control all parking facilities on the Event site.

29. Failure by the Hotel to comply with any of the terms of this Contract shall be sufficient cause for the termination of this contract by Addison. In the event of termination, Hotel shall immediately vacate Event property removing all equipment, materials, and supplies; in addition, Addison shall have other rights and remedies available at law or in equity. Hotel acknowledges that this contract is not a lease but only a revocable license to operate the activity described herein.
30. Hotel acknowledges and understands that the privilege to provide services granted herein is nonexclusive.
31. This Contract contains the entire agreement of Hotel and Addison and may not be amended, modified or altered without the express written consent of Addison and the Hotel.
32. This Contract shall be subject to any and all reasonable rules and regulations imposed by Addison.
33. This Contract shall be interpreted by Texas law and is performable for all purposes in the County of Dallas, State of Texas.
34. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other acts extending said authority have been duly passed and are now in full force and effect.

EXECUTED this _____ day of _____, 2017.

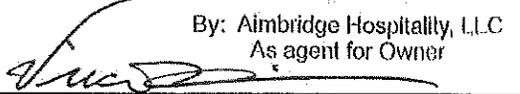
TOWN OF ADDISON, TEXAS

By _____

Title: _____ City Manager

Quorum Hospitality LLC d/b/a
VENDOR: MARRIOTT QUORUM HOTEL

By: Aimbridge Hospitality, LLC
As agent for Owner

By  _____

Title: **Vincent F. Cuce**
Authorized Signer 7-24-17

AI-2353

9.

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: Special Events

AGENDA CAPTION:

Consider Action On A **Resolution To Approve A Non-Exclusive Food And Beverage Vending Agreement With Crown Plaza Hotels And Authorize The City Manager To Execute The Agreement To Provide Food And Beverage Services To Event Patrons At Oktoberfest 2017.**

BACKGROUND:

The Marriott Quorum, the Crowne Plaza Hotel, The Taste of Cuba Food Truck And Catering, LLC(Concessionaire) and Chamberlains Brau Haus are the major providers of food and beverages at the Town of Addison's Oktoberfest event. They collect Tasty Buck coupons from patrons who purchase food and beverages from them in the main tent and in satellite tents throughout the event site. The Town redeems their Tasty Bucks after the event and issues the hotels a check for 85% of the sales with the Town to retain 15% of the sales.

The food and beverage sales are expected to be in excess of \$100,000. Due to this number exceeding the signing authority allowed to the City Manager, this item requires Council approval. The Food and Beverage Vending Agreement is included as Exhibit A in the attached resolution.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Crowne Plaza

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A NON-EXCLUSIVE FOOD AND BEVERAGE VENDING CONTRACT BETWEEN THE TOWN OF ADDISON AND CROWNE PLAZA ADDISON FOR MUSIC, BEVERAGE AND FOOD SERVICES DURING OKTOBERFEST, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The Non-Exclusive Food and Beverage Vending Contract between the Town of Addison and Crowne Plaza Addison for music, beverage and food services during Oktoberfest, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved.

The City Manager is hereby authorized to execute the contract.

Section 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this The 22nd day of August, 2017.

Joe Chow, Mayor

ATTEST:

By: _____
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

Exhibit A

NON-EXCLUSIVE FOOD & BEVERAGE VENDING CONTRACT

STATE OF TEXAS #
COUNTY OF DALLAS #

THIS CONTRACT is entered into by and between the TOWN OF ADDISON, TEXAS (hereinafter referred to as "Addison"), and CROWNE PLAZA ADDISON (hereinafter referred to as "Hotel"), on the date indicated below.

W I T N E S S E I H

WHEREAS, a special event known as Oktoberfest (hereinafter referred to as "Event") shall take place within the Town of Addison on the following dates: September 14, 15, 16, and 17, 2017;

WHEREAS, Addison is sponsoring and hosting the Event in whole or in part; and

WHEREAS, Hotel desires to provide beverage and food service to patrons of the Event; and

WHEREAS, the Addison City Manager has heretofore authorized the Addison Director of Special Events to enter into Contracts with Hotels providing terms and conditions such service.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, Addison and Hotel do hereby agree and contract as follows:

- The term of this Contract shall be for the following days and times:
 September 14, 2017 6:00 pm to 11:00 pm
 September 15, 2017 6:00 pm to 12:00 am midnight
 September 16, 2017 12:00 pm to 12:00 am midnight
 September 17, 2017 12:00 pm to 6:00 pm
- The hours of operation of the Event shall be those scheduled by Addison. Hotel shall have a reasonable amount of time to set up prior to its commencement and to tear down after its conclusion. Addison reserves the right to regulate the hours that the concession(s) remain open. Concession hours shall end each day as follows:

<u>Date</u>	<u>Food Sales</u>	<u>Alcoholic Beverage</u>
Thursday, September 14, 2017	11:00 pm	10:00 pm
Friday, September 15, 2017	Midnight	11:00 pm
Saturday, September 16, 2017	Midnight	11:00 pm
Sunday, September 17, 2017	6:00 pm	5:00 pm

- Hotel agrees that no representations have been made by Addison or by any of its agents, officers or employees that the preparation of the Event site shall be advanced to any particular stage upon any particular date, or that any warranty is being made as to the opening date of the Event. It is understood that Addison is making every reasonable effort to proceed with preparation of the Event site and construction so that the Event shall open as scheduled, and that Hotel shall have reasonable time prior to this date for the preparation of projects. If the Event does not open as scheduled or at all, Addison shall be under no liability to Hotel for any claims for damages.
- Should the Event be postponed or canceled for an Act of God, public safety, welfare or for whatever reason, Hotel hereby releases Addison from any and all liability and claims for damages which result from such postponement or cancellation.

5. Hotel shall furnish and serve food and beverages to patrons of the Event. In addition, it shall provide decorations and signs appropriate to the Event subject to the provisions contained in paragraph 24. Hotel shall furnish food, food service items and a sufficient number of personnel to perform food service duties. Hotel understands and acknowledges that the rights granted to it hereunder by Addison are not exclusive and that other hotels and groups, including the Marriott Quorum, Taste of Cuba and certain German groups shall be granted a similar right to sell concessions, food, beverages and merchandise.
7. Hotel shall file with the Addison City Manager or his designee prior to Friday, August 4, 2017 a detailed outline of the service the Hotel shall provide all staging requirements and all other information required by Addison personnel concerning the Event.
8. Any and all sales of concessions, food, beverages or merchandise shall be made through the use of tickets furnished by Addison. Hotel shall not sell any items for cash but only for tickets issued by Addison. Patrons shall purchase tickets from Addison personnel and redeem them in Hotel's tent(s). No later than (3) days after the close of the Event, Hotel shall present to Addison all tickets received during the Event. Prior to presentation to Addison, Hotel shall remove all stubs and staples from the tickets. Separate 2016 tickets from all other tickets. You do not need to bundle tickets, but please separate tickets from previous years. All tickets must be dry before they are weighed. In exchange for such tickets, Addison shall issue a check to Hotel in the amount of eighty-five percent (85%) of the face value of the tickets turned in, and Addison shall retain fifteen percent (15%) of the face value of tickets sold. Such check shall be mailed to Hotel within thirty (30) working days after the presentation of tickets to Addison.
9. Addison has contracted with Coca Cola (hereinafter referred to as "Coke") to be the official non-alcoholic beverage sponsor of the Event. Coca Cola shall be granted exclusive pouring rights and shall furnish all soft drinks and other non-alcoholic beverages that the Hotel shall offer for sale in their tent(s). Hotel shall sell no non-alcoholic beverages other than those furnished by such sponsor. Hotel shall purchase the Coke products directly from Coke.
10. Addison has contracted with Paulaner HP USA (hereinafter referred to as "Paulaner") to be the primary import beer sponsor of the Event. Through Ben E. Keith distributing, Paulaner shall furnish kegs of Oktoberfest Wiesen, Oktoberfest Märzen and Hefe-Weizen for the Hotel to sell in their tents at the Event. Hotel shall purchase the beverages directly from Ben E. Keith Distributing. Hotel may also purchase souvenir items from Ben E. Keith Distributing. Hotels shall be solely responsible for payment of beer and glassware sold at the Event and Addison shall not in any way be responsible for payment of beer, glassware or either of them. Note that this paragraph does not intend to and does not limit the types of beer that may be sold by Hotel at the Event
11. Addison shall furnish whatever tents, tables and chairs, bandstand, dance floor, utilities, lighting and fans it shall deem necessary. In addition, Addison shall provide police, fire, streets, ticket sales and accounting personnel.
12. Hotel shall not sublet or assign this Contract to any other person, or any of the privileges conveyed herein, except with the prior written approval of Addison. Any approved assignee shall be subject to all the provisions and requirements of this Contract.
13. During the course of the Event, Hotel shall maintain the areas inside their tent(s) and in the main tent seating areas designated to each Hotel for patrons in a clean and sanitary condition. Hotel shall pick-up all trash, food, etc. off of ground and shall keep tables clean ongoing during the Event. Addison shall empty full trash receptacles and remove from the main tent. Addison shall clean and maintain all areas outside the tents during the Event and shall clean the entire site of the Event after the Event has concluded.

14. Hotel agrees that its activities shall be conducted in a clean, orderly, and legitimate manner and in accordance with existing ordinances and laws. No rubbish, glass, or bottles of any kind shall be thrown upon the grounds or in any buildings by Hotel or anyone working under or for Hotel.
15. Addison shall have the right, but not the duty, to supervise the manner of exercising the operation of the activity by Hotel. However, in doing so Addison is expressly not accepting responsibility for such operations and conduct. Hotel shall remain liable for such operations and conduct.
16. Hotel agrees that its employees involved with the Event shall not drink any beer, wine or other alcoholic beverage while in performance of their duties under this Contract, and that all such employees who operate utility carts for the transportation of materials shall exercise the utmost caution when operating the carts.
17. HOTEL AGREES TO AND SHALL INDEMNIFY ADDISON, TEXAS, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS AGAINST, AND HOLD ADDISON, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM, ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LAWSUITS, LIABILITY, JUDGMENTS, DAMAGES, INJURIES, PENALTIES, LOSSES, COSTS OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES, ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, AND COSTS OF DEFENSE), FOR PERSONAL INJURY (INCLUDING WITHOUT LIMITATION, SICKNESS, EMOTIONAL AND PSYCHOLOGICAL INJURY, DISEASE OR DEATH), DAMAGE TO OR DESTRUCTION OF ANY PROPERTY (INCLUDING, WITHOUT LIMITATION, LOSS OF USE OF PROPERTY NOT OTHERWISE PHYSICALLY DAMAGED), BREACH OF CONTRACT, BREACH OF THE INSURANCE REQUIREMENTS SET FORTH IN SECTION 21 OF THIS CONTRACT, OR ANY OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR ORGANIZATION, THAT MAY ARISE OUT OF ANY ACT OR OMISSION OF HOTEL, ITS AGENTS, OFFICERS AND EMPLOYEES, INCLUDING WITHOUT LIMITATION ANY SUCH ACT OR OMISSION IN BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, IN THE PERFORMANCE OR UNDER THE PROVISIONS OF THIS CONTRACT (INCLUDING BUT NOT LIMITED TO THE PROVISION OR SERVING OF FOOD OR ALCOHOLIC BEVERAGES.) THIS INDEMNITY IS INTENDED TO PROTECT ADDISON, ITS AGENTS, OFFICERS AND EMPLOYEES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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18. HOTEL HEREBY RELEASES ADDISON FROM ANY ACTIONS FOR ANY LOSS OR DAMAGE SUSTAINED BY REASON OF ANY DEFECT OF ANY PART OF THE WATER SUPPLY SYSTEM, THE SEWAGE AND DRAINAGE SYSTEM, THE GAS SYSTEM, ELECTRICAL APPARATUS OR WIRING ON THE EVENT SITE OR TENT(S) OR ANY OTHER PREMISES OR BAND STAND, AND FOR ANY LOSS OR DAMAGE RESULTING FROM FIRE, THEFT, WATER, TORNADO, RAIN, SNOW, STRIKES, CIVIL COMMOTION OR RIOT, OR OTHERWISE, UNLESS CAUSED BY THE GROSS NEGLIGENCE OF ADDISON.
19. ADDISON ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED ON THE PREMISES, AND HOTEL HEREBY RELEASES ADDISON, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGES TO PERSON OR PROPERTY THAT ARE SUSTAINED BY REASON OF THE OCCUPANCY OF THE EVENT SITE UNDER THIS CONTRACT. ALL WATCHMEN OR OTHER PROTECTIVE SERVICE DESIRED BY HOTEL MUST BE ARRANGED FOR BY SPECIAL AGREEMENT WITH ADDISON.
20. Hotel may begin set up for the Event on Monday, September 11, 2017 after 10:00 a.m. All property of Hotel shall be removed from the Event site on or before Monday, September 18, 2017 at 5:00 p.m. (the "Time of Removal") or prior to the Time of Removal in the event of termination of this Contract. If any part of the Hotel's tent(s) is not vacated at or before the Time of Removal or within a reasonable time following the termination hereof, then Addison is authorized to remove from the premises and store, without resorting to any legal proceeding and

at the sole expense of Hotel, all property occupying a portion of the Hotel's tent(s) and shall not be liable for any damage to or loss of any property sustained during its removal and storage. Upon termination of this Contract, Hotel shall deliver the Hotel tent(s) area to Addison in as good condition as at the beginning of the terms of this Contract, except for ordinary wear and tear. The terms of this paragraph shall survive the termination of the Contract.

21. For purposes of this Contract and at all times during the Event, Hotel shall provide and maintain the minimum insurance coverages set forth below (and shall show proof of such coverages at the time of the execution of this Contract):

a) 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; \$1,000,000 for personal injury and advertising injury; and a \$2,000,000 annual aggregate for products/completed operations. Commercial General Liability coverage must include Premises, Operations, Contractual Liability, Products/Completed Operations, Independent Contractors, and Liquor Liability.

b) Workers Compensation Insurance at statutory limits, including Employers Liability coverage at minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

c) Commercial Automobile Liability Insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

d) Other Provisions.

1. The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess/umbrella is a "following form" policy, at a minimum.

2. All insurance policies that name the City as an additional insured must be endorsed to read as primary coverage regardless of the application of other insurance.

3. The Hotel is solely responsible for maintaining insurance coverage on its personal property.

4. In the event that the Hotel in any manner employs, hires, or makes use of any sub-contractor in the performance of any of its rights and duties in this Agreement, the Hotel shall require that each and every such sub-contractor maintain the following insurance coverages, and that such coverages are endorsed to include the Hotel and the City as additional insureds:

(a) Commercial General Liability coverages written on a standard and approved ISO form, with combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage; \$2,000,000 for personal injury; and a \$2,000,000 annual aggregate for Products/Completed Operations. Coverage must include Contractual Liability and Products/Completed Operations, and Liquor Liability.

(b) Workers' Compensation Insurance at statutory limits, including Employers' Liability coverage at minimum limits of \$1,000,000 each occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including Owned, Non-Owned and Hired Car Coverage. This coverage must be written on a standard and approved ISO form.

5. With reference to the foregoing insurance requirements Hotel and its contractors shall specifically endorse applicable insurance policies as follows:

- a) The Town of Addison, Texas shall be named as an additional insured with respect to Commercial General Liability and Automobile Liability.
- b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- c) A waiver of subrogation in favor of the Town of Addison shall be contained in the Workers Compensation and all liability policies.
- d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- e) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- f) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- h) Hotel may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- i) Insurance must be purchased from insurers that meet the following requirements:
 - 1. A minimum financial rating of A- VII as currently assigned in *BEST'S KEY RATING GUIDE*.
 - 2. Licensed and admitted to do business by the Texas Department of Insurance. Non-Admitted carriers are acceptable only if the coverage is not available from an admitted carrier and the following criteria are satisfied:
 - (a) The carrier is approved by NAIC or is approved (or has not been disapproved) by the Texas Department of Insurance.
 - (b) The policy must include a Service of Suit Endorsement.
 - (c) All requirements of the Surplus Lines Stamping Office of Texas, including filing of all appropriate policy forms, and payment of all taxes and fees.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance, including the Surplus Lines Stamping Office of Texas, if applicable. Certificates of

Insurance shall be prepared and executed by the Insurance company or its authorized agent and shall contain provisions representing and warranting the following:

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

Upon request, Hotel shall furnish the City Manager with certified copies of all insurance policies.

The parties acknowledge and agree that in the event that Hotel, by its acts, omissions or conduct causes or contributes to any lapse, cancellation, denial of coverage, or any other prejudice to the applicability of any of the above referenced insurance coverages and requirements, that such acts, omissions, or conduct shall constitute a material breach of the terms of this Agreement.

22. This Contract does not include the use of broadcasting or television facilities or the use of the Hotel's tent(s) for any activities other than those described herein, arrangements for which must be made with Addison. Addison shall advertise and promote the Event at its cost and shall choose the media for such advertisement.
23. Hotel hereby gives to Addison the permission and a limited and non-exclusive license to use any copyrighted material to which Hotel may own a right in connection with the Event. Provided Addison is not in default of this section of the Agreement, then Hotel agrees not to sue Addison for any potential infringement thereof.
24. Hotel shall use and display only those signs which pertain to the Event and which have been approved by Addison prior to August 31, 2017. Hotel shall comply with any and all sign permit requirements for the display of such signs. Hotel shall not use or otherwise mention the Event in any advertising or promotion without the prior written consent of Addison.
25. Hotel shall not park any vehicle on or near the location of the Event in other than designated parking areas. Personal vehicles may be used to make deliveries to Hotel tent(s), but must be parked in the designated area immediately after unloading.
26. Hotel agrees to pay promptly all taxes and applicable fees and to take out all permits and licenses, municipal, state or federal, required for the permitted usage. Hotel agrees to furnish Addison, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees and showing that all required permits and licenses are in effect.
27. Addison may designate certain of its agents, officers or employees as inspectors and Hotel agrees that the inspectors have the right, at any time and as often as Addison may consider necessary, to inspect any property, services or activities of Hotel on the premises. Hotel shall give the inspectors free access to any space used by Hotel or under its control for the inspection and shall, upon request of an inspector, operate any machinery, mechanical devices, or electrical appliances owned, maintained, or in the possession of Hotel on the premises, or operate any process or activities carried on by Hotel. The police and fire force or other authorized agents of Addison shall be given free access in accordance with the rules and regulations of Addison at any time to any space used by Hotel or under its control, for the purpose of maintaining order and safety or of enforcing any rule or regulation of Addison.
28. Addison reserves the right to (i) control and manage the entire Event location, (ii) enforce all

necessary and proper rules for its management and operation, and (iii) have its authorized representatives enter the Hotel's tent(s) at any time and on any occasion. Addison also shall have the right, but not the duty, through its duly appointed representatives, to eject any objectionable person(s) from the Event site and Hotel's tent(s), and Hotel waives any claims for damages against Addison or any of its officers, agents or employees resulting from the reasonable exercise of this authority. Addison reserves the right to manage and control all parking facilities on the Event site.

- 29. Failure by the Hotel to comply with any of the terms of this Contract shall be sufficient cause for the termination of this contract by Addison. In the event of termination, Hotel shall immediately vacate Event property removing all equipment, materials, and supplies; in addition, Addison shall have other rights and remedies available at law or in equity. Hotel acknowledges that this contract is not a lease but only a revocable license to operate the activity described herein.
- 30. Hotel acknowledges and understands that the privilege to provide services granted herein is nonexclusive.
- 31. This Contract contains the entire agreement of Hotel and Addison and may not be amended, modified or altered without the express written consent of Addison and the Hotel.
- 32. This Contract shall be subject to any and all reasonable rules and regulations imposed by Addison.
- 33. This Contract shall be interpreted by Texas law and is performable for all purposes in the County of Dallas, State of Texas.
- 34. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other acts extending said authority have been duly passed and are now in full force and effect.

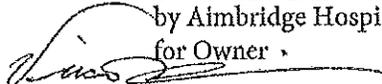
EXECUTED this ____ day of _____, 2017.

TOWN OF ADDISON, TEXAS

By _____

Title City Manager

Garrison Addison OpCo LP d/b/a
VENDOR: CROWNE PLAZA ADDISON
by Aimbridge Hospitality, LLC as agent
for Owner

By  _____

Title Vincent F. Cuce
Authorized Signer

7-29-17

AI-2354

10.

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: Special Events

AGENDA CAPTION:

Consider Action On A **Resolution To Approve A Non-Exclusive Food And Beverage Vending Agreement With The Taste Of Cuba Food Truck And Catering, LLC (Concessionaire) And Authorize The City Manager To Execute The Agreement To Provide Food And Beverage Services To Event Patrons At Oktoberfest 2017.**

BACKGROUND:

The Marriott Quorum, the Crowne Plaza Hotel, The Taste of Cuba Food Truck And Catering, LLC (Concessionaire) and Chamberlains Brau Haus are the major providers of food and beverages at the Town of Addison's Oktoberfest event. They collect Tasty Buck coupons from patrons who purchase food and beverages from them in the main tent and in satellite tents throughout the event site. A check is issued for The Taste of Cuba Food Truck And Catering, LLC for 75% of the sales with the Town to retain 25% of the sales.

The food and beverage sales are expected to be in excess of \$100,000. Due to this number exceeding the signing authority allowed to the City Manager, this item requires Council approval. The Food and Beverage Vending Agreement is included as Exhibit A in the attached resolution.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Taste of Cuba

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A NON-EXCLUSIVE FOOD AND BEVERAGE VENDING CONTRACT BETWEEN THE TOWN OF ADDISON AND THE TASTE OF CUBA FOOD TRUCK AND CATERING, LLC (CONCESSIONAIRE) FOR MUSIC, BEVERAGE AND FOOD SERVICES DURING OKTOBERFEST, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The Non-Exclusive Food and Beverage Vending Contract between the Town of Addison and The Taste Of Cuba Food Truck And Catering, LLC for music, beverage and food services during Oktoberfest, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved.
The City Manager is hereby authorized to execute the contract.

Section 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this The 22nd day of August, 2017.

Joe Chow, Mayor

ATTEST:

By: _____
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

Exhibit A

NON-EXCLUSIVE FOOD & BEVERAGE VENDING CONTRACT

STATE OF TEXAS #
COUNTY OF DALLAS #

THIS CONTRACT is entered into by and between the TOWN OF ADDISON, TEXAS (hereinafter referred to as "Addison"), and **THE TASTE OF CUBA FOOD TRUCK AND CATERING, LLC** (hereinafter referred to as "Concessionaire") for beverage and food service at the Draught Haus, Biergarten & Sports Tavern, on the date indicated below.

W I T N E S S E T H

WHEREAS, a special event known as Oktoberfest (hereinafter referred to as "Event") shall take place within the Town of Addison on the following dates: **September 14, 15, 16, and 17, 2017;**

WHEREAS, Addison is sponsoring and hosting the Event in whole or in part; and

WHEREAS, Concessionaire desires to provide beverage and food service to patrons of the Event; and

WHEREAS, the Addison City Manager has heretofore authorized the Addison Director of Special Events to enter into Contracts with Concessionaire providing terms and conditions such service.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, Addison and Concessionaire do hereby agree and contract as follows:

1. The term of this Contract shall be for the following days and times:

September 14, 2017	6:00 pm to 11:00 pm
September 15, 2017	6:00 pm to 12:00 am midnight
September 16, 2017	12:00 pm to 12:00 am midnight
September 17, 2017	12:00 pm to 6:00 pm

2. The hours of operation of the Event shall be those scheduled by Addison. Concessionaire shall have a reasonable amount of time to set up prior to its commencement and to tear down after its conclusion. Addison reserves the right to regulate the hours that the concession(s) remain open. Concession hours shall end each day as follows:

<u>Date</u>	<u>Food Sales</u>	<u>Alcoholic Beverage</u>
Thursday, September 14, 2017	11:00 pm	10:00 pm
Friday, September 15, 2017	Midnight	11:00 pm
Saturday, September 16, 2017	Midnight	11:00 pm
Sunday, September 18, 2017	6:00 pm	5:00 pm

3. Concessionaire agrees that no representations have been made by Addison or by any of its agents, officers or employees that the preparation of the Event site shall be advanced to any particular stage upon any particular date, or that any warranty is being made as to the opening date of the Event. It is understood that Addison is making every reasonable effort to proceed with preparation of the Event site and construction so that the Event shall open as scheduled, and that Concessionaire shall have reasonable time prior to this date for the preparation of projects. If the Event does not open as scheduled or at all, Addison shall be under no liability to Concessionaire for any claims for damages.

4. Should the Event be postponed or canceled for an Act of God, public safety, welfare or for whatever reason, Concessionaire hereby releases Addison from any and all liability and claims

for damages which result from such postponement or cancellation.

5. Concessionaire shall furnish and serve food and beverages to patrons of the Event. In addition, it shall provide decorations and signs appropriate to the Event subject to the provisions contained in paragraph 24. Concessionaire shall furnish food, food service items and a sufficient number of personnel to perform food service duties. Concessionaire understands and acknowledges that the rights granted to it hereunder by Addison are not exclusive and that other hotels and groups, including the Marriott Quorum, Crowne Plaza, and certain German groups shall be granted a similar right to sell concessions, food, beverages and merchandise.
7. Concessionaire shall file with the Addison City Manager or his designee prior to **Friday, August 4, 2017** a detailed outline of the service the Concessionaire shall provide all staging requirements and all other information required by Addison personnel concerning the Event.
8. Any and all sales of concessions, food, beverages or merchandise shall be made through the use of tickets furnished by Addison. Concessionaire shall not sell any items for cash but only for tickets issued by Addison. Concessionaire shall accept valid Tasty Buck tickets from all years. Patrons shall purchase tickets from Addison personnel and redeem them in Concessionaire's tent(s). No later than (3) days after the close of the Event, Concessionaire shall present to Addison all tickets received during the Event. Prior to presentation to Addison, Concessionaire shall remove all stubs and staples from the tickets. Separate 2017 tickets from all other tickets. You do not need to bundle tickets, but please separate tickets from previous years. All tickets must be dry before they are weighed. In exchange for such tickets, Addison shall issue a check to Concessionaire in the amount of seventy-five percent (75%) of the face value of the tickets turned in, and Addison shall retain twenty-five percent (25%) of the face value of tickets sold. Such check shall be mailed to Concessionaire within thirty (30) working days after the presentation of tickets to Addison.
9. Addison has contracted with Coca Cola (hereinafter referred to as "Coke") to be the official non-alcoholic beverage sponsor of the Event. Coca Cola shall be granted exclusive pouring rights and shall furnish all soft drinks and other non-alcoholic beverages that the Concessionaire shall offer for sale in their tent(s). Concessionaire shall sell no non-alcoholic beverages other than those furnished by such sponsor. Concessionaire shall purchase the Coke products directly from Coke.
10. Addison has contracted with Paulaner HP USA (hereinafter referred to as "Paulaner") to be the primary import beer sponsor of the Event. Through Ben E. Keith distributing, Paulaner shall furnish kegs of Oktoberfest Wiesen, Oktoberfest Märzen and Hefe-Weizen for the Concessionaire to sell in their tents at the Event. Concessionaire shall purchase the beverages directly from Ben E. Keith Distributing. Concessionaire may also purchase souvenir items from Ben E. Keith Distributing. Concessionaire shall be solely responsible for payment of beer and glassware sold at the Event and Addison shall not in any way be responsible for payment of beer, glassware or either of them. Note that this paragraph does not intend to and does not limit the types of beer that may be sold by Concessionaire at the Event.
11. Addison shall furnish whatever tents, tables and chairs, utilities, and lighting it shall deem necessary. In addition, Addison shall provide police, fire, streets, ticket sales and accounting personnel.
12. Concessionaire shall not sublet or assign this Contract to any other person, or any of the privileges conveyed herein, except with the prior written approval of Addison. Any approved assignee shall be subject to all the provisions and requirements of this Contract.
13. During the course of the Event, Concessionaire shall maintain the areas inside the Conference Centre, tent(s) and lawn areas designated to Concessionaire for patrons in a clean and sanitary

condition. Concessionaire shall pick-up all trash, food, etc. off of ground and shall keep tables clean ongoing during the Event. Addison shall empty full trash receptacles and remove from the Conference Centre and lawn. Addison shall clean and maintain all areas during the Event and shall clean the entire site of the Event after the Event has concluded.

14. Concessionaire agrees that its activities shall be conducted in a clean, orderly, and legitimate manner and in accordance with existing ordinances and laws. No rubbish, glass, or bottles of any kind shall be thrown upon the grounds or in any buildings by Concessionaire or anyone working under or for Concessionaire
15. Addison shall have the right, but not the duty, to supervise the manner of exercising the operation of the activity by Concessionaire. However, in doing so Addison is expressly not accepting responsibility for such operations and conduct. Concessionaire shall remain liable for such operations and conduct.
16. Concessionaire agrees that its employees involved with the Event shall not drink any beer, wine or other alcoholic beverage while in performance of their duties under this Contract, and that all such employees who operate utility carts for the transportation of materials shall exercise the utmost caution when operating the carts.
17. **CONCESSIONAIRE AGREES TO AND SHALL INDEMNIFY ADDISON, TEXAS, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS AGAINST, AND HOLD ADDISON, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM, ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LAWSUITS, LIABILITY, JUDGMENTS, DAMAGES, INJURIES, PENALTIES, LOSSES, COSTS OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES, ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, AND COSTS OF DEFENSE), FOR PERSONAL INJURY (INCLUDING WITHOUT LIMITATION, SICKNESS, EMOTIONAL AND PSYCHOLOGICAL INJURY, DISEASE OR DEATH), DAMAGE TO OR DESTRUCTION OF ANY PROPERTY (INCLUDING, WITHOUT LIMITATION, LOSS OF USE OF PROPERTY NOT OTHERWISE PHYSICALLY DAMAGED), BREACH OF CONTRACT, BREACH OF THE INSURANCE REQUIREMENTS SET FORTH IN SECTION 21 OF THIS CONTRACT, OR ANY OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR ORGANIZATION, THAT MAY ARISE OUT OF ANY ACT OR OMISSION OF CONCESSIONAIRE, ITS AGENTS, OFFICERS AND EMPLOYEES, INCLUDING WITHOUT LIMITATION ANY SUCH ACT OR OMISSION IN BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, IN THE PERFORMANCE OR UNDER THE PROVISIONS OF THIS CONTRACT (INCLUDING BUT NOT LIMITED TO THE PROVISION OR SERVING OF FOOD OR ALCOHOLIC BEVERAGES.) THIS INDEMNITY IS INTENDED TO PROTECT ADDISON, ITS AGENTS, OFFICERS AND EMPLOYEES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**
CONCESSIONAIRE, ITS OFFICERS, AGENTS AND EMPLOYEES DO HEREBY WAIVE ANY AND ALL CLAIMS FOR DAMAGE, INJURY OR LOSS TO ANY PERSON OR PROPERTY, INCLUDING THE DEATH OF ANY PERSON THAT MAY BE CAUSED, IN WHOLE OR IN PART, BY THE ACT OR FAILURE TO ACT OF ADDISON, ITS OFFICERS, AGENTS OR EMPLOYEES. CONCESSIONAIRE, ITS OFFICERS, AGENTS AND EMPLOYEES ASSUME THE RISK OF ALL CONDITIONS, WHETHER DANGEROUS OR OTHERWISE, IN AND ABOUT THEIR TENTS, AND WAIVE ANY AND ALL SPECIFIC NOTICE OF THE EXISTENCE OF ANY DEFECTIVE OR DANGEROUS CONDITION IN OR ABOUT THEIR TENTS. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION, COMPLETION, OR EXPIRATION OF THIS CONTRACT.
18. **CONCESSIONAIRE HEREBY RELEASES ADDISON FROM ANY ACTIONS FOR ANY LOSS OR DAMAGE SUSTAINED BY REASON OF ANY DEFECT OF ANY PART OF THE WATER SUPPLY SYSTEM, THE SEWAGE AND DRAINAGE SYSTEM, THE GAS SYSTEM, ELECTRICAL APPARATUS OR WIRING ON THE EVENT SITE OR TENT(S) OR ANY OTHER PREMISES OR BAND STAND, AND FOR ANY LOSS OR DAMAGE RESULTING FROM FIRE, THEFT, WATER, TORNADO, RAIN, SNOW, STRIKES, CIVIL COMMOTION OR RIOT, OR OTHERWISE, UNLESS CAUSED BY THE GROSS NEGLIGENCE OF ADDISON.**
19. **ADDISON ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED ON THE PREMISES, AND CONCESSIONAIRE HEREBY RELEASES ADDISON, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGES TO PERSON OR PROPERTY THAT ARE SUSTAINED BY REASON OF THE OCCUPANCY OF THE EVENT SITE UNDER THIS CONTRACT. ALL WATCHMEN OR OTHER PROTECTIVE SERVICE DESIRED BY CONCESSIONAIRE MUST BE ARRANGED FOR BY SPECIAL AGREEMENT WITH ADDISON.**

20. Concessionaire may begin set up for the Event on **Monday, September 11, 2017 after 10:00 a.m.** All property of Concessionaire shall be removed from the Event site on or before **Monday, September 18, 2017 at 5:00 p.m.** (the "Time of Removal") or prior to the Time of Removal in the event of termination of this Contract. If any part of the Concessionaire's tent(s) is not vacated at or before the Time of Removal or within a reasonable time following the termination hereof, then Addison is authorized to remove from the premises and store, without resorting to any legal proceeding and at the sole expense of Concessionaire, all property occupying a portion of the Concessionaire's tent(s) and shall not be liable for any damage to or loss of any property sustained during its removal and storage. Upon termination of this Contract, Concessionaire shall deliver the Concessionaire tent(s) area to Addison in as good condition as at the beginning of the terms of this Contract, except for ordinary wear and tear. The terms of this paragraph shall survive the termination of the Contract.
21. For purposes of this Contract and at all times during the Event, Concessionaire shall provide and maintain the minimum insurance coverages set forth below (and shall show proof of such coverages at the time of the execution of this Contract):
- a) 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; \$1,000,000 for personal injury and advertising injury; and a \$2,000,000 annual aggregate for products/completed operations. Commercial General Liability coverage must include Premises, Operations, Contractual Liability, Products/Completed Operations, Independent Contractors, and Liquor Liability.
 - b) Workers Compensation insurance at statutory limits, including Employers Liability coverage at minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
 - c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
 - d) Other Provisions.
 1. The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess/umbrella is a "following form" policy, at a minimum.
 2. All insurance policies that name the City as an additional insured must be endorsed to read as primary coverage regardless of the application of other insurance.
 3. The Concessionaire is solely responsible for maintaining insurance coverage on its personal property.
 4. In the event that the Concessionaire in any manner employs, hires, or makes use of any sub-contractor in the performance of any of its rights and duties in this Agreement, the Concessionaire shall require that each and every such sub-contractor maintain the following insurance coverages, and that such coverages are endorsed to include the Concessionaire and the City as additional insureds:
 - (a) Commercial General Liability coverages written on a standard and approved ISO form, with combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage; \$2,000,000 for personal

injury; and a \$2,000,000 annual aggregate for Products/Completed Operations. Coverage must include Contractual Liability and Products/Completed Operations, and Liquor Liability.

- (b) Workers' Compensation insurance at statutory limits, including Employers' Liability coverage at minimum limits of \$1,000,000 each occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including Owned, Non-Owned and Hired Car Coverage. This coverage must be written on a standard and approved ISO form.

5. With reference to the foregoing insurance requirements Concessionaire and its contractors shall specifically endorse applicable insurance policies as follows:

- a) The Town of Addison, Texas shall be named as an additional insured with respect to Commercial General Liability and Automobile Liability.
- b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- c) A waiver of subrogation in favor of the Town of Addison shall be contained in the Workers Compensation and all liability policies.
- d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- e) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- f) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- h) Concessionaire may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- i) Insurance must be purchased from insurers that meet the following requirements:
 - 1. A minimum financial rating of A- VII as currently assigned in *BEST'S KEY RATING GUIDE*.
 - 2. Licensed and admitted to do business by the Texas Department of Insurance. Non-Admitted carriers are acceptable only if the coverage is not available from an admitted carrier and the following criteria are satisfied:
 - (a) The carrier is approved by NAIC or is approved (or has not been disapproved) by the Texas Department of Insurance.

(b) The policy must include a Service of Suit Endorsement.

(c) All requirements of the Surplus Lines Stamping Office of Texas, including filing of all appropriate policy forms, and payment of all taxes and fees.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance, including the Surplus Lines Stamping Office of Texas, if applicable. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

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

Upon request, Concessionaire shall furnish the City Manager with certified copies of all insurance policies.

The parties acknowledge and agree that in the event that Concessionaire, by its acts, omissions or conduct causes or contributes to any lapse, cancellation, denial of coverage, or any other prejudice to the applicability of any of the above referenced insurance coverages and requirements, that such acts, omissions, or conduct shall constitute a material breach of the terms of this Agreement.

- 22. This Contract does not include the use of broadcasting or television facilities or the use of the Concessionaire's tent(s) for any activities other than those described herein, arrangements for which must be made with Addison. Addison shall advertise and promote the Event at its cost and shall choose the media for such advertisement.
- 23. Concessionaire hereby gives to Addison the permission and a limited and non-exclusive license to use any copyrighted material to which Concessionaire may own a right in connection with the Event. Provided Addison is not in default of this section of the Agreement, then Concessionaire agrees not to sue Addison for any potential infringement thereof.
- 24. Concessionaire shall use and display only those signs which pertain to the Event and which have been approved by Addison prior to **August 31, 2017**. Concessionaire shall comply with any and all sign permit requirements for the display of such signs. Concessionaire shall not use or otherwise mention the Event in any advertising or promotion without the prior written consent of Addison.
- 25. Concessionaire shall not park any vehicle on or near the location of the Event in other than designated parking areas. Personal vehicles may be used to make deliveries to Concessionaire tent(s), but must be parked in the designated area immediately after unloading.
- 26. Concessionaire agrees to pay promptly all taxes and applicable fees and to take out all permits and licenses, municipal, state or federal, required for the permitted usage. Hotel agrees to furnish Addison, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees and showing that all required permits and licenses are in effect.
- 27. Addison may designate certain of its agents, officers or employees as inspectors and Concessionaire agrees that the inspectors have the right, at any time and as often as Addison

may consider necessary, to inspect any property, services or activities of Concessionaire on the premises. Concessionaire shall give the inspectors free access to any space used by Concessionaire or under its control for the inspection and shall, upon request of an inspector, operate any machinery, mechanical devices, or electrical appliances owned, maintained, or in the possession of Concessionaire on the premises, or operate any process or activities carried on by Concessionaire. The police and fire force or other authorized agents of Addison shall be given free access in accordance with the rules and regulations of Addison at any time to any space used by Concessionaire or under its control, for the purpose of maintaining order and safety or of enforcing any rule or regulation of Addison.

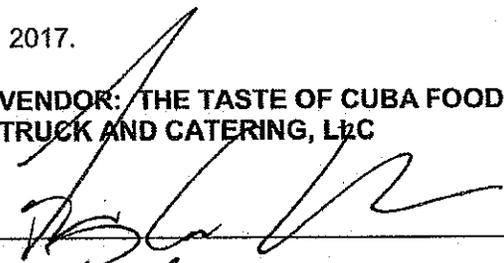
- 28. Addison reserves the right to (i) control and manage the entire Event location, (ii) enforce all necessary and proper rules for its management and operation, and (iii) have its authorized representatives enter the Concessionaire's tent(s) at any time and on any occasion. Addison also shall have the right, but not the duty, through its duly appointed representatives, to eject any objectionable person(s) from the Event site and Concessionaire's tent(s), and Concessionaire waives any claims for damages against Addison or any of its officers, agents or employees resulting from the reasonable exercise of this authority. Addison reserves the right to manage and control all parking facilities on the Event site.
- 29. Failure by the Concessionaire to comply with any of the terms of this Contract shall be sufficient cause for the termination of this contract by Addison. In the event of termination, Concessionaire shall immediately vacate Event property removing all equipment, materials, and supplies; in addition, Addison shall have other rights and remedies available at law or in equity. Concessionaire acknowledges that this contract is not a lease but only a revocable license to operate the activity described herein.
- 30. Concessionaire acknowledges and understands that the privilege to provide services granted herein is nonexclusive.
- 31. This Contract contains the entire agreement of Concessionaire and Addison and may not be amended, modified or altered without the express written consent of Addison and the Concessionaire.
- 32. This Contract shall be subject to any and all reasonable rules and regulations imposed by Addison.
- 33. This Contract shall be interpreted by Texas law and is performable for all purposes in the County of Dallas, State of Texas.
- 34. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other acts extending said authority have been duly passed and are now in full force and effect.

EXECUTED this _____ day of _____, 2017.

TOWN OF ADDISON, TEXAS

VENDOR: THE TASTE OF CUBA FOOD TRUCK AND CATERING, L&C

By _____

By  _____

Title City Manager

Title General

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: Special Events

AGENDA CAPTION:

Consider Action On A **Resolution To Approve A Non-Exclusive Food And Beverage Vending Agreement With Prime Steak Management, Inc., (DBA Chamberlain's Brau Haus) And Authorize The City Manager To Execute The Agreement To Provide Food And Beverage Services To Event Patrons At Oktoberfest 2017.**

BACKGROUND:

The Marriott Quorum, the Crowne Plaza Hotel, The Taste of Cuba Food Truck And Catering, LLC (Concessionaire) and Chamberlains Brau Haus are the major providers of food and beverages at the Town of Addison's Oktoberfest event. They collect Tasty Buck coupons from patrons who purchase food and beverages from them in the main tent and in satellite tents throughout the event site. Chamberlains does not collect Tasty Bucks. Instead, Chamberlains operates its own point of sale for the sale of tickets for the Brau Haus. This system then generates a report that is given to the Town that reflects the total amount of sales. The Town issues a check to Chamberlains for 85% of the sales with the Town to retain 15% of sales.

The food and beverage sales are expected to be in excess of \$100,000. Due to this number exceeding the signing authority allowed to the City Manager, this item requires Council approval. The Food and Beverage Vending Agreement is included as Exhibit A in the attached resolution.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Prime Steak Management

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A NON-EXCLUSIVE FOOD AND BEVERAGE VENDING CONTRACT BETWEEN THE TOWN OF ADDISON AND PRIME STEAK MANAGEMENT, INC., FOR MUSIC, BEVERAGE AND FOOD SERVICES DURING OKTOBERFEST, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The Non-Exclusive Food and Beverage Vending Contract between the Town of Addison and Prime Steak Management Inc., for music, beverage and food services during Oktoberfest, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved.

The City Manager is hereby authorized to execute the contract.

Section 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this The 22nd day of August, 2017.

Joe Chow, Mayor

ATTEST:

By: _____
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

Exhibit A

NON-EXCLUSIVE FOOD & BEVERAGE VENDING CONTRACT

STATE OF TEXAS #
COUNTY OF DALLAS #

THIS CONTRACT is entered into by and between the TOWN OF ADDISON, TEXAS (hereinafter referred to as "Addison"), and **Prime Steak Management, Inc., DBA, CHAMBERLAIN'S BRAU HAUS** (hereinafter referred to as "Chamberlains"), on the date indicated below.

W I T N E S S E T H

WHEREAS, a special event known as Oktoberfest (hereinafter referred to as "Event") shall take place within the Town of Addison on the following dates: **September 14, 15, 16, and 17, 2017;**

WHEREAS, Addison is sponsoring and hosting the Event in whole or in part; and

WHEREAS, Chamberlain's desires to provide music, beverage and food service to patrons of the Event; and

WHEREAS, the Addison City Manager has heretofore authorized the Addison Director of Special Events to enter into Contracts with Chamberlain's providing terms and conditions such service.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, Addison and Chamberlain's do hereby agree and contract as follows:

- The term of this Contract shall be for the following days and times:
September 14, 2017 **6:00 pm to 11:00 pm**
September 15, 2017 **6:00 pm to 12:00 am midnight**
September 16, 2017 **12:00 pm to 12:00 am midnight**
- The hours of operation of the Event shall be those scheduled by Addison. Chamberlain's shall have a reasonable amount of time to set up prior to its commencement and to tear down after its conclusion. Addison reserves the right to regulate the hours that the concession(s) remain open. Concession hours shall end each day as follows:

<u>Date</u>	<u>Food Sales</u>	<u>Alcoholic Beverage Sales</u>
Thursday, September 14, 2017	11:00 pm	10:00 pm
Friday, September 15, 2017	Midnight	11:00 pm
Saturday, September 16, 2017	Midnight	11:00 pm
Sunday, September 17, 2017	6:00 pm	5:00 pm

- Chamberlain's agrees that no representations have been made by Addison or any of its agents, officers or employees that the preparation of the Event site shall be advanced to any particular stage upon any particular date, or that any warranty is being made as to the opening date of the Event. It is understood that Addison is making every reasonable effort to proceed with preparation of the Event site and construction so that the Event shall open as scheduled, and that Chamberlain's shall have reasonable time prior to this date for the preparation of projects. If the Event does not open as scheduled or at all, Addison shall be under no liability to Chamberlain's for any claims for damages.
- Should the Event be postponed or canceled for an Act of God, public safety, welfare or for whatever reason, Chamberlain's hereby releases Addison from any and all liability and claims for damages which result from such postponement or cancellation.

5. Chamberlain's shall furnish and serve food and beverages to patrons of the Event. In addition, it shall provide decorations and signs appropriate to the Event subject to the provisions contained in paragraph 24. Chamberlain's shall furnish food, food service items and a sufficient number of personnel to perform food service duties. Chamberlain's understands and acknowledges that the rights granted to it hereunder by Addison are not exclusive and that other hotels and groups, including the Marriott Quorum, Crowne Plaza, Taste of Cuba and certain German groups shall be granted a similar right to sell concessions, food, beverages and merchandise.
6. Any and all sales of concessions, food, beverages or merchandise shall be made through the use of credit card, debit card, cash through Chamberlains Point of Sale (POS) or Tasty Buck tickets furnished by Addison. Patrons shall purchase seating reservations from Chamberlains personnel and redeem them in Chamberlain's tent(s). No later than (3) days after the close of the Event, Chamberlain's shall present to Addison a batch report from Chamberlains point of sales system and all Tasty Buck tickets received during the Event. Prior to presentation to Addison, Chamberlain's shall remove all stubs and staples from the Tasty Buck tickets. Separate 2017 tickets from all other tickets. You do not need to bundle tickets, but please separate tickets from previous years. All tickets must be dry before they are weighed. In exchange for such tickets and POS documentation, Addison shall issue a check to Chamberlain's in the amount of eighty-five percent (85%) of the face value of the sales made and tickets turned in, and Addison shall retain fifteen percent (15%) of the face value of sales and tickets sold. Such check shall be mailed to Chamberlain's within thirty (30) working days after the presentation of tickets to Addison.
7. Addison has contracted with Coca Cola (hereinafter referred to as "Coke") to be the official non-alcoholic beverage sponsor of the Event. Coca Cola shall be granted exclusive pouring rights and shall furnish all soft drinks and other non-alcoholic beverages that the Chamberlain's shall offer for sale in their tent(s). Chamberlain's shall sell no non-alcoholic beverages other than those furnished by such sponsor. Chamberlain's shall purchase the Coke products directly from Coke.
8. Addison has contracted with Paulaner HP USA (hereinafter referred to as "Paulaner") to be the primary import beer sponsor of the Event. Through Ben E. Keith distributing, Paulaner shall furnish kegs of Oktoberfest Wiesn, Oktoberfest Märzen and Hefe-Weizen for the Chamberlain's to sell in their tents at the Event. Chamberlain's shall purchase the beverages directly from Ben E. Keith Distributing. Chamberlain's may also purchase souvenir items from Ben E. Keith Distributing. Chamberlain's shall be solely responsible for payment of beer and souvenir items sold at the Event and Addison shall not in any way be responsible for payment of beer or souvenir items. Note that this paragraph does not intend to and does not limit the types of beer that may be sold by Chamberlain's at the Event. Addison will provide Chamberlains with 1000 Paulaner 1 Liter glass beer steins. Chamberlains shall return any unused steins to Addison.
9. Addison shall furnish whatever tents, tables and chairs, bandstand, dance floor, utilities, lighting and fans it shall deem necessary. In addition, Addison shall provide police, fire, streets, ticket sales and accounting personnel.
10. Chamberlain's shall not sublet or assign this Contract to any other person, or any of the privileges conveyed herein, except with the prior written approval of Addison. Any approved assignee shall be subject to all the provisions and requirements of this Contract.
11. During the course of the Event, Chamberlain's shall maintain the areas inside their tent(s) and in the main tent seating areas designated to each Chamberlain's for patrons in a clean and sanitary condition. Chamberlain's shall pick-up all trash, food, etc. off of ground and shall keep tables clean ongoing during the Event. Addison shall empty full trash receptacles and remove from the main tent. Addison shall clean and maintain all areas outside the tents during the Event and shall clean the entire site of the Event after the Event has concluded.

12. Chamberlain's agrees that its activities shall be conducted in a clean, orderly, and legitimate manner and in accordance with existing ordinances and laws. No rubbish, glass, or bottles of any kind shall be thrown upon the grounds or in any buildings by Chamberlain's or anyone working under or for Chamberlain's.
13. Addison shall have the right, but not the duty, to supervise the manner of exercising the operation of the activity by Chamberlain's. However, in doing so Addison is expressly not accepting responsibility for such operations and conduct. Chamberlain's shall remain liable for such operations and conduct.
14. Chamberlain's agrees that its employees involved with the Event shall not drink any beer, wine or other alcoholic beverage while in performance of their duties under this Contract, and that all such employees who operate utility carts for the transportation of materials shall exercise the utmost caution when operating the carts.
15. Chamberlain's agrees to and shall indemnify Addison, Texas, its officials, officers, employees and agents against, and hold Addison, its officials, officers, employees and agents harmless from, any and all claims, actions, causes of action, lawsuits, liability, judgments, damages, injuries, penalties, losses, costs or expenses (including reasonable attorney's fees, all court or arbitration or other dispute resolution costs, and costs of defense), for personal injury (including without limitation, sickness, emotional and psychological injury, disease or death), damage to or destruction of any property (including, without limitation, loss of use of property not otherwise physically damaged), breach of contract, breach of the insurance requirements set forth in Section 21 of this Contract, or any other harm for which recovery of damages is sought, suffered by any person or organization, that may arise out of any act or omission of Chamberlain's, its agents, officers and employees, including without limitation any such act or omission in breach of any of the terms or provisions of this Contract, or any negligent or strictly liable act or omission, in the performance or under the provisions of this Contract (including but not limited to the provision or serving of food, alcoholic beverages or music.) This indemnity is intended to protect Addison, its agents, officers and employees. The provisions of this paragraph shall survive the termination of this Contract.

Chamberlain's, its officers, agents and employees do hereby waive any and all claims for damage, injury or loss to any person or property, including the death of any person that may be caused, in whole or in part, by the act or failure to act of Addison, its officers, agents or employees. Chamberlain's, its officers, agents and employees assume the risk of all conditions, whether dangerous or otherwise, in and about their tents, and waive any and all specific notice of the existence of any defective or dangerous condition in or about their tents. The provisions of this paragraph shall survive the termination, completion, or expiration of this Contract.

16. Chamberlain's hereby releases Addison from any actions for any loss or damage sustained by reason of any defect of any part of the water supply system, the sewage and drainage system, the gas system, electrical apparatus or wiring on the Event site or tent(s) or any other premises or band stand, and for any loss or damage resulting from fire, theft, water, tornado, rain, snow, strikes, civil commotion or riot, or otherwise, unless caused by the gross negligence of Addison.
17. Addison assumes no responsibility for any property placed on the premises, and Chamberlain's hereby releases Addison, its officials, officers, employees and agents from any and all liability for any loss, injury or damages to person or property that are sustained by reason of the occupancy of the Event site under this Contract. All watchmen or other protective service desired by Chamberlain's must be arranged for by special agreement with Addison.
18. Chamberlain's may begin set up for the Event on **Tuesday, September 12, 2017 after 10:00**

a.m. All property of Chamberlain's shall be removed from the Event site on or before **Monday, September 18, 2017 at 5:00 p.m.** (the "Time of Removal") or prior to the Time of Removal in the event of termination of this Contract. If any part of the Chamberlain's tent(s) is not vacated at or before the Time of Removal or within a reasonable time following the termination hereof, then Addison is authorized to remove from the premises and store, without resorting to any legal proceeding and at the sole expense of Chamberlain's, all property occupying a portion of the Chamberlain's tent(s) and shall not be liable for any damage to or loss of any property sustained during its removal and storage. Upon termination of this Contract, Chamberlain's shall deliver the Chamberlain's tent(s) area to Addison in as good condition as at the beginning of the terms of this Contract, except for ordinary wear and tear. The terms of this paragraph shall survive the termination of the Contract.

19. For purposes of this Contract and at all times during the Event, Chamberlain's shall provide and maintain the minimum insurance coverages set forth below (and shall show proof of such coverages at the time of the execution of this Contract):

a) 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; \$1,000,000 for personal injury and advertising injury; and a \$2,000,000 annual aggregate for products/completed operations. Commercial General Liability coverage must include Premises, Operations, Contractual Liability, Products/Completed Operations, Independent Contractors, and Liquor Liability.

b) Workers Compensation insurance at statutory limits, including Employers Liability coverage at minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

d) Other Provisions.

1. The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess/umbrella is a "following form" policy, at a minimum.

2. All insurance policies that name the City as an additional insured must be endorsed to read as primary coverage regardless of the application of other insurance.

3. The Chamberlain's is solely responsible for maintaining insurance coverage on its personal property.

4. In the event that the Chamberlain's in any manner employs, hires, or makes use of any sub-contractor in the performance of any of its rights and duties in this Agreement, the Chamberlain's shall require that each and every such sub-contractor maintain the following insurance coverages, and that such coverages are endorsed to include the Chamberlain's and the City as additional insureds:

(a) Commercial General Liability coverages written on a standard and approved ISO form, with combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage; \$2,000,000 for personal injury; and a \$2,000,000 annual aggregate for Products/Completed Operations. Coverage must include Contractual Liability and Products/Completed Operations,

and Liquor Liability.

- (b) Workers' Compensation insurance at statutory limits, including Employers' Liability coverage at minimum limits of \$1,000,000 each occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including Owned, Non-Owned and Hired Car Coverage. This coverage must be written on a standard and approved ISO form.

5. With reference to the foregoing insurance requirements Chamberlain's and its contractors shall specifically endorse applicable insurance policies as follows:

- a) The Town of Addison, Texas shall be named as an additional insured with respect to Commercial General Liability and Automobile Liability.
- b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- c) A waiver of subrogation in favor of the Town of Addison shall be contained in the Workers Compensation and all liability policies.
- d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- e) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- f) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- h) Chamberlain's may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- i) Insurance must be purchased from insurers that meet the following requirements:
 - 1. A minimum financial rating of A- VII as currently assigned in *BEST'S KEY RATING GUIDE*.
 - 2. Licensed and admitted to do business by the Texas Department of Insurance. Non-Admitted carriers are acceptable only if the coverage is not available from an admitted carrier and the following criteria are satisfied:
 - (a) The carrier is approved by NAIC or is approved (or has not been disapproved) by the Texas Department of Insurance.
 - (b) The policy must include a Service of Suit Endorsement.

- (c) All requirements of the Surplus Lines Stamping Office of Texas, including filing of all appropriate policy forms, and payment of all taxes and fees.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance, including the Surplus Lines Stamping Office of Texas, if applicable. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

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

Upon request, Chamberlain's shall furnish the City Manager with certified copies of all insurance policies.

The parties acknowledge and agree that in the event that Chamberlain's, by its acts, omissions or conduct causes or contributes to any lapse, cancellation, denial of coverage, or any other prejudice to the applicability of any of the above referenced insurance coverages and requirements, that such acts, omissions, or conduct shall constitute a material breach of the terms of this Agreement.

- 20. This Contract does not include the use of broadcasting or television facilities or the use of the Chamberlain's tent(s) for any activities other than those described herein, arrangements for which must be made with Addison. Addison shall advertise and promote the Event at its cost and shall choose the media for such advertisement.
- 21. Chamberlain's hereby gives to Addison the permission and a limited and non-exclusive license to use any copyrighted material to which Chamberlain's may own a right in connection with the Event. Provided Addison is not in default of this section of the Agreement, then Chamberlain's agrees not to sue Addison for any potential infringement thereof.
- 22. Chamberlain's shall use and display only those signs which pertain to the Event and which have been approved by Addison prior to **August 31, 2017**. Chamberlain's shall comply with any and all sign permit requirements for the display of such signs. Chamberlain's shall not use or otherwise mention the Event in any advertising or promotion without the prior written consent of Addison.
- 23. Chamberlain's shall not park any vehicle on or near the location of the Event in other than designated parking areas. Personal vehicles may be used to make deliveries to Chamberlain's tent(s), but must be parked in the designated area immediately after unloading.
- 24. Chamberlain's agrees to pay promptly all taxes and applicable fees and to take out all permits and licenses, municipal, state or federal, required for the permitted usage. Chamberlain's agrees to furnish Addison, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees and showing that all required permits and licenses are in effect.
- 25. Addison may designate certain of its agents, officers or employees as inspectors and

Chamberlain's agrees that the inspectors have the right, at any time and as often as Addison may consider necessary, to inspect any property, services or activities of Chamberlain's on the premises. Chamberlain's shall give the inspectors free access to any space used by Chamberlain's or under its control for the inspection and shall, upon request of an inspector, operate any machinery, mechanical devices, or electrical appliances owned, maintained, or in the possession of Chamberlain's on the premises, or operate any process or activities carried on by Chamberlain's. The police and fire force or other authorized agents of Addison shall be given free access in accordance with the rules and regulations of Addison at any time to any space used by Chamberlain's or under its control, for the purpose of maintaining order and safety or of enforcing any rule or regulation of Addison.

26. Addison reserves the right to (i) control and manage the entire Event location, (ii) enforce all necessary and proper rules for its management and operation, and (iii) have its authorized representatives enter the Chamberlain's tent(s) at any time and on any occasion. Addison also shall have the right, but not the duty, through its duly appointed representatives, to eject any objectionable person(s) from the Event site and Chamberlain's tent(s), and Chamberlain's waives any claims for damages against Addison or any of its officers, agents or employees resulting from the reasonable exercise of this authority. Addison reserves the right to manage and control all parking facilities on the Event site.
27. Failure by the Chamberlain's to comply with any of the terms of this Contract shall be sufficient cause for the termination of this contract by Addison. In the event of termination, Chamberlain's shall immediately vacate Event property removing all equipment, materials, and supplies; in addition, Addison shall have other rights and remedies available at law or in equity. Chamberlain's acknowledges that this contract is not a lease but only a revocable license to operate the activity described herein.
28. Chamberlain's acknowledges and understands that the privilege to provide services granted herein is nonexclusive.
29. This Contract contains the entire agreement of Chamberlain's and Addison and may not be amended, modified or altered without the express written consent of Addison and the Chamberlain's.
30. This Contract shall be subject to any and all reasonable rules and regulations imposed by Addison.
31. This Contract shall be interpreted by Texas law and is performable for all purposes in the County of Dallas, State of Texas.
32. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other acts extending said authority have been duly passed and are now in full force and effect.

EXECUTED this 1st day of August, 2017.

TOWN OF ADDISON, TEXAS

By _____

Title _____

**VENDOR: Prime Steak Management, Inc.,
DBA, CHAMBERLAIN'S BRAU HAUS**

By *Jennifer Boucher*

Title *Event Coordinator*

Work Session and Regular Meeting**Meeting Date:** 08/22/2017**Department:** Police

AGENDA CAPTION:

Present, Discuss, And Consider Action **On The Addison Citizens Assisting Police (ACAP) Program.**

BACKGROUND:

Mayor Joe Chows requested this item be placed on the agenda to discuss the Addison Citizens Assisting Police (ACAP) program.

The ACAP program began in early 2012 as a means for the community to volunteer with the department. The program limited its participants to non-enforcement duties within the community such as park patrols, issuing crime risk reports (a form that contains a checklist of observable items that could be improved to deter crime on an individual's property), checking close patrols and general patrols in the business and residential areas. Initially, volunteers were given a minimum number of hours (100 annually) that they were required to work, but that requirement wavered over the years as the program matured. All ACAP members are certified to work in a law enforcement environment by completing a Criminal Justice Information Security (CJIS) audit through the police department. This process includes a background check, finger printing, security addendum and completion of the ACAP training program.

Volunteer Qualifications include:

- Must hold a valid Texas Driver's License and Insurance
- Must live or work in Addison, Texas or be a registered Addison Advocate
- Must be at least 21 years of age
- Have no felony convictions
- Have no DWI/DUI convictions in the past ten years.
- Have no more than one Class C misdemeanor conviction within the past three years. Driving convictions will be evaluated on a case-by-case basis
- Graduate of the Town's Citizens Academy preferred
- Excellent driving record
- Town physician verifying that the applicant can repeatedly lift and carry 25lbs and work in extremes temperature for up to 4 hours

Currently, we have nine active ACAP volunteers managed by Ms. Stacy Love under the direction of a police patrol lieutenant. The Addison Circle Storefront is the base of operations containing their equipment and the ACAP vehicle. Under Ms. Love, ACAP has preapproved shift assignments detailing the days, hours and tasks for each shift.

Very few changes have been implemented since the inception of the program in 2012. Patrolling the business and residential districts, park checks, vacation watch (close patrols) are still the predominant tasks; we added helping in police administration with various tasks (such as scanning records etc.) in 2016. Other opportunities for ACAP include crime prevention inspections for residents, assisting our Quartermaster with fleet/equipment and our community outreach programs.

The police department spends the following amounts on ACAP as needed:

- Ms. Love's personnel expenses to manage the program for the remainder of the FY 2017 are approximately \$3,000; a full year is estimated to be \$12,000.
- Approximately \$100 for CJIS finger printing (Background checks are very brief with little manpower needed). The main goal for the background is to certify the person as CJIS certified and that there are no disqualifying events such as a felony conviction etc. Most of this background check is completed online through services provided by the Town or department.
- The department spends \$10 per applicant on fingerprinting.
- The online CJIS test through the state is free and done on the volunteer's own time.
- Approximately \$100 for equipment (shirts, cap and jacket/flashlight).
- Fuel for the ACAP vehicle (a retired Dodge Durango) is not included

FY 2018 total estimated costs for ACAP are \$16,500, which includes repairing a current Town owned vehicle (\$3,500).

RECOMMENDATION:

Staff requests direction from Council.

Attachments

Presentation - Addison Citizens Assisting Police (ACAP)

Addison Citizens Assisting Police

ACAP Program Overview
August 22, 2017



ADDISON

Agenda



ADDISON

- Historical Overview
- Volunteer Qualifications
- Current Structure & Duties
- Financial Obligation

Historical Overview

A blue circular logo with the word "ADDISON" in white capital letters.

- The Addison Citizens Assisting Police (ACAP) program began in early 2012 as a means for the community to volunteer with the department.
- The program limited its participants to non-enforcement duties within the community such as park patrols, issuing crime risks (an itemized checklist of observable items on a property to deter crime), checking close patrols and general patrols in the business and residential areas. Initially volunteers were given a minimum number of hours (100 annually) they were required to work, but that requirement waived over the years as the program matured.
- All ACAP members are certified to work in a law enforcement environment by completing a Criminal Justice Information Security (CJIS) audit through the police department. This process includes a background check, finger printing, security addendum and completion of ACAP training program.

3

Volunteer Qualifications

A blue circular logo with the word "ADDISON" in white capital letters.

- Must hold a valid Texas Driver's License and Insurance
- Must live or work in Addison, Texas or be a registered Addison Advocate
- Must be at least 21 years of age
- Have no felony convictions
- Have no DWI/DUI convictions in the past ten years
- Have no more than one Class C misdemeanor conviction within the past three years. Driving convictions will be evaluated on a case-by-case basis
- Graduate of the Town's Citizens Academy preferred
- Excellent driving record
- Town physician verifying that the applicant can repeatedly lift and carry 25lbs and work in extremes temperature for up to 4 hours

4

Current Structure



- To date, we have nine active ACAP volunteers managed by Ms. Stacy Love under the direction of a police patrol lieutenant. The Addison Circle Storefront is the base of operations containing their equipment and the ACAP vehicle. Under Ms. Love, ACAP has preapproved shift assignments detailing the days, hours and tasks for each shift.

Annual Volunteer Hours

Year	# of hours
2014	167.75
2015	373.25
2016	262.75
Average	267.92

5

Current Duties



- Very few changes have been made since the inception of the program in 2012. Patrolling the business and residential districts, park checks, vacation watch (close patrols) are still the predominant tasks; we added helping in police administration with various tasks (such as scanning records etc.) in 2016.
- Other opportunities for ACAP include crime prevention inspections for residents, assisting our Quartermaster with fleet/equipment and within our community outreach programs.

6

Financial Obligations

A blue circular logo with the word "ADDISON" in white capital letters.

The police department spends the following amounts on ACAP as needed:

- Ms. Love's personnel expenses to manage the program for the remainder of the FY 2017 are approximately \$3,000; a full year is estimated to be \$12,000
- Approximately \$100 for CJIS finger printing
- \$10 per applicant on fingerprinting
- Approximately \$100 for equipment (shirts, cap and jacket/flashlight)
- Fuel for the ACAP vehicle (a retired Dodge Durango) is not included

FY2018 total estimated costs for ACAP are \$16,500 which includes repairing a current Town owned vehicle (\$3,500).

7

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: Infrastructure- Development Services

AGENDA CAPTION:

Present, Discuss, And Consider Action On **An Ordinance Amending Chapter 70 Of The Code Of Ordinances Related To The Management Of The Town Of Addison Right-Of-Way; Establishing Regulations And Fees For Permitting, Construction, Placement, And Excavation In Rights-Of-Way And Public Easements; Providing For The Regulation Of Network Nodes And Node Support Poles Pursuant To Chapter 284 Of The Texas Local Government Code; Adopting A Wireless Services Design Manual; Designating Underground Districts; Designating Design Districts; And Providing Restrictions On Placement Of Network Nodes And Node Support Poles In Municipal Parks, Residential Areas, Underground Districts And Design Districts.**

BACKGROUND:

During the 2017 Regular Legislative Session, the Texas Legislature passed Senate Bill 1004. This bill created Chapter 284 in the Texas Local Government Code to regulate the placement of wireless network infrastructure within public rights-of-way. Chapter 284 allows wireless network providers such as AT&T, Verizon and Sprint to place cellular network antennas (known as network nodes), support poles and other related infrastructure in the right-of-way and on municipal streetlight and signal poles with limited municipal oversight or regulation.

During the August 8, 2017 Work Session to discuss Chapter 284, the Council affirmed the following goals in reacting to Chapter 284:

- Respond to regulatory changes in Chapter 284
- Protect safety, health and public welfare
- Limit the impact of wireless telecommunications infrastructure where the Town has invested in the aesthetics of the area

In response, staff and the City Attorney's Office drafted the attached new Right-of-Way Management Ordinance. This ordinance updates many of the Town's requirements for permitting, construction, infrastructure placement and excavation within the public right-of-way that are in the current municipal code. The ordinance addresses technical design, construction and safety standards when working in the right-of-way; provides indemnification and other liability requirements for right-of-way users; and establishes approval processes and fees. These ordinance changes will impact all right-of-way users, not just those falling under Chapter 284.

With regard to Chapter 284 specifically, the Right-of-Way Management Ordinance has been drafted to mirror the requirements of the statute. In addition to the provisions of the Right-of-Way Management Ordinance, Chapter 284 allows municipalities the following mechanisms for regulating network providers:

- Adoption of a Design Manual
- Pole Attachment Agreements
- Designating Underground and Design Districts

Design Manual

A design manual may be used to address technical requirements for permitting and regulating the placement of wireless network infrastructure within the right-of-way. The proposed manual is attached to the Right-of-Way Management Ordinance as Exhibit A. Going forward, the ordinance provides that the Director of Infrastructure and Development Services can administratively amend the design manual as necessary.

Pole Attachment Agreement

Pole attachment agreements can be used to govern the placement of wireless network infrastructure on poles owned by the Town. The agreement itself is not included as part of this ordinance, however, this ordinance authorizes the City Manager to execute such agreements.

Underground and Design Districts

Chapter 284 states that network providers must comply with non-discriminatory requirements to underground utilities in the right-of-way. Additionally, cities may establish design districts where they have installed decorative poles. Within these design districts, cities may require concealment measures for wireless network infrastructure in order to reduce their visual impact.

Per Council's direction, the residential areas where utilities have been placed underground or that have decorative poles have been added to the proposed underground and design districts. A comprehensive listing of the underground and design districts can be found in Section 70-94 of the attached ordinance. Additionally, they are shown on the Wireless Services Location Map attached to the Design Manual.

In Underground Districts, the ordinance prohibits the placement of new utility support poles for electrical distribution lines with 60,000 volts and less and all communication utilities, such as wireless network providers, unless otherwise provided by law. Additionally, no new pole mounted infrastructure will be allowed.

In Design Districts, the ordinance prohibits the placement of network nodes on decorative poles, unless they can be installed in a way to cause no change

in the outward appearance of the pole. Network nodes and node support poles that are not on a decorative pole, must be concealed in a manner approved by the Town.

Based on Council's direction, the ordinance does not address the formal designation of any municipal parks. The Ordinance does, however, include regulations regarding the placement of wireless network infrastructure within parks, should parks be designated in the future.

Following the adoption of the new Right-of-Way Management Ordinance, staff will prepare applications and other required documentation, and finalize administrative processes for accepting applications from wireless network providers in accordance with Chapter 284 prior to the statute's effective date of September 1, 2017.

RECOMMENDATION:

Administration recommends approval.

Attachments

Ordinance - Right-Of-Way Management

ORDINANCE NO. 017-_____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, REPEALING ORDINANCE NO. 000-005; ADOPTING ARTICLE III (RIGHT-OF-WAY MANAGEMENT) OF CHAPTER 70 OF THE CODE OF ORDINANCES RELATED TO THE MANAGEMENT OF THE TOWN OF ADDISON RIGHT-OF-WAY; ESTABLISHING REGULATIONS FOR PERMITTING, CONSTRUCTION, PLACEMENT, AND EXCAVATION IN RIGHTS-OF-WAY AND PUBLIC EASEMENTS; PROVIDING FOR THE REGULATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; ADOPTING A WIRELESS SERVICE DESIGN MANUAL; PROVIDING TOWN PROCEDURES FOR APPLICATIONS FOR PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; PROVIDING APPLICATION FEES AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL RATES; DESIGNATING UNDERGROUND DISTRICTS; DESIGNATING DESIGN DISTRICTS; PROVIDING RESTRICTIONS ON PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN MUNICIPAL PARKS, RESIDENTIAL AREAS, UNDERGROUND DISTRICTS AND DESIGN DISTRICTS; PROVIDING INDEMNITY FOR THE TOWN; PROVIDING REQUIREMENTS RELATIVE TO REMOVAL, REPLACEMENT, MAINTENANCE AND REPAIR; PROVIDING FOR INSTALLATION AND INSPECTIONS; PROVIDING FOR THE RENUMBERING OF ARTICLES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING FOR A PENALTY OF FINE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Addison is a Home-Rule Municipality located in Dallas County created in accordance with provisions of the Texas Local Government Code and operating pursuant to the legislation of the State of Texas (“Town”); and

WHEREAS, the state has delegated to each municipality the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety and welfare of the public, subject to state law; and

WHEREAS, the Town is charged with maintaining control of and access to the right-of-way in order to protect the public health, safety, and welfare; and

WHEREAS, the City Council of the Town (the “City Council”) has determined that excavations in Town streets may significantly interfere with the public use of the streets and resulting in negative impact to public safety, air quality, level of service on streets and sidewalks, and aesthetics of the community; and

WHEREAS, the City Council finds excavations in paved streets significantly degrades and shortens the life of the surface of the streets, and increase the frequency and cost to the public of requisite resurfacing, maintenance, and repair; and

WHEREAS, the City Council has determined that substantial public funds have been invested to build, maintain and repair the Town streets and utilities and the Town holds these streets and utilities as an asset in trust for its citizens; and

WHEREAS, the City Council has determined that substantial public funds have been invested to improve the aesthetics and overall development scheme within the Town, including but not limited to the undergrounding of utilities; and

WHEREAS, it is desirable to adopt regulations to protect the structural integrity of Town streets and safeguard the value of the public investment of the benefit of Town residents by providing incentives to reduce the number of excavations in Town streets, which will also reduce the number of service disruptions and excavations; and

WHEREAS, the City Council has determined that adoption of a right-of-way ordinance will comply with and promote the regulations in Chapter 283 of the Texas Local Government Code pertaining to Certificated Telecommunications Providers as well as the Texas Utilities Code; and

WHEREAS, the Texas State Legislature has enacted S.B. No. 1004 relating to the deployment of network nodes in the public right-of-way and has amended Subtitle A, Title 9, Local Government Code by adding Chapter 284, to take effect on September 1, 2017; and

WHEREAS, municipalities retain the authority to manage the public right-of-way to ensure the health, safety and welfare of the public; and

WHEREAS, it is desirable to adopt regulations to protect the structural integrity of town streets and safeguard the value of public infrastructure; and

WHEREAS, the Town reasonably anticipates that the actual and direct cost of processing permit applications for network providers will exceed \$500 per application covering up to five network nodes, \$250 for each additional network node per application, and \$1000 per application for each pole, however, city staff will review costs as the process is undertaken and will determine the actual and direct costs based upon actual experience and revise application fees if required; and

WHEREAS, as expressly allowed by Section 284.108 of Chapter 284 and pursuant to its police power authority reserved in Sec. 284.301 of Chapter 284, the Town has drafted a *Wireless Services Design Manual* in order to meet its fiduciary duty to the citizens of the Town, and to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment; and

WHEREAS, the City Council desires to regulate the installation of network nodes and network support poles pursuant to Chapter 284 in a way that is fair, reasonable and nondiscriminatory; and

WHEREAS, the City Council having reviewed the regulations contained herein has determined that the adoption of this ordinance serves the public health, safety and welfare.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated as if fully set forth herein.

SECTION 2: Ordinance Nos. 000-005 Repealed. Addison Ordinance No. 000-005 is repealed in its entirety and replaced by this Ordinance. The effective date of the repeal discussed in this Section shall not occur until the effective date of this Ordinance at which time Ordinance No. 000-005 shall be repealed. Such repeal shall not abate any pending prosecution and/or lawsuit or prevent any prosecution and/or lawsuit from being commenced for any violation of Ordinance No. 000-005 occurring before the effective date of this Ordinance.

SECTION 2: Adoption of Article III (Right of Way Management) of Chapter 70 (Streets, Sidewalks and Other Public Places) of the Code of Ordinances of the Town of Addison. Article III (Right-of-Way Management) of Chapter 70 (Streets, Sidewalks and other Public Places) is hereby adopted as follows:

CHAPTER 70 STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES

...

ARTICLE III RIGHT-OF-WAY MANAGEMENT

DIVISION 1 GENERALLY

Sec. 70-35 Administration; Ordinance Construction; Purpose; Objectives

- (a) Administration. This article shall be known and cited as the Right-of-Way Management Ordinance for the Town of Addison, Texas. The City Manager appoints the Director of Infrastructure and Development Services, or his/her designee, as the principal Town official responsible for the administration of the right-of-way, right-of-way permits, the regulation of same and ordinances related thereto. The Director may delegate any or all of the duties hereunder. The Director shall have the duties, responsibilities and authority as specified herein.
- (b) Construction. This article shall be construed under and in accordance with the laws of the State of Texas and the City Charter and Code of Ordinances to the extent that such Charter and Code of Ordinances are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas. All obligations of the parties hereunder are performable in Dallas County.

- (c) Purpose. This article provides principles and procedures for the placement of structures and facilities, construction, excavation, encroachments, and work activities within or upon any public right-of-way and to protect the integrity of the road and Town utility system. To achieve these purposes, it is necessary to require permits of private users of the public rights-of-way, except as prohibited by law, and to establish permit procedures, rules, and regulations for work done within or upon the public rights-of-way.
- (d) Objectives. Public and private uses of public rights-of-way for location of facilities employed in the provision of public services should, in the interests of the general welfare, be accommodated; however, the Town must insure that the primary purpose of the rights-of-way, safe passage of pedestrian and vehicular traffic, is maintained to the greatest extent possible. In addition, the value of other public and private installations, roadways, the Town utility system, facilities and properties should be protected, competing uses must be reconciled, and the public safety preserved. The use of the public right-of-way by persons, agencies, network providers, and public infrastructure contractors is secondary to these public objectives and the movement of traffic. This article is intended to strike a balance between the public need for efficient, safe transportation routes and the use of public rights-of-way for location of facilities by public and private entities. The article thus has several objectives:
1. To insure the public safety is maintained and that public inconvenience is minimized.
 2. To protect the Town's infrastructure investment by establishing repair standards for the pavement, facilities, and property in the public rights-of-way when work is accomplished.
 3. To facilitate work within the public rights-of-way through the standardization of regulations.
 4. To maintain an efficient and applicable permitting process.
 5. To conserve and fairly apportion the limited physical capacity of the public rights-of-way held in public trust by the Town.
 6. To preserve the substantial effort on the part of the Town to enhance the aesthetic appearance of the public right-of-way.
 7. To establish a public policy for enabling the Town to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.
 8. To promote cooperation among the agencies, network providers, and public infrastructure contractors (as defined herein) and the Town in the occupation of the public rights-of-way, and work therein, in order to: (i) eliminate duplication that is wasteful, unnecessary or unsightly; (ii) lower the agencies, network provider's, public infrastructure contractors', if possible, and the Town's costs of providing services to the public; and (iii) preserve the physical integrity of the streets and highways by minimizing street cuts.
 9. To assure that the Town can continue to fairly and responsibly protect the public health, safety and welfare.

Sec. 70-36 Definitions

The following definitions apply in this article, except as otherwise specifically noted otherwise. The terms, phrases, words, abbreviations and their derivations shall have the same meanings herein. When not inconsistent with the context words used in the present tense include the future; words in plural number include the singular number, and words in the singular include the plural. The word “shall” is mandatory and not merely permissive.

Abandoned facilities means facilities no longer in service or physically disconnected from the operating facilities, or from any other facilities, or from any other facilities that are in use or that still carry service.

Administration fee or fee means the fee charged by the Town to recover its costs incurred for right-of-way management; including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration improvements; determining the adequacy of the right-of-way restoration; revoking right-of-way permits and other costs the Town may incur in implementing the provisions of this article.

Applicant means an owner or authorized agent of an owner, who submits an application for a permit under the provisions of this article.

Area of influence means that area around a utility excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration due to the trench excavation.

Backfill means the following:

- (1) The placement of new dirt, fill, or other material to refill an excavation; or
- (2) The return of excavated dirt, fill or other material to an excavation.

Certificated Telecommunications Provider or “CTP” means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Texas Public Utility Commission or “PUC” to offer local exchange telephone service or a person who provides voice service as defined by V.T.C.A., Local Government Code Chapter 283 or “the Act”.

Compaction means consolidating backfill material in a trench to prevent future settlement.

Construction means boring, the breaking of pavement, or the installation, modification, upgrade, maintenance, removal, or similar activities, within the right-of-way. The definition includes, but is not limited to, providing primary service, restoration, or maintenance of existing facilities within the right-of-way.

Contractor means any public or private person, subcontractor or organization, other than the Town.

Day means business day unless otherwise specified.

Department means the Town department of infrastructure and development services or a successor department that is responsible for management of the right-of-way and roadway infrastructure.

Director means the Director of Infrastructure and Development Services of the Town of Addison or his/her designee.

Emergency means any event that may threaten public health or safety, including, but not limited to, damaged or leaking water or gas conduit systems, damaged, plugged, or leaking sewer or storm drain conduit systems, damaged facilities, downed aerial facilities, or service outages whether to one customer or an area of the city.

Emergency operations means as those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address or prevent an immediate service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergency operations.

Excavation means any activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the right-of-way and does not include landscaping activity unless the activity removes or disturbs the paved portion of the right-of-way.

Facilities means the equipment, and property, including but not limited to, lines, poles, mains, pipes, conduits, ducts, cables, valves, manholes, handholes and wires located under, on, or above the surface of the ground within the right-of-way, and related facilities and equipment used or useful for the provision of utility services.

FCC means the Federal Communications Commission.

Governing body means the Mayor and the City Council of the Town of Addison, Texas.

Governmental entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the state or of any other state of the United States and any agency or instrumentality of the state or of any other state of the United States.

Holiday means days in which Town offices are closed in observance of a holiday.

Main line shall refer to lines other than service connections used to convey the right-of-way user's product.

Major project means any project, which includes 300 or more linear feet of excavation or any excavation under pavement.

Master Transportation Plan (MTP) means the plan adopting transportation goals and designating thoroughfares and right-of-way standards for the Town of Addison, as it currently exists or is hereinafter amended.

Network Provider means:

- (A) a wireless service provider; or
- (B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
 - (i) Network Nodes; or
 - (ii) Node Support Poles or any other structure that supports or is capable of supporting a network node.

Pavement means streets containing Portland cement, asphalt, brick or other rigid or semi-rigid material that covers the surface of a street and their underlying subgrade and base.

Permit means a permit issued under this article authorizing excavation in the right-of-way.

Permittee means any person or right-of-way user to whom a permit is issued to excavate a right-of-way.

Perpendicular excavations means any trench with a centerline that when projected toward the centerline of the street, the two lines intersect at an angle of 90 degrees.

Person means any person, company, partnership, contractor, subcontractor, agency or other public or private entity, excepting the Town.

Public inconvenience penalty means a penalty assessed to the right-of-way user who denies the public the use of public property for a time period greater than allowed by this article.

PUCT means the Public Utility Commission of Texas.

Registration means the annual application process of the right-of-way user to use any portion of the right-of-way.

Registration certificate means the document provided by the Town, annually, upon approval of the application for registration.

Repair means the temporary or permanent construction work necessary to make the right-of-way useable.

Repair area means that area around excavation where the pavement and subgrade is impacted by an excavation.

Restoration means the process by which an excavated right-of-way and surrounding area, including, but not limited to, pavement and foundation structures, ground cover, landscaping, and monuments are returned to the same condition, or better than that which existed before the commencement of the work.

Resurfacing means any repaving, overlay, seal or reconstruction which creates a new pavement surface over the entire width of the street, excluding crack seals and localized base and pavement repairs.

Right-of-way or public right-of-way means the surface of, and the space above and below, any street, road, highway, freeway, tollway, lane, path, drainageway, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, fire lane or other easement now or hereafter held by the Town or over which the Town exercises any rights of management or control and shall include, but not be limited to, all easements now held, or hereafter held, by the Town, but shall specifically exclude private property.

Director means the Town of Addison Director of Infrastructure and Development Services, or his/her designee.

Right-of-way user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or installing, constructing, maintaining, or repairing facilities thereon, including, but not limited to, landowners and service providers.

Routine service operation means a work activity that makes no material change to the facilities and does not disrupt traffic.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

Service connection means the line that serves no more than two individual customers or two meter banks.

Street means the paved portion of the right-of-way, whether fee or easement, that has been constructed, reconstructed, or resurfaced with concrete or asphalt or some other surface.

Surface mounted markers means any sign, post or other marker, which rises above the surface of the ground to show the location of an underground utility.

Thoroughfare means all roadways and streets classified on the Town's Master Transportation Plan, including but not limited to as a toll road, principle arterial, minor arterial, commercial collector, residential collector and local.

TMUTCD means the Texas Manual on Uniform Traffic Control Devices, as it exists or may be amended.

Town means the Town of Addison, Texas and the Town's officers and employees.

Town Construction Specifications means the set of documents that provide engineering design and construction standards for Town owned facilities as they currently exist or are hereinafter amended.

Town project means the construction, location, maintenance, relocation, alteration, improvement, repair, removal or other work performed by the Town, or its designee, in the public right-of-way or on any Town utilities or Town facilities.

Town utilities means any water, sewer or drainage line or services owned and operated by the Town.

Trench means any excavation deeper than 12 inches. This shall include linear trenches, holes, pits and etc.

Underground Facility Damage Protection Safety Act means the V.T.C.A., Utilities Code sec. 251.001 et seq. as it exists or may be amended.

Utility means any privately or publicly owned entity which uses right-of-way to furnish the public any general public service, including, without limitation, sanitary sewer, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the right-of-way. Poles are regulated herein only as specifically set forth in this article.

White lining means marking the excavation site with white washable marking paint or flags prior to requesting a utility location in order to further identify the site.

Sec. 70-37 Police Powers

A person's, utility's, right-of-way user's, network provider's, or public infrastructure contractor's rights hereunder are subject to the police power of the Town of Addison which includes the power to adopt and enforce ordinances, including amendments to this article, necessary for the safety, health, and welfare of the public. Agencies, network providers, and public infrastructure contractors shall comply with all applicable laws and ordinances enacted, or hereafter enacted, by the Town of Addison or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town of Addison reserves the right to exercise its police powers, notwithstanding anything in this article or a permit to the contrary. Any conflict between the provisions of this article or a permit and any other present or future lawful exercise of the Town of Addison's police powers shall be resolved in favor of the latter.

Sec. 70-38 Utility coordinator; Field utility coordination; Field standards; Excavation standards

- (a) Utility coordinator. Each utility and right-of-way user shall name a utility coordinator who shall be the representative and point of contact for all communications from the Town and who shall meet with the Director when so requested.
- (b) Field utility coordination. The right-of-way user shall notify the department at each of the following times during a project:
 - 1. Forty-eight hours before the start of construction;
 - 2. Upon completion of the initial backfill; and
 - 3. Upon completion of the project.
- (c) Field standards.
 - 1. The right-of-way user shall make a request for a utility locate in compliance with the Underground Facility Damage Prevention and Safety Act.
 - 2. Markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of “non-washable” markers is prohibited.
 - 3. Compliance with the Texas Utilities Code, as amended, is required at all times.
 - 4. All barricades, plates, cones, traffic directional equipment and all other traffic control devices owned, leased or used by the right-of-way user and used on or near any excavation shall be clearly and visibly marked with the name of the permittee and/or right-of-way user or subcontractor, as applicable, at all times such equipment is used on or near the right-of-way. An exception to the marking requirement may be made in the sole discretion of the Director in the event the traffic control equipment is not owned by the permittee or right-of-way user.
- (d) Excavation standards. When conducting street and sidewalk excavations, the following industry standards shall apply:
 - 1. The plans by a permittee under this article for all trenches whose depth will equal or will exceed five feet shall include detailed plans and specifications showing a trench safety system which meets occupational safety and health administration standards.
 - 2. The permittee and a registered professional engineer shall certify that the trench safety system set forth on the submitted plan meets and complies with all occupational safety and health administration standards.
 - 3. The permittee and the engineer shall indemnify and hold the Town harmless from any damages or injuries resulting from a failure of the plan or its implementation to meet occupational safety and health administration standards.
 - 4. It shall be unlawful for the permittee under this article to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment or other device having the characteristics of an attractive nuisance likely to attract children and be hazardous to their safety or health.

Sec. 70-39 Maps; Records of registrants

- (a) Maps. Within 30 days of passage of this article, each right-of-way user shall provide the Town an accurate map of their service area. The map shall be in electronic format overlaid over the Dallas County and North Central Texas Council of Governments digital map, as applicable. In dual coverage areas, the Town may request additional information to enable identification of right-of-way users.

Each right-of-way user must maintain accurate maps and records of its facilities. If available, the Town's road network may be provided in digital format upon request. The right-of-way user is encouraged to maintain their system maps geo-referenced to the Town's geodetic network, which is on the Dallas County digital map or the North Central Texas Council of Governments digital map, as applicable. The map should include true bearings and distances to the nearest established street lines and official monuments, which shall be accurately described on the map. The right-of-way user will provide the Town with digital information within 90 days of a request for maps from the Town for any user with less than 50 miles of utilities within the Town. All other right-of-way users shall provide the digital information within one year of the request. Thereafter, the data is to be provided to the Town on an annual basis by January 1. The acceptable digital data formats for GIS deliverables are, in order of preference; fire geodatabase, shapefile or ArcGIS feature services and CAD, provided that the data adhere to the Town of Addison requirements (when applicable) regarding the coordinate system, metadata, feature attribution and data integrity.

- (b) Records of registrants. If the maps and records submitted in response to any request by or requirement of the Town include information expressly designated by the right-of-way user as a trade secret or other confidential information protected from disclosure by state law, the Town and its agents, employees, or other representatives may not disclose that information to the public without the consent of the right-of-way user, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a right-of-way user to designate all matters in its maps and records as confidential or as trade secrets.

Sec. 70-40 Notice

Notice for purposes of this article shall be made to the Town via electronic message (e-mail), overnight courier (generally used carrier with tracing available) or hand delivery with signed receipt, or United States mail return receipt required.

Sec. 70-41 Permit required; Registration of utility or right-of-way user

- (a) Permit required. Nothing in this section relieves a right-of-way user and/or utility from obtaining a permit under this article to perform work, including construction, in the right-of-way.

(b) Registration. In order to protect the public health, safety, and welfare, a utility or right-of-way maintaining or operating existing facilities in the right-of-way must register with the Director in accordance with the following requirements:

1. The registration must be on a form furnished by the Director and made in the name of the utility or right-of-way user that owns the facilities.
2. Registration expires December 31 of the following year after the first registration occurs. If the utility or right-of-way user fails to renew registration by that date, the Town will send by certified mail a notice of noncompliance to the address listed on the registration. If the utility or right-of-way user fails to renew registration within 30 calendar days after the date of sending the notification, the facilities of the utility or right-of-way user will be deemed to have been legally abandoned, and the Town may exercise any rights available at law and in equity.
3. If information provided as part of the registration changes, the utility or right-of-way user must inform the Director, in writing, not more than 30 days after the date the change occurs.
4. The utility or right-of-way user shall also include the following registration:
 - i. The name of the utility or right-of-way user using the right-of-way, including any business name, assumed name, or trade name the entity operates under or has operated under in the Town within the past five years.
 - ii. If the utility is a CTP, the certificate number issued by the Texas Public Utility Commission.
 - iii. The ordinance number of any franchise or license issued by the Town that authorizes the utility or right-of-way user to use the right-of-way.
 - iv. The names, addresses, email addresses and telephone numbers of at least two persons who will be general, day-to-day contacts for the utility or right-of-way user. At least one of the addresses must be within the Dallas/Fort Worth metropolitan area.
 - v. The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the utility or right-of-way user.
 - vi. The name, address and telephone number of any contractor or subcontractor, who will be working in the right-of-way on behalf of the utility or right-of-way user. This list may be amended as needed; however, no work shall be performed in the right-of-way by a contractor or subcontractor that is not on the list, regardless of whether a permit is required.
 - vii. The names and telephone numbers of at least two persons serving as emergency contacts who can be reached by telephone 24 hours a day, seven days a week. The telephone numbers should be accessible without the Town having to pay long distance telephone or toll charge.
 - viii. Proof of existing insurance that complies with this Ordinance.

Upon completion of registration, the Town will provide the utility or right-of-way user a registration certificate valid until the end of the calendar year during which the registration was completed. The utility or right-of-way user may make as many photocopies of the registration

certificate as necessary. The utility or right-of-way user is responsible for ensuring that all contractors, listed in accordance with subsection (b)(4)(vi) above have a copy of the registration certificate on site when work is being conducted under the provisions of the registration certificate.

It is unlawful for any person, its agents, servants or employees to perform construction in the right-of-way without first having made either application and obtained a permit therefor or have in possession a valid registration certificate.

Sec. 70-42 Traffic handling training

The right-of-way user is responsible for work zone safety including, but not limited to, traffic control through the designated traffic control representative. The representative is responsible for compliance with the TMUTCD and the traffic control plan (if required) at all work zone sites. The traffic control representative shall ensure employees on the job site have adequate training.

Sec. 70-43 Reporting obligations

All right-of-way users shall, upon request, provide proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any governmental entity, including, but not limited to, the Town, state, or federal government, or railroad or pipeline company, including a description of the right-of-way user's intended use of the right-of-way, information sufficient to determine whether the right-of-way user is subject to franchising or licensing by the Town, and information to determine whether the right-of-way user has applied for and received any certificate of authority required by the PUCT. The information provided shall be sufficient enough to determine whether the right-of-way user has applied for and received any permit or other approvals required by the FCC. Right-of-way user shall provide all such other information as may be reasonably required by the Town to complete the registration statement.

Sec. 70-44 Surface mounted markers

Where surface mounted markers are needed, curb mounted medallions shall be used whenever possible.

Sec. 70-45 Relocation of facilities for Town projects and public improvements

- (a) In the exercise of governmental functions, the Town has first priority over all uses of the right-of-way. The Town reserves the right to, among other things, lay water, sewer, drainage, and other pipelines or cables and conduits, and to do underground and overhead work, and attachments, restructuring, or changes in street facilities in across, along, over, or under a public street, alley or right-of-way occupied by an agency or right-of-way user, and to change the curb, sidewalks, or the grade of streets.
- (b) The right-of-way user must relocate its facilities, at its own expense and in accordance with this Ordinance, prior to the start of construction of a Town project. Failure to comply

with this provision shall subject the right-of-way user to the enforcement provisions contained herein.

- (c) A permit will be required when making facility adjustments in preparation for Town projects.

Sec. 70-46 Right-of-Way permit required

- (a) Right-of-Way permit required. It is unlawful for any person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, tunnel, excavate or close lanes on a thoroughfare without first having made application and obtained a permit therefor in compliance with the Town Construction Specifications, promulgated and amended by the Director, except for as allowed by this section. It is unlawful for any person, its agents, servants or employees to make or cause to be made any excavation in or under the surface of any right-of-way for the installation, repair or removal of any facilities, or for any other purpose without first obtaining from the Director a permit in compliance with this article.
1. Before issuing a permit, the Director shall have been provided a written application, on a form furnished by the Director, setting forth the name and residence or business address of the applicant; the location and approximate area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the excavation. The application form shall include plans prepared in accordance with Town specifications. Plans shall be drawn at a reasonable scale that legibly and accurately show all existing improvements and proposed work. All proposed work must be shown in heavy or bold type lines and fonts. If proposed work is in phases or part of another overall drawing, show all existing and future work in lighter or faded out lines and fonts. If right-of-way user cannot show distinctive line weights, the plans shall clearly label the above information using text. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the state.
 2. At the time the permit is issued, the applicant shall pay a nonrefundable permit application fee in an amount as provided for in this Ordinance.
 3. The proposed location, depth and other characteristics of any facilities for which the permit is issued shall be subject to approval of the Director, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this article.
 4. No fee or requirement authorized or imposed pursuant to this article shall be construed to affect or alter in any way any obligation of public and/or private utilities with facilities installed in any right-of-way to relocate the facilities, at no cost to the Town, subject to state law, if applicable, in the event that relocation is required by the Town to accommodate a proper governmental use of the right-of-way.
 5. Combinations of permits shall be permitted at the sole discretion of the Director. Fees shall be assessed based on the excavations permitted.

6. Subdivision monuments, historical markers, and any other signs or structures with foundations in the right-of-way, are subject to this article.
7. Irrigation system installation requires a permit per existing Town codes.

Sec. 70-47 Exceptions to required permit

(a) Exceptions to required permit. The Director reserves the right in his/her discretion to require a right-of-way permit on service connections. Unless otherwise required by the Director, service connections do not require a right-of-way permit if all of the following conditions are met:

1. The service connection excavation shall not exceed four feet inside the right-of-way to property line;
2. All excavation shall be in accordance with service connection drawings;
3. The address for the service connection is on the Town provided form, which is submitted to the Director via e-mail. Work shall not begin until the electronic form is transmitted to the Director;
4. The excavation required is less than 12 inches in depth;
5. The excavation is no wider than two inches or is hand dug; and
6. The service connection does not require boring.

Sec. 70-48 Permit application; Issuance of permit

(a) Permit application.

1. Application for a permit shall be addressed to the Director and made on a form furnished for that purpose, stating the extent, dimensions, character and purpose of the cut or excavation to be made, the location, by street and number if possible, where the work is to be done, and the time in which it is to be completed. The application form shall be accompanied by maps of the existing facilities in the area, to the extent available, and the location of the proposed facilities, methodology of construction, and proposed start and completion dates. When the work includes excavating, which will exceed five feet in depth, a trench safety design sealed by a licensed professional engineer shall also accompany the application, unless otherwise provided by law.
2. A permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that which is specified in the permit must apply for and receive a new right-of-way permit.
3. Fees shall apply to all right-of-way users unless governed by an existing agreement with the Town. Applicants may apply jointly for permits to excavate the right-of-way at the same time and place. Applicants who apply jointly for a right-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay. The Town will recognize only one point of contact.

4. Except as otherwise provided by Division 6 of this article, permits will typically be issued or denied within ten (10) days of the Town receiving a complete application. Permits shall be valid for the dates specified in the permit. The applicant may request but is not guaranteed the permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. The Town may approve or deny the application for such extended permit period. No permittee may commence work before the permit start date and, except as provided herein, no permittee may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and may receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the Town prior to the permit end date.
5. The application is not complete unless it contains all information required by this Ordinance, requested on the application form, and required by any supplemental list of required documentation provided by the Town with the application form.
6. Applicants are encouraged to request a pre-submission meeting for large projects.

(b) Issuance of permit

1. Every person making application for a permit in accordance with the provisions of this article, and having complied with such provisions, shall be entitled thereto, and, upon filing such application with the Director, it shall be his duty to issue the permit, when the provisions of this article have been complied with.
2. Upon receiving a written application for a permit and a plan prepared in accordance with the Town specifications, the Director's designee shall set forth all requirements, approve or disapprove the application, sign and return it to applicant. Excepting only emergency excavations, at least forty-eight (48) hours prior to the start of work, the applicant shall notify the Director the date the work will commence when traffic control devices are necessary on a thoroughfare.
3. No permit shall be transferable. A permit shall be void unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.
4. Each permit shall state a time period for completion of all the work to be done hereunder. The Director may, in his sole discretion, grant extensions of time.
5. No person in violation of any requirement of this article shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued a permit on the person's behalf, until the outstanding violation is/are corrected or a plan for correction is approved by the Director. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the Town at law or equity.
6. No work shall be done under any permit issued under this article except as stated in the permit. If the permit is allowed to expire, the right-of-way user shall procure a new permit, paying the applicable fee, prior to proceeding with any such work.

Sec. 70-49 Posting of signs

The right-of-way user and contractor (if used) shall be identified with three feet by three feet information signs on all work requiring a permit. The signs shall state the name and phone number of the right-of-way user and contractor (if used). The signs shall be placed in the right-of-way on each approach to the location where construction is occurring from the time of the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring.

Sec. 70-50 Permit and identification required; Protection of property and interference; Town installations or improvements; Conform utilities

- (a) Permit and identification required. Any right-of-way user engaged in making or backfilling any excavation in any right-of-way shall, at all times while such work is in progress, keep at the job location the permit, or a copy thereof, and shall provide of the same, when requested by any authorized Town employee. At all times while the work is in progress, the right-of-way user shall also maintain, at the job location, a sign, barricade or other device bearing the right-of-way user's name.
- (b) Protection of property and interference. The right-of-way user shall be responsible for identifying both public and private utilities within their work area. Those utilities shall be clearly marked prior to any excavation. The right-of-way user shall protect from damage, utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, irrigation, sidewalks, streets, signs, street lights, or other property at, near or encountered in its work. The right-of-way user shall determine the boundary of the right-of-way.

All excavations and other construction in the streets shall be conducted so as to interfere as little as practicable with the use of right-of-way and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the Town pursuant to the policy and regulatory powers of the Town necessary to provide for public convenience. The right-of-way user shall not trespass upon private property. The right-of-way user shall determine the boundary between right-of-way and private property and place stakes/markers indicating the boundary to remain in place for the duration of the work.

All transmission and distribution structures, lines, equipment and facilities erected by a right-of-way user within the Town shall be so located as to cause minimum interference with the proper use of the right-of-way, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets. No pole may be placed in an area prohibited by another section of this article or which interferes with the public's unimpeded use of the right-of-way.

- (c) Town installations or improvements. The Town reserves the right to among others, lay, and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and facilities, as well as drainage pipes, and channels and streets, and to perform, and allow to be performed, any underground and overhead installation or improvement that may be

deemed necessary or proper by the governing body of the Town, in, across, along, over or under any right-of-way or public place occupied by a right-of-way user and to change any curb or sidewalk or the grade of any street and to maintain all of the Town's facilities. In allowing such work to be performed by others, the Town shall not be liable to a right-of-way user for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a right-of-way user by such third party.

- (d) Conform facilities. If the Town requires a right-of-way user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the Town, to use, or to use with greater convenience, any right-of-way or public place, the right-of-way user shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a right-of-way user for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of a right-of-way user's facilities; provided, however, that the Town shall never be liable for such reimbursement.

Sec. 70-51 Hours of operation for nonemergency work

All work shall be performed during normal business hours. No work shall be performed on holidays. A right-of-way user may work outside of the normal business hours' subject to the approval of the Director and a notification no later than 72 hours prior to which the work is to be performed.

Sec. 70-52 Denial of permit; Appeal

- (a) Denial of Permit. A permit may be denied or suspended for any of the following reasons:
1. Failure to provide proof of a surety bond or liability insurance acceptable to the Town or notice of termination of the same.
 2. Failure to secure a contractor's license or other required license.
 3. Failure to perform in accordance with the requirements of this article.
 4. The excavation would be in a street and not otherwise permitted by this article.
 5. The proposed warning or other traffic control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the Director.
 6. The proposed activity would violate any Town ordinance or state or federal law, rule, regulation or statute.
 7. The permit application contains false or misleading information.
 8. The activity would cause a public health or safety hazard.
 9. The right-of-way user is not authorized within the Town.
 10. The right-of-way user is in violation of this article relative to work in progress.
 11. The right-of-way user has not compensated the Town, unless the user is not legally obligated to compensate the Town by contract, by agreement or by law,

for using the public property; or the right-of-way user has failed to timely make required payments.

(b) Appeal. A right-of-way user that: (i) has been denied registration; (ii) has been denied a permit; (iii) has had a permit revoked; or (iv) believes that fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request as follows:

1. If an applicant desires to appeal a decision, the applicant may file a written notice of appeal with the Director within five business days of the date the decision was rendered. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The Director shall provide a written decision within five business days. Failure to render a decision within five business days shall constitute a denial.
2. If a denial is given by the Director, the appellant may thereafter file a written notice of appeal to the City Manager within five business days of receipt of the Director's written decision. The City Manager shall provide a written decision within five business days of receipt of an appeal in accordance with this section. Failure to render a decision within five business days shall constitute a denial.

DIVISION 2 TECHNICAL SPECIFICATIONS

Sec. 70-53 Lawful use of right-of-way; Compliance with safety regulations.

(a) Lawful use of right-of-way.

1. The use of the right-of-way in any manner which violates federal, state, or local laws, or Town codes, ordinances and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All permittees shall provide satisfactory evidence of compliance with the foregoing upon request of the Town.
2. The permittee shall dispose of all material removed from the right-of-way and any waste created by permittee in compliance with all state, federal and local laws and requirements. Temporary storage of material may be placed in a pile no higher than 30 inches.
3. If a permittee excavates any contaminated, regulated or hazardous materials in the right-of-way, such permittee shall be responsible for environmental assessment, excavation, testing, transportation and disposal of that material in accordance with applicable law. The permittee shall promptly notify the Town, orally, of the condition within two hours of discovery of any contaminated, regulated or hazardous materials in the right-of-way, and within eight hours provide the aforementioned information to the Town in writing. The permittee must consult with and receive written authorization from the Town before undertaking any of the steps/actions set forth in this subsection.

(b) Compliance with safety regulations.

1. The permittee and right-of-way user shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not limitation, the occupational safety and health standards for the construction industry.

Sec. 70-54 Conformance with the Master Transportation Plan

A right-of-way user should consult the Town's MTP prior to the acquisition of any interest in real property in the Town for the installation or relocation of service lines or other equipment or facilities along or adjacent to any street, right-of-way, thoroughfare, highway, or any proposed street, right-of-way, highway or thoroughfare to attempt to minimize any future conflict regarding the location of such facilities. All right-of-way users are charged at all times with constructive notice of the MTP. The Town shall, at a minimum, have no liability for the value of or loss by a right-of-way user of any improvements constructed in the area shown on the MTP, except as provided herein. Typical locations of Town facilities are depicted in in the Town standard details.

Sec. 70-55 Tree trimming and graffiti abatement

- (a) Tree trimming. The right-of-way user shall identify on the permit application any anticipated tree trimming resulting from the permit requested. Permission may be granted to a right-of-way user, subject to the requirements of this code, as it exists or may be amended from time to time, to trim trees upon and overhanging the right-of-way, so as to prevent the branches of such trees from coming in contact with a right-of-way user's facilities. When so directed by the Town, the tree trimming shall be done under the supervision and direction of the Town.

A person may trim trees in or over the public rights-of-way for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with standards promulgated by the National Arborist Association and International Society of Arboriculture, and should be done in such a manner to preserve as much vegetation and natural shape of trees as reasonably possible, and still accomplish a safe and effective tree trimming program. Reasonable efforts shall be made to contact affected property owners prior to necessary tree trimming operations. Should the person, its contractor or agent, fail to remove such trimmings within 24 hours (unless a longer period is required for extraordinary conditions and conditions beyond the control of the person), the Town may remove the trimmings or have them removed, and upon receipt of a bill from the Town, the person shall promptly reimburse the Town for all costs incurred within 30 working days.

- (b) Graffiti abatement. The right-of-way user shall make the necessary repairs or restoration, including, but not limited to, cleaning of graffiti, as soon as practicable but not to exceed seven days after the right-of-way user discovers or learns of any misuse, destruction, damage or vandalism to its facilities.

Sec. 70-56 Routing and spatial assignment

The Town reserves the right, in the permit or otherwise, to restrict or determine the route (pathway) and/or spatial location, whether horizontal, vertical or depth, of any facility and/or structure or improvement in the right-of-way. The Town reserves the right to reserve space for future utilities.

Sec. 70-57 Commencement and completion

After obtaining the permit and prior to commencing the work, the permittee shall notify the Director, and shall commence and complete all work within the time specified in the permit, unless an extension of time is granted by the Director. No work shall commence until erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades are in place.

Sec. 70-58 Notification to affected property owners; Employee communication

(a) Notification to affected property owners. Except in the case of an emergency, whenever excavation is required in the right-of-way adjacent to an occupied property, the right-of-way user shall notify the property owner of the activity through use of a door hanger, at its sole cost and expense, which shall include the following information:

1. Permit number;
2. Identity of the contractor and the right-of-way user, including a contact name and phone number by which more information regarding the project could be obtained and a 24-hour a day emergency phone number; and
3. The anticipated duration of the construction work.

(b) Employee communication. The right-of-way user shall ensure that there is at least one employee on the job site, during any type of work activity, who can read, write and speak English fluently.

Sec. 70-59 Safe conduct of work

Every permittee and right-of-way user shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public, using the street or right-of-way where the work is being performed, from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings and excavation, in accordance with TMUTCD. All material, implements and tools stored upon the premises and used in connection with the excavation shall be stored in a safe and nonhazardous manner.

Sec. 70-60 Revocation or suspension of permit; Work not in accordance with permit declared unlawful; Work done without a permit

(a) Revocation or suspension of permit. The Town reserves its right, as provided herein, to revoke or suspend any permit, without refund of the permit fee, in the event of a breach by the permittee of the terms and/or conditions of the permit, this article and/or any other

Town ordinance. A breach of the terms of the permit shall include, but not be limited to any of the following:

1. The violation of any provision of the permit.
2. An evasion or attempt to evade any provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Town or its citizens.
3. Any material misrepresentation of any fact in the permit application.
4. The failure to meet insurance, surety bond or indemnification requirements.
5. The failure to complete the work as specified in the permit.
6. The failure to correct a condition indicated on an order issued pursuant to this article.
7. Repeated traffic control violation(s).
8. Failure to protect facilities or repair facilities damaged in the right-of-way.
9. Violation of any part of this article.
10. Recognition by the Director that a permit was issued in error.
11. Failing to comply with an order of the Director on the permit and any other valid permit held by the right-of-way user.
12. Any safety violation or other action that threatens the health, welfare and/or safety of the public as solely determined by the Director.

If the Director determines that the permittee has committed a breach of any law or condition of the right-of-way permit, the Director shall make a written demand upon the permittee to remedy such violation. Continued violation may be cause for revocation of the permit or legal action, or both. The Director may, in his/her discretion, revoke the permit, provide specifications to cure the breach, or both. Within two business days of receiving notification of the breach, permittee shall contact the Director with a plan, acceptable to the Director, for correction of the breach. Permittee's failure to do so or permittee's failure to timely implement the approved plan shall be cause for revocation of the permit.

- (b) Work not in accordance with permit declared unlawful. It shall be unlawful for any person to make, cause or allow to be made, any excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, utility pole or other utility or appliance in or under the surface of any street, alley, sidewalk, right-of-way or other public place, at any location, other than that described in the application for the permit and as shown on the plans filed with the Director, and in accordance with the requirements of the permit. If the circumstances appearing after the excavation is commenced make it impossible to comply with the permit, the Director may, in his/her sole discretion, grant a waiver to take the circumstances into account. Failure to comply with requirements set forth in this article or on any permit shall be cause for revocation of the subject permit and of any other permits held by the same permittee until the violations have been corrected or the Director has approved alternative requirements.
- (c) Work done without a permit. No cut, excavation, grading or disturbing of the right-of-way or wires on poles, in any way, shall be made, other than excavations necessary for emergency work, without first securing a permit. No person or right-of-way user shall, at

any time, open or encumber more of the right-of-way than shall be reasonably necessary to complete a project in the most expeditious manner.

Sec. 70-61 Cessation of work

At any time, the Director may order the immediate cessation or revocation of any work that poses a threat to the health, safety or well-being of the public.

Sec. 70-62 Violations of standards notice

The Director may issue a written notice to the permittee indicating work that does not conform to the terms of the permit, applicable standards, conditions, codes or other applicable regulation. Within five days after issuance of written notice, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit.

Sec. 70-63 Location and relocation of facilities; Relocation of facilities for the Town

- (a) Location and relocation of facilities. Subject to applicable federal, state, and local laws, the right-of-way user shall, upon the request of the Town, which shall be in writing, locate and/or relocate its facilities situated within any right-of-way, at no expense to the Town, where reasonable and necessary to accommodate any Town project. The written request provided by the Town shall state the date by which the relocation by the right-of-way user shall be completed and a reasonable amount of time shall be provided by the Town. When relocation is necessitated by federal government requirements, which includes reimbursements of costs, the Town will reimburse applicant for its proportionate share from funds provided to the Town in such reimbursements.
- (b) Relocation of facilities for the Town. In the event the Town finds it necessary to move a right-of-way user's facilities to protect the right-of-way, any Town utilities and/or street, the Town shall notify the local representative of the right-of-way user. Right-of-way user shall promptly move or facilitate the relocation of the subject facilities at right-of-way user's sole expense.

Sec. 70-64 Abandoned facilities

- (a) A right-of-way user owning abandoned facilities in the right-of-way shall:
 - 1. Remove its facilities and repair, at its sole expense, any damage caused by the removal. The Director may allow some or all facilities to remain if the Director determines same is in the best interest of the public to do so; or
 - 2. Provide information satisfactory to the Town that the right-of-way user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized right-of-way user.

The facilities of the right-of-way user who fails to comply with this section, and those facilities which remain unused for two years, shall be deemed to be abandoned unless, within the aforesaid two-year period, the Town receives written confirmation and reasonable evidence, as solely determined by Town, that the right-of-way user intends to use the facilities. The Town may exercise any remedies and/or rights it has at law or in equity, including, but not limited to, taking possession of the abandoned facilities or requiring the removal of the facilities by the right-of-way user at the right-of-way user's sole expense.

Sec. 70-65 Undergrounding; Underground service requirements

- (a) Undergrounding. It is the intent of the Town to require the undergrounding of utilities in certain areas to achieve more reliable service, improve aesthetics, reduce visual clutter in the built environment and provide for pedestrian amenities and landscaping. These requirements are in accordance with the franchise agreements set forth in the Code of Ordinance, the provisions of this Ordinance or otherwise agreed to in writing between the Town and a utility. If a location is designated by the Town to be an underground requirement area or Underground District, then a utility or right-of-way user shall place their facilities underground.
- (b) Undergrounding service requirements.
 - a. Placement of new utility support structures (poles) shall be prohibited for electrical distribution lines with 60,000 volts and less and all communication utilities, unless otherwise allowed by other law or an existing franchise agreement between the right-of-way user and the Town or a PUCT tariff.
 - b. No new pole mounted infrastructure will be allowed in designated Underground Districts.

Sec. 70-66 Location of poles and conduits

In conjunction with the other provisions of this Ordinance, all poles in the right-of-way shall be metal, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to interfere with vehicular and pedestrian travel. The location and route of all conduits, fiber, cables, utilities and facilities placed and constructed by a right-of-way user in the construction and maintenance of its system in the Town shall be subject to the reasonable and proper control, direction and approval of the Town. Placement of poles and anchor guys along curvilinear streets shall comply with the applicable provisions of all Town ordinances and regulations.

Sec. 70-67 Size and location of aboveground facilities; Height of overhead line

- (a) Size and location of aboveground facilities. The maximum dimensions for ground mounted utility structures above the ground in the right-of-way adjacent to streets are seven feet long (parallel to the road), two feet wide (perpendicular to the road) and six feet in height. For structures three feet or less in height, the width may be 44 inches. This does not include poles. The height of utility structures shall be measured from the lowest grade at any point

18 inches or less from the side of the structure that faces the street to the highest point of the structure. Utility structures exceeding those dimensions shall not be located in the right-of-way adjacent to streets, unless otherwise approved in writing by the Director. All aboveground facilities shall be located outside of the corner visibility triangle at all intersections, future intersections and all driveways. No aboveground facilities may be placed in a parkway that is across from a median opening. Aboveground facilities cannot conflict with the existing or future pedestrian path of travel as identified on the Master Transportation Plan, including any ADA accessible path.

- (b) Height of overhead line. The user shall ensure all overhead lines are constructed and maintained so that the minimum clearances are in compliance with the National Electrical Code, as it exists or may be amended.

Sec. 70-68 Attachments to poles

- (a) Attachments to poles. Except as otherwise required by this Ordinance, nothing shall obligate or restrict a right-of-way user from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies authorized to operate within the Town:
1. A right-of-way user shall utilize existing pole space, conduit, and other facilities whenever reasonably and/or economically possible.
 2. Antennas must be mounted to the top of the pole, or flush to the pole near the top, in a screen that is coated or painted an approved color to match the pole to camouflage the installation, unless the antenna is requested as part of a network node and subject to Chapter 284.
 3. If the existing pole already has two or more existing risers/drops, the pole must be replaced with a metal pole and all wires and cables must be run in conduit inside the pole. The existing drops will also be relocated inside the new pole and underground entry into the pole through the foundation is required. When installation will result in two or fewer risers/drops on the pole, the wires and cable may be installed as a riser/drop in conduit painted an approved color.

Sec. 70-69 Street closures; Temporary rearrangement of aerial wires

- (a) Street closures.
1. All lane closures on any thoroughfare shall comply with TMUTCD, and shall include a lane closure exhibit to be submitted with the permit to the Director. The Director may require a traffic control plan. Arrow boards and message boards may be required for lane closures on thoroughfares. In addition, the following steps shall be taken before any street or part thereof may be closed or restricted to traffic:
 - i. The permittee must receive the approval of the Director and the police department;

- ii. The permittee must notify the chief of the fire department of any street closed;
 - iii. Upon completion of construction work, the permittee shall notify the Director, fire department and the police department before traffic is moved back to its normal flow so that any necessary adjustments may be made; and
 - iv. Where flagmen are deemed necessary by the Director, they shall be furnished by the permittee at its own expense. Through traffic shall be maintained without the aid of detours, if possible. In instances in which this would not be feasible, the Director will designate detours. The Town shall maintain roadway surfaces of existing highways designated as detours without expense to the permittee, but in case there are no existing highways, the permittee shall construct all detours at its expense and in conformity with the specifications of the Director. The permittee will be responsible for any unnecessary damage as may be determined in the Director's sole discretion caused to any highways by the operation of its equipment.
2. Except in an emergency, no street shall be closed on weekdays during the hours of 6:30 a.m. to 9:30 a.m. and 3:30 p.m. to 6:30 p.m. or outside normal working hours of the Town.
 3. All lane closures require 24-hour notification of the police and fire departments prior to closing.
 4. Emergency closures may be permitted with the approval of the Director. The permittee shall route and control traffic including its own vehicles as directed by the police department.
- (b) Temporary rearrangement of aerial wires. The right-of-way user shall rearrange its transmission media temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall pay the reasonable and necessary expense of such temporary rearrangements. The right-of-way user shall in a reasonable time frame and reasonable cost, remove its transmission media in connection with the demolition of unsafe structures, including emergency or ordered demolitions at no cost to the Town. The right-of-way user may invoice the requesting parties for the cost of this work, where applicable.

Sec. 70-70 Erosion control and storm water management; Maintain the accessible path; Dust control; Traffic control safety; Responsibility for signs, barricades and warning devices; Duty to barricade

- (a) Erosion control and storm water management. The right-of-way user shall be responsible for storm water management, erosion control and excavation safety measures that comply with Town, state and federal guidelines. Requirements shall include, but not be limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Sediment leaving the work site and entering the public storm water system must be cleaned prior to completion of the job. Upon request of Director, the right-of-way user may be required to furnish documentation submitted or received from the federal or state government.

- (b) Maintain the accessible path. The right-of-way user shall be responsible for maintaining an approved accessible path of travel throughout the project. If maintaining an accessible path through the construction area is not feasible a suitable temporary path shall be created. Accessible path's shall be approved by the Director and maintained for the duration of the project.
- (c) Dust control. The right-of-way user shall ensure that the work is conducted and site maintained to minimize blowing dust. At any time dust leaves the job site so that it is a nuisance, the work will stop until measures can be taken to eliminate the dust.
- (d) Traffic control safety. In the event of noncompliance with the TMUTCD, the right-of-way user shall be notified of the violation. In the event of continued noncompliance, the Director may revoke the permit, in addition to any other remedies available to the Town. At any time the Director determines the work threatens public safety, he may take immediate action as necessary including but not limited to, stopping all work, or have a third party make the repairs at the expense of the applicant.
- (e) Responsibility for signs, barricades and warning devices. The right-of-way user working in any right-of-way is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The right-of-way user shall meet all requirements for barricading and traffic control as specified in the TMUTCD:
 - 1. Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including without limitation, those in TMUTCD, may place and maintain the traffic control devices in a construction area.
 - 2. The right-of-way user must either: (i) subcontract the barricading to a firm specializing in traffic control; or (ii) submit the qualifications and name of employees to the right-of-way user manager for approval prior to the work commencing. The right-of-way user must also submit a traffic control plan for review when required by this article. All signs and barricades must conform to the requirements of the TMUTCD.
 - 3. All barricades, plates, and other traffic control equipment must conform to TMUTCD specifications and must be inspected and maintained by the traffic control representative.
 - 4. All barricades, plates and other traffic control equipment must display accurate and sufficient information including without limitation, the name of the right-of-way user.
 - 5. Noncompliance with the TMUTCD shall be cited in writing. In the event of noncompliance after citation, the Director may place the necessary devices as required, and the right-of-way user shall reimburse the Town for all such expenses as well as \$500.00 for noncompliance. Failure to comply with this provision may result in denial of application for future permits.
 - 6. All traffic control devices must be removed immediately upon completion of work.

- (f) Duty to barricade. At all times during construction activity, the contractor and/or right-of-way user, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including without limitation, watchmen certified in accordance with the safety training described in this article, if necessary, upon and around the work and for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

Sec. 70-71 Inspection; Materials testing; Backfill material

- (a) Inspection. The permittee shall make the work site accessible to the Town, and others as authorized by law, for inspection at all reasonable times during performance of the work.
- (b) Materials Testing. The Town will require testing of materials used in construction in or near the right-of-way to determine conformance with Town construction specifications, including, but not limited to, compaction tests on backfill materials, subgrade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary by the Town. The right-of-way user shall, at his expense, hire a testing laboratory with current accreditation by the American Association for Laboratory Accreditation, American Association of State Highway and Transportation Officials (AASHTO) or another nationally recognized accreditation agency that verifies compliance with ASTM E 329 and that demonstrates the laboratory's capabilities to perform applicable ASTM or AASHTO test procedures, as may be required.
- (c) Backfill Material. Whenever any excavation for the laying of pipe is made through rock, the pipe shall be laid six inches above the rock bottom of the trench and the space under, around and six inches above the pipe shall be backfilled with clean river sand, noncorrosive soil or one-quarter inch minus gravel or in accordance with manufacturer's specification if approved in writing by the public works director. Broken pavement, large stones, and debris shall not be used in the backfill.

Sec. 70-72 Duties of persons making excavations or creating obstructions; Emergency excavations; Urgent work

- (a) Duties of persons making excavations or creating obstructions. Any person who shall cause to be made any excavation or obstruction in any street or right-of-way shall not allow the same to remain there beyond a time reasonably sufficient for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of such street and/or right-of-way so as to restore the same to its condition previous to the making of such excavation or obstruction. It shall be the duty of such excavators to protect the area while such condition exists and promptly to repair the same so as to leave the street or right-of-way in as good condition as before the excavation.
- (b) Emergency excavations. Nothing in this article shall be construed to prevent any person maintaining any pipe, conduit or duct in or under any street, or right-of-way by virtue of

any law, article or permit, from making such excavation as may be necessary for compliance with law or for the preservation of life or property when the necessity arises, provided that the person making the excavation shall notify the Director within 24 hours. Except as specifically provided otherwise in this article for excavations authorized by this section, permittee shall be subject to all fees and requirements of this article.

- (c) Urgent Work. If in his/her judgment, traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the Director with the consent of the city manager, if the excavation is within 300 feet of a residence, shall have full power to order, at the time the permit is granted, that a crew of men and adequate facilities be employed by the permittee 24 hours a day to the end that such excavation work may be completed as soon as possible.

Sec. 70-73 Excavation in streets; Backfill of excavated streets

- (a) Excavation in streets. Except in case of an emergency there shall be no excavation in any street without the prior written approval of the Director. Any request for a permit to excavate a street shall include a description of the proposed work and proposed restoration of the area, as well as a statement of clear and convincing evidence is provided to the Director as to why alternate procedures cannot or should not be used in lieu of excavating a street. All pavement cuts and repairs shall be performed by a contractor with experience in street repair work and restored to an as good or better condition. Any damage to pavement outside the removal area shall also be repaired at the discretion of the Director and subject to the Director's approval.
1. Excavation in Portland cement concrete (PCC) pavement surface. If the existing pavement is PCC, the concrete shall be cut first with a saw to a depth of the full thickness of the concrete or 6", whichever is greater, and the full width of the trench, which shall also cut any reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the concrete and excavated to undisturbed soil. Further criteria is set forth in the Town's standard details.
 2. Excavation in hot mix asphalt concrete (HMAC) pavement surface. If the existing pavement is HMAC, the HMAC shall be cut first with a saw to a depth of the full thickness of the pavement or 6", whichever is greater, and the full width of the trench, which shall also cut any reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the pavement and excavated to undisturbed soil. Further criteria is set forth in the Town's standard details.
 3. Jacking and boring. A permittee or right-of-way user shall perform all work in conformance with methods approved by the Town and in such a manner as to not interfere or disturb existing or planned infrastructure.
 4. Responsibility of excavated area maintenance. A permittee or right-of-way user shall warrant and be responsible for its repairs in the right-of-way for two years from the completion date of any repair.
 5. Clearance for fire suppression equipment. The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants.

Passageways leading to fire escapes or firefighting equipment shall be kept free of excavated material or other obstructions.

6. Access to public infrastructure. The excavation work shall be performed and conducted so as not to interfere with access to the Town's public infrastructure such as water valves, water meters and backflow devices, sanitary sewer manholes, sanitary sewer cleanouts, storm water manholes, storm water drains and inlets, etc.

(b) Backfill of excavated area.

1. Open trenches may be temporarily backfilled for the convenience of the permittee or the public safety. Traffic bearing plates can be used temporarily in conformance with Town requirements. At least one hour prior to beginning permanent backfill operations, the permittee shall notify the Director of the time the backfill will begin.
2. All excess water and mud shall be removed from the trench prior to backfilling. Any backfill placed during a rainy period or at other times, where excess water cannot be prevented from entering the trench, will be considered temporary and shall be removed as soon as weather permits. All disturbed base material or any base that has been undermined shall be removed and discarded. Compaction of all backfill shall be 95 percent of maximum density with a moisture content of minus two percent to plus four percent of optimum moisture content as determined by ASTM D698 under or near paved surfaces, future paved surfaces or otherwise as determined by Director. Outside of pavement surfaces, compaction of all backfill shall be 95 percent of maximum density with a moisture content of minus two percent to plus four percent of optimum moisture content as determined by ASTM D698, and be smoothed, raked, and topsoil and grass or other landscaping installed to match the surrounding conditions.

Sec. 70-74 Right-of-way restoration requirements

(a) Right-of-way restoration requirements

1. The work to be done pursuant to the permit and any repair and/or subsequent restoration of the right-of-way must be completed within the dates specified in the permit. In the event of circumstances beyond the control of the permittee or when work is prohibited by unseasonable or unreasonable conditions, the Director may, in his sole discretion, extend the dates on receipt of a substantiated supplementary application for a permit extension.
2. All earth, materials, sidewalk, pavement, utilities, conduits, crossing, irrigation, landscaping, monuments, manhole covers, valve covers, meter box lids or improvements of any kind, which are owned or possessed by the Town, and damaged, disturbed, or removed by a right-of-way user shall be fully repaired promptly by the right-of-way user, at its sole expense, to the reasonable satisfaction of the Director with material approved by the Town.
3. After any excavation, the right-of-way user shall, at its expense, restore the right-of-way, trench envelope, pavement structure and the surrounding area, to the same or better condition than it was prior to the excavation. The restoration shall be made

- in accordance with specifications set forth herein, and the repair shall be covered by a maintenance bond for two years from the completion date of any repair.
4. In the event the right-of-way user fails to restore the right-of-way in the manner and to the condition required herein, or fails to satisfactorily and/or timely complete all restoration, the Town may, at its option, serve written notice upon the right-of-way user that, unless within five days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the right-of-way by the right-of-way user, the Town may take over the work and prosecute same to completion, by contract or otherwise, at the sole expense of the right-of-way user, and right-of-way user, and its surety, shall be liable to the Town for any and all cost incurred by the Town by reason of such prosecution and completion including, without limitation, the applicable public inconvenience penalty. Nothing contained herein shall limit any other remedies available to the Town.
 5. If any excavation cannot be backfilled immediately, the right-of-way user shall securely and adequately cover the excavation and maintain proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.
 6. In all right-of-way restoration, the right-of-way user guarantees its work and shall maintain it two years from the date of completion of any restoration. During the period following completion, the right-of-way user shall, in the event of any failure of the restoration, and upon notification from the Director, reimburse the Town for pavement restoration costs as provided for in this article. Additionally, the right-of-way user, in the event of such failure, shall within 48 hours of notice from the Town, repair the subject trench envelope.
 7. The two-year guarantee period shall be applicable to, among others, failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by the Town, the right-of-way user retains repair responsibility at all times during the guarantee period for the trench envelope. In locations where two or more right-of-way users have made repairs in the exact same location, the last right-of-way user to excavate shall be responsible for the two-year guarantee in that location, unless the Director determines, in his sole discretion, that a failure was most likely a result of work performed by another right-of-way user. That right-of-way user shall be responsible for the two-year maintenance period.
 8. All street excavations shall be perpendicular excavations, if possible, unless otherwise approved by the Director. Excavations in streets, which are not perpendicular excavations require block-to-block and curb-to-curb pavement reconstruction, or other method of repair approved by the Director. All repairs shall be equal or better than that which existed prior to the commencement of any work.
 9. No trench shall be opened for the purpose of laying pipes, conduits or ducts for a distance greater than can be backfilled on the same workday before sunset. Any variance from this requirement must be granted in writing from the Director prior to work beginning.
 10. The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until approved to do so by the Director.

Sec. 70-75 Restoration of pavement; permanent pavement repairs; substandard repair of pavement of right-of-way

- (a) Restoration of pavement. Unless otherwise specified in the permit, restoration of the pavement of any street, alley, right-of-way or other public place shall be performed by the permittee.
1. No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than 200 feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the Director.
 2. All excavations shall comply with the Town construction standards, as amended, and requirements of this article. Unless otherwise required by Town standards, as amended, or if unusual conditions are encountered, the Director may require new standards for compaction, backfill and pavement restoration.
 3. Any excavated pavement, debris and/or other rubble shall be removed, together with any surplus material, within one working day from the time such material is placed upon the street. After backfilling is completed, and prior to repaving the cut, the right-of-way user shall remove all loose paving material and trim the edges of the excavation at the street surface to the satisfaction of the Director.
 4. Whenever any caving occurs in the sidewalks of any excavation, the pavements above such caving shall be cut away, trench backfilled, compacted and sidewalk pavement restored. In no case shall any side or lateral tamping fill any void under a pavement.
- (b) Permanent pavement repairs. The right-of-way user will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The right-of-way user shall make the final repairs within seven days on thoroughfares that are classified as principal and within 14 days on residential, local and alley streets after the Director makes final inspection. Backfill failures shall remain the responsibility of the right-of-way user.
- (c) Substandard repair of pavement of right-of-way. In case the pavement or the surface of the street, alley, or right-of-way in, over or near any excavation should become depressed, cracked or broken at any time or fails in any way at any time after the excavation has been made and during the two-year warranty, the right-of-way user shall comply with any applicable obligations of this article, including, without limitation, reimbursement to the Town of the cost to restore the street and/or right-of-way.

Sec. 70-76 Failure to complete work within specified time

In the event any work governed by this article is not completed by the right-of-way user within the time required or in accordance with the specifications required herein or by the Director, the Director may cause such work to be performed as is necessary to secure the work area to a safe and passable condition. The right-of-way user shall reimburse the Town for the costs of securing the site.

Sec. 70-77 Removal and reconstruction where work is defective

All construction work in the streets, right-of-way, sidewalks and public places of the Town is declared to be subject to the exclusive control of the Town, and whenever, in the sole opinion of the Director, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or materials or because not true to the lines or grades or specification therefor given to him by the Director, then upon written demand or notice from the Director, such right-of-way user or contractor shall promptly remedy, complete and/or remove and reconstruct such incomplete or defective work all as the Director may require, and these provisions shall also apply to all repair and maintenance work. If the contractor or right-of-way user shall fail or refuse to do so within a reasonable time to be specified by the Director, then, if required by the Director, such work shall be completed or corrected or removed and wholly or partially reconstructed by the Town, in such a manner as in the opinion of the Director may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the direction of the Director, and the contractor or right-of-way user shall reimburse Town for any and all cost incurred by the Town performing the work described in this subsection.

Sec. 70-78 Cleanup of right-of-way

In every case, and at all times, the work of removing from the right-of-way all obstructions, surplus materials, debris and waste matter of every description caused by and/or accumulated from the excavation shall be the sole responsibility of the right-of-way user. The right-of-way user shall maintain the area on and around the excavation and related work in a clean, safe and orderly fashion at all times during conduct of the excavation and shall clean the same area upon completion of work. Streets shall be cleaned by use of a vacuum street sweeper. The right-of-way user shall clean the surrounding area, as outlined above, within one day upon completion and approval of all trench work and pavement restoration unless the Director, sufficient reason therefore having been given to his satisfaction, grants a written extension of time.

Sec. 70-79 Reporting completion of work; Effect of article on persons engaged in construction

- (a) Reporting completion of work. When the work under permit hereunder is completed, the permittee shall notify the Town in accordance with the requirements placed on the permit. The Town will schedule a final walk-through with the contractor to develop a final punch list of items to be remedied.
- (b) Effect of article on persons engaged in construction. Any permit issued prior to the adoption of this article will remain subject to the terms and conditions of Town ordinances and requirements in effect at the time of issuance of the permit and is not affected by this article, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this article.

DIVISION 3. INDEMNIFICATION, INSURANCE, BONDING AND LIABILITY

Sec. 70-80 Indemnification

To the extent allowed by law, the right-of-way user or permittee shall be liable to the Town for any damage or loss occasioned by any act and/or omission occurring in connection with its excavation, and subject to state law, the right-of-way user shall fully indemnify, hold harmless and defend the Town, its councilmembers, officers, employees, agents, representatives and volunteers from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the Town, its councilmembers, officers, employees, volunteers, agents, and representatives may be subjected for injury of any type, death or property damage arising from or connected with any such act and/or omission. The Town shall promptly notify a permittee, or right-of-way user, at the address set forth in the permit, or last known address, of any claim, suit or demand served upon the Town and alleging negligent or wrongful conduct by the permittee or right-of-way user in connection with an excavation.

Sec. 70-81 Insurance; Performance Bond

(a) Insurance.

1. It shall be unlawful for any person, unless exempt under this Chapter, to construct, reconstruct or repair any sidewalk, driveway, curb or curb and gutter in any street, alley, easement or right-of-way of the Town without having first executed and delivered to the Town a current policy(ies) of liability insurance in an amount determined by the Town (including but not limited to general and/or commercial liability, worker's compensation and business auto liability), and such insurance must be conditioned as follows: that the principal shall fully indemnify and hold the Town harmless from any and all cost, expense or damage, whether real or asserted, on account of any injury done to any person or property in the prosecution of the work, or that may arise out of or be occasioned by the performance of such work by occurrence. The Town shall have no duty to perform under this article until such certificate has been delivered to the department.
2. The Town shall be entitled, upon request and without expense before issuing a permit, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the Town, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon any party to the policy or the underwriter of such policy). Upon such request by the Town, the right-of-way user shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
3. Right-of-way user shall notify the Town in the event of any notice of cancellation, nonrenewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or ten days notice for cancellation due to nonpayment of premiums, which notice must be accompanied by a replacement certificate of insurance.

4. Nothing herein contained shall be construed as limiting in any way the extent to which the right-of-way user may be held responsible for payments of damages to persons (including death) or property resulting from the right-of-way user's, or its subcontractors', performance of the work performed in the public right-of-way.
5. The Town owned utilities shall not be required to provide the insurance specified herein.
6. With respect to the right-of-way user's obligation to comply with the requirements for commercial general (public) liability insurance coverage, the Director, in collaboration with the Town's Chief Financial Officer may, in their discretion, allow the right-of-way user to self-insure upon annual production of evidence that is satisfactory to show the user has sufficient assets and history of performance to justify the user to self-insure.

(b) Performance Bond. Before a permit shall be issued, the Director may, in his discretion, may require the applicant and/or the person or entity for which the applicant is performing, to execute and deliver to the Town, to be kept on file with the Town, a good and sufficient bond of performance or assurance, in the sum to be determined by the Town and conditioned that the person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of carelessness or negligence in the manner of performing such work or by reason of any defects therein caused or arising from careless, negligent or imperfect construction thereof, and to hold the Town, its councilmembers, officers, employees, volunteers, agents, and representatives, free and harmless from liability on all such claims for damages to the performance or assurance bond which shall cover the cost of repairs in or upon the street, sidewalk or other public place where the work is to be done that may become necessary by reason of such cut or excavation having been made. The bond shall be maintained annually for a period of two (2) year after the date of acceptance by the Town and the applicant agrees to maintain upon demand and to make all necessary repairs during the two (2) year period.

Sec. 70-82 Liability of contractor and sureties for maintenance and repair work

Any defects of workmanship or material relating to work done by an excavator during the initial project or becoming known, or which should have been known, during the guarantee period (the two years) shall be known as maintenance or repair work, and both the excavator and the sureties and/or the contractor's bond shall be fully liable for any default of such contractor under this section. In the event of a failure in the restoration of an excavation, the right-of-way user shall, at its sole expense, have one opportunity to repair, in a timely manner, the section of the restoration that has failed, which repair shall be in accordance with the standards set forth in this article. In the event of any subsequent failure of that section of the restoration, the Town retains the right and option to terminate the right-of-way user's guaranty, upon written notice to the right-of-way user. In such event, the right-of-way user shall reimburse the Town for its direct costs associated with the repair of the failure of the restoration work.

Sec. 70-83 When additional security required; Decision of Director binding on contractor, right-of-way user and sureties

- (a) When additional security required. In the event the Director reasonably believes the contractor's or right-of-way user's solvency is threatened, the Director may, at any time, make written demand on a contractor and/or right-of-way user for bonds, and the contractor and/or right-of-way user shall immediately furnish such additional bond or bonds to the Town.
- (b) Decision of Director binding on contractor, right-of-way user and sureties. If any question arises as to when any work was actually begun or other specific dates, the decision of the Director shall be conclusive on the contractor, right-of-way user, and the sureties on all such bonds.

DIVISION 4. VARIANCES AND EXEMPTIONS

Sec. 70-84 Variance/exemptions

- (a) Variance/exemption. A permittee or right-of-way user may request a variance from any of the requirements of this article by filing a written request with the Director stating the requirement and the basis for the variance. The Director may reject incomplete variance requests. The applicant shall bear its own expenses of the application process.
 - 1. Any request for a variance from any right-of-way restoration requirement shall be made in writing, in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted reconstruction and/or repair of the excavated area, if applicable.
 - 2. Any request for an exemption and/or variance from any penalty and/or fee, other than as provided in this article, shall be made in writing, and shall be accompanied by a written detailed request stating the reasons therefore.
 - 3. Any request for an exemption and/or variance from any permit, or any other requirement of this article shall be made in writing, stating in detail all reasons for the requested exemption and/or variance.
 - 4. The Director shall grant or deny an application for a variance and/or exemption within ten days of receipt of the application for variance and/or exemption.
 - 5. Denial of the variance may be appealed in accordance with this Ordinance.

DIVISION 5. CERTIFIED TELECOMMUNICATION PROVIDERS

Sec. 70-85 Certificated telecommunications providers authority required/nonexclusive use

A CTP must provide evidence that the CTP has acquired authorization from the PUCT pursuant to state law, prior to obtaining a permit to use public right-of-way. The CTP's right to use and occupy the public right-of-way shall not be exclusive, and the Town shall have the right to exercise its police powers and manage its public right-of-way, based on the Act and all other state or federal laws.

Sec. 70-86 Transfer and notice; Exemption from fees; Waiver bonds

- (a) **Transfer and notice.** A CTP shall notify the Director of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within 30 days of such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the Director at all times during which the CTP uses the right-of-way.
- (b) **Exemption from fees.** CTPs are exempted from the following fees provided for in this article:
 - 1. Permit application fee;
 - 2. Registration fee.
- (c) **Waiver bonds.** Unless determined otherwise by the Director a CTP will be exempt from the bonding requirements of this chapter, however, in the event that the Director determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, and/or the health and safety of the public, then the Director may require that a CTP post a reasonable bond not to exceed \$100,000.00. Factors to be considered in determining reasonable grounds may include, but are not limited to, a conviction for violation of this article, a general pattern of substandard adherence to the provisions of this article or the failure to comply with this article. If three years pass from the date that the Director requires a bond of a CTP and it has not been necessary for the Town to seek performance under the bond, then a bond will no longer be required pursuant to this section.
- (d) **CTP Indemnity.** A CTP shall indemnify the Town as specified by V.T.C.A., Local Government Code sec. 283.057, as may be amended. A CTP shall be exempt from all indemnity requirements of this article that are inconsistent with V.T.C.A., Local Government Code sec. 283.057, as amended.

DIVISION 6. NETWORK PROVIDERS

Sec. 70-87 Purpose

The purpose of this Division is to set forth the standards for the Town's regulation of the installation of network nodes and network support poles pursuant to Chapter 284 in a way that is fair, reasonable and nondiscriminatory in accordance with Chapter 284 while managing the public right-of-way and balancing the interests of network providers with the health, safety, and welfare of the public and while acting on behalf of the state of Texas as the fiduciary trustee of public property under Chapter 284. This Division shall be construed in accordance with Chapter 284, to the extent not in conflict with the Constitution and laws of the United States or of the State of Texas. Unless otherwise articulated by this Division, the Town and network providers shall look to the other Divisions of this Ordinance to determine applicable requirements.

Sec. 70-88 Definitions

For the purpose of this Division, the definitions found in the *Town of Addison Wireless Services Design Manual* (“the Design Manual”) are hereby incorporated into this Division and shall apply unless the context clearly indicates or requires a different meaning. The definitions contained above in this article, and as amended, (the “General Definitions”) shall be applicable to this Division to the extent that there is no conflict between the General Definitions and the definitions contained herein or the Design Manual. In the event of a conflict between the definitions in this Division, the Design Manual and the General Definitions, the definitions contained in this Division and the Design Manual shall control. The following definitions are specifically applicable to this Division:

Applicable Codes means:

- (A) the Town adopted uniform or international building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes as adopted by the Town to the extent not inconsistent with Chapter 284.

Chapter 284 means Texas Local Government Code, Chapter 284, as amended.

Town Owned Utility Pole means a utility pole owned or operated by a Town owned utility, as defined by Section 11.003, Texas Utilities Code, and located in a public right-of-way.

Collocate and collocation mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

Concealment means any wireless facility or pole that is covered, disguised, or otherwise concealed such that the wireless facility blends into the surrounding environment and is visually unobtrusive.

Decorative pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory Town ordinances and Applicable Codes.

Design District means an area that is zoned, or otherwise designated by Town’s ordinances and Applicable Codes, and for which the Town maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the Town for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

FAA means the Federal Aviation Administration, or other lawful successor, authorized to oversee aviation travel on an international level.

Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means public right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Law means common law or a federal, state, or local law (municipal or county), statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the Town.

Location means the Town-approved and lawfully permitted location for the Network Node.

Macro Tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 of Chapter 284 and that supports or is capable of supporting antennas.

Mayor means the mayor of the Town of Addison, Texas, or designee.

Micro network node means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Municipal park means an area that is zoned or otherwise designated by the Town or Town ordinance as a public park for the purpose of recreational activity.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower

Network provider means:

- (A) a wireless service provider; or
- (B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:

- (i) network nodes; or
- (ii) node support poles or any other structure that supports or is capable of supporting a network node.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a network node.

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from the Town before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

Pole means a service pole, Town-owned utility pole, node support pole, or utility pole.

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as “Network Provider.”

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the Town has an interest. The term does not include:

- (A) a private easement; or
- (B) the airwaves above a public right-of-way with regard to wireless telecommunications.

Right-of-Way Management Ordinance means the right-of-way ordinance codified in the Town of Addison Code of Ordinances as Article III, “Right of Way Management”, as may be amended from time to time in the future, including amendments adopting addition sections.

Service pole means a pole, other than a Town Owned Utility Pole, owned or operated by the Town and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by the Town and supporting only network nodes.

Stealth shall mean a method that hides or conceals an antenna, supporting electrical or mechanical equipment or any other support structure, including network nodes.

Street means only the paved portion of the Public Right-of-Way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire Public Right-of-Way, while a Public Right-of-Way may include sidewalks and utility easements. A “Street” does not include the curb, on street parking, or the sidewalk, if any are present at the time of a permit application or if added later.

Traffic Signal means any Town owned or operated device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Underground District means any area in the Town, as designated by this ordinance, where all utilities are underground.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or Public Right-of-Way, depending on the context.

Utility pole means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

Wireless service means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless service to the public.

Wireless facilities mean “micro network nodes,” “network nodes,” and “node support poles” as defined in Texas Local Government Code, Chapter 284.

Sec. 70-89 Applicability; Use and occupancy of public right-of-way

- (a) Applicability. The terms of this Division shall apply to all network providers and network providers’ facilities used, in whole or part, in the provision of wireless services throughout the Town, within the public right of way, including without limitation the highway right-of-way as defined herein. The terms of the Town’s Right-of-Way Management Ordinance (defined herein) apply to network providers to the extent that the terms of that ordinance do not conflict with the terms of this Division, the Design Manual, or with Chapter 284. In the event of a conflict, the terms of this Division, the Design Manual and Chapter 284 shall control, in that order.
- (b) Use and occupancy of public right-of-way. Pursuant to this Division and subject to Chapter 284, the Design Manual, applicable Town ordinances, and Applicable Codes, a network provider has the nonexclusive right to use and occupy the public rights-of-way in the Town only for the purpose of:
 - 1. Conducting activities related to transport facilities for network nodes in the public right of way;

2. The activities of a network provider collocating network nodes in the public right of way; or
3. Installing, constructing, operating, modifying, replacing, and maintaining node support poles in a public right of way.

Sec. 70-90 Adoption of Design Manual; Compliance with design manual and applicable codes; Require pole attachment agreement and City Manager authority

- (a) Adoption of Design Manual. This Ordinance hereby adopts the Town’s Wireless Services Design Manual, attached hereto as Exhibit “A” and incorporated herein for all purposes. Subsequent to the adoption of this Ordinance, the Director has the absolute authority to amend or revise the Town’s Wireless Services Design Manual as deemed necessary by the Director.
- (b) Compliance with Design Manual and Applicable Codes. All wireless network providers shall comply with the terms of all applicable Law, including without limitation, this Public Right-of-Way management ordinance, other applicable Town ordinances, Applicable Codes, and the terms and conditions of the Design Manual.
- (c) Require pole attachment agreement and City Manager authority. A network provider shall execute a Pole Attachment Agreement with the Town to access and use Town service poles, which includes traffic lights, non-decorative street lights, and traffic signage, to dictate the terms of use. The City Manager is hereby authorized, on behalf of the Town, to execute a Pole Attachment Agreement with a network provider dictating the terms of use of Town service poles.

Sec. 70-91 General construction and maintenance Standards; Size of network nodes and equipment cabinets; Underground construction

- (a) Standards. A network provider shall construct and maintain network nodes and network support poles described in Chapter 284 in a manner that does not:
 - a. Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
 - b. Obstruct the legal use of a public right-of-way by other utility providers;
 - c. Violate nondiscriminatory Applicable codes;
 - d. Violate or conflict with the Town’s Design Manual; or
 - e. Violate the federal Americans with Disabilities Act of 1990 (ADA).
- (b) Size of Network Nodes and Equipment Cabinets. All network providers shall comply with the size limitations of network nodes and equipment cabinets as set forth in the Design Manual and Chapter 284.
- (c) Underground Construction. As required by this Ordinance, and when required by Applicable Codes, general ordinances, deed restrictions, regulations or rules of the Town or applicable state or federal law, right-of-way users, network provider’s, or public

infrastructure contractor's new facilities shall be placed underground at right-of-way user's, network provider's, or public infrastructure contractor's expense. Underground facilities are required for network provider's in Underground Districts as provided in this Ordinance. Related equipment, such as pedestals, must be placed in accordance with the Town's applicable code requirements and rules, including all visibility triangle requirements. In areas not designated as an Underground District, where existing facilities are aerial, network provider or public infrastructure contractor may install aerial facilities. Following the original adoption of this Ordinance, if a location is subsequently designated by the Town to be an underground requirement area, then a right-of-way user's or network provider's permit for the location of the facilities, at such location will be revoked 90 days after the designation, with removal of said facilities at such location within 90 days of such designation, or as otherwise reasonably allowed by the Town for the transition of other overhead facilities. Placement of street-related poles and facilities above ground in the right-of-way, including but not limited to stop signs and street lights, does not preclude an area from designation as an area requiring undergrounding and placement of facilities on street-related poles in an area requiring undergrounding is prohibited.

Sec. 70-92 Permit applications; Information required; Exemption from permit; Notwithstanding exemption; Substantially similar node or pole; Height and distance limitation – exception; Appeal

- (a) Permit applications. Except as otherwise provided in Chapter 284, a network provider shall obtain one or more permits from the Town to install a network node, node support pole, or transport facility in a Town public right-of-way. A network provider requesting to install or collocate multiple network nodes inside the city limits of the Town may file a consolidated permit application with the Town for not more than thirty (30) network nodes, and upon payment of the applicable fee(s), receive a permit or permits for the installation or collocation of those network nodes.

- (b) Information required: The network provider shall provide the following information in its permit applications:
 - 1. Applicable construction and engineering drawings and information to confirm that the applicant will comply with the Design Manual and Applicable Codes;
 - 2. Any additional information reasonably related to the network provider's use of the public rights-of-way to ensure compliance with the Design Manual, this Division and Chapter 284;
 - 3. A certificate that the Network Node(s) complies with applicable regulations of the Federal Communications Commission;
 - 4. Certification that the proposed network node(s) will be placed into active commercial service by or for the network provider not later than the sixtieth (60th) day after the date of construction and final testing of each network node is completed; and
 - 5. A certificate of insurance that provides that the Network Provider and its contractor has at least \$1,000,000.00 in general liability coverage, in addition to other

insurance policy(ies) deemed necessary by the Director as provided by and in accordance with this Ordinance.

6. Written approval from the owner of the utility pole, if not the Town, that the network provider is authorized to install facilities at the utility pole.
7. Written certification that there are no other poles, with small cell attachments permitted/under application review, within 300 feet of the subject pole(s).
8. Other information as required by the Design Manual.

(c) Exemption from permit: As provided in Section 284.157 of Chapter 284, a network provider is not required to apply, obtain a permit, or pay a rate to the Town for:

1. Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
2. Replacing or upgrading a network node or network pole with a node or pole that is
 - i. substantially similar (as set forth in Subsection "F", "Substantially Similar Node or Pole" below), in size or smaller; and
 - ii. that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
 - iii. the replacement or upgrade does not include replacement of an existing node support pole; and
 - iv. The replacement or upgrade does not defeat existing concealment elements of a node support pole; or
 - v. The installation, placement, maintenance, operation, or replacement of micro network nodes that are strung on cables between existing poles or node support poles in compliance with the National Electrical Safety Code.

(d) Notwithstanding exemption. Notwithstanding Subdivision (c) of this Section:

1. The network provider or its contractors shall notify the Town at least twenty-four (24) hours in advance of work described in Subdivision (d); and
2. The network provider may replace or upgrade a pole only with the approval of the pole's owner; and
3. The size limitations may not in any event exceed the parameters prescribed by Section 284.003 of Chapter 284 without the Town's approval in accordance with Section 284.109 of Chapter 284, with the Town acting on behalf of the State of Texas as fiduciary trustee of public property.

(e) Substantially similar node or pole. A network node or pole is considered to be "substantially similar" if:

1. The new or upgraded network node, including the antenna or other equipment element, will not be more than ten (10) percent larger than the existing node, provided that the increase may not result in the node exceeding the size limitations provided by Section 284.003 of Chapter 284; and

2. the new or upgraded pole will not be more than ten (10) percent higher than the existing pole, provided that the increase may not result in the pole exceeding the applicable height limitations prescribed by Section 284.103 of Chapter 284; and
 3. The determination of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the network node or node support pole as approved by the municipality.
- (f) Appeal. A network provider may appeal a decision with regard to the permitting of network nodes and network node support poles, including the denial or revocation of a permit, as set forth in Section 70-52 of this Ordinance.

Sec. 70-93 Installation in Underground Districts; Installation in Design Districts

(a) Installation in Underground Districts

1. Installation. A network provider shall obtain advance written consent from the Town before installing or collocating new network nodes or installing new node support poles in an area of the Town that has been designated as an Underground District by this ordinance. The network provider shall be required to comply with the requirements described in the Design Manual and as set forth in this article, including Sec. 70-65. The Town has the authority and discretion to designate new underground districts at any time.

(b) Installation in Design Districts

1. Installation. A network provider shall obtain advance written consent from the Director before collocating new network nodes or installing new node support poles in an area of the Town that has been zoned or otherwise designated as a design district. The network provider shall be required to comply with the requirements described in the Design Manual and as set forth in this Section. The Town has the authority and discretion to designate new historic districts and design districts any time, including subsequent to the adoption of this Division.
2. Concealment. Concealment of network nodes and node support poles shall be required by the Town in Design Districts pursuant to Chapter 284.105, this Ordinance and the Design Manual. Network providers shall submit a proposal for installation of a network node or node support pole with its permit application. In a Design District, network nodes installed on decorative poles shall be installed in such a way as to cause no change to the outward appearance of the decorative pole. network nodes installed on all other poles in a Design District shall be concealed in accordance with this Ordinance and the Design Manual. Node support poles installed in a Design District shall first be approved by the Town to ensure consistency with the look of other decorative poles in the Design District.
3. Enclosure. The network node facilities shall be concealed or enclosed in a stealth manner in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually

minimized to the extent possible in strict accordance with this Division, and other applicable ordinances, except to the extent not consistent with Chapter 284.

4. Color. Colors in the Design Districts must be approved by the Director and must match the color of existing decorative poles in the district. Unless otherwise provided, all colors shall be shall match the background of any structure the facilities are located upon and all efforts shall be made by network provider for the colors to be inconspicuous. Colors in areas other than in Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas that are not in violation of this section or the Design Manual.

Sec. 70-94 Designation of Underground Districts; Designation of Design Districts

(a) Designation of Underground Districts

1. Pursuant to the authority granted by Chapter 284, the Town hereby designates the following areas as Underground Districts for the purposes of installation of utilities in the public right-of-way; specifically, as defined by this Ordinance, Underground Districts are areas of the Town where the undergrounding of utilities is required. These districts shall adhere to the undergrounding requirements set forth in this Ordinance and the Design Manual. Each Underground District is identified by all of the streets within the district that are subject to undergrounding and is more particularly described by the Town’s Wireless Services Location Map, included in the Design Manual:

District	Streets
Vitruvian Underground District	Bella Lane; Marsh Lane (From the Southern City Limit Line to Spring Valley Road); Park Avenue; Ponte Avenue; Spring Valley Road (From the Eastern City Limit Line to the Western City Limit Line); Vitruvian Way; Westgate Lane
Les Lacs Underground District	Marsh Lane; Beltway Drive; Park Place; Chancey Street; Camden Lane; Chatham Court Drive; Les Lacs Avenue; Lakeway Court; Waterside Court; Waterford Drive; Meadowcreek Circle; Ridgelake Court; Lakeview Court; Weller Run Court; Bentwater Court; Wayside Court; Waterview Cricle; Woodshadow Lane; Brookwood Lane; Flanders Court; Windsor Court; Stratford Court; Dickenson Court; Longfellow Court; Ponder Court; Poe Court; Walden Court; Princeton Court; Dove Court; Whitman Court;

	Greenleaf Court; Beau Park Lane; Hawthorne Court; Blueberry Court; Hemingway Court; Parker Court; Cambridge Court; Evergreen Court; Dartmouth Court; Camelot Court; Aspen Court; Emerald Court; Proton Drive; Azure Lane; Canot Lane; Rive Lane; Plage Lane; Lexus Avenue; Lakecrest Drive; Heritage Lane; Vintage Lane
Midway Meadows Underground District	Beltway Drive; Surveyor Blvd (south of Beltway Drive); Morman Lane; Sopras Circle; Le Grande Drive; Winter Park Lane; Sherlock Drive; Bobbin Lane; Dome Drive; Rush Circle; Leadville Place; Pokolodi Circle
Addison Grove Underground District	Oak Street; Holly Street; Magnolia Street; Runyon Road (south of Belt Line Road)
Asbury Circle Underground District	Asbury Lane; Everwood Lane; Amberwood Drive; Sugar Treeway; Commercial Drive (South of Belt Line Road)
Belt Line Road Underground District	Belt Line Road (from the Eastern City Limit Line to the Western City Limit Line)
Beltway Drive Underground District	Beltway Drive (East of Midway Road)
South Quorum Underground District	Quorum Drive; Landmark Boulevard; Landmark Place
Quorum Drive Underground District	Quorum Drive
Addison Circle Underground District	Arapaho Road (from eastern city limit line to Addison Road); Addison Road (eastern right of way from Arapaho Road to Airport Parkway); Airport Parkway (southern right-of-way from eastern city limit line to Addison Road); Quorum Drive; Edwin Lewis Drive (from Quorum Drive to Spectrum Drive); Spectrum Drive (terminating at the southern lot line of Quorum North Addition, Block 3); Broadway Street; Julian Street; Festival Way; Addison Circle; Mcentire Place; Lewis Place; Witt Place; Mildred Place; Morris Avenue; Artist Way; Paschal Place; Seabolt Place; Parkview Place; Breedlove Place; Spruill Avenue; Calloway Drive; Meridian Lane;

	Whisper Lane; Goodman Avenue; Ringo Place; Marcus Avenue
Addison Place Underground District	Knots Landing; Planters Row; Upper Bay Road; Vinland Drive; Winward Lane; Southfork Drive; Sojourn Place; Sojourn Drive (northern right-of-way parallel to Sojourn Place, extending to the eastern edge of Winward Lane); Westgrove Road; Westgrove Drive (eastern right-of-way parallel to Westgrove Road, extending to the northern edge of North Addison Park)
Arapaho Road Underground District	Arapaho Road (from eastern city limit line to Midway Road)
East Addison Residential Underground District	Oaks North Drive; Trafalgar Court; Oaks North Place; Paladium Drive; Lochinvar Drive; Buckingham Court; Lochinvar Court; Bedivere Court; Maiden Court; Stanford Court; Celestial Place; Winnwood Road (from Northern City Limit Line to Bellbrook Way); Bellbrook Way; Bellbrook Drive; Havenshire Place; Hampton Court
Montfort Drive Underground District	Montfort Drive (from the Northern City Limit Line to the Southern City Limit Line)

(b) Designation of Design Districts

1. Pursuant to the authority granted by Chapter 284, the Town hereby designates the following areas as Design Districts for the purposes of installation of utilities in the public right-of-way. Each Design District is identified by all of the streets within the district that are subject to undergrounding, includes a depiction of the decorative poles in the Design District and is more particularly described by the Town’s Wireless Services Location Map, included in the Design Manual:

<u>District</u>	<u>Streets</u>	<u>Depiction of Decorative Poles</u>
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<p>Vitruvian District</p>	<p>Design</p> <p>Bella Lane; Marsh Lane (From the Southern City Limit Line to Spring Valley Road); Park Avenue; Ponte Avenue; Spring Valley Road (From the Eastern City Limit Line to the Western City Limit Line); Vitruvian Way; Westgate Lane</p>	
<p>Les Lacs District</p>	<p>Design</p> <p>Marsh Lane; Beltway Drive; Park Place; Chancey Street; Camden Lane; Chatham Court Drive; Les Lacs Avenue; Lakeway Court; Waterside Court; Waterford Drive; Meadowcreek Circle; Ridgelake Court; Lakeview Court; Weller Run Court; Bentwater Court; Wayside Court; Waterview Cricle; Woodshadow Lane; Brookwood Lane; Flanders Court; Windsor Court; Stratford Court; Dickenson Court; Longfellow Court; Ponder Court; Poe Court; Walden Court; Princeton Court; Dove Court;</p>	

	<p>Whitman Court; Greenleaf Court; Beau Park Lane; Hawthorne Court; Blueberry Court; Hemingway Court; Parker Court; Cambridge Court; Evergreen Court; Dartmouth Court; Camelot Court ; Aspen Court; Emerald Court; Proton Drive; Azure Lane; Canot Lane; Rive Lane; Plage Lane; Lexus Avenue; Lakecrest Drive; Heritage Lane; Vintage Lane</p>	
<p>Midway Meadows Design District</p>	<p>Beltway Drive; Surveyor Blvd (south of Beltway Drive); Morman Lane; Sopras Circle; Le Grande Drive; Winter Park Lane; Sherlock Drive; Bobbin Lane; Dome Drive; Rush Circle; Leadville Place; Pokolodi Circle</p>	

		
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<p>Addison Grove Design District</p>	<p>Oak Street; Holly Street; Magnolia Street; Runyon Road (south of Belt Line Road)</p>		
<p>Asbury Circle Design District</p>	<p>Asbury Lane; Everwood Lane; Amberwood Drive; Sugar Treeway; Commercial Drive (South of Belt Line Road)</p>		

<p>Belt Line Road Design District</p>	<p>Belt Line Road (from the Eastern City Limit Line to the Western City Limit Line)</p>	
<p>Beltway Drive Design District</p>	<p>Beltway Drive (East of Midway Road)</p>	

<p>South Quorum Design District</p>	<p>Quorum Drive; Landmark Boulevard; Landmark Place</p>	
<p>Quorum Artwalk Design District</p>	<p>Quorum Drive</p>	
<p>Addison Road Design District</p>	<p>Addison Road (Belt Line Road to Arapaho Road)</p>	

		
<p>Addison Circle Design District</p>	<p>Arapaho Road (from eastern city limit line to Addison Road); Addison Road (eastern right of way from Arapaho Road to Airport Parkway); Airport Parkway (southern right-of-way from eastern city limit line to Addison Road); Quorum Drive; Edwin Lewis Drive (from Quorum Drive to Spectrum Drive); Spectrum Drive (terminating at the southern lot line of Quorum North Addition, Block 3); Broadway Street; Julian Street; Festival Way; Addison Circle; Mcentire Place; Lewis Place; Witt Place; Mildred Place; Morris Avenue; Artist Way; Paschal Place; Seabolt Place; Parkview Place; Breedlove Place; Spruill Avenue; Calloway Drive; Meridian Lane; Whisper Lane; Goodman Avenue; Ringo Place; Marcus Avenue</p>	

		 <p>The top photograph shows a close-up of a modern brick building with a balcony and a street lamp. The bottom photograph shows a wider view of a similar brick building with a street lamp and a brick-paved area.</p>
<p>Addison Place Design District</p>	<p>Knots Landing; Planters Row; Upper Bay Road; Vinland Drive; Winward Lane; Southfork Drive; Sojourn Place; Sojourn Drive (northern right-of-way parallel to Sojourn Place, extending to the eastern edge of Winward Lane); Westgrove Road; Westgrove Drive (eastern right-of-way parallel to Westgrove Road, extending to the northern edge of North Addison Park)</p>	 <p>The photograph shows a street scene with a brick building, a silver car parked on the side, and a street lamp. There are trees and a clear sky in the background.</p>

Right-of-Way Management Ordinance

		
Arapaho Road Design District	Arapaho Road	

		
<p>East Addison Residential District</p>	<p>Oaks North Drive; Trafalgar Court; Oaks North Place; Paladium Drive; Lochinvar Drive; Buckingham Court; Lochinvar Court; Bedivere Court; Maiden Court; Stanford Court; Celestial Place; Winnwood Road; Celestial Road Bellbrook Way; Bellbrook Drive; Havenshire Place; Hampton Court</p>	

		
<p>Town Park Design District</p>	<p>Sidney; Woodway Drive</p>	

Sec. 70-95. Installation in municipal parks and residential areas; Safety

(a) Installation in municipal parks and residential areas. A network provider shall not install a new Node Support Pole in a public right-of-way without the Director’s discretionary written consent, which consent shall be nondiscriminatory, if the public right-of way:

1. Is in a municipal park; or
 - i. Is adjacent to a street or thoroughfare that is:
 1. Not more than 50 feet wide; and
 2. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restriction.

- ii. In addition to compliance with the requirements of the preceding section, a network provider installing a network node or node support pole in a public right-of-way identified in this section shall comply with private deed restriction and other private restriction in the area that apply to those facilities.
- iii. The network provider shall be further required to comply with guidelines set out in the Design Manual, applicable Town Ordinances and Applicable Codes.

(b) **Safety.** In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the Director may deny a request for a proposed location if the network provider installs network node ground equipment where existing ground equipment within three hundred (300) feet already occupies a footprint of twenty-five (25) square feet or more.

Sec. 70-96. Determination of application completeness; Approval or denial of application; Basis for denial of application; Deemed approved; Resubmission of denied application; Reconsideration of denied application

- (a) Determination of Application Completeness: Upon receipt of a permit application, the Town shall make a determination regarding whether the permit application is complete and shall notify the applicant of that determination as follows:
1. *For Network Nodes and Note Support Poles:* Notice shall be provided no later than thirty (30) days after the date the Town received the permit application.
 2. *For a Transport Facility:* Notice shall be provided no later than ten (10) days after the date the Town received the permit application.

If Town determines that an application is not complete, Town shall identify the missing information necessary to complete the review of the application.

- (b) Approval or Denial of Application: The Town shall approve or deny a completed application as follows:
1. *For Network Nodes:* No later than sixty (60) days after the date the Town receives a complete application.
 2. *For Network Support Poles:* No later than One hundred and fifty (150) days after the date the Town receives a complete application.
 3. *For Transport Facilities:* No later than twenty-one (21) days after the Town receives a complete application.

(c) Basis for Denial of Application: If an application is denied by the Town, it shall document the basis for the denial, including the specific applicable Town code provisions or other Town rules, regulations, or other law on which the denial is based and notify the applicant.

The documentation for the denial is to be sent by electronic mail to the applicant on or before the deadline for denial of the application as set forth above.

- (d) Deemed Approved. An application for a permit for a node support pole, network node, or transport facility shall be deemed approved if the application is not approved or denied before the applicable date for such approval or denial.
- (e) Resubmission of Denied Application. The applicant may cure the deficiencies identified in the denial notice from Town without paying an additional application fee, other than a fee for actual costs incurred by the Town, if within thirty (30) days from the date the Town denies the completed application, the applicant cures the deficiencies identified in the denial documentation and resubmits the revised completed application.
- (f) Reconsideration of Denied Application. After providing notice of denial in accordance with this Section, the Town shall approve or deny the revised completed application no later than ninety (90) days after the Town receives a revised completed application. The Town's review shall be limited to the deficiencies cited in the denial documentation.

Sec. 70-97 Location of installation; Time of installation

- (a) The network provider shall provide notification to adjacent residential developments/neighborhoods within 300 feet of the installation of the micro network node, network node or network node support pole at Network Provider's sole cost and expense. Notification must be made at least 24 hours prior to the commencement of the work.
- (b) A network provider shall begin installation for which a permit is granted not later than six (6) months after final approval of the application and shall diligently pursue installation to completion. Notwithstanding the foregoing, the Director or designee may in his/her sole discretion grant reasonable extensions of time for completion or grant reasonable extensions as requested by the network provider.

Sec. 70-98 Applicable Fees and Rental Rates; In-kind services prohibited

- (a) Applicable fees and rental rates. As compensation for the network provider's use and occupancy of the Town public rights-of-way, the network provider shall pay application fees and annual public right-of-way rental rates as set forth below, which shall be in lieu of any lawful tax, license, charge, public right-of-way permit, use, construction, street cut or inspection fee; or other public right-of-way related charge or fee, whether charged to the network provider or its contractor(s) within the Town, except the usual general ad valorem taxes, special assessments and sales tax levied in accordance with state law and equally applicable to all general businesses in the Town.

1. *Network Nodes:*

- i. **Application Fee:** The application fee shall be \$500.00 for each network node for up to but not more than five (5) Network Nodes, and \$250.00 for each additional Network Node on a permit (not to exceed 30 total).

- ii. **Annual Public Right-of-Way Rental Rate:** The annual public right-of-way rate shall be \$250.00 per network node installed in the Town public rights-of-way.
 - iii. **Public Right-of-Way Rate Adjustment:** As provided in Section 284.054 of Chapter 284, the Town may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI). The Town shall provide written notice to each network provider of the new rate; and the rate shall apply to the first payment due to the Town on or after the 60th day following the written notice.
- 2. *Node Support Poles:*
 - i. The application fee for each network support pole shall be \$1000.00.
 - 3. *Transfer Facilities:*
 - i. The application fee for each transfer facility shall be \$100.00.
 - ii. The annual transfer facility rental rate shall be \$28.00 monthly for each network node site located in a public right-of-way. However, no rate is required if the network provider is already paying the Town an amount equal to or greater than the amount of other Town public right-of-way fees for access lines under Chapter 283 of Chapter 284 or cable franchise fees under Chapter 66 of the Texas Utility Code.
 - 4. *Micro Network Nodes:*
 - i. No application fee is required for a micro network node if the installation is attached on lines between poles or node support poles.
 - 5. *Collocation of Network Nodes on Service Poles:*
 - i. Subject to execution of the Town's Service Pole Attachment Agreement, the collocation of network nodes on Town service poles shall allowed be at a rate of \$20.00 per year per service pole or the maximum amount allowed by law.
 - 6. *Town-Owned Utility Poles:*
 - i. Annual Rate. A network provider shall pay an annual pole attachment rate for the collocation of a network node supported by or installed on a Town-owned utility pole based upon the pole attachment rate consistent with Section 54.024 of the Texas Utilities Code, applied on a per-foot basis.

- (b) In-Kind Services Prohibited. The Town may not seek or accept in-kind services unrelated to the installation or collocation for which a permit is sought, including in-kind contributions such as reserving fiber, conduit, or pole space for the Town, in lieu of or as additional payment or consideration from any network provider, as a condition for issuing a permit required under Chapter 284 for use of the public right-of-way.

Sec. 70-99 Indemnity

As provided in Section 284.302 of Chapter 284, a wireless network provider shall indemnify, defend, and hold the Town harmless from and against all liability, damages, cost, and expense, including reasonable attorney's fees, arising from injury to person or property proximately caused by the negligent act or omission of the network provider accessing a public right of way under

Chapter 284. The Town and the network provider, as applicable, shall promptly notify each other in writing of any known claim or demand against the other related to or arising out of the network provider's use of the public right of way under Chapter 284. After such notice, the network provider shall defend the claims. The network provider shall have the right to defend and compromise the claims. The Town shall cooperate in the defense of the claims. The foregoing indemnity obligations shall not apply to claims arising solely from the negligence of Town; however, they shall apply in the case of all claims which arise from the joint negligence of the network provider and the Town; provided that in such cases, the amount of the claims for which the Town shall be entitled to indemnification shall be limited to that portion attributable to the network provider. Nothing in this section shall be construed as waiving any governmental immunity available to the Town under state law or waiving any defenses of the parties under state law. Further, the indemnification provided by Chapter 284 is solely for the benefit of the Town and the network provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Sec. 70-100 Removal or relocation by network provider; Removal or relocation required for Town project; Removal required by Town for Safety and Imminent Danger Reasons

(a) Removal or relocation by network provider.

1. Notice. In the event of removal or relocation of a micro network node, network node facilities, node support pole or related ground equipment by a network provider at its own discretion, network provider shall notify the Director in writing not less than (ten)10 business days prior to removal or relocation. Network provider shall obtain all Permits required for relocation or removal of its micro network node, network node facilities, node support poles and related ground equipment prior to relocation or removal.
2. No Refunds. No refunds of any amounts paid by network provider for micro network node, network node facilities, node support poles or related ground equipment that have been removed shall be due from Town to network provider.

(b) Removal or relocation required for Town project.

1. In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, a network provider shall relocate or adjust micro network node, network node, node support pole and related ground equipment in a public right-of-way in a timely manner and without cost to the Town of Addison as manager of the public right-of-way.
2. Town may require network provider to remove or relocate its micro network node, network node, node support pole and related ground equipment, or any portion thereof from the Public Right-of-Way for Town construction projects as allowed by law, including the common-law without compensation.
3. Network provider shall, at the Director's direction, remove or relocate the same at network provider's sole cost and expense, except as otherwise provided in existing state and federal law, whenever the Director reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the

construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any Town construction or maintenance project of a street or public rights-of-way to enhance the use of the public for travel and transportation.

4. If network provider fails to remove or relocate the micro network node, network node, node support pole or related ground equipment, or portion thereof as requested by the Director within ninety (90) days of network provider's receipt of the request, then the Town shall be entitled to remove the micro network node, network node, node support pole or related ground equipment, or portion thereof at network provider's sole cost and expense, without further notice to network provider.
5. Network provider shall, within thirty (30) days following issuance of invoice for the same, reimburse the Town for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the micro network node, network node, node support pole or related ground equipment, or portion thereof.

(c) Removal required by Town for Safety and Imminent Danger Reasons

1. Network provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable micro network node, network node, node support pole and related ground equipment within the time frame and in the manner required by the Director if the Director reasonably determines that the disconnection, removal, or relocation of any part of a micro network node, network node, node support pole and related ground equipment: (a) is necessary to protect the public health, safety, welfare, or Town property; (b) the micro network node, network node, node support pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or Town property; or (c) network provider fails to obtain all applicable licenses, permits, and certifications required by law for its micro network node, network node, node support pole and related ground equipment, or use of any location under applicable law. If the Director reasonably determines that there is imminent danger to the public, then the Town may immediately disconnect, remove, or relocate the applicable micro network node, network node, node support pole and related ground equipment at the network provider's sole cost and expense.
2. The Director shall provide ninety (90) days written notice to the network provider before removing a micro network node, network node, node support pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.
3. Network provider shall reimburse Town for the Town's actual cost of removal of micro network node, network node, node support pole and related ground equipment within thirty (30) days of receiving the invoice from the Town.

Sec. 70-101 Installation; Inspection; Interference

- (a) Installation. Network provider shall, at its own cost and expense, install the micro network node, network node facilities, node support poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the Town via the Director, as such may be amended from time to time. Network provider's work shall be subject to the regulation, control and direction of the Director. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the micro network node, network node facilities, node support poles and related ground equipment shall be in compliance with all applicable laws as defined herein.
- (b) Inspection. The Director, or designee, may perform visual inspections of any micro network node, network node, node support pole or related ground equipment located in the Public Right-of-Way as the Director deems appropriate without notice to network provider. If the inspection requires physical contact with the micro network node, network node, node support poles or related ground equipment, the Director shall provide written notice to the network provider within five (5) business days of the planned inspection. Network provider may have a representative present during such inspection.
- (c) Interference. The network provider shall provide detailed analysis, in accordance with the Design Manual, that the installation and operation of a proposed network node, node support pole or transfer facility shall not cause any interference with the Town public safety radio system, traffic signal light system, other communications components or the operations of the Addison Airport. It shall be the responsibility of the network provider to evaluate, prior to making the application for the permit, the compatibility between the existing Town infrastructure and the network provider's proposed infrastructure. A network node, node support pole or transfer facility shall not be installed in a location that causes any interference. Network nodes, node support poles or transfer facilities shall not be allowed on the Town's public safety radio infrastructure or within Addison Airport.

Sec. 70-102 Requirements upon abandonment of obsolete micro network node, network node, node support pole and related ground equipment.

Network provider shall remove micro network node, network node, node support pole and related ground equipment when such facilities are abandoned regardless of whether or not it receives notice from the Town. Unless the Town sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of ninety (90) days of the micro network node, network node, node support pole and related ground equipment being abandoned or within ninety (90) days of receipt of written notice from the Town. When network provider removes, or abandons permanent structures in the Public Right-of-Way, the network provider shall notify the Director in writing of such removal or abandonment and shall file with the Director the location and description of each micro network node, network node, node support pole and related ground equipment removed or abandoned. The Director may require the network provider to complete additional remedial measures necessary for public safety and the integrity of the Public Right-of-Way.

Sec. 70-103 As-Built maps and records; Courtesy and proper performance; Drug policy; Ownership

- (a) As-Built maps and records. Network provider shall maintain accurate maps and other appropriate records of its network node facilities, node support poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network provider shall provide additional maps to the Town upon request.
- (b) Courtesy and proper performance. Network provider shall make citizen satisfaction a priority in using the Public Right-of-Way. Network provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its micro network node, network node, node support pole and related ground equipment in the Public Right-of-Way. Network provider's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the Director or designee, network provider is not interacting in a positive and polite manner with citizens, he or she shall request network provider to take all remedial steps to conform to these standards.
- (c) Drug policy. It is the policy of the Town to achieve a drug-free workforce and environment. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by network provider's employees, contractors, subcontractors, sub-network provider's, or vendors while on Town rights-of-way is prohibited.
- (d) Ownership. No part of a micro network node, network node, node support pole and related ground equipment erected or placed on the Public Right-of-Way by network provider will become, or be considered by the Town as being affixed to or a part of, the Public Right-of-Way. All portions of the micro network node, network node, node support pole and related ground equipment constructed, modified, erected, or placed by network provider on the Public Right-of-Way shall be and remain the property of network provider and may be removed by network provider at any time, provided the network provider shall notify the Director prior to any work in the Public Right-of-Way.

DIVISION 7. LICENSE AGREEMENT

Sec. 70-104 License required for private operation; Application; Grant by City Council; Terms and Conditions

- (a) License required for private operation. Any person operating a utility (other than a certificated telecommunications provider) solely for private use (personal or business) and not for the benefit of the public at-large, and seeking to place facilities on, in, under or over any portion of any public rights-of-way, or any other area under the control of the Town now or hereafter existing, shall first have obtained from the Town a license or other authorization from the Town as may be required by the Town to use such right-of-way. The issuance of a license shall not constitute a franchise and shall not replace any obligation to obtain a franchise, if applicable.

- (b) Application. Persons desiring a license as provided in this Division shall apply in writing to the Director. The application must be accompanied by plans or drawings showing the area to be used, certified survey notes showing elevations of the area and a statement of the purpose for which the public rights-of-way are to be used.
- (c) Grant by City Council. If, in the sole judgement of the City Council, the requested use is not inconsistent with and does not unreasonably impair the public use of the public rights-of-way, the City Council may by ordinance grant the license.
- (d) Terms and Conditions.
 - 1. The ordinance provided for in this Division shall contain the terms and conditions of the license and shall state the time for which the license exists. Whether or not stated in the ordinance, the City Council retains the right to terminate a license whenever in its judgement the purpose or use of the license is inconsistent with the public use of the public rights-of-way or whenever the purpose or use of the license is likely to become a nuisance.
 - 2. If a private license does not state the time for expiration, it will expire ten years from the date of the passage of the ordinance granting the license.
 - 3. If a license to place and maintain the facilities of a utility operated by a governmental entity on public rights-of-way does not state the time for expiration, it will expire upon expiration of the governmental entity's contract with the Town providing for mutual granting of rights-of-way.
- (e) Annual Fee. The annual fee for a license to use the public rights-of-way is \$2.00 per linear foot of public right-of-way traversed and \$1,000.00 per public street crossing. All fees are payable in advance for each upcoming year until the license is terminated. The person to whom the license is granted, or licensee, shall bear the entire cost of constructing, reconstructing, maintaining and operating any facilities constructed on the public rights-of-way, and will not allow any mechanic's or materialman's liens to be enforced against the public right-of-way by reason of any such work.

DIVISION 8. PENALTY; FEE

Sec. 70-105 Penalty provision

Any person, firm, corporation or business entity violating this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this Chapter shall not preclude the Town from filing suit to enjoin the violation. The Town retains all legal rights and remedies available to it pursuant to local, state and federal law.

Sec. 70-106 Fee

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES	
Right-of-way Management	
Permit application fee	\$50.00
Permit expiration fee; each permit for incomplete work on expiration date if not extended	\$30.00
Public inconvenience penalty	\$25.00/day
Registration per right-of-way user per year	\$100.00
Small cell application fee (This penalty shall not exceed and is capped by statutory limits)	\$500.00 (1-5 network notes); \$250.00 (each additional network node); \$1,000.00 per pole
Small cell user fees (this penalty shall not exceed and is capped by statutory limits)	\$250.00 annually for each network node; \$20.00 per year for Town pole attachment

“Sec. 70-107 to 70-110 reserved.”

SECTION 4: Renumbering of Article (IV) (Excavations) through Article (IX) (Solicitation to Occupants of Vehicles on Public Roadways Prohibited) in Chapter 70 (Streets, Sidewalks and Other Public Places). Article (IV) (Excavations) through (Article IX) (Solicitation to Occupants of Vehicles on Public Roadways Prohibited) shall be renumbered accordingly: Article (IV) (Barricades), Article (V) (Unloading Construction Equipment on Public Property), Article VI (Newsracks), Article VII (License for Use of Public Right-of-Way) and Article VIII (Solicitation to Occupants of Vehicles on Public Roadways Prohibited).

SECTION 5: SEVERABILITY. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Addison hereby declares that is would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 6: SAVINGS/REPEALINGS. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 7: PENALTY. It is the intent of the City Council of the Town of Addison in adopting this Ordinance that an offense under this Ordinance be a strict liability offense; in the prosecution of an offense under this Ordinance, no pleading or proof of intent shall be required to establish the guilt of an accused. Any person, firm, corporation or business entity violating this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day’s violation under this article shall constitute a separate offense. The penal

provisions imposed under this Chapter shall not preclude the Town from filing suit to enjoin the violation.

SECTION 24: EFFECTIVE DATE. This Ordinance shall take effect immediately upon and after its passage and publication as provided by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS this 22nd day of August, 2017.

Joe Chow, Mayor

ATTEST:

Laura Bell, City Secretary

APPROVED AS TO FORM

Brenda N. McDonald, City Attorney

EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL

Town of Addison, Texas
Wireless Services Design Manual

I. Purpose

1.1. Purpose.

- A. The Town of Addison (“Town”) recognizes that the State of Texas has delegated to the Town the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety and welfare of the public to Texas municipalities.
- B. Local Government Code, Chapter 284 (“Chapter 284”), allows certain wireless network providers to install in the public rights-of-way their wireless facilities, described and defined in Chapter 284.
- C. The Town encourages the deployment of state-of-the-art small cell wireless technology in a manner that balances the public need for efficient, safe transportation routes and the use of public rights-of-way within the Town, as any other right-of-way user.
- D. The standards and procedures provided in this *Wireless Services Design Manual* (“Design Manual”) are adopted to protect the health, safety, and welfare of the public by minimizing and reducing impacts to public safety within the Town’s Right-of-Way and to minimize and reduce impacts to the Town, its residents and visitors; and for the general health and welfare of the public.
- C. Due to the increasing number of facilities in the Town’s Right-of-Way, the Town has adopted the “Right-of-Way Management Ordinance” (“ROW Ordinance”), article III of Chapter 70 of the Code of Ordinances, which is applicable to all public service providers including Wireless Service Providers or Network Providers (collectively, “Network Providers”) as defined by Chapter 284 of the Texas Local Government Code.
- D. In addition, the Town has adopted this Design Manual to provide technical criteria and details necessary for Network Providers seeking to install and construct network nodes and node support poles in the Town’s Right-of-Way.
- E. Network Providers shall adhere to the requirements found in the ROW Ordinance and this Design Manual for the placement of their facilities within the Town’s Right-of-Way.
- F. To the extent of any conflict with the ROW Ordinance and this Design Manual, the ROW Ordinance and then the Design Manual shall control, in that order, with regard to a Network Provider.
- G. Pursuant to the ROW Ordinance, the Director of Infrastructure and Development Services has the absolute authority to amend any portion of this Design Manual and

EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL

his/her discretion.

II. Definitions

For purposes of this *Wireless Services Design Manual* the following terms shall have the meanings herein; the definitions for other terms not specifically defined herein may be found in the ROW Ordinance. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

- A. *"Abandon"* and its derivatives means the network nodes and node support poles, or portion thereof, that have been left by Network Provider in an unused or non-functioning condition for more than 120 consecutive days unless, after notice to Network provider, Network Provider has established to the reasonable satisfaction of the Town that the network nodes and node support poles, or portion thereof, has the ability to provide communications.
- B. *"Design District"* means an area that is zoned, or otherwise designated by Town's ordinances and Applicable Codes, and for which the Town maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.
- C. *"Interference"* shall mean any electronic device or signal, including but not limited to, radio frequency ("RF") emissions or signals, physical obstruction, degradation, or other substantial adverse effect to electronic communications signals, including but not limited to RF signals.
- D. *"Network node"* means Network Provider's equipment as defined by Chapter 284 of the Texas Local Government Code.
- E. *"Node support pole"* means a pole as defined by Chapter 284 of the Texas Local Government Code.
- F. *"Park"* means an area that is zoned or otherwise designated by the Town or Town ordinance as a public park for the purpose of recreational activity.
- G. *"Permit"* means a document issued by the Town pursuant to the ROW Ordinance, authorizing installation, removal, modification and other work for Network Provider's network nodes or node support poles in accordance with the approved plans and specifications.
- H. *"Public Right-of-Way"* means the surface of, and the space above and below, any street, road, highway, freeway, tollway, lane, path, drainageway, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, fire lane or other easement now or hereafter held by the Town or over which the Town exercises any rights of management or control and shall include, but not be limited to, all easements now held, or hereafter held, by the Town, but shall specifically exclude private property.

**EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL**

- I. “Town” means the Town of Addison, Texas and the Town’s officers and employees.
- J. “Traffic Signal” means any Town owned or operated device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.
- K. “Underground District” means an area where poles, overhead wires, associated overhead or above ground structures, or any other type of utility facility are required to be installed, buried or fixed underground because the area has been designated with an undergrounding requirement.

III. Permitting

3.1 Attachment to Existing Poles.

Prior to installation or modification of a network node or node support pole, Network Provider shall complete and submit to the Town a Public Right-of-Way Permit application, along with standard required documents and the following items. The Town shall require all of the following information, in addition to any information required by the ROW Ordinance, in order to determine the completeness of the application:

- A. Permit fee.
- B. Aerial Map showing the location of the existing pole to which the network node is proposed to be attached, and a street view image.
- C. Plans and drawings prepared by a professional engineer licensed in the State of Texas that has evaluated the existing pole or infrastructure for structural stability to carry proposed network nodes and can bear the wind load without pole modification or whether the installation will require pole re-enforcement. If pole re-enforcement is necessary, Network Provider shall provide engineering design and specification drawings for the proposed alteration to the existing pole. Any pole re-enforcement or replacement shall be at Network Provider’s sole cost. All re-enforcement or replacement poles shall match the character of the pre-existing pole in order to blend into the surrounding environment and be visually unobtrusive. Town reserves the right to deny a certain type of pole due to its differences.
- D. Scaled dimensioned drawings or pictures of the proposed attachments of the network node to the existing poles or structures as well as any other proposed equipment associated with the proposal, indicating the spacing from existing curb, driveways, sidewalk, and other existing light poles and any other poles or appurtenances. This shall include a before-and-after image of the pole and all proposed attachments and associated standalone equipment.
- E. Scaled dimensioned construction plans indicating the current Public Right-of-Way line and showing the proposed underground conduit and equipment, and its spacing from existing utilities. The drawings shall also show a sectional profile of the Public Right-

EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL

of-Way and identify all existing utilities and existing utility conflicts.

- F. If a Town pole is proposed, the Town pole ID number shall be provided, when available. If the pole ID number is not available, the Network Provider shall identify the closest cross street section and address for location purposes.
- G. The applicant needs to provide detailed analysis that the proposed network node shall not cause any interference with the Town public safety radio system, traffic signal light system, SCADA (Supervisory Control and Data Acquisition) System, other “wireless” communication networks/components, other communications components or the operations of Addison Airport. It shall be the responsibility of the Network Provider to evaluate, prior to making the application for the permit, the compatibility between the existing Town infrastructure and the Network Provider’s proposed infrastructure. A network node shall not be installed in a location that causes any interference. Network nodes shall not be allowed on Town’s public safety radio infrastructure.
- H. A traffic control plan, SWPPP, and trench safety plan may also be required based on the proposed scope of work as determined by the Town.
- I. The Town issued Public Right-of-Way permit authorizes use of its Public Right-of-Way. Network Providers/applicants are responsible for obtaining permission on non-Town-owned infrastructure. If the project lies within the State Right-of-Way, the applicant must provide written evidence of a permit from the State.
- J. If the Network Provider is installing on a third-party pole, the Network Provider must provide written approval from the thirty-party that they are authorized to locate on the pole.
- K. The Network Provider shall provide notification to adjacent residential developments/neighborhoods within 300 feet of the node attachments on Town infrastructure at Network Provider’s sole cost and expense. Notification must be made at least 24 hours prior to the commencement of the work.

The proposal shall comply with the following standards:

- A. Unless otherwise subject to Underground District or Design District requirements, any facilities located off pole must remain in cabinetry or enclosed structure underground, except for the electric meter pedestal. There shall be no external cables or electric wire/cables on pole or structures or aerial wires or cables extending from the pole or structure.
- B. The electrical meter **shall not** be mounted on a Town’s metal pole or structure. Network Provider shall use 240 voltage when connecting to any Town infrastructure and provide key to meter upon inspection.
- C. All attachments to a pole that are projecting, or any equipment or appurtenance mounted on the ground, shall comply with TAS, ADA and shall not obstruct an existing

EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL

or planned sidewalk or walkway.

- D. All proposed projecting attachments to the pole, excluding the electric meter shall provide a minimum vertical clearance of eight (8) feet. If any attachments are projecting towards the street side, it shall provide a minimum vertical clearance of 16 feet.
- E. The color of the network nodes shall match the existing pole color such that the network nodes blend with the color of the pole to the extent possible.
- F. It is the responsibility of the Network Provider to certify on the application that there are no other poles, with small cell attachments permitted/under application review, within 300 feet of the subject pole(s).

3.2 Installation of New Poles.

Prior to installation or modification of a node support pole, Network Provider shall complete and submit to the Town a Commercial Building Permit application for the new pole, as well as a Public Right-of-Way Permit application. Along with standard required documents and requirements set forth in the ROW Ordinance, the following items will also be required for the ROW Permit application:

- A. Permit fee.
- B. Map showing intended location of the node support pole. Aerial Map showing the location of the proposed new pole, and a street view image.
- C. The applicant will need to provide analysis showing that the proposed new node support pole is spaced at least three hundred (300) linear feet from another existing pole that is capable of supporting network nodes along the proposed location, unless otherwise approved by the Town in writing.
- D. Scaled dimensioned drawings or pictures of the proposed node support pole as well as any other proposed equipment associated with the proposal, indicating the spacing from existing curb, driveways, sidewalk, light poles, and any other poles or appurtenances. This shall include a before-and-after street view image. The after-image needs to include the proposed pole and all proposed attachments and associated standalone equipment.
- E. Scaled dimensioned construction plans indicating the current Public Right-of-Way line and showing the proposed underground conduit and equipment, its spacing from existing lines. The drawings shall also show a sectional profile of the Public Right-of-Way and identify all existing utilities and existing utility conflicts.
- F. A traffic control plan, SWPPP, and trench safety plan may also be required based on the proposed scope of work.
- G. The applicant needs to provide analysis that the proposed network node shall not

EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL

cause any interference with Town public safety radio system, traffic signal light system, SCADA (Supervisory control and data acquisition) System, other “wireless” communication networks/components, other communications components or Addison Airport. It shall be the responsibility of Network Provider to evaluate, prior to making application for permit, the compatibility between the existing Town infrastructure and Network Provider’s proposed infrastructure. A network node shall not be installed in a location that causes any interference. Network nodes shall not be allowed on Town’s public safety radio infrastructure.

- H. If the project lies within the State Right-of-Way, the applicant must provide evidence of a permit from the State.
- I. Notification to adjacent residential developments/neighborhoods within 300 feet is required on all node support poles owned by Network Provider.

The proposal shall comply with the following standards:

- J. Any facilities located off pole must remain in cabinetry or enclosed structure underground. There shall be no external cables or electric wire/cables on pole or structures or aerial wires or cables extending from the pole or structure. Shroud poles, as shown in the below image, are encouraged.
- K. The electric meter shall not be mounted on Town’s poles or structures. Network Provider shall use 240 voltage when connecting to any Town infrastructure and provide a key to the meter upon inspection.
- L. The pole and all attachments to the pole that are projecting, or any equipment or appurtenance mounted on the ground shall comply with TAS, ADA and shall not obstruct an existing or planned sidewalk or walkway.
- M. Wooden poles are prohibited. All new poles are required to be break-away and painted/powder coated a color approved by the Town. All attachments for the network nodes shall also match the color of the network support pole. All network support poles shall match the existing poles in the surrounding block or district in which the network support pole is located in order to blend into the surrounding environment and be visually unobtrusive. Town reserves the right to deny a certain type of pole due to its differences.
- N. Upon approval of the permit, the Network Provider shall call for locates. All locate requests shall be handled through the Texas311 call center.



EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL

3.3. Electrical Permit.

- A. Network Provider shall be responsible for obtaining any required electrical power service to the network nodes and node support poles or structures. Network Provider's electrical supply shall be separately metered from the Town and must match Town infrastructure voltage.
- B. Network Provider shall provide Town with the electrical permit and provide sealed engineered drawings for conduit size, circuit size, calculations for Amp, distances running, etc.

IV. Network Node and Node Support Pole Requirements

4.1 Installation.

Network Provider shall, at its own cost and expense, install the network nodes and node support poles in a good and workmanlike manner and in accordance with the requirements promulgated by this Design Manual, the ROW Ordinance and all other applicable laws, ordinances, codes, rules and regulations of the Town, the state, and the United States ("Laws"), as such may be amended from time to time. Network Provider's work shall be subject to the regulation, control and direction of the Town. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the network nodes and node support poles shall be in compliance with all applicable Laws.

4.2 Inspections.

The Town may perform visual inspections of any network nodes and node support poles located in the Public Right-of-Way as the Town deems appropriate without notice. If the inspection requires physical contact with the network nodes or node support poles, the Town shall provide written notice to the Network Provider within five business days of the planned inspection. Network Provider may have a representative present during such inspection.

In the event of an emergency, the Town may, but is not required to, notify Network Provider of an inspection. The Town may take action necessary to remediate the emergency situation and the Town shall notify Network Provider as soon as practically possible after remediation is complete.

4.3. Placement.

- A. *Parks.* Placement of network nodes and node support poles in any Parks, Park roads, sidewalk, or property is prohibited unless such falls within the definition of Public right-of-way in Chapter 284 of the Texas Local Government Code and the placement complies with applicable laws, private deed restrictions, and other public or private restrictions on the use of the Park.
- B. *Town Infrastructure.* Network Provider shall neither allow nor install network nodes or node support poles on any Town property that falls outside the definition

EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL

of Public Right-of-Way in Chapter 284 of the Texas Local Government Code.

- C. *Residential Streets.* Network Provider shall neither allow nor install new node support poles in Public Right-of-Way that is adjacent to a street or thoroughfare that is not more than 50 feet wide and adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
- D. *Underground District.* In a designated Underground District, no new infrastructure can be placed above ground.
- E. *Design District.* Network Provider shall neither allow nor install network nodes or node support poles in the Public Right-of-Way that is within a Design District as defined by Chapter 284 of the Texas Local Government Code, unless approved by the Town in writing.
- F. *Decorative Poles.* Network Provider shall neither allow nor install network nodes on a Decorative Pole as defined by Chapter 284 of the Texas Local Government Code, unless approved by the Town in writing. This standard shall be applicable in all Design Districts as designated in the ROW Ordinance.
 - 1. On a Decorative Pole in a Design District, the installation of the network node shall cause no change in the outward appearance of the Decorative Pole.
 - 2. On all other poles in a Design District, the installation of the network node or network node support pole shall be stealth. See examples below.
- G. *Poles.* Wireless Facilities on a node support poles shall be installed at least eight (8) feet above the ground. If any attachments are projecting towards the street side, it shall provide a minimum vertical clearance of 16 feet.
- H. *Public Right-of-Way.* Node support poles and ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Public Right-of- Way line. Node support poles and ground equipment or network nodes shall not impede pedestrian or vehicular traffic in the Public Right-of-Way. If a node support pole and ground equipment or network node is installed in a location that is not in accordance with the plans approved by the Town and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Public Right-of-Way non-compliant with



**EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL**

applicable Laws, including the American Disabilities Act, then Network Provider shall remove the node support poles, ground equipment or network nodes.

4.4 Fiber Connection.

Network Provider shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its node support poles or network nodes.

4.5 Generators.

Network Provider shall not allow or install generators or back-up generators in the Public Right-of-Way.

4.6 Equipment Dimensions.

Network Provider's node support poles and network nodes shall comply with the dimensions set forth in Chapter 284 of the Texas Local Government Code.

4.7 Tree Maintenance.

In accordance with the ROW Ordinance, Network Provider, its contractors, and agents shall obtain written permission from the Town before trimming trees hanging over its node support poles and network nodes to prevent branches of such trees from contacting node support poles and network nodes, as required by the ROW Ordinance. When directed by the Town, Network Provider shall trim under the supervision and direction of the Parks Director. The Town shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

4.8 Signage.

- A. Network Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the node support poles and network nodes that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the Town.
- B. Except as required by Laws or by the utility pole owner, Network Provider shall not post any other signage or advertising on the node support poles and network nodes, or utility pole.

4.9 Overhead Lines Prohibited.

All overhead lines connecting to the node support pole where other overhead telecommunications or utility lines are or planned to be buried below ground as part of a project shall be buried below ground.

EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL

4.10 Repair.

Whenever the installation, placement, attachment, repair, modification, removal, operation, use, or relocation of the node support poles or network nodes, or any portion thereof is required and such installation, placement, attachment, repair, modification, removal, operation, use, or relocation causes any property of the Town to be damaged or to have been altered in such a manner as to make it unusable, unsafe, or in violation of any Laws, Network Provider, at its sole cost and expense, shall promptly repair and return such property to its original condition. If Network Provider does not repair such property or perform such work as described in this paragraph, then the Town shall have the option, upon 15 days' prior written notice to Network Provider or immediately if there is an imminent danger to the public, to perform or cause to be performed such reasonable and necessary work on behalf of Network Provider and to charge Network provider for the reasonable and actual costs incurred by the Town. Network provider shall reimburse the Town for the costs.

4.11 Graffiti Abatement.

As soon as practical, but not later than seven (7) days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its node support poles and network nodes located in the Public Right of Way.

4.12 Inventory

Network Provider shall maintain a list of its network nodes and node support poles and provide Town an Inventory of locations within ten (10) days of installation. The Inventory of network nodes and node support poles shall include GIS coordinates, date of installation, Town pole ID number (if applicable), type of pole used for installation, pole owner, and description/type of installation for each network node and node support pole installation.

Upon Town's written request, Network Provider shall provide a cumulative Inventory within thirty (30) days of Town's request. Concerning network nodes and node support poles that become inactive, the Inventory shall include the same information as active installations in addition to the date the network node and/or node support pole was deactivated and the date the network node and/or node support pole was removed from the Public Right-of-Way. Town may compare the Inventory to its records to identify any discrepancies.

4.13 Reservation of Rights.

- A. The Town reserves the right to install, and permit others to install, utility facilities in the Public Rights-of-Way. In permitting such work to be done by others, the Town shall not be liable to Network Provider for any damage caused by those persons or entities.
- B. The Town reserves the right to locate, operate, maintain, and remove Town traffic

**EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL**

signal poles in the manner that best enables the operation of its traffic signal system and protect public safety.

- C. The Town reserves the right to locate, operate, maintain, and remove any Town pole or structure located within the Public Right-of-Way in the manner that best enables the Town's operations.

4.14 Coordination of Traffic Signal Maintenance Activities and Emergency Response

Network Provider will provide Town a key to each meter box at the time of inspection and have the ability to temporarily cut-off electricity to its facilities for the safety of maintenance personnel. In the event of failure of components of the traffic signal system for whatever reason, including damage resulting from vehicular collisions, weather related events, or malicious attacks, Town will respond to restore traffic signal operations as a matter of public safety. Should the events that result in damage or failure of the traffic signal system also affect Network Provider's network nodes, Network Provider shall have the sole responsibility to repair or replace its network nodes and shall coordinate its own emergency efforts with the Town.

V. Interference with Operations

5.1 No Liability

- A. The Town shall not be liable to Network Provider for any damage caused by other Network Providers with Wireless Facilities sharing the same pole or for failure of Network Provider's network nodes for whatever reason, including damage resulting from vehicular collisions, weather related events, or malicious attacks.
- B. The Town shall not be liable to Network Provider by reason of inconvenience, annoyance or injury to the network nodes or node support poles or activities conducted by Network Provider therefrom, arising from the necessity of repairing any portion of the Public Right-of-Way, or from the making of any necessary alteration or improvements, in, or to, any portion of the Public Right-of-Way, or in, or to, Town's fixtures, appurtenances or equipment. The Town will use reasonable efforts not to cause material interference to Network Provider's operation of its network nodes or node support poles.

5.2 Signal Interference with Town's Communications and Addison Airport Operations and Infrastructure Prohibited.

- A. There shall be no interference with the Town's communications systems, including the public safety radio system, or the Addison Airport operations and infrastructure. In the event that Network Provider's network nodes interferes with the Town's traffic signal system, SCADA (Supervisory control and data acquisition) System, other "wireless" communication networks/components, public safety radio system, or other Town communications infrastructure operating on spectrum where the

**EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL**

Town is legally authorized to operate, Network Provider shall immediately cease operation of the network nodes causing said interference upon receiving notice from the Town and refrain from operating. Network Provider shall respond to the Town's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving notice.

- B. Protocol for Responding to Event of Interference. The protocol for responding to events of interference will require Network Provider to provide the Town an Interference Remediation Report that includes the following items:
1. Remediation Plan. Revise a remediation plan to stop the event of inference;
 2. Time Frame for Execution. Provide the expected time frame for execution of the remediation plan; and
 3. Additional Information. Include any additional information relevant to the execution of the remediation plan.

In the event that interference with Town facilities cannot be eliminated, Network Provider shall shut down the network nodes and remove or relocate the network node that is the source of the interference as soon as possible to a suitable alternative location made available by Town.

- C. Following installation or modification of a network node, the Town may require Network Provider to test the network node's radio frequency and other functions to confirm it does not interfere with the Town's Operations.

VI. Abandonment, Relocation and Removal

6.1 Abandonment of Obsolete Network Nodes and Node Support Poles

Network Provider shall remove network nodes and node support poles when such facilities are abandoned regardless of whether or not it receives notice from the Town. Unless the Town sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the network nodes and node support poles being abandoned or within 90 days of receipt of written notice from the Town. When Network Provider removes or abandons permanent structures in the Public Right-of-Way, the Network Provider shall notify the Town in writing of such removal or abandonment and shall file with the Town the location and description of each network node or node support pole removed or abandoned. The Town may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Public Right-of-Way.

6.2 Relocation and Removal at Network Provider's Expense

- A. Network Provider shall remove and relocate its network nodes and node support

EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL

poles at its own expense to an alternative location not later than one hundred twenty (120) days after receiving written notice that removal, relocation, and/or alteration of the network nodes and/or node support poles is necessary due to:

1. Construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any Town construction or maintenance project or other public improvement project; or
 2. Maintenance, upgrade, expansion, replacement, removal or relocation of the Town's pole or structure upon which Network Provider's network nodes are attached; or
 3. The network node or node support pole, or portion thereof, is adversely affecting proper operation of traffic signals, streetlights or other Town property;
 4. Closure of a street or sale of Town property; or
 5. Projects and programs undertaken to protect or preserve the public health or safety; or
 6. Activities undertaken to eliminate a public nuisance; or
 7. Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its network nodes or node support poles; or Duty otherwise arising from applicable law.
- B. Network Provider's duty to remove and relocate its network nodes and node support poles at its expense is not contingent on the availability of an alternative location acceptable for relocation. Town will make reasonable efforts to provide an alternative location within the Public Right-of-Way for relocation, but regardless of the availability of an alternative site acceptable to Network Provider, Network provider shall comply with the notice to remove its network nodes and node support poles as instructed.
- C. The Town may remove the network node and/or node support pole if Network Provider does not remove such within one hundred twenty (120) days. In such case, Network Provider shall reimburse Town for the Town's actual cost of removal of its network nodes and node support poles within 30 days of receiving the invoice from the Town.

6.3 Removal or Relocation by Network Provider

- A. If the Network Provider removes or relocates at its own discretion, it shall notify the Town in writing not less than 10 business days prior to removal or relocation. Network Provider shall obtain all Permits required for relocation or removal of its network nodes and node support poles prior to relocation or removal.

EXHIBIT A
WIRELESS SERVICES DESIGN MANUAL

- B. The Town shall not issue any refunds for any amounts paid by Network Provider for network nodes and node support poles that have been removed.

6.4 Restoration

Network Provider shall repair any damage to the Public Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within 10 days following the date of such removal or relocation, at Network Provider's sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Network Provider was granted a Permit for the applicable location, including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the Town.

6.5 Network Provider Responsibility

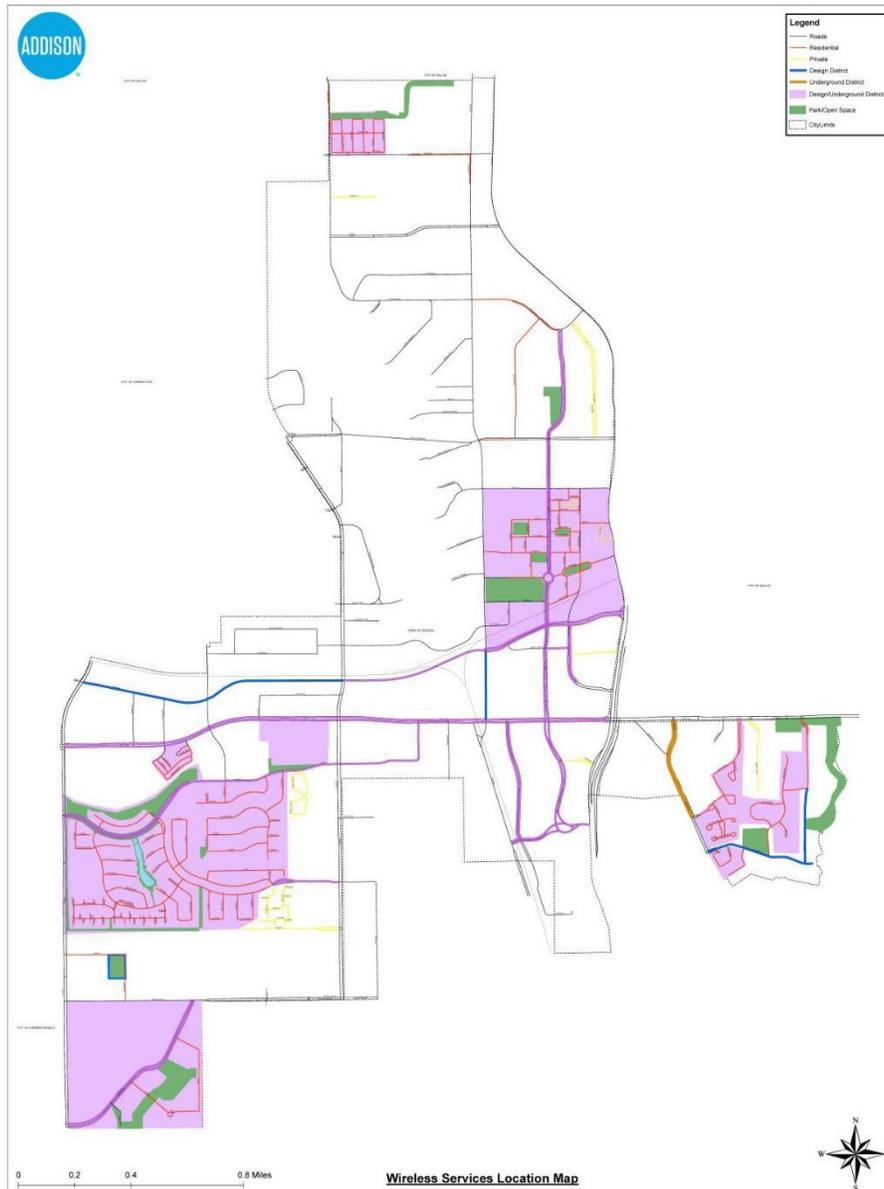
Network Provider shall be responsible and liable for the acts and omissions of Network Provider's employees, temporary employees, officers, directors, consultants, agents, affiliates, subsidiaries, sub lessees, and subcontractors in connection with the performance of activities within the Public Right-of-Way, as if such acts or omissions were Network Provider's acts or omissions.

(Continued on the following page)

EXHIBIT A WIRELESS SERVICES DESIGN MANUAL

VII. Wireless Services Location Map

The Wireless Services Location Map is shown below and may be amended in accordance with Chapter 70 of the Code of Ordinances.



Work Session and Regular Meeting**Meeting Date:** 08/22/2017**Department:** Infrastructure- Development Services

AGENDA CAPTION:

Present And Discuss **The Kellway Lift Station Assessment And Capital Improvement Program Report.**

BACKGROUND:

On May 24, 2016, Council authorized a contract with Garver to perform an assessment of the Town's sanitary sewer lift station located on Kellway Circle. That assessment is now complete and staff will update Council on the findings and the proposed Capital Improvement Program.

Sewer services are designed to flow on a gravity basis. It is sometimes necessary to install a lift station that will pump wastewater or sewage from a lower elevation to a higher elevation so that it can continue to flow by gravity.

The Kellway Lift Station was built in 1998 to move wastewater from the northern part of Town to a sewer tunnel system that is then treated at a Trinity River Authority (TRA) wastewater treatment plant in Dallas. This facility has very complex components, such as pumps, motors, intricate piping, complex electrical and control systems, and detailed structural elements that require routine maintenance (based on industry best practices) and periodic refurbishment and replacement. Although staff does perform routine maintenance tasks, a more in-depth assessment should be done by specialized wastewater engineers and contractors. Prior to the completion of this assessment, no in-depth study had been done at this facility. This data will be incorporated into the asset management plan.

The assessment performed by Garver included the following services:

- Preparation of an asset inventory
- Assessment of each asset and documentation of its condition including structural, electrical, and pumping equipment
- Provide improvement recommendations for the Town's computerized monitoring system Supervisory Controls and Data Acquisition System (SCADA)
- Evaluation and recommendations for capacity and process control improvements
- Evaluation of the facilities current compliance with state regulatory requirements
- Provide opinion of probable costs for projects

- Prepare Capital Improvements Plan (CIP)

Staff will provide a briefing on the assessment and its findings.

RECOMMENDATION:

Information only, no action required.

Attachments

Presentation - Kellway Lift Station

Kellway Lift Station Assessment And Capital Improvement Program Report

August 22, 2017

The logo for Addison, featuring the word "ADDISON" in a bold, blue, sans-serif font inside a white circle. The circle is set against a blue background that has a white diagonal line running from the top-left to the bottom-right.

Background

A small version of the Addison logo, consisting of the word "ADDISON" in blue text inside a white circle, set against a blue background with a white diagonal line.

- Kellway Lift Station was built in 1998
- Moves wastewater from northern portion of Addison into the sewer tunnel system that runs to the Trinity River Authority treatment plant in Dallas
- Sanitary sewer system typically runs by gravity flow but if not possible, a lift station is installed
- Provides pumping to move sewage from lower elevation to a higher elevation

Location

ADDISON



3

Goals of the Assessment

ADDISON

1. Inventory and condition assessment
 - Asset inventory based on as-built drawings and site visits
 - Three categories of assets - structural, process and mechanical, and electrical
2. Process control assessment and recommendations
 - Review existing Supervisory Control and Data Acquisition System (SCADA) and provide improvement recommendations
 - Review existing pumping parameters
 - Review regulatory requirements
 - Develop process improvement recommendations
3. Capital Improvement Program development and recommendations
 - Prioritized based on "Risk Assessment"

4

Kellway Lift Station Assessment



- Assessment was conducted by Garver
- Six major components:
 1. Condition assessment and Business Risk Exposure
 2. SCADA Improvements
 3. Capacity and Process Control Optimization
 4. Regulatory Assessment
 5. Recommendations and Costs
 6. Capital Improvement Plan

5

Kellway Lift Station Project Groups



Six project groups identified

1. Electrical Improvement Projects
 - Replacement of old, out of code electrical equipment
2. Lift Station Bypass Pumping Project
 - Installation of a permanent sewer bypass system
3. Lift Station Pump Improvements
 - Replacement of existing pumps and installation of third pump

6

Kellway Lift Station Project Groups (cont)



4. Regulatory Upgrades
 - Additional monitoring and alarming improvements
 - Ventilation system improvements
5. Communication Upgrades
 - Improvements to communication system along with redundancy
6. Control System Improvements
 - Provide additional control and protection for the pumps and motors

7

Assessment Results



Kellway Lift Station CIP					
Project Name	FY18	FY19	FY20	FY21	FY22
Power Distribution Improvements					
<i>Replace Automatic Transfer Switch</i>	\$ 57,750.00				
<i>Replace Switchboard MSB</i>	\$ 68,250.00				
<i>Replace Main Circuit Breaker with Wiring and Conduit</i>	\$ 130,200.00				
Replace MSB-3 (F-1 Exhaust Fan Control Panel 7.5 HP)	\$ 11,550.00				
Arc Flash Hazard Assessment - Engineering	\$ 13,650.00				
Installation of Permanent Bypass Pumping System		\$ 556,600.00			
Installation of Dewatering Container Filter	\$ 68,200.00				
Replace Pump #1			\$ 74,750.00		
Replace Pump #2			\$ 74,750.00		
Install Pump #3			\$ 74,750.00		
Ventilation Improvements				\$ 40,800.00	
Alarming Improvements				\$ 93,600.00	
Motor Protective Relays				\$ 48,000.00	
Installation of Variable Frequency Drives					\$ 385,000.00
Control System (SCADA) Improvements					\$ 146,250.00
Total	\$ 349,600.00	\$ 556,600.00	\$ 224,250.00	\$ 182,400.00	\$ 531,250.00
				5 Year Total	\$ 1,844,100.00

8

Next Steps

A blue circular logo with the word "ADDISON" in white capital letters.

- FY2018 projects are funded and subject to Council adoption of the annual budget
- Design and construction contracts will be brought to Council for consideration
- Assessment will be updated on a regular basis

9

Questions

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10

AI-2344

15.

Work Session and Regular Meeting

Meeting Date: 08/22/2017

Department: City Manager

AGENDA CAPTION:

Present, Discuss And Consider Action On **An Update Of Recent Activity Relating To The Dallas Area Rapid Transit (DART) Board Of Directors And How The Town Might Communicate And Promote Addison's DART Priorities Regarding The Cotton Belt.**

BACKGROUND:

Mayor Joe Chow and Mayor Pro Tempore Ivan Hughes requested this item be placed on the agenda to provide an update on recent activity related to the Dallas Area Rapid Transit (DART) Board of Directors and how the Town might communicate and promote Addison's DART priorities regarding the Cotton Belt project.

RECOMMENDATION:

Staff recommends direction from Council.
