

PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON JULY 27, 2009, FOLLOWED BY PRELIMINARY OPEN MEETING IN THE PLANO MUNICIPAL BUILDING, 1520 K AVENUE, IN COMPLIANCE WITH VERNON'S TEXAS CODES ANNOTATED, GOVERNMENT CODE CHAPTER 551 (OPEN MEETINGS ACT), AS FOLLOWS:

Mission Statement: The mission of the City of Plano is to provide outstanding services and facilities, through cooperative efforts with our citizens, that contribute to the quality of life in our community.

EXECUTIVE SESSION

- | | | | |
|------|--|-------------|---------|
| I. | Legal Advice | Wetherbee | 10 min. |
| | A. Respond to questions and receive legal advice on agenda items | | |
| | B. Bid requirements for purchase of cement | | |
| II. | Personnel | Council | 10 min. |
| | <u>Reappointments:</u>
Arts of Collin County Commission Board of Directors
Board of Adjustment
Building Standards Commission
Heritage Commission
Planning and Zoning Commission | | |
| III. | Economic Development | Muehlenbeck | 10 min. |
| | A. Discuss a financial offer or other incentive to a business prospect to locate, stay, or expand in Plano and consider any commercial and financial information from the business prospect. | | |

PRELIMINARY OPEN MEETING

- | | | | |
|------|---|---------|---------|
| I. | Consideration and action resulting from Executive Session discussion: Personnel
<u>Reappointments:</u>
Arts of Collin County Commission Board of Directors
Board of Adjustment
Building Standards Commission
Heritage Commission
Planning and Zoning Commission | Council | 10 min. |
| II. | Personnel
<u>Reappointments:</u>
Animal Shelter Advisory Committee
Civil Service Commission
Community Relations Commission
Cultural Affairs Commission
Library Advisory Board
Parks and Recreation Planning Board
Plano Housing Authority
Public Arts Committee
Retirement Security Plan Committee
Self Sufficiency Committee
Senior Citizens Advisory Board
Tax Increment Financing Reinvestment Zone No. 2 Board | Council | 15 min. |
| III. | Mobility Report | Neal | 10 min. |
| IV. | Comprehensive Monthly Financial Report | Tacke | 10 min. |
| V. | Council items for discussion/action on future agendas | Council | 5 min. |
| VI. | Consent and Regular Agenda | Council | 5 min. |

In accordance with the provisions of the Open Meetings Act, during Preliminary Open Meetings, agenda items will be discussed and votes may be taken where appropriate.

Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Avenue L, with specially marked parking spaces nearby. Access and special parking are also available on the north side of building. The Council Chamber is accessible by elevator to the lower level. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.



CITY COUNCIL

1520 AVENUE K

DATE: July 27, 2009

CALL TO ORDER: 7:00 p.m.

INVOCATION: Father R. James Balint
Prince of Peace Catholic Community

PLEDGE OF ALLEGIANCE:

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>PROCLAMATIONS & SPECIAL RECOGNITION</u></p> <ul style="list-style-type: none"> • Special Recognition: Ben Sater – All-Stars Among Us Winner • Special Recognition: Corina Sadler – Outstanding New Volunteer Administrator • Recognition of Designation: Pecan Hollow Golf Course as a Certified Audubon Cooperative Sanctuary • Recognition of Award: Plano Arts Program at the Americans for the Arts Annual Convention • Presentation: Phyllis Jarrell, Director of Planning – 25 Year Service Award <p><u>CERTIFICATES OF APPRECIATION</u></p> <p><u>Self Sufficiency Committee</u> Shelby Williams III</p> <p><u>COMMENTS OF PUBLIC INTEREST</u></p> <p><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>CONSENT AGENDA</u></p> <p><u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p><u>Approval of Minutes</u></p> <p>(a) June 22, 2009</p> <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p> <p>(b) Bid No. 2009-133-B for 2008-09 Arterial Concrete Pavement Rehabilitation Project (Project No. 5982) – Enterprise Drive and Premier Drive to Smith Contracting Inc. in the amount of \$174,102. This project involves the repair of arterial concrete pavement on Enterprise Drive between Park Boulevard and Central Expressway and on Premier Drive between Enterprise Drive and Ruisseau Drive.</p> <p>(c) Bid No. 2009-132-B for 2008-09 Arterial Concrete Pavement Rehab, Plano Parkway and Commerce Drive, Project No. 5975 to Advanced Paving Acquisitions LTD, dba Advanced Paving Company in the amount of \$530,551. This project involves the replacement of arterial street pavement, curb and gutter, sidewalk repair and barrier free ramp construction on Plano Parkway between Commerce Drive and K Avenue and on Commerce Drive between 15th Street and Plano Parkway.</p> <p>(d) Bid No. 2009-34-B for Preston Road at Legacy Drive Intersection Improvements to McMahon Contracting, LP, in the amount of \$1,292,753. The project consists of construction to provide modified median left turn improvements at Preston Road and Legacy Drive.</p> <p>(e) Rejection of Bid No. 2009-122-B for the Legacy Greenbelt Extension, Denbury to YMCA from all bidders. The project is for construction of concrete recreational trail along White Rock Creek (Legacy Trail) from Tennyson Parkway north through the current YMCA property on the west side of the creek.</p> <p>Purchase from an Existing Contract</p> <p>(f) To authorize the purchase and installation of 6780 Sun Storage, in the amount of \$154,940 from Sigma Solutions, Incorporated, through an existing contract/agreement with the Department of Information Resources (DIR) contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-503)</p> <p>(g) To approve the purchase of Materials Testing Services for Razor Road from Ohio Drive to S.H. 121, in the amount of \$55,422 from Terracon Consultants, Inc., through an existing contract (Number 2009-6-D), and authorizing the City Manager to execute all necessary documents.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p> <p>(h) To approve an Engineering Contract by and between the City of Plano and Wier & Associates, Inc., in the amount of \$184,000 for the Cross Bend and Deerfield Culverts project, and authorizing the City Manager to execute all necessary documents.</p> <p>Approval of Change Order</p> <p>(i) To Tiseo Paving Company increasing the contract by \$36,804 for the Independence Parkway Paving Improvements – McDermott Road to SH 121, Change Order No. 2 (Bid No. 2009-21-B). This is to modify the portion of pavement that falls inside and adjacent to the State Highway right of way so as to conform with the TxDOT specifications. This portion is located south of the intersection of Independence Parkway and SH 121.</p> <p>Approval of Modification</p> <p>(j) To consider a Modification to the Substantial Amendment to the 2008-09 City of Plano Action Plan for the Community Development Block Grant Recovery Program.</p> <p><u>Adoption of Resolutions</u></p> <p>(k) To authorize continued participation with the Atmos Cities Steering Committee; authorizing the payment of 2 cents per capita to the Atmos Cities Steering Committee to fund regulatory and related activities related to Atmos Energy Corporation; and providing an effective date.</p> <p>(l) To ratify the additional expenditure of \$23,100 from the Buffington Community Services Fund to increase the number of meals delivered to at-risk Plano seniors and to increase the individual seniors being served weekday meals by 50 people; authorizing the execution of any and all documents in connection therewith by the City Manager; and providing an effective date.</p> <p>(m) To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Murphy, Texas to allow City of Murphy's employees to take classes offered by City of Plano Professional Development Center; authorizing its execution by the City Manager; and providing an effective date.</p> <p>(n) To approve the terms and conditions of a Software Maintenance Agreement by and between the City of Plano and Northrop Grumman Information Technology, Inc., the sole source provider of the Records Management System and Automated Field Reporting System, in an amount not to exceed \$246,993; authorizing its execution by the City Manager; and providing an effective date.</p> <p>(o) To ratify the Takeover Agreement by and between Liberty Mutual Insurance Company and the City of Plano for completion of Plano Centre Storage Expansion; approving its execution by the City Manager; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(p)	To approve the dedication of four tracts of land, a 0.371 acre tract, a 1.173 acre tract, a 1.302 acre tract, and a 3.575 acre tract, owned by the City of Plano, Texas designated as park property but not yet utilized as park for dedication as a public right-of-way for Chaparral Road, said tracts being situated in the Jeremiah Muncy Survey, Abstract No. 621 and the R.C. Whisenant Survey, Abstract No. 1012, in the City of Plano, Collin County, Texas, and providing an effective date.	
(q)	To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, for Intersection Improvements at McDermott Road and Robinson Road; authorizing its execution by the City Manager; and providing an effective date.	
(r)	To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, concerning the Design and Right of Way Acquisitions for the Parker Road and US 75 Interchange and repealing Resolution No. 2004-9-25(R); authorizing its execution by the City Manager; and providing an effective date.	
(s)	To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, for the Widening of Communications Parkway from Parker Road to Spring Creek Parkway and repealing Resolution No. 2009-3-6(R); authorizing its execution by the City Manager; and providing an effective date.	
(t)	To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, for Ridgeview Drive Widening from Coit Road to Independence Parkway and repealing Resolution No. 2009-5-22(R); authorizing its execution by the City Manager; and providing an effective date.	
<u>Adoption of Ordinances</u>		
(u)	To approve a Negotiated Resolution between the Atmos Cities Steering Committee ("ACSC" or "Steering Committee") and Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company") regarding the Company's Rate Review Mechanism filing in all cities exercising original jurisdiction; declaring existing rates to be unreasonable; requiring the Company to reimburse cities' reasonable ratemaking expenses; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement and finding the rates to be set by the attached tariffs to be just and reasonable; approving Atmos' Proof of Revenues; adopting a savings clause; determining that this ordinance was passed in accordance with the requirements of the Texas Open Meetings Act; declaring an effective date; and requiring delivery of this Ordinance to the Company and the steering committee's legal counsel.	
(v)	To amend Article I of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas to add certain definitions to Section 18-1 and adding Section 18-25 Downtown Collection Accommodation and rates to create accommodation for the collection of solid waste for specified downtown properties including a rate structure; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(w)	<p>To transfer the sum of \$183,610 from the General Fund Operating Appropriation for Fiscal Year 2008-09 to the Grant Fund Operating Appropriation to repay HUD for Plano International Preschool’s failure to fully comply with the national objectives during the relevant periods; amending the budget of the City and Ordinance 2008-9-15, as amended, to reflect the actions taken herein; declaring this action to be a case of public necessity; and providing an effective date.</p>	
(x)	<p>To amend Section 12-101 of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances to temporarily prohibit until February 1, 2010 the stopping, standing, or parking of motor vehicles on certain sections of Buckboard Drive and Windmill Lane, within the City limits of the City of Plano; declaring it unlawful and a misdemeanor to park motor vehicles upon such sections of such roadway within the limits herein defined; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.</p>	
	<p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	<p>CSP No. 2009-90-B for the construction of the Environmental Education Complex – Project No. 5119, in the amount of \$1,185,314 to Turner Construction Company, and authorizing the City Manager to execute all necessary documents.</p>	
(2)	<p>To Rescind an Award for Median Right of Way Landscape Maintenance (Proposal #2009-94-C)</p>	
(3)	<p>A Resolution to approve the terms and conditions of an Amendment to Tax Abatement Agreement by and between the City of Plano, Texas and The Shops at Legacy (North) LLC; authorizing its execution by the City Manager; and providing an effective date.</p>	
(4)	<p>Public Hearing and an Ordinance to designate a certain area within the City of Plano as Reinvestment Zone No. 119 for a Tax Abatement consisting of a 14.36 acre tract of land located at the southwest corner of East Plano Parkway and Shiloh Road, in the City of Plano, Texas establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(5)	<p>A Resolution to approve the terms and conditions of an Agreement by and between the City of Plano, Texas, Lineage Power Corporation, a Nevada corporation, and Plano Tech Center Partners, Ltd., a Texas limited partnership; providing for a Real and Business Personal Property Tax Abatement, and authorizing its execution by the City Manager; and providing an effective date.</p>	
(6)	<p>A Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Lineage Power Corporation, a Nevada corporation; authorizing its execution by the City Manager; and providing an effective date.</p>	
(7)	<p>A Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Atos Origin, Inc., a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date.</p>	
(8)	<p>A Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Enterprise Mobile, Inc., a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date.</p>	
(9)	<p>A Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Publicis Inc., a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date.</p>	
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Phil Dyer
Mayor

Harry LaRosiliere
Mayor Pro Tem

Lee Dunlap
Deputy Mayor Pro Tem

Pat Miner
Place 1

Ben Harris
Place 2

Mabrie Jackson
Place 3

Lissa Smith
Place 4

Jean Callison
Place 7

Thomas H. Muehlenbeck
City Manager

July 23, 2009

Mayor Phil Dyer
City Council Members
City of Plano
Plano, TX 75074

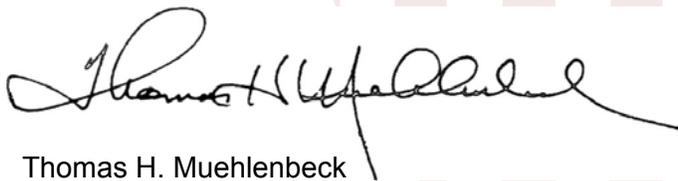
Honorable Mayor and City Council:

We will begin our meeting on Monday in Executive Session where we will receive legal advice from the City Attorney and information regarding bid requirements for the purchase of cement. Under Item II the Council will consider reappointments/appointments to various committees and under Item III potential economic development prospects may be discussed.

The Preliminary Open Meeting will begin with consideration of reappointments/appointments to boards and commissions, followed by the Mobility Report and the Comprehensive Monthly Financial Report.

I look forward to seeing you on Monday.

Sincerely yours,



Thomas H. Muehlenbeck

MEMO

DATE: July 23, 2009

TO: Honorable Mayor and City Council
City Manager Muehlenbeck
City Secretary Zucco

FROM: Alice Snyder, Assistant City Secretary

RE: Personnel Reappointments -
Executive and Worksession Meetings

The following reappointments will be considered at the July 27, 2009 Council Meeting.

<u>Executive Session</u>	<u>Worksession Meeting</u>
<u>Reappointments:</u> Arts of Collin County Commission Board of Directors Board of Adjustment Building Standards Commission Heritage Commission Planning and Zoning Commission	<u>Reappointments:</u> Animal Shelter Advisory Committee Civil Service Commission Community Relations Commission Cultural Affairs Commission Library Advisory Board Parks and Recreation Planning Board Plano Housing Authority Public Arts Committee Retirement Security Plan Committee Self Sufficiency Committee Senior Citizens Advisory Board Tax Increment Financing Reinvestment Zone No. 2 Board



Transportation Engineering Division

Transportation Mobility / Safety Report

June 2009

- Traffic Signals
 - ✓ **Implemented temporary signal timing for overpass closure at Custer/121.**
 - ✓ **Reactivated traffic signal communications at the Jupiter Elevated Tank to restore communications with 30 intersections in East Plano.**
 - ✓ **Independence Parkway @ Ridgeview Road – Design new traffic signal**
 - Ohio Drive @ SH 121 – **Waiting on electrical service**
 - Parkwood Blvd @ Windhaven Prkwy – Design completed
 - Midway Road @ McKamy Trail – Design New Traffic Signal (**96%** completed)
 - Razor Road @ McDermott Road - Design New Traffic Signal (**80%** completed)
 - Razor Road @ Ohio Drive - Design New Traffic Signal (**65%** completed)
 - Traffic Surveillance Camera Restoration Project (**75%** completed)
 - Completed 2 As-built signal plans.
 - City-wide Speed Zone Survey Project (**65%** completed)

- Traffic Safety
 - ✓ **US- 75 @ Parker Road – Coordinated eastbound traffic switch on Parker Road.**
 - ✓ **Conducted pedestrian safety audits at McDermott/Custer, McDermott/ Independence, and Coit Road/Stonehaven Drive.**
 - ✓ **Dallas Parkway @ Park Boulevard - Reinstalled lane lines on the frontage road.**
 - ✓ **Spring Creek Parkway @ Roundrock Trail - Request to increase southwest corner curb radius for fire trucks – Review in progress.**
 - HAL/HARS 2008-2009 project list – **80%** complete
 - Speed trailer deployment:
 - **Hawkhurst Drive between Robinson Road and Preston Meadow Drive.**
 - **Rainier Road between Spring Creek Parkway and Coffeyville Trail.**

- PISD/FISD
 - Andrews Elementary - Request for All-Way Stop control at the Sutherland Lane/Scenic Drive intersection – Review in progress.
 - Barron Elementary – Request to reinstall a school zone on Parker Road at P Avenue – **Approved by City Council 6/22/09.**
 - Clark High School - Request to lengthen the school zone on Spring Creek Parkway – Review in progress.
 - Forman Elementary - Request for review of pick-up/drop-off operation impacts on Hendrick Drive – Review in progress.
 - Forman Elementary - Request for All-Way Stop control at the Hendrick Drive/Timberline Drive intersection – Review in progress.
 - Forman Elementary - Request to extend afternoon school zone hours for the Shiloh Road school speed zones for tutorials – **Approved by City Council 6/22/09.**
 - Hedgoxe Elementary - Request to add NO PARKING signs on Prescott Drive – **Installation completed.**
 - Jackson Elementary - Request for new No Parking signs, crosswalks, and removal of existing No Parking signs on streets abutting the school (Jackson Drive, Colchester Drive, Jomar Drive) – Review in progress.

- Jasper High School – Alcove Lane west of Archgate Drive - Request for No Parking zone - Ordinance under development.
- McCall Elementary - Request to modify the times on No Left-Turn signs on Cloverhaven Way – Review in progress.
- Rice Middle - Independence Parkway @ Russell Creek Drive - Request to extend school zone hours – **Approved by City Council 6/22/09**
- - Request to evaluate pick-up/drop-off operations – Review in progress.
- Sigler Elementary - Request to review the school zones on Alma Drive @ 15th Street, and Alma Drive @ Plano Parkway – Review in progress.
- Taylor Elementary School – Independence Parkway @ Ridge Creek Lane - Request to evaluate the use of the existing school crossing - Ordinance being developed.
- Identify school zones located on attendance boundaries. Six zones identified – Removal ordinance under consideration.

- Safe Streets Program (SSP)

Participating Neighborhoods Active in the Program

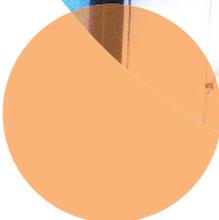
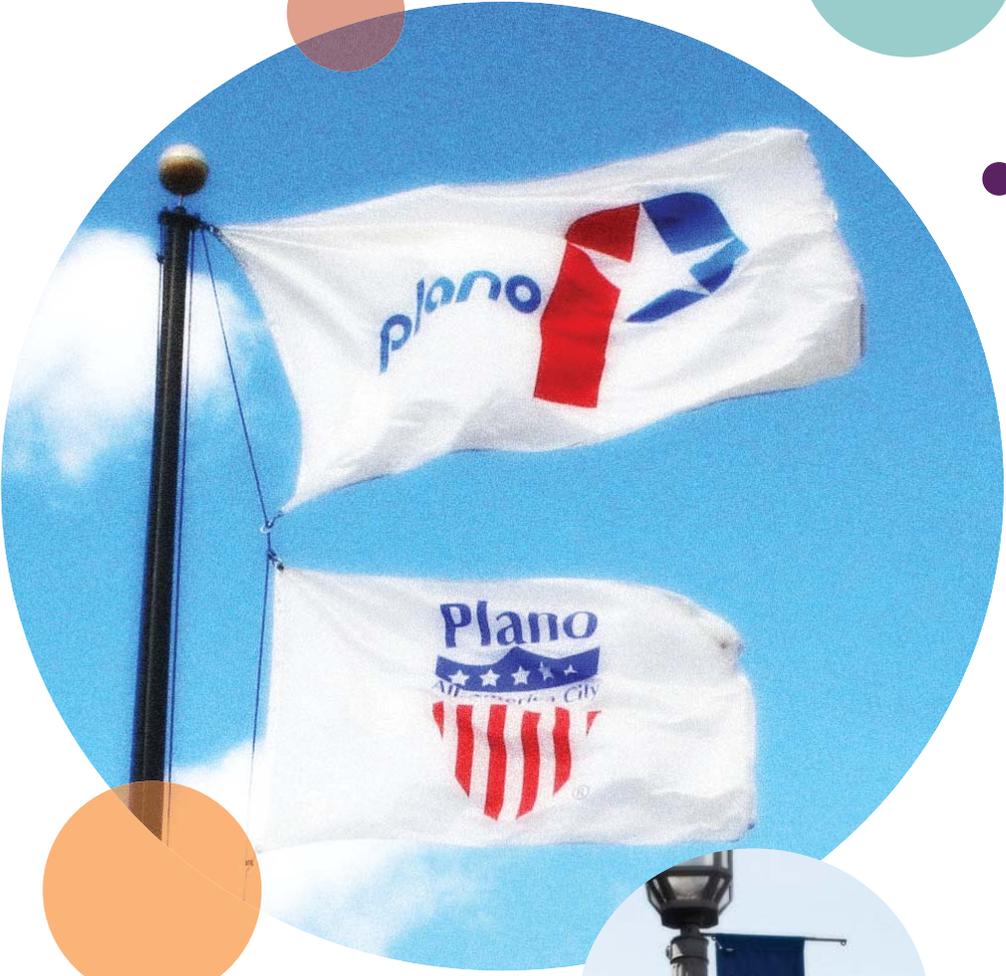
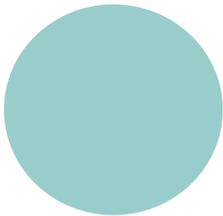
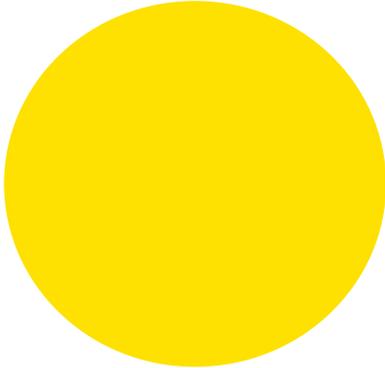
- Denham Way - Comment forms received
- Harrisburg Lane/Sutherland Lane – Heavy enforcement underway.
- Merriman Drive neighborhood streets – Petition process pending.
- Oklahoma Avenue – Heavy enforcement completed
- Robinson Road – Permanent Plan installation pending
- Royal Oaks Drive - Permanent plan ballot packets to be mailed 7/09
- Russell Creek Drive East of Independence Parkway – Permanent Plan installation pending
- Teakwood Lane from Custer Road to Roundrock Trail – Petition process pending.
- Wesson Drive – Petition process pending.
- Woodburn Corners – Heavy enforcement underway.

- Long Range Planning:

- ✓ **Start Long Range Transportation Planning Model Update**
- Attended monthly DRMC, RTC, TAC, STTC, and ITE meetings

comprehensive **monthly**

finance report



ABOUT THIS REPORT

The City of Plano Finance Department is dedicated to excellence in local government, comprehensive fiscal management, compliance and reporting. The Comprehensive Monthly Finance Report (CMFR) is a unique document, directed at providing our audience (internal and external users), with the general awareness of the City's financial positions and economic activity.

This report is comprised of five sections:

1. The **Financial Analysis** reports the performance of the major operating funds of the City. Narrative disclosures are used to highlight any significant changes or fluctuations.
- 1A. The **Financial Summary** provides comparative data for major revenue sources and expenditure items.
2. The **Economic Analysis** section contains a summary of the key economic indicators and an in-depth review with graphic illustrations.
3. The **Investment Report** provides a description of investment activity during the month and a summary of interest earnings.

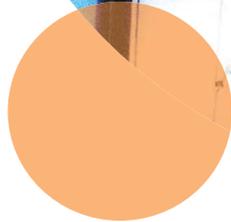
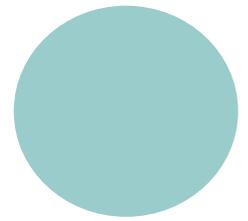
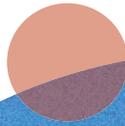
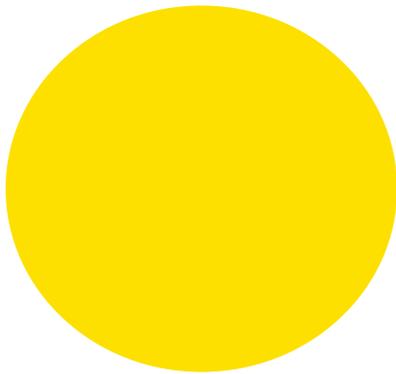
We would like to acknowledge those responsible for this report: Steve Okunfulure for the Financial Summary, Brianna Alvarado and Myra Conklin for the Economic Analysis Report, and the Investment Report.

The CMFR is intended to provide our audience with a timely, unique and informative document. Please provide us with any comments or suggestions you may have and should you desire additional information, feel free to contact my office.



Denise Tacke
Director of Finance
P.O. Box 860358
Plano, TX 75006-0358
972-941-7135

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SECTION 1

FINANCIAL ANALYSIS

City of Plano

Comprehensive Monthly Finance Report

This report is designed for internal use and does not include all the funds and accounts included in the City of Plano's operations. For a complete report, refer to the City of Plano Comprehensive Annual Financial Report, available through the City's Finance Department.

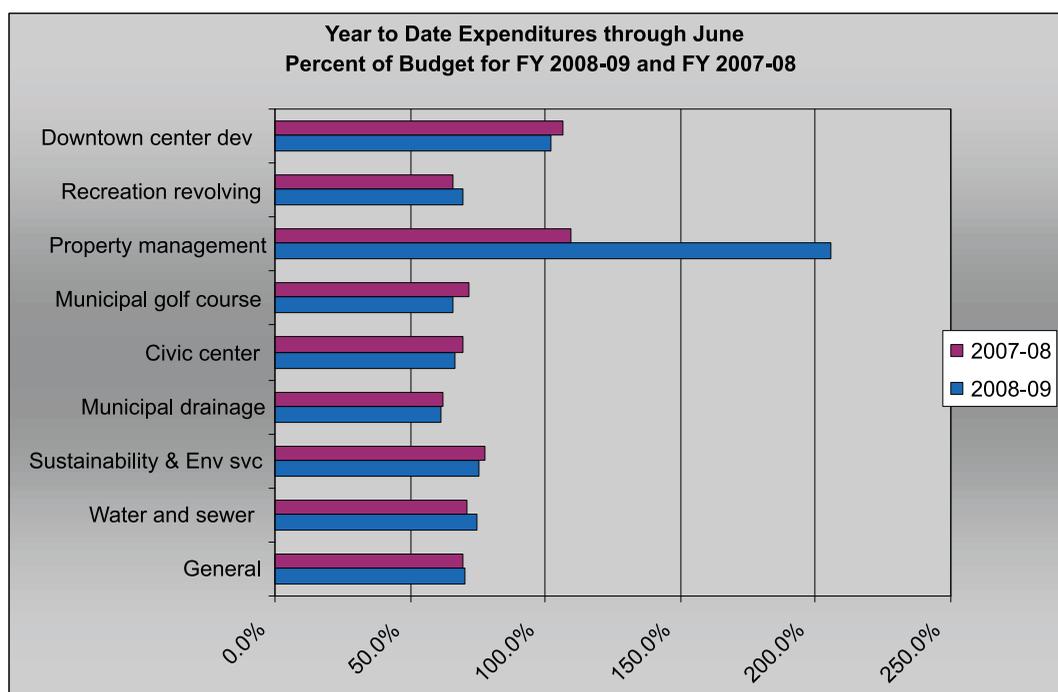
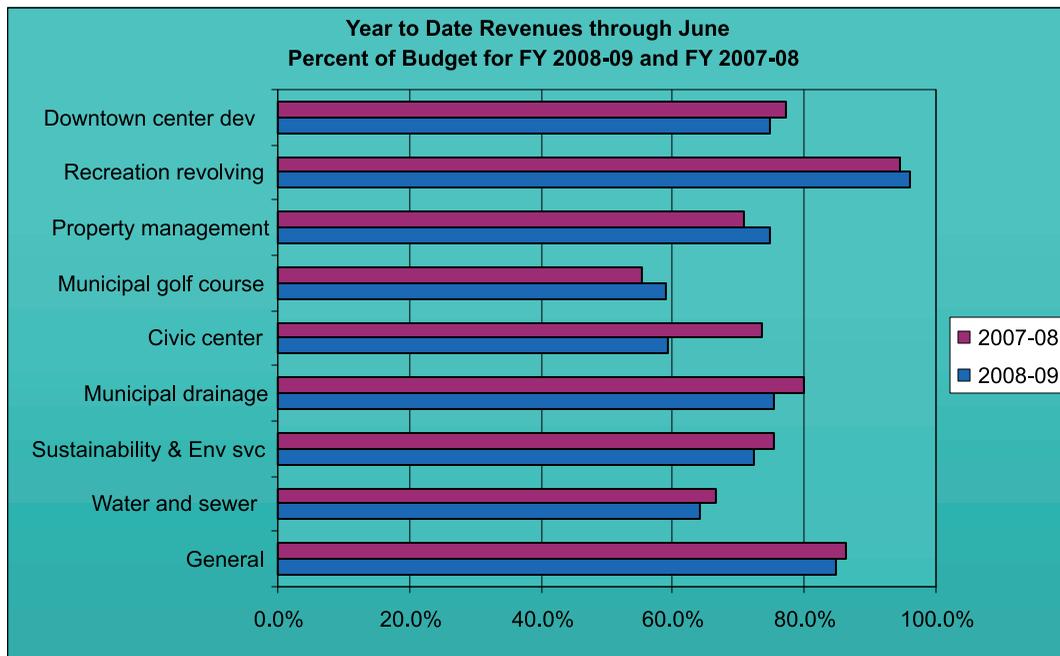
REPORT NOTES JUNE, 2009

The information represented in this report provides a summary of the General Fund and Business-type revenues and expenses which offers readers an overview of the City of Plano's finances.

This section compares year to date activity in the current fiscal year to the same time period in prior year. Please note that beginning fund balances in all funds are subject to final audit adjustments.

The graphs below represent year to date revenues and expenses as a percent of budget comparing the current and prior fiscal years.

HIGHLIGHTS OF GENERAL FUND VARIANCES



REPORT NOTES CONTINUED

JUNE, 2009

FINANCIAL HIGHLIGHTS

GENERAL FUND VARIANCES

Revenues

- Ad valorem tax revenue increases over prior year of \$5,049,500 are primarily attributable to an increase in existing property values and new property coming on-line.
- Sales tax revenues decreased over the prior year by \$2,871,891 as a result of the declining economy. When comparing the cash received in the months of June 2009 and June 2008, a decrease of 2.8% is noted in sales tax revenues.
- Gas franchise revenues increased over the prior year by \$958,119, as the result of a 1% increase in gross revenues by Atmos Energy.
- CATV franchise revenues increased over the prior year by \$170,934 due to an increase in subscribers over the past three quarters.
- Electric franchise revenues are lower by \$121,909 primarily due to a decrease in usage and milder weather.
- Telephone franchise fee revenues increased \$85,404 in the current year due to a migration of people and businesses to smaller providers. The City does not collect franchise fees from digital and cellular users.
- Court fines and forfeitures increased \$1,203,241 as a result of efforts by the Collections Unit, increased case fillings, and a successful state-wide warrant round up.
- Due to an increase in the number of new permits and renewals and a yearly fee increase for both residential and business permits effective October 1, 2008, alarm permit revenues increased \$350,905.
- Ambulance service revenues increased \$216,704 due to the timing of collections. However, downward trends are noted in patient collections and the volume of ambulance transports.
- Revenues received from Collin County Community College and the City of Allen for shared maintenance costs have increased \$85,819. Prior to September 2008, maintenance costs were accounted for in the Sproles Library Fund. Since that time, maintenance costs are absorbed in the General Fund.
- Revenues generated from issuance of building permits decreased \$1,142,751 due to an overall decrease in new residential and commercial construction, alterations, remodels and interior finish outs.
- Parks and Recreation athletic field user fees decreased over the prior year by \$83,286. This is primarily due to timing of payments made by youth and adult sports organizations.
- Engineering inspection revenues decreased \$180,240. Several large private development projects are being withheld at this time due to the declining economy. Also, fewer and smaller projects are being released in the current year.
- Because of the slowing economy and increases in the fee structure, membership to recreation centers has declined. However, membership rate increases resulted in additional general membership revenues of \$244,151.
- In the current fiscal year, General Fund departments received reimbursements of \$181,024 for insurance and damages related to accidents involving City fleet and equipment. This represents a decrease of \$167,276 as compared to the prior year.
- Interest income decreased \$735,775 due to a decline in the market.

Expenditures

- Personal services increased \$4,467,736 over the prior year primarily due to increases in salary and benefits costs. In addition, General Fund funding for the City's Section 115 Trust began in December 2008 and totaled \$3,046,005. The Trust is required by Governmental Accounting Standards Board Statement (GASB) No. 45, "Accounting and Financial Reporting by Employers for Postemployment Benefits other than Pensions".

REPORT NOTES CONTINUED

JUNE, 2009

- Electric payments increased \$361,087 over the prior year. However, beginning in February 2009, rates began to decrease as a result of a new contract with Cities Aggregation Power Project Inc.
- Expenditures for interdepartmental water billings increased \$218,431 due to increased consumption as a result of less rainfall in the current fiscal year.
- Transfers to Technology Services increased over the prior year by \$856,646 due to higher costs budgeted in the current year.
- Municipal garage charges to maintain city fleet decreased by \$700,388. The decrease is attributable to lower fuel rates and implementation of new fuel conservation measures.
- Replacement charges for city rolling stock and equipment decreased \$442,936 due to timing differences between when vehicles are received and placed into service.
- The Safe Streets Program experienced a decrease of \$84,210 due to rebidding of the contract in the latter portion of the prior fiscal year. Installation delays have occurred as a result of supplier and staffing changes.
- Expenditures and encumbrances for police training decreased \$94,396. Costs are incurred on an "as needed" basis.
- Storage cabinets to house microfilm at the libraries were purchased in the current year at a cost of \$84,604.
- Funding for Urban Grants decreased \$105,648 due to a decline in requested appropriations from community organizations and events.

BUSINESS-TYPE VARIANCES

Water and Sewer

- Water and sewer revenues increased over the prior year by \$2,842,282 and \$3,157,457, respectively. Water and sewer rate increases were implemented March 1st, 2009 contributing to the increase in revenues. Additionally, water consumption for the current year is up as compared to the same time period in the prior year. Sewer revenues are directly related to water consumption and therefore increased as well. Expenses and encumbrances for maintenance parts for automated meter readers increased over prior year. \$2,700,000 was spent and encumbered in the prior fiscal year and \$3,724,378 in the current year. The encumbered balance at June 30 is \$1,543,676. Water meter purchases are higher than the prior year by \$261,327. A new program began in the current fiscal year and will continue over the next several years to replace water meters and AMR devices. Contractual payments to North Texas Municipal Water District (NTMWD) for wastewater and pre-treatment services and water usage increased by \$2,828,427 and \$1,786,717, respectively. Personal services costs increased \$445,932 due to benefit related costs and funding of the City's 115 Trust of \$280,935.

Sustainability & Environmental Services

- Commercial franchise fee revenues, based upon commercial tonnage disposed, increased \$58,923 due to the timing of collections. Residential solid waste revenues are \$759,474 higher than the prior year primarily due to a \$1.25 rate increase for use of 95-gallon carts. Recycling revenues are down \$784,529 as a result of a decline in the recycling market. Compost revenues are higher by \$273,824 primarily due to an increase in the volume of products sold. The Sustainability and Environmental Services Department received reimbursements of \$113,893 in insurance and damage receipts for City fleet involved in accidents. Tipping fees decreased \$100,969 due to the discontinuation of using treated fencing as a feedstock for compost. Because of high arsenic levels, treated fencing is not acceptable product to make compost. Expenses and encumbrances increased over the prior year by \$647,433. Personal services costs increased \$328,950 due to increased salary and benefit related costs as well as funding of the City's 115 Trust of \$170,100. Contractual payments to NTMWD increased \$667,616 over the prior year. The contract with Otto Container Management has increased over prior year by \$118,300 primarily due to timing issues. A new John Deere front end loader was added to the Compost Operations department in the prior year costing \$290,242. Municipal garage charges to maintain city fleet decreased over the prior year by \$232,714. This is primarily attributed to lower fuel rates. Additionally, new procedures are in place addressing fuel conservation measures.

REPORT NOTES CONTINUED

JUNE, 2009

Municipal Drainage

- Interest income decreased \$84,838 due to a decline in the market. Personal services increased \$104,571 over the prior year due to increased salary and benefit related costs and the addition of a position. Of the benefit cost increase, year to date funding for the City's Section 115 Trust is \$36,180. Reimbursements to the Water and Sewer fund increased \$28,207 for shared salary costs of a Water Education and Services Supervisor. Costs for mowing services decreased \$57,701 due to timing issues in addition to recent rainfall causing services to be delayed.

Civic Center

- Hotel/motel tax revenues decreased \$412,749 primarily due to an increase in hotel/motel tax exemptions and decline in travel due to the economy. Inside catering revenues are down \$181,155 from the prior year. Due to a customer's decision to cancel its annual conference, Plano Centre lost a top revenue-producing event this current fiscal year. Revenue generated from this event last year was approximately \$85,000. Overall, catering and equipment revenues are down as a result of decreased corporate spending in response to the downturn in the economy. Interest income decreased \$78,835 as compared to the prior year due to a decline in the market. Expenses and encumbrances increased \$204,163 when compared to last year. Personal services increased \$80,893 due to increased salary and benefit related costs. Of this salary increase, costs associated with funding of the city's 115 Trust was \$63,180. Costs of building design services spent and encumbered to expand the Plano Centre in the current fiscal year are \$179,592. The Plano Convention & Tourism department has contracted services to assist in promotional efforts of area events and activities in the current year for \$48,000. Costs associated with remodel work in the restrooms at Plano Centre are \$75,236. Costs totaling \$197,764 were incurred in the prior year for work on expanding the parking lot at Plano Centre. Funds spent in the prior year for a replacement phone system cost \$71,582.

Golf Course

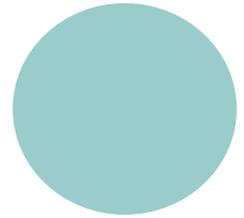
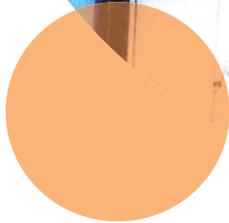
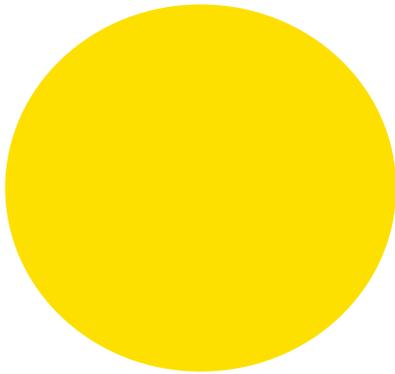
- Golf revenues increased over the prior year by \$7,804, primarily due to timing of collections. Personal services decreased \$28,942 due to retiree payouts in the current year. Pecan Hollow Golf Course purchased a greens mower in prior year costing \$22,104.

Recreation Revolving

- Revenues for recreational classes increased over the prior year by \$205,372. Because the Tom Muehlenbeck Center opened in November 2007 an additional month of revenue has been collected from that facility in the current year. Additionally, class participation increased at the Center resulting in higher costs of contractual services for instructors in the amount of \$66,922. Costs for temporary employees increased \$73,721 primarily as a result of increased swim programs at the Tom Muehlenbeck Center.

Property Management

- Rental revenues are down \$18,692 due to Downtown South tenants moving to other properties. Expenses and encumbrances decreased over prior year by \$12,845. Appraisal services pertaining to Downtown Center South were rendered in prior year at a cost of \$3,800. Contractual services decreased \$6,000 due to a prior year review of improvements at a facility located at 925 East 15th Street.



SECTION 1A

FINANCIAL SUMMARY

City of Plano

Comprehensive Monthly Finance Report

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH JUNE 30 OF FISCAL YEARS 2009, 2008, AND 2007
 GENERAL FUND

	Fiscal Year	Annual Budget	9 Months Actual	Actual/ Budget	Performance Index
REVENUES:					
Ad valorem tax	2009	\$ 83,068,770	81,775,804	98.4%	131.26
	2008	77,466,721	76,726,304	99.0%	132.06
	2007	69,461,175	68,828,964	99.1%	132.12
Sales tax	2009	57,417,708	44,492,384	77.5%	103.32
	2008	61,181,328	47,364,275	77.4%	103.22
	2007	57,606,179	48,252,461	83.8%	111.68
Other revenue	2009	52,721,887	37,736,600	71.6%	95.44
	2008	48,068,964	37,112,356	77.2%	102.94
	2007	46,258,634	36,243,518	78.3%	104.47
TOTAL REVENUE	2009	193,208,365	164,004,788	84.9%	113.18
	2008	186,717,013	161,202,935	86.3%	115.11
	2007	173,325,988	153,324,943	88.5%	117.95
EXPENDITURES & ENCUMBRANCES:					
Current operating	2009	\$ 201,136,043	140,918,642	70.1%	93.42
	2008	199,162,227	137,731,818	69.2%	92.21
	2007	188,783,677	132,131,600	70.0%	93.32
Capital outlay	2009	2,505,307	1,842,402	73.5%	98.05
	2008	2,254,500	2,196,504	97.4%	129.90
	2007	1,465,905	4,045,798	276.0%	367.99
Total expenditures and encumbrances	2009	203,641,350	142,761,044	70.1%	93.47
	2008	201,416,727	139,928,322	69.5%	92.63
	2007	190,249,582	136,177,398	71.6%	95.44
Excess (deficiency) of revenues over (under) expenditures	2009	(10,432,985)	21,243,744	-	-
	2008	(14,699,714)	21,274,613	-	-
	2007	(16,923,594)	17,147,545	-	-
OTHER FINANCING SOURCES (USES)					
Transfers in	2009	17,634,574	15,266,909	86.6%	115.43
	2008	16,609,119	12,456,839	75.0%	100.00
	2007	16,396,879	12,297,659	75.0%	100.00
Transfers out	2009	(19,678,201)	(15,005,865)	76.3%	101.68
	2008	(21,947,400)	(17,169,907)	78.2%	104.31
	2007	(21,055,472)	(16,722,861)	79.4%	105.90
NET CHANGE IN FUND BALANCES	2009	(12,476,612)	21,504,788		
	2008	(20,037,995)	16,561,545		
	2007	(21,582,187)	12,722,343		
FUND BALANCES-BEGINNING	2009		44,741,546		
	2008		45,683,660		
	2007		48,804,662		
FUND BALANCES-ENDING JUNE 30	2009		66,246,334		
	2008		62,245,205		
	2007		61,527,005		

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH JUNE 30 OF FISCAL YEARS 2009, 2008, AND 2007
 WATER AND SEWER FUND

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>9 Months Actual</u>	<u>Actual/Budget</u>	<u>Performance Index</u>
REVENUES:					
Water and sewer revenue	2009	\$ 110,225,529	70,395,384	63.9%	85.15
	2008	96,339,563	64,418,777	66.9%	89.16
	2007	93,433,871	56,740,192	60.7%	80.97
Other fees and service charges	2009	2,572,861	1,851,909	72.0%	95.97
	2008	2,693,389	1,633,886	60.7%	80.88
	2007	2,556,353	1,689,041	66.1%	88.10
TOTAL REVENUE	2009	112,798,390	72,247,293	64.0%	85.40
	2008	99,032,952	66,052,663	66.7%	88.93
	2007	95,990,224	58,429,233	60.9%	81.16
EXPENSES & ENCUMBRANCES:					
Capital outlay	2009	-	82,304	-	-
	2008	1,245,000	212,484	17.1%	22.76
	2007	80,000	152,858	191.1%	254.76
Other expenses & encumbrances	2009	75,009,576	55,839,834	74.4%	99.26
	2008	66,173,780	47,699,426	72.1%	96.11
	2007	63,809,634	44,900,995	70.4%	93.82
Total expenses and encumbrances	2009	75,009,576	55,922,138	74.6%	99.40
	2008	67,418,780	47,911,910	71.1%	94.75
	2007	63,889,634	45,053,853	70.5%	94.02
Excess (deficiency) of revenues over (under) expenses	2009	37,788,814	16,325,155	-	-
	2008	31,614,172	18,140,753	-	-
	2007	32,100,590	13,375,380	-	-
TRANSFERS IN (OUT)					
Transfers in	2009	-	-	-	-
	2008	254,530	190,897	75.0%	100.00
	2007	267,877	200,908	75.0%	100.00
Transfers out	2009	(34,349,069)	(25,761,802)	75.0%	100.00
	2008	(30,888,665)	(23,166,499)	75.0%	100.00
	2007	(30,207,670)	(22,547,026)	74.6%	99.52
CHANGE IN NET ASSETS	2009	\$ 3,439,745	(9,436,647)		
	2008	980,037	(4,834,849)		
	2007	2,160,797	(8,970,738)		
TOTAL NET ASSETS-BEGINNING	2009		321,538,734		
	2008		315,705,835		
	2007		324,870,706		
TOTAL NET ASSETS-ENDING JUNE 30	2009		312,102,087		
	2008		310,870,986		
	2007		315,899,968		

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH JUNE 30 OF FISCAL YEARS 2009, 2008, AND 2007
 SUSTAINABILITY AND ENVIRONMENTAL SERVICES FUND

	Fiscal Year	Annual Budget	9 Months Actual	Actual/ Budget	Performance Index
REVENUES:					
Commerical solid waste franchise	2009	\$ 6,496,731	4,815,577	74.1%	98.83
	2008	6,351,573	4,756,654	74.9%	99.85
	2007	5,900,620	4,369,933	74.1%	98.75
Refuse collection revenue	2009	13,316,939	9,529,138	71.6%	95.41
	2008	12,272,746	9,531,188	77.7%	103.55
	2007	12,077,759	9,074,555	75.1%	100.18
Other fees and service charges	2009	2,502,911	1,784,062	71.3%	95.04
	2008	2,100,592	1,312,116	62.5%	83.29
	2007	1,545,269	1,074,777	69.6%	92.74
TOTAL REVENUE	2009	22,316,581	16,128,777	72.3%	96.36
	2008	20,724,911	15,599,958	75.3%	100.36
	2007	19,523,648	14,519,265	74.4%	99.16
EXPENSES & ENCUMBRANCES:					
Capital outlay	2009	256,170	188,409	73.5%	98.06
	2008	141,500	367,000	259.4%	345.82
	2007	312,000	22,965	7.4%	9.81
Other expenses & encumbrances	2009	21,440,299	16,113,552	75.2%	100.21
	2008	19,969,352	15,287,528	76.6%	102.07
	2007	18,531,094	14,246,211	76.9%	102.50
Total expenses and encumbrances	2009	21,696,469	16,301,961	75.1%	100.18
	2008	20,110,852	15,654,528	77.8%	103.79
	2007	18,843,094	14,269,176	75.7%	100.97
Excess (deficiency) of revenues over (under) expenses	2009	620,112	(173,184)	-	-
	2008	614,059	(54,570)	-	-
	2007	680,554	250,089	-	-
TRANSFERS IN (OUT)					
Transfers in	2009	100,000	75,000	75.0%	100.00
	2008	100,000	75,000	75.0%	100.00
	2007	84,758	63,569	75.0%	100.00
Transfers out	2009	(1,223,535)	(844,823)	69.0%	92.06
	2008	(1,174,818)	(881,114)	75.0%	100.00
	2007	(1,205,184)	(829,989)	68.9%	91.82
CHANGE IN NET ASSETS	2009	\$ (503,423)	(943,007)		
	2008	(460,759)	(860,684)		
	2007	(439,872)	(516,331)		
TOTAL NET ASSETS-BEGINNING	2009		1,690,291		
	2008		2,308,223		
	2007		1,759,463		
TOTAL NET ASSETS-ENDING JUNE 30	2009		747,284		
	2008		1,447,539		
	2007		1,243,132		

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH JUNE 30 OF FISCAL YEARS 2009, 2008, AND 2007
 MUNICIPAL DRAINAGE FUND

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>9 Months Actual</u>	<u>Actual/ Budget</u>	<u>Performance Index</u>
REVENUES:					
Fees and service charges	2009	\$ 4,928,110	3,774,572	76.6%	102.12
	2008	4,723,698	3,733,432	79.0%	105.38
	2007	4,700,197	3,666,780	78.0%	104.02
Miscellaneous revenue	2009	150,000	60,882	40.6%	54.12
	2008	125,000	142,717	114.2%	152.23
	2007	108,500	152,075	140.2%	186.88
TOTAL REVENUE	2009	5,078,110	3,835,454	75.5%	100.71
	2008	4,848,698	3,876,149	79.9%	106.59
	2007	4,808,697	3,818,855	79.4%	105.89
EXPENSES & ENCUMBRANCES:					
Capital outlay	2009	-	1,764	-	-
	2008	-	-	-	-
	2007	28,000	25,147	89.8%	119.75
Other expenses & encumbrances	2009	2,803,503	1,716,496	61.2%	81.64
	2008	2,579,209	1,607,793	62.3%	83.12
	2007	2,681,621	1,606,382	59.9%	79.87
Total expenses and encumbrances	2009	2,803,503	1,718,260	61.3%	81.72
	2008	2,579,209	1,607,793	62.3%	83.12
	2007	2,709,621	1,631,529	60.2%	80.28
Excess (deficiency) of revenues over (under) expenses	2009	2,274,607	2,117,194	-	-
	2008	2,269,489	2,268,356	-	-
	2007	2,099,076	2,187,326	-	-
TRANSFERS OUT					
Operating transfers out	2009	(2,867,538)	(2,150,654)	75.0%	100.00
	2008	(2,710,706)	(2,033,030)	75.0%	100.00
	2007	(2,558,951)	(1,919,213)	75.0%	100.00
CHANGE IN NET ASSETS	2009	(592,931)	(33,460)		
	2008	(441,217)	235,326		
	2007	(459,875)	268,113		
TOTAL NET ASSETS-BEGINNING	2009		21,003,753		
	2008		21,105,863		
	2007		20,753,610		
TOTAL NET ASSETS-ENDING JUNE 30	2009		20,970,293		
	2008		21,341,189		
	2007		21,021,723		

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH JUNE 30 OF FISCAL YEARS 2009, 2008, AND 2007
 NON-MAJOR BUSINESS TYPE FUNDS

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>9 Months Actual</u>	<u>Actual/ Budget</u>	<u>Performance Index</u>
REVENUES:					
Hotel/motel tax	2009	\$ 4,964,601	2,647,518	53.3%	71.10
	2008	4,518,066	3,060,267	67.7%	90.31
	2007	4,008,677	2,980,664	74.4%	99.14
Other revenue	2009	6,974,294	5,595,286	80.2%	106.97
	2008	6,695,120	5,626,850	84.0%	112.06
	2007	6,325,693	5,289,065	83.6%	111.48
TOTAL REVENUE	2009	11,938,895	8,242,804	69.0%	92.06
	2008	11,213,186	8,687,117	77.5%	103.30
	2007	10,334,370	8,269,729	80.0%	106.70
EXPENSES & ENCUMBRANCES:					
Capital outlay	2009	-	75,236	-	-
	2008	80,500	124,087	154.1%	205.53
	2007	51,500	144,396	280.4%	373.84
Other expenses & encumbrances	2009	12,550,538	8,387,497	66.8%	89.11
	2008	11,659,342	7,995,867	68.6%	91.44
	2007	10,469,418	6,973,484	66.6%	88.81
Total expenses and encumbrances	2009	12,550,538	8,462,733	67.4%	89.91
	2008	11,739,842	8,119,954	69.2%	92.22
	2007	10,520,918	7,117,880	67.7%	90.21
Excess (deficiency) of Revenues over (under) expenses	2009	(611,643)	(219,929)	-	-
	2008	(526,656)	567,163	-	-
	2007	(186,548)	1,151,849	-	=
TRANSFERS OUT:					
Operating transfers out	2009	(1,444,860)	(1,083,646)	75.0%	100.00
	2008	(1,120,300)	(840,225)	75.0%	100.00
	2007	(670,016)	(502,760)	75.0%	100.05
CHANGE IN NET ASSETS	2009	(2,056,503)	(1,303,575)		
	2008	(1,646,956)	(273,062)		
	2007	(856,564)	649,089		
TOTAL NET ASSETS-BEGINNING	2009		13,062,762		
	2008		13,467,830		
	2007		12,925,456		
TOTAL NET ASSETS-ENDING JUNE 30	2009		11,759,187		
	2008		13,194,768		
	2007		13,574,545		

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH JUNE 30 OF FISCAL YEARS 2009, 2008, AND 2007
 ECONOMIC DEVELOPMENT FUND

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>9 Months Actual</u>	<u>Actual/ Budget</u>	<u>Performance Index</u>
REVENUES:					
Miscellaneous revenue	2009	\$ 310,000	177,204	57.2%	76.22
	2008	185,000	307,386	166.2%	221.54
	2007	-	197,548	-	-
EXPENSES & ENCUMBRANCES					
Personal services	2009	559,469	420,773	75.2%	100.28
	2008	550,728	390,044	70.8%	94.43
	2007	528,912	386,850	73.1%	97.52
Materials and supplies	2009	23,452	10,060	42.9%	57.19
	2008	23,500	19,446	82.7%	110.33
	2007	26,000	33,300	128.1%	170.77
Contractual / professional and other	2009	5,485,693	3,250,784	59.3%	79.01
	2008	6,275,424	1,137,185	18.1%	24.16
	2007	6,275,727	211,215	3.4%	4.49
Capital outlay	2009	-	-	-	-
	2008	-	-	-	-
	2007	-	6,599	-	-
Total Expenses and Encumbrances	2009	6,068,614	3,681,617	60.7%	80.89
	2008	6,849,652	1,546,675	22.6%	30.11
	2007	6,830,639	637,964	9.3%	12.45
Excess (Deficiency) of Revenues Over (Under) Expenses	2009	(5,758,614)	(3,504,413)	-	-
	2008	(6,664,652)	(1,239,289)	-	-
	2007	(6,830,639)	(440,416)	-	-
TRANSFERS IN					
Operating transfers in	2009	6,068,614	4,551,460	75.0%	100.00
	2008	6,849,652	5,137,239	75.0%	100.00
	2007	6,830,639	6,622,979	97.0%	129.28
CHANGE IN NET ASSETS					
	2009	310,000	1,047,047		
	2008	185,000	3,897,950		
	2007	-	6,182,563		
TOTAL NET ASSETS-BEGINNING					
	2009		12,255,577		
	2008		6,940,876		
	2007		1,029,866		
TOTAL NET ASSETS-ENDING JUNE 30					
	2009		13,302,624		
	2008		10,838,826		
	2007		7,212,429		

EQUITY IN TREASURY POOL

JUNE 2009

FUND NO.	FUND NAME	CASH	EQUITY IN TREASURY POOL	TOTAL 6/30/09	TOTAL 10/1/08	TOTAL 6/30/08
GENERAL FUND:						
01	General	\$ 27,643	59,907,569	59,935,212	41,392,079	56,512,530
77	Payroll	-	2,072,211	2,072,211	1,949,394	2,015,701
24	City Store	-	-	-	9,800	9,835
		27,643	61,979,780	62,007,423	43,351,273	58,538,066
DEBT SERVICE FUND:						
03	G.O. Debt Service	-	33,612,186	33,612,186	5,484,247	35,685,814
		-	33,612,186	33,612,186	5,484,247	35,685,814
CAPITAL PROJECTS:						
22	Recreation Center Facilities	-	587,311	587,311	579,235	540,598
23	Street Enhancement	-	1,651,896	1,651,896	1,629,181	1,558,081
25	1991 Police & Courts Facility	-	1,160,136	1,160,136	1,260,384	1,724,051
27	1991 Library Facility	-	876,509	876,509	864,457	657,926
28	1991 Fire Facility	-	3,512,415	3,512,415	2,276,248	2,008,750
29	Technology Improvements	-	871,529	871,529	745,789	259,992
31	Municipal Facilities	-	448,719	448,719	440,760	430,493
32	Park Improvements	-	6,355,396	6,355,396	5,734,853	4,906,677
33	Street & Drainage Improvement	-	7,465,398	7,465,398	4,778,540	4,739,678
35	Capital Reserve	-	37,394,269	37,394,269	39,462,781	39,575,739
38	DART L.A.P.	-	771,313	771,313	760,707	756,479
39	Spring Creekwalk	-	23,743	23,743	23,416	23,286
52	Park Service Areas	-	5,634,611	5,634,611	5,803,569	5,752,996
53	Creative & Performing Arts	-	2,215,240	2,215,240	2,184,778	2,076,176
54	Animal Control Facilities	-	340,720	340,720	336,035	257,682
59	Service Center	-	132,459	132,459	130,638	129,912
60	Joint Use Facilities	-	637,087	637,087	628,326	591,771
85	Public Arts	-	118,080	118,080	116,457	101,944
110	G.O. Bond Clearing - 1999	-	326,298	326,298	342,544	377,390
190	G.O. Bond Clearing - 2000	-	3,667,366	3,667,366	3,640,760	3,763,306
230	Tax Notes Clearing - 2001	-	1,116,988	1,116,988	1,342,586	1,396,079
240	G.O. Bond Clearing - 2001-A	-	184,727	184,727	182,187	188,319
250	Tax Notes Clearing - 2001-A	-	60,160	60,160	158,395	163,727
270	G.O. Bond Refund/Clearing - 2003	-	124,525	124,525	136,843	288,606
310	G.O. Bond Refund/Clearing - 2005	-	-	-	-	1,033,659
093	G.O. Bond Clearing - 2006	-	-	-	-	36,925
089	C.O. Bond Clearing - 2006	-	148,795	148,795	268,914	316,783
102	G.O. Bond Clearing - 2007	-	1,355,325	1,355,325	9,664,026	13,920,324
105	Tax Notes Clearing - 2007	-	525	525	555,411	6,713,796
082	G.O. Bond Clearing - 2008	-	15,690,678	15,690,678	34,778,209	39,582,058
083	Tax Notes Clearing - 2008	-	13,459,860	13,459,860	17,207,111	17,440,515
106	G.O. Bond Clearing - 2009	-	23,287,485	23,287,485	-	-
150	Tax Notes Clearing - 2009	-	6,443,617	6,443,617	-	-
		-	136,063,180	136,063,180	136,033,140	151,313,718
ENTERPRISE FUNDS:						
26	Municipal Drainage CIP	-	284,940	284,940	281,022	279,460
34	Sewer CIP	-	10,143,569	10,143,569	8,134,307	6,975,061
36	Water CIP	-	5,635,494	5,635,494	5,531,294	5,888,323
37	Downtown Center Development	-	136,191	136,191	119,257	109,721
41	Water & Sewer - Operating	631,032	(8,075,459)	(7,444,427)	3,227,451	(8,597,927)
42	Water & Sewer - Debt Service	-	1,751,368	1,751,368	207,060	2,106,858
43	Municipal Drainage - Debt Service	-	2,688,477	2,688,477	3,288,284	2,310,172
44	W & S Impact Fees Clearing	-	3,939,526	3,939,526	3,292,773	3,065,823
45	Sustainability & Environmental Services	650	(624,462)	(623,812)	770,016	427,063
46	Convention & Tourism	4,310	2,860,994	2,865,304	4,248,434	3,776,037
81	Friends of Plano Centre	-	3,947	3,947	3,892	3,871
47	Municipal Drainage	-	4,335,048	4,335,048	4,346,876	4,442,198
48	Municipal Golf Course	-	34,397	34,397	138,945	15,449
49	Property Management	-	466,889	466,889	439,513	429,963
51	Recreation Revolving	350	1,607,310	1,607,660	1,411,929	1,510,467
104	Municipal Drain Bond Clearing-1996	-	-	-	179,811	178,811
320	Municipal Drain Rev Bond Clearing - 2005	-	-	-	152,416	306,089
094	Municipal Drain Rev Bond Clearing - 2006	-	-	-	163,758	705,881
330	Municipal Drain Rev Bond Clearing - 2007	-	1,732,629	1,732,629	2,604,212	3,012,343
340	Municipal Drain Rev Bond Clearing - 2008	-	2,119,860	2,119,860	2,090,710	2,079,092
107	Municipal Drain Rev Bond Clearing - 2009	-	1,803,974	1,803,974	-	-
		636,342	30,844,692	31,481,034	40,631,960	29,024,755

EQUITY IN TREASURY POOL

JUNE 2009

FUND NO.	FUND NAME	CASH	EQUITY IN TREASURY POOL	TOTAL 6/30/09	TOTAL 10/1/08	TOTAL 6/30/08
SPECIAL REVENUE FUNDS:						
2	Sproles Library	-	186,050	186,050	184,786	183,759
4	TIF-Mall	-	74,434	74,434	-	879,151
5	TIF-East Side	-	6,647,617	6,647,617	6,002,395	6,905,414
11	LLEBG-Police Grant	-	40,802	40,802	25,970	52,424
12	Criminal Investigation	-	1,218,338	1,218,338	988,895	1,013,901
13	Grant	95	(733,317)	(733,222)	(68,916)	(477,795)
14	Wireline Fees	-	9,849,602	9,849,602	398,768	370,862
15	Judicial Efficiency	-	122,876	122,876	118,125	115,301
16	Industrial	-	18,244	18,244	17,993	17,893
17	Intergovernmental	-	374,051	374,051	370,126	580,920
18	Government Access/CATV	-	435,126	435,126	430,794	424,917
19	Teen Court Program	-	47,152	47,152	45,649	43,088
20	Municipal Courts Technology	-	1,682,191	1,682,191	1,537,733	1,524,830
24	American Recovery/Reinv Act Grant	-	(265)	(265)	-	-
55	Municipal Court-Building Security Fees	-	1,186,251	1,186,251	1,327,658	1,305,029
56	911 Reserve Fund	-	2	2	8,461,787	8,120,145
57	State Library Grants	-	52,055	52,055	(53,409)	(9,094)
67	Disaster Relief	-	1,203,116	1,203,116	1,088,243	1,179,236
68	Animal Shelter Donations	-	230,880	230,880	179,916	165,502
73	Memorial Library	-	373,006	373,006	377,874	319,497
86	Juvenile Case Manager	-	229,006	229,006	167,328	154,477
87	Traffic Safety	-	1,989,926	1,989,926	1,212,502	980,774
88	Child Safety	-	1,115,206	1,115,206	826,922	973,085
		95	26,342,349	26,342,444	23,641,139	24,823,316
INTERNAL SERVICE FUNDS:						
6	Public Safety Technology	-	1,985,785	1,985,785	1,717,520	1,647,021
9	Technology Infrastructure	-	(8,965)	(8,965)	(107,905)	(113,517)
58	PC Replacement	-	1,295,254	1,295,254	2,024,127	1,768,863
61	Equipment Maintenance	200	631,692	631,892	(4,200,912)	(4,986,199)
62	Information Technology	-	3,770,561	3,770,561	3,260,847	3,802,214
63	Office Services	125	33,223	33,348	(276,904)	(313,002)
64	Warehouse	100	(30,049)	(29,949)	237,638	107,889
65	Property/Liability Loss	-	3,665,626	3,665,626	5,624,465	6,987,091
66	Technology Services	-	6,776,528	6,776,528	12,786,423	11,556,040
71	Equipment Replacement	-	14,015,388	14,015,388	10,279,459	11,920,161
78	Health Claims	-	10,148,988	10,148,988	7,943,436	15,515,603
79	Parkway Service Ctr. Expansion	-	(28,580)	(28,580)	(28,187)	(29,135)
		425	42,255,451	42,255,876	39,260,007	47,863,029
FIDUCIARY FUNDS:						
7	Unclaimed Property	-	58,249	58,249	56,701	56,386
8	Library Training Lab	-	2,734	2,734	5,516	4,300
69	Collin County Seized Assets	-	161,867	161,867	262,791	268,938
74	Developers' Escrow	-	3,551,247	3,551,247	4,184,550	4,223,101
75	Plano Economic Development Trust	-	555,212	555,212	683,273	679,476
76	Economic Development	200	12,881,510	12,881,710	11,727,330	10,257,364
84	Rebate	-	1,497,831	1,497,831	1,016,829	1,018,101
		200	18,708,650	18,708,850	17,936,990	16,507,666
TOTAL		\$ 664,705	349,806,288	350,470,993	306,338,756	363,756,364
TRUST FUNDS						
72	Retirement Security Plan	-	61,611,854	61,611,854	61,611,854	70,007,492
91	115 Trust	-	24,108,373	24,108,373	21,299,133	15,500,000
TOTAL TRUST FUNDS		\$ -	85,720,227	85,720,227	82,910,987	85,507,492

A Treasury Pool fund has been created for the purpose of consolidating cash and investments. All City funds not restricted or held in trust are included in this consolidated fund. Each fund's "Equity in Treasury Pool" represents the fund's proportionate share of the Treasury Pool Fund. At June 30, 2009 the Treasury Pool, including an adjustment to Fair Value as required by GASB 31, consisted of the following:

Cash	29,734,584
Local Government Investment Pool	3,140,985
Texas Daily	79,284,147
Federal Securities	145,126,423
Certificates of Deposit	90,199,000
Fair Value Adjustment	1,087,842
Interest Receivable	1,233,307
	<u>349,806,288</u>

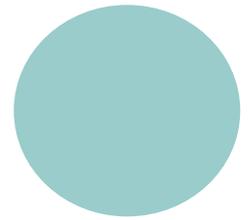
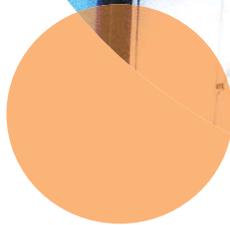
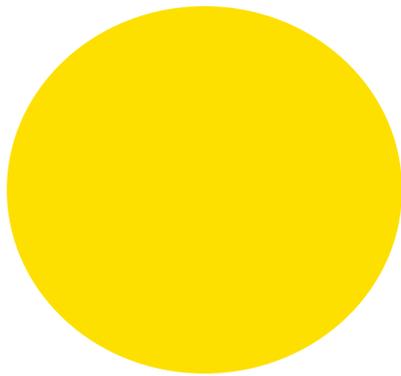
HEALTH CLAIMS FUND THROUGH JUNE 30 OF FISCAL YEARS 2009 AND 2008

<u>Health Claims Fund</u>	6 Month Variance Favorable <i>(Unfavorable)</i>			2 month Variance Favorable <i>(Unfavorable)</i>			1 month Variance Favorable <i>(Unfavorable)</i>			Year to Date Variance Favorable <i>(Unfavorable)</i>		
	FY 08-09 October-March	FY 07-08 October-March	Favorable <i>(Unfavorable)</i>	FY 08-09 April-May	FY 07-08 April-May	Favorable <i>(Unfavorable)</i>	FY 08-09 June	FY 07-08 June	Favorable <i>(Unfavorable)</i>	FY 08-09 Total	FY 07-08 Total	Favorable <i>(Unfavorable)</i>
Revenues												
Employees Health Ins. Contributions	\$ 1,562,494	\$ 1,399,631	162,863	\$ 533,008	\$ 505,266	27,742	\$ 263,998	\$ 252,909	11,089	\$ 2,359,500	\$ 2,157,806	201,694
Employers Health Ins. Contributions	9,478,853	9,659,771	<i>(180,918)</i>	3,544,211	3,103,651	440,560	1,761,697	1,551,640	210,058	14,784,761	14,315,062	469,700
Contributions for Retirees	372,005	353,871	18,134	124,878	135,768	<i>(10,890)</i>	65,097	59,592	5,504	561,980	549,231	12,748
Cobra Insurance Receipts	23,945	32,532	<i>(8,587)</i>	9,475	8,075	1,400	4,304	2,185	2,119	37,724	42,792	<i>(5,068)</i>
Retiree Insurance Receipts	273,428	233,380	40,048	99,133	76,739	22,394	69,119	43,839	25,279	441,680	353,958	87,721
Retiree Contributions	-	-	-	-	-	-	(152,503)	-	<i>(152,503)</i>	(152,503)	-	<i>(152,503)</i>
Employer Contribution-OPEB	2,211,975	-	2,211,975	1,096,740	-	1,096,740	543,240	-	543,240	3,851,955	-	3,851,955
Interest	66,712	719,492	<i>(652,780)</i>	18,195	75,077	<i>(56,882)</i>	34,128	35,133	<i>(1,005)</i>	119,035	829,702	<i>(710,667)</i>
Total Revenues	13,989,412	12,398,677	1,590,735	5,425,640	3,904,576	1,521,064	2,589,080	1,945,298	643,782	22,004,132	18,248,551	3,755,581
Transfers Out												
Transfers Out	2,010,628	15,500,000	<i>(13,489,372)</i>	1,340,418	-	<i>(1,340,418)</i>	680,902	-	<i>(680,902)</i>	4,031,948	15,500,000	11,468,052
Expenses												
Insurance	583,646	702,263	118,617	155,953	232,752	76,799	78,348	116,422	38,074	817,947	1,051,437	233,490
Contracts- Professional Svc.	147,115	108,169	<i>(38,946)</i>	22,127	36,962	14,835	5,500	5,287	<i>(213)</i>	174,742	150,418	<i>(24,324)</i>
Contractual Repair	-	120	120	-	-	-	-	-	-	-	120	120
Contracts- Other	598,428	503,016	<i>(95,412)</i>	229,284	202,841	<i>(26,443)</i>	94,923	101,664	6,741	922,635	807,521	<i>(115,114)</i>
Health Claims Paid Reinsurance	(674,424)	(507,228)	167,196	(470,597)	(43,825)	426,772	7,088	(1,619)	<i>(8,707)</i>	(1,137,933)	(552,672)	585,261
Retiree Claims	(685,801)	-	685,801	(473,734)	-	473,734	(199,176)	-	199,176	(1,358,711)	-	1,358,711
Health Claims - Prescription	1,761,414	1,534,767	<i>(226,647)</i>	658,366	530,196	<i>(128,170)</i>	315,785	244,292	<i>(71,493)</i>	2,735,565	2,309,255	<i>(426,310)</i>
Health Claims Paid -UHC	9,357,619	6,551,997	<i>(2,805,622)</i>	2,679,120	2,449,986	<i>(229,134)</i>	1,234,513	1,382,733	148,220	13,271,252	10,384,716	<i>(2,886,536)</i>
Cobra Insurance Paid	1,818	2,384	566	439	700	261	313	345	31	2,570	3,429	858
Retiree Insurance Paid	39,386	59,489	20,103	12,903	13,843	940	6,786	6,940	154	59,075	80,272	21,197
Retiree Insurance Paid- Medicare	150,436	57,320	<i>(93,116)</i>	43,535	49,229	5,694	22,444	19,738	<i>(2,706)</i>	216,415	126,287	<i>(90,128)</i>
Total Expenses	11,279,637	9,012,297	<i>(2,267,340)</i>	2,857,396	3,472,684	615,288	1,566,526	1,875,802	309,277	15,703,559	14,360,783	<i>(1,342,775)</i>
Net increase (decrease)	\$ 699,147	\$ (12,113,620)	<i>(14,165,977)</i>	1,227,826	431,892	795,934	341,652	69,496	272,156	\$ 2,268,625	\$ (11,612,232)	13,880,857
Health Claims Fund Balance - Cumulative												
	\$ 4,678,986	\$ 11,940,264	<i>(7,261,278)</i>	\$ 5,906,813	\$ 12,372,156	<i>(6,465,343)</i>	\$ 6,248,464	\$ 12,441,652	<i>(6,193,188)</i>			

ANALYSIS OF PROPERTY LIABILITY LOSS FUND THROUGH JUNE 30 OF FISCAL YEARS 2009, 2008, & 2007

PROPERTY LIABILITY LOSS FUND	Fiscal Year 2009	Fiscal Year 2008	Fiscal Year 2007
Claims Paid per General Ledger	\$ 1,293,769	635,614	857,066
Net Judgments/Damages/Attorney Fees	626,123	774,804	583,678
Total Expenses	\$ 1,919,892	1,410,418	1,440,744

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SECTION 2

ECONOMIC ANALYSIS

City of Plano

Comprehensive Monthly Finance Report

ECONOMIC ANALYSIS

Figure I shows a breakdown of the various sources of revenues for the City's General Fund Year to Date through June 30, 2009. The largest category is Ad Valorem Property Taxes in the amount of \$81.8 million. Closest behind

is Sales Tax with a total of \$40.1 million, and Franchise Fees with a total of \$17.6 million.

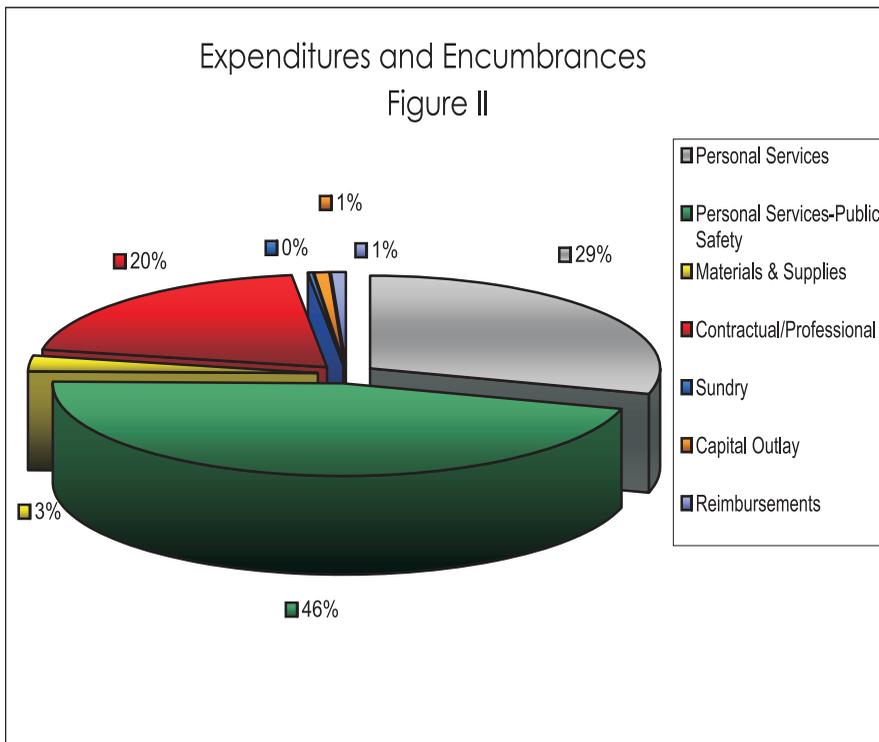
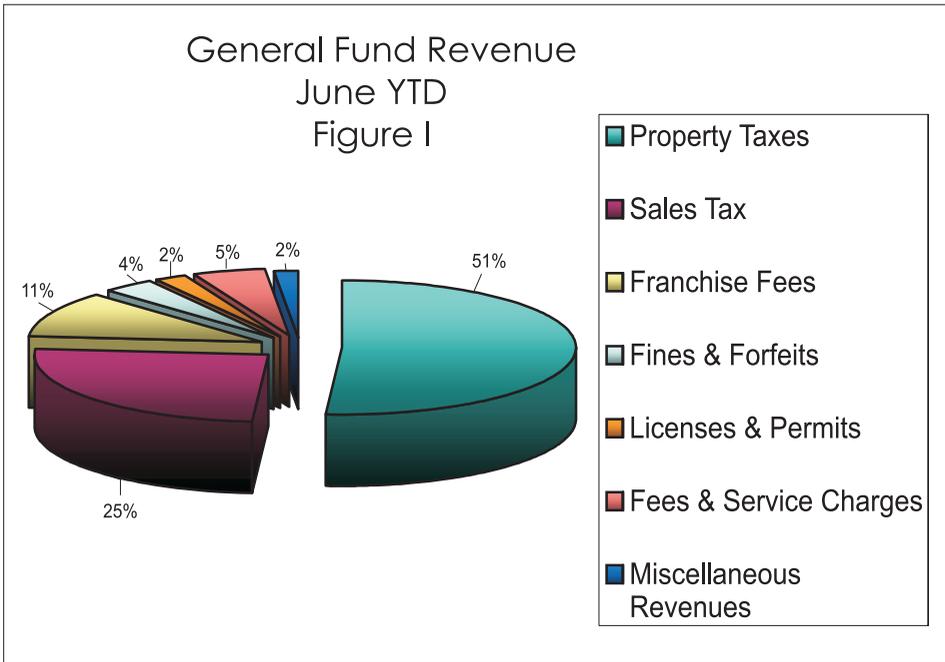


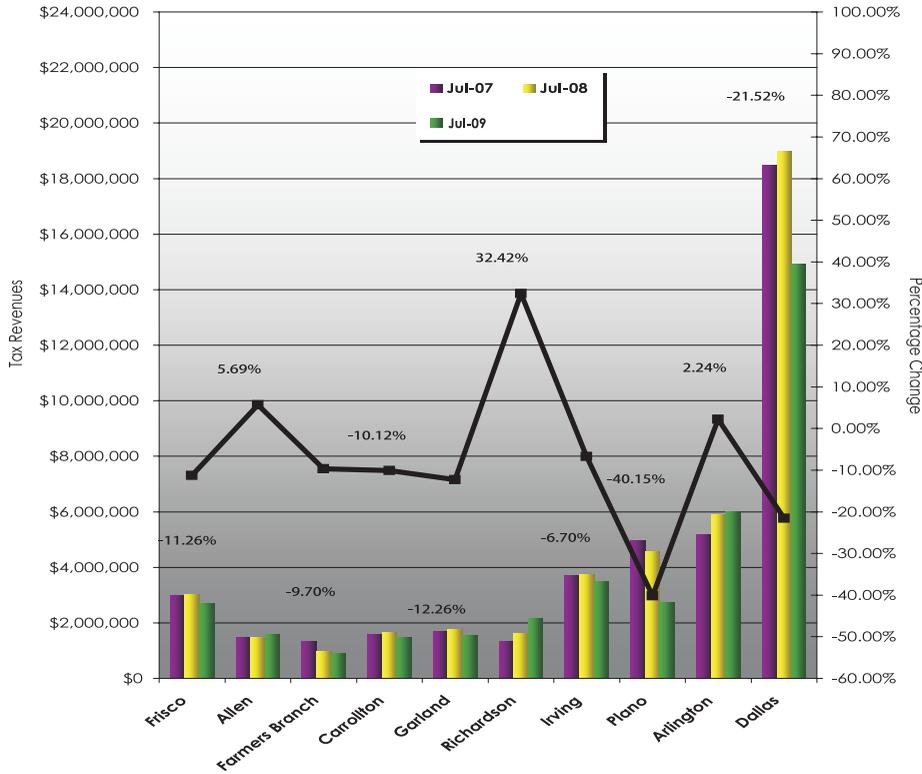
Figure II shows a breakdown of the various expenditures and encumbrances for the City's General Fund Year to Date through June 30, 2009. The largest category is Personal Services-Public Safety in the amount of \$65.4 million which includes the Police, Fire, Fire-Civilian and Public Safety Communications departments. Closest behind is Personal Services (for all other departments) with a total of \$42.0 million, and Contractual/Professional Services totaling 28.3 million.

ECONOMIC ANALYSIS

Figure III shows sales tax allocations in the months of July 2007, July 2008 and July 2009 for the City of Plano and nine area cities. Each of the cities shown has a sales tax rate of 1%, except for the cities of Allen and Frisco, which

Sales Tax Comparisons City of Plano and Area Cities

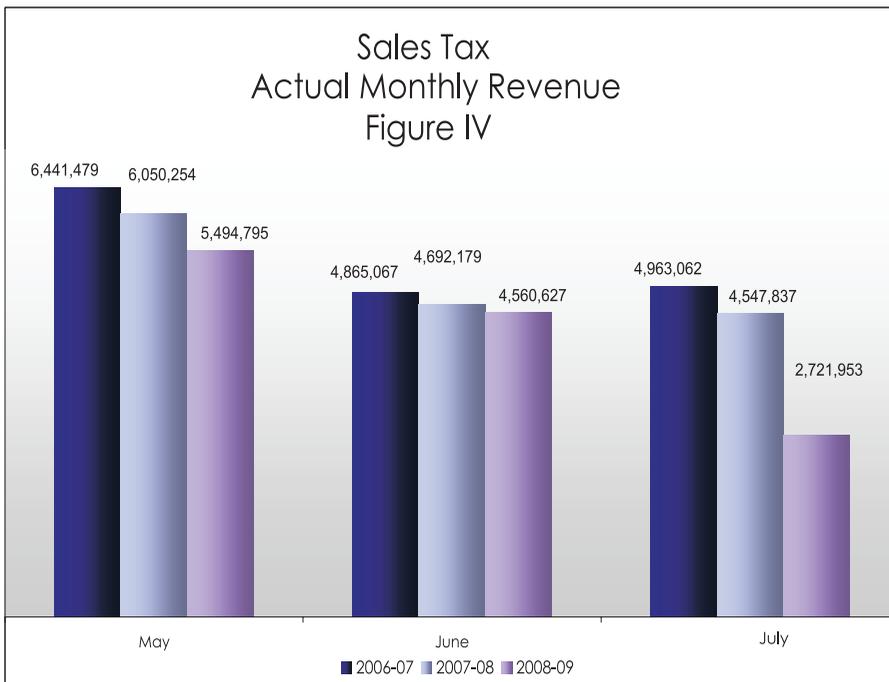
Figure III



have a 2% rate, but distribute half of the amount shown in the graph to 4A and 4B development corporations within their respective cities, and the City of Arlington which has a 1.75% sales tax rate with .25% dedicated to road maintenance and .50% for funding of the Dallas Cowboys Complex Development Project. In the month of July the City of Plano received \$2,721,953 from this 1% tax.

The percentage change in sales tax allocations for the area cities, comparing July 2008 to July 2009, ranged from 32.42% for the City of Richardson to -40.15% for the City of Plano. City of Plano sales tax decreased significantly this month due to an audit adjustment of \$1.4 million. The City of Richardson had an audit adjustment in the same month increasing sales tax by \$691,325.

Sales Tax Actual Monthly Revenue Figure IV

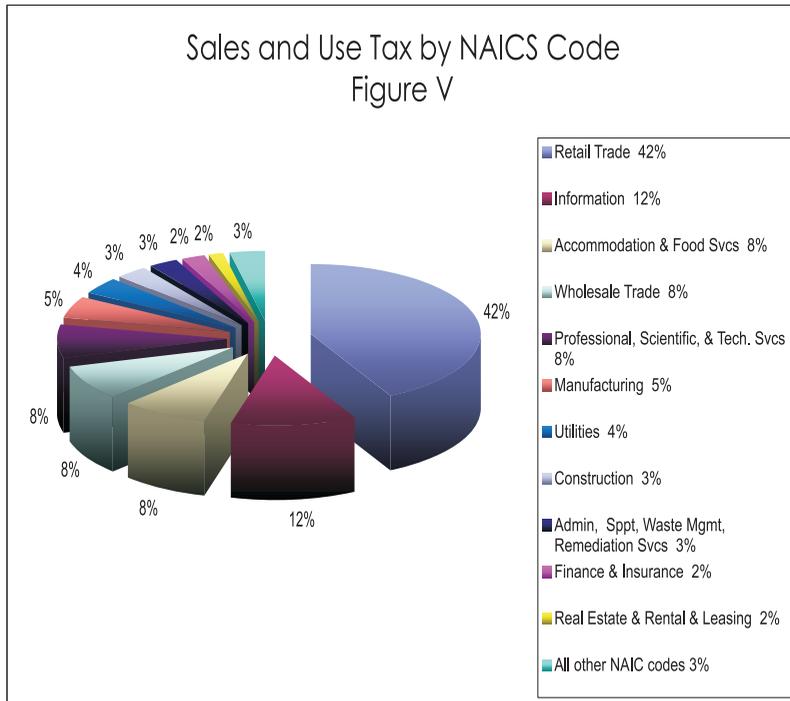


Sales tax allocation of \$2,721,953 was remitted to the City of Plano in the month of July. This amount represents a decrease of 40.1% compared to the amount received in July 2008 due in part to an audit adjustment of \$1.4 million decreasing sales tax revenue.

Sales tax revenue is generated from the 1% tax on applicable business activity within the City. These taxes were collected by businesses filing monthly returns, reported in May to the State, and received in July by the City of Plano.

Figure IV represent actual sales and use tax receipts for the months of May through July for fiscal years 2006-2007, 2007-2008, and 2008-2009.

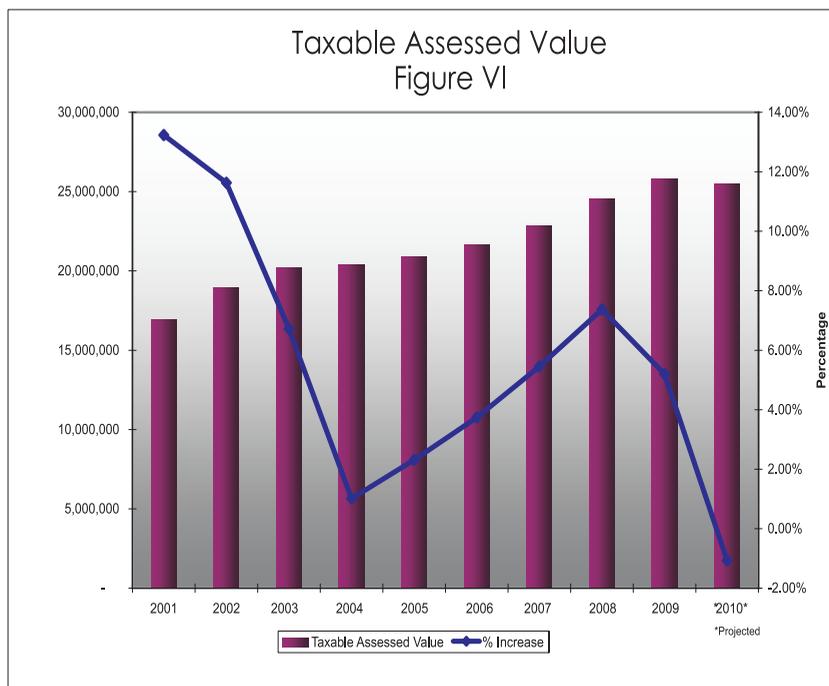
ECONOMIC ANALYSIS



The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. Figure V shows the percentage of sales and use tax by NAICS Code for June 2009.

Some examples in each code are as follows:
 Retail Trade: Wal-Mart, Costco, Kohls.
 Information: AT&T, Verizon, Microsoft licensing.
 Accommodation and Food Services: Brinker, Starbucks, Sodexo Services.
 Wholesale Trade: Oracle USA, Hewlett Packard, Hobby Lobby.
 Professional, Scientific, and Technical Services: EDS, Perot Systems, Cisco Systems.
 Manufacturing: Pepsico, TI, Apple, Frito Lay.
 Utilities: Reliant Energy, Direct Energy, Green Mountain Energy.
 Construction: Texas Custom Pools, Outdoor Lighting Services, Scott and Reid General Contractors.
 Administration, Support, Waste Management and Remediation Services: Allied Waste Systems, Trugreen, Hadden Landscaping.

Finance and Insurance: CountryWide, Wells Fargo, Viewpoint Bank.
 Real Estate and Rental and Leasing: Rent-A-Center, Blockbuster, United Rentals Northwest.
 All other NAIC codes – Other Services, Arts, Entertainment & Recreation, Health Care & Social Services, Public Administration, Transportation & Warehousing, Educational Services, Management of Companies & Enterprises, Mining, Agriculture, Forestry, Hunting & Fishing, and Unknown: Baylor Regional Medical Center, Main Event, 24 Hour Fitness, Becker CPA Review, Aramark Management Services, Coca-Cola, Ace Cash Express.



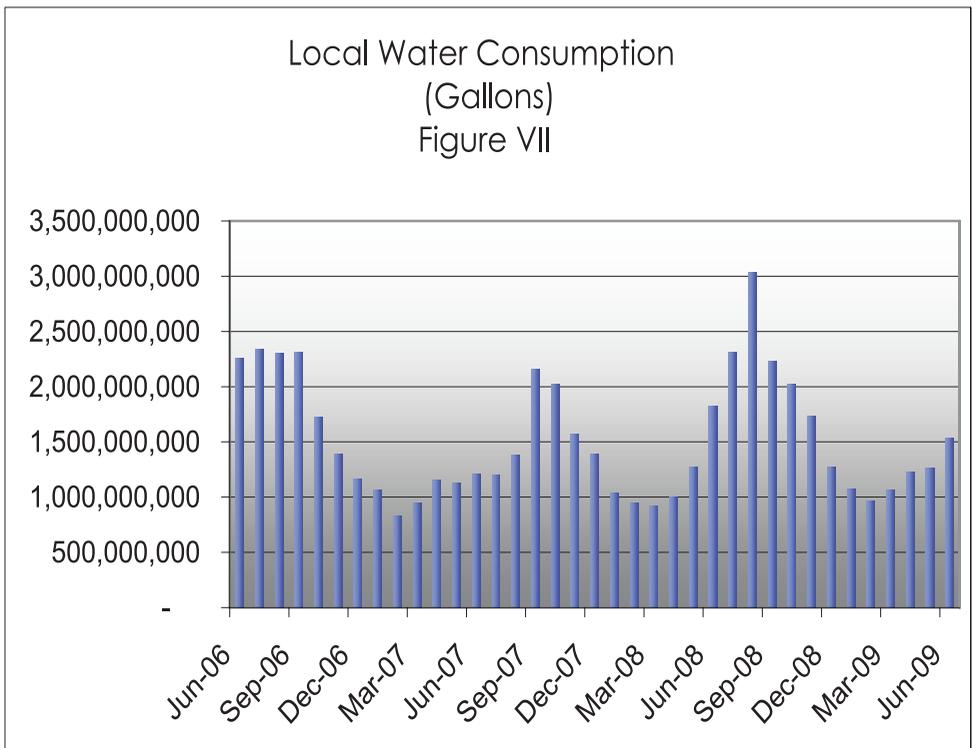
Property value is assessed by Collin County Appraisal District (CAD) and Denton County (for the area that is in the City of Plano and Denton County). All real estate, mobile homes and business personal property that is owned on January 1 are taxable. Examples of business personal property include equipment, furniture, fixtures and inventory.

The City of Plano has the following exemptions to assessed value:
 General Homestead: 20%
 *Over 65 Homestead: \$40,000
 *Disabled Person: \$40,000
 * Property Tax Freeze: Effective with the 2004 tax year, taxes are frozen for taxpayers qualifying for the Over 65 Homestead or the Disabled Person Homestead. Please note that both exemptions cannot be claimed. A choice must be made between the two. There are only two conditions that can increase the amount of the freeze: (1) if there are improvements on the property beyond the normal maintenance and upkeep; and (2) if the property erroneously received an exemption to which it was not entitled in a prior year.
 The City also grants the State Mandated Disabled Veterans Exemption.

Taxable assessed value for the fiscal year 2009 is projected to be \$25,785,315,308 which represents an increase of 5.20% compared to the value in 2008. In 2009, the amount of assessed value that was not taxed due to exemptions and the incremental increase in value of the two Tax Increment Financing units was \$5,115,583,297 which equals \$24,222,287 in lost taxes.

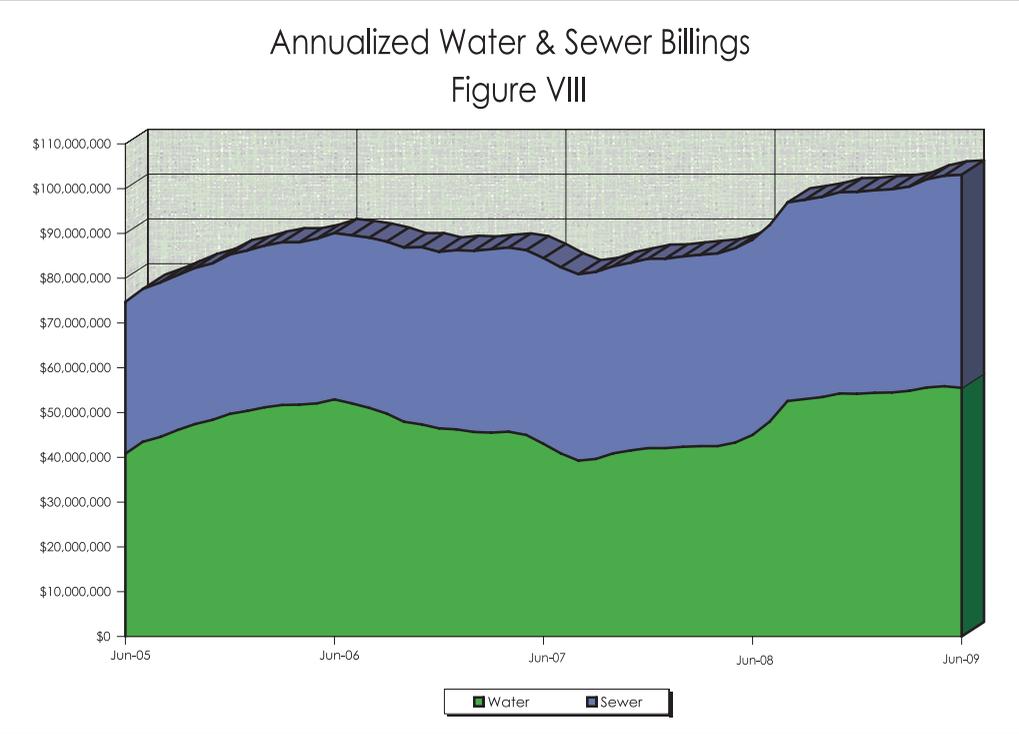
ECONOMIC ANALYSIS

In June, the City of Plano pumped 2,209,474,000 gallons of water from the North Texas Municipal Water District (NTMWD). Consumption was 1,538,146,170 gallons among 78,719 billed water accounts while billed



sewer accounts numbered 74,983. The minimum daily water pumpage was 49,176,000 gallons, which occurred on Thursday, June 11th. Maximum daily pumpage was 89,130,000 gallons and occurred on Saturday, June 27th. This month's average daily pumpage was 73,649,000 gallons.

Figure VII shows the monthly actual local water consumption.



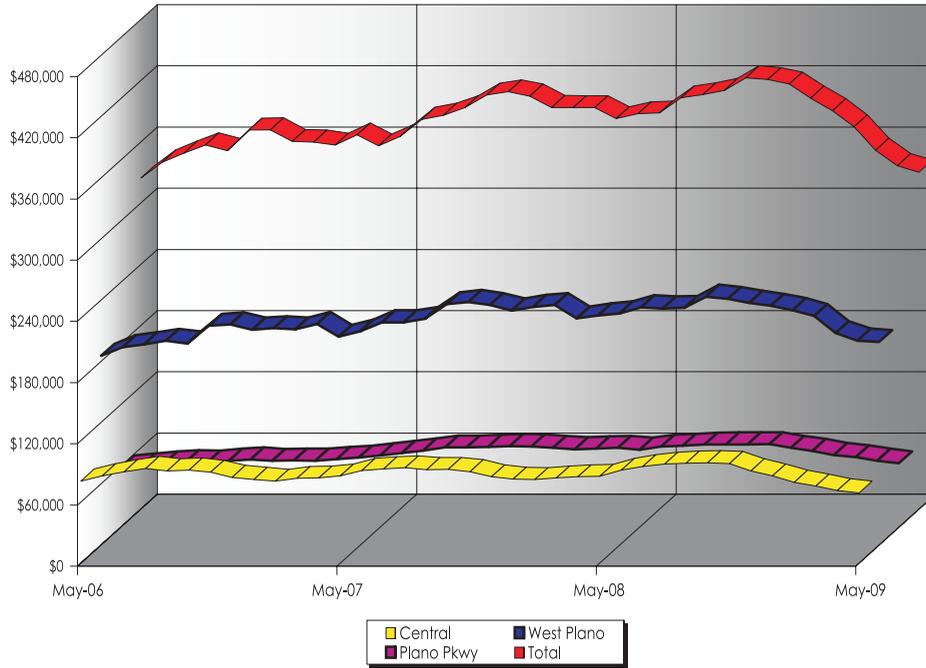
The actual water and sewer customer billing revenues in June were \$4,707,783 and \$4,379,834, representing a decrease of 6.83% and an increase of 14.71% respectively, compared to June 2008 revenues. The aggregate water and sewer accounts netted \$9,087,617 for an increase of 2.44%.

June consumption brought annualized revenue of \$55,524,863 for water and \$47,572,168 for sewer, totaling \$103,097,030. This total represents an increase of 16.41% compared to last year's annualized revenue.

Figure VIII represents the annualized billing history of water and sewer revenues for June 2005 through June 2009.

ECONOMIC ANALYSIS

Hotel/Motel Occupancy Tax
Six Month Trend
Figure IX



May revenue from hotel/motel occupancy tax was \$330,173. This represents a decrease of \$64,614 or -16.376% compared to May 2008. The average monthly revenue for the past six months (see graph) was \$330,458, a decrease of 14.926% from the previous year's average. The six-month average for the Central area decreased to \$68,736, the West Plano average decreased to \$199,092, and the Plano Pkwy average decreased to \$62,658 from the prior year.

This amount will not always equal the hotel/motel taxes reported in the financial section. The economic report is based on the amount of taxes earned during a month, while the financial report indicates when the City received the tax.

Unemployment Rates
Unadjusted Rate Comparison
Figure X

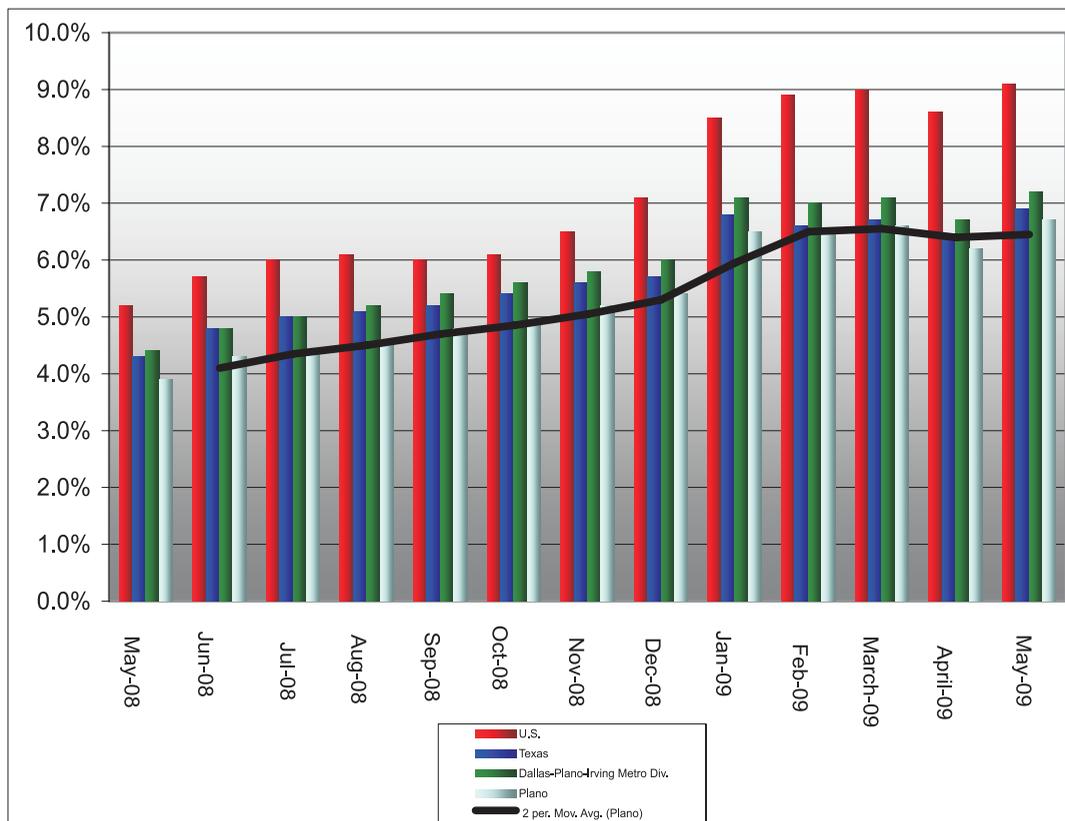
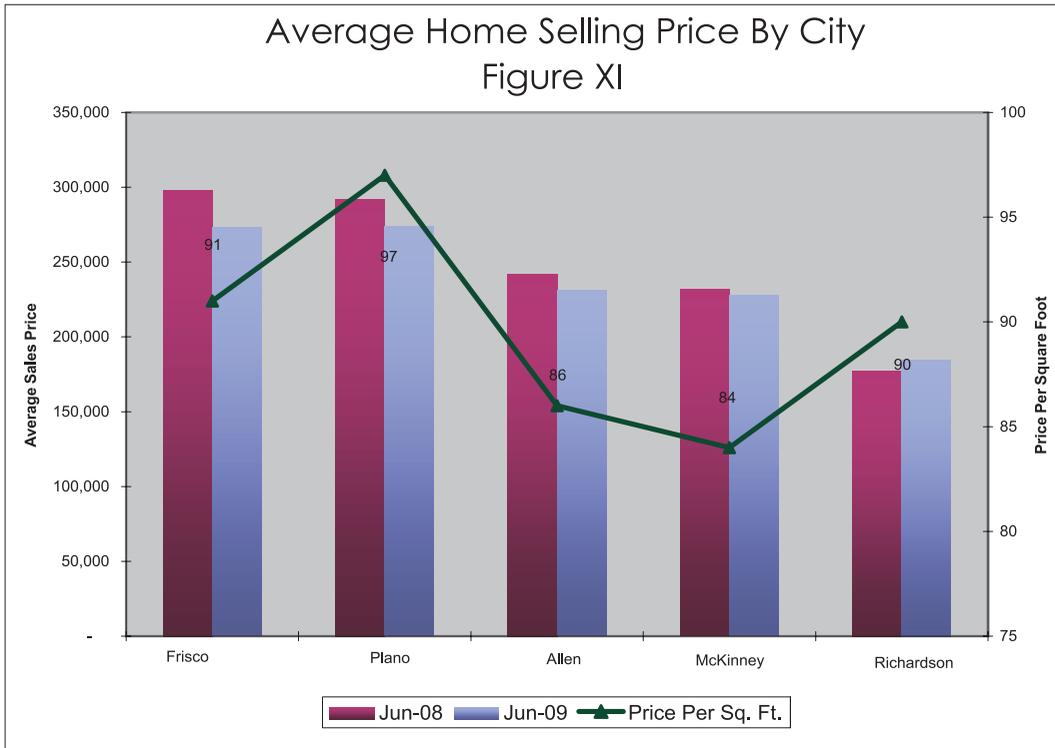


Figure X shows unadjusted unemployment rates based on the Bureau of Labor Statistics U.S. City Average, and Local Area Unemployment Statistics estimates for the State of Texas, the Dallas-Plano-Irving Metropolitan Division and the City of Plano from May 2008 to May 2009.

ECONOMIC ANALYSIS

Figure XI shows the average home selling price for the months of June 2008 and June 2009 for the City of Plano and four area cities. The average price per square foot is also included for each city for the month of June 2009.



Please note that the average sales price and price per square foot can change significantly from month to month due to the location of the properties sold.

Figure XII represents the percentage of sales price to asking price for single family homes for the past year along with days on the market. The percentage of asking price has stayed the same from June 2008 to



June 2009 at 97%. Days on the market has decreased by 17 days or 22% from June 2008 to June 2009.

ECONOMIC ANALYSIS

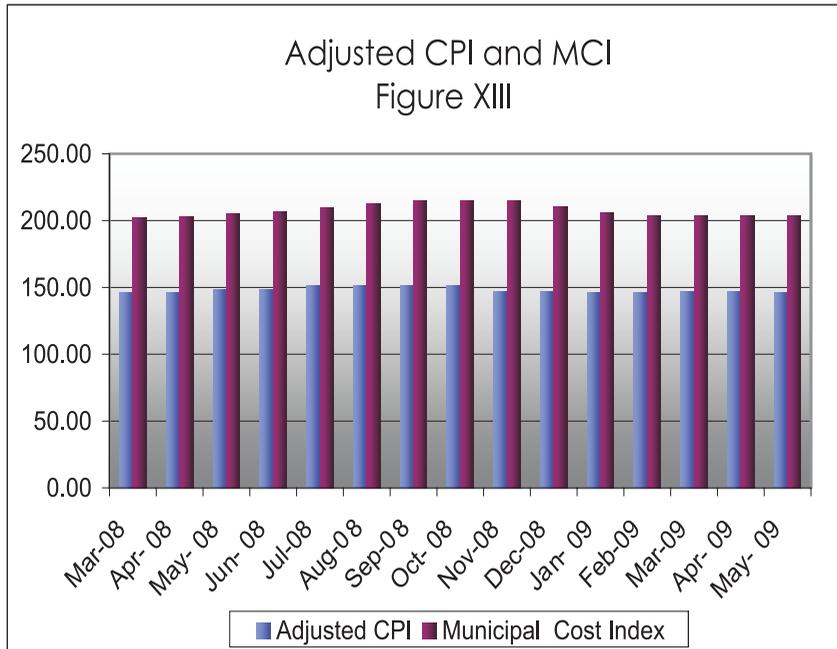


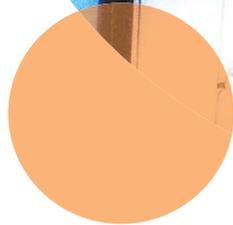
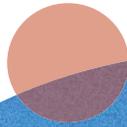
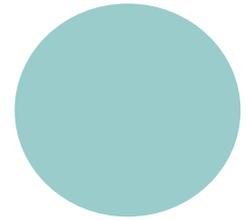
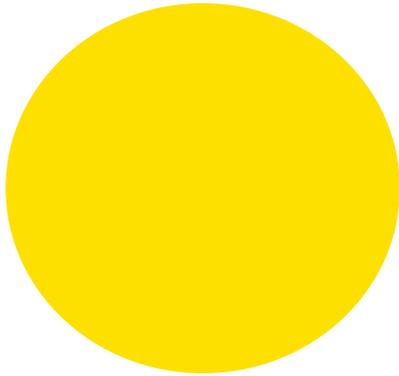
Figure XIII, left, tracks the Dallas-area CPI, using 1982-84 as the base period and the Municipal Cost Index (MCI). For June 2009, the adjusted CPI and MCI were 146 and 204.0, respectively.

The consumer price index (CPI) is a measure of the average price of consumer goods and services purchased by households. The consumer price index measures a price change for a constant market basket of goods and services from one period to the next within the same area city. The percent change in the CPI is a measure of inflation. Since January 1998, the Bureau of Labor Statistics has moved the Dallas-Area pricing cycle for CPI computation to odd-numbered months.

The MCI is designed to show the effects of inflation on the cost of providing municipal services. State and local government officials rely on the MCI to stay on top of price trends, help control price increases for commodities, make informed government contract decisions and intelligent budget planning.

ECONOMIC ANALYSIS

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SECTION 3

FINANCIAL SUMMARY

City of Plano

Comprehensive Monthly Finance Report

Funds of the City of Plano are invested in accordance with Chapter 2256 of the "Public Funds Investment Act." The Act clearly defines allowable investment instruments for local governments. The City of Plano Investment Policy incorporates the provisions of the Act and all investment transactions are executed in compliance with the Act and the Policy.

INVESTMENT REPORT

JUNE, 2009

Interest Received during June totaled \$115,583 and represents interest paid on maturing investments and coupon payments on investments less interest purchased on new investments. Interest allocation is based on average balances within each fund during the month. The two-year Treasury note yield increased throughout the month of June, starting at .97% and ending at 1.11%.

As of June 30, a total of \$341 million was invested in the Treasury Fund. Of this amount, \$36.7 million was General Obligation Bond Funds, \$5.6 million was Municipal Drainage Revenue Bond Funds, and \$298.7 million was in the remaining funds.

Metrics	Current Month Actual	Fiscal YTD	Prior Fiscal YTD	Prior Fiscal Year Total
Funds Invested ¹	\$ 25,036,618	\$ 281,309,866	\$ 91,712,891	\$ 132,311,266
Interest Received ²	\$ 115,583	\$ 2,954,634	\$ 10,597,202	\$ 12,955,262
Weighted Average Maturity (in days) ³	220		89	
Modified Duration ⁴	0.6017		0.2188	
Average 2-Year T-Note Yield ⁵	1.18%		2.77%	

* See interest allocation footnote on Page C-3.

- (1) Does not include funds on deposit earning a "NOW" rate, and/or moneys in investment pools or cash accounts.
- (2) Cash Basis.
- (3) The length of time (expressed in days) until the average investment in the portfolio will mature. The Prior fiscal YTD column represents current month, prior year.
- (4) Expresses the measurable change in the value of the portfolio in response to a 100-basis-point (1%) change in interest rates. The modified duration number in the Prior fiscal YTD column represents current month, prior year.
- (5) Compares 2009 to 2008.

Month-to-Month Comparison

Metrics	May-09	Jun-09	Difference
Portfolio Holding Period Yield	1.02%	1.07%	+0.05% (+5 Basis Points)
Average 2-Year T-Note Yield	0.93%	1.18%	+0.25% (+25 Basis Points)

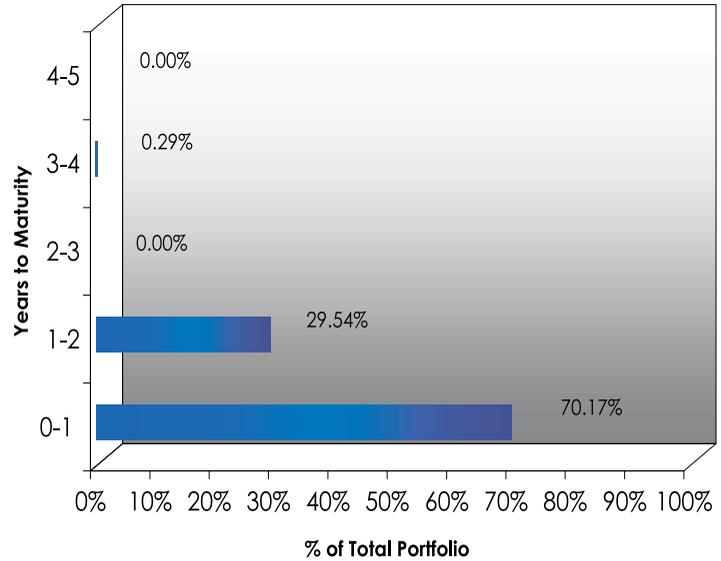
INVESTMENT REPORT

Portfolio Maturity Schedule

Figure I

Years to Maturity*	Book Value	% Total
0-1	\$ 243,925,467	70.17%
1-2	102,703,057	29.54%
2-3	0	0.00%
3-4	1,000,000	0.29%
4-5	0	0.00%
Total	\$ 347,628,523	100.00%

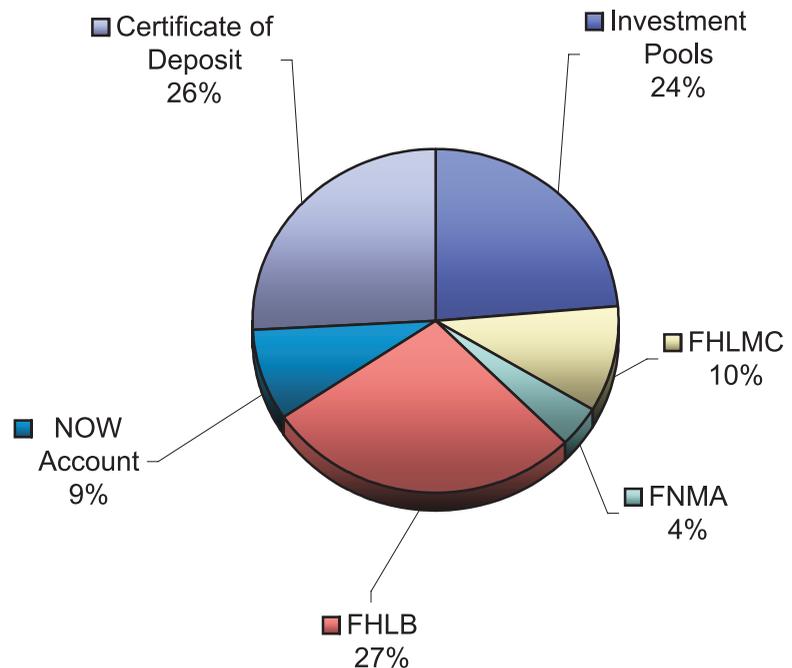
*Does not take into consideration callable issues that can, if called, significantly shorten the Weighted Average Maturity.



Portfolio Diversification

Figure II

Type	Book Value	% Total
Investment Pools	\$ 82,425,132	23.71%
Commercial Paper	0	0.00%
FHLMC	34,254,127	9.85%
FNMA	13,463,365	3.87%
FFCB	0	0.00%
FHLB	97,329,499	28.00%
NOW Account	29,957,400	8.62%
Certificate of Deposit	90,199,000	25.95%
Total	\$ 347,628,523	100.00%



INVESTMENT REPORT

Allocated Interest/Fund Balances June 2009

Fund	Beginning Fund Balance 6/30/2009	Allocated Interest Current Month	Fiscal Y-T-D	Ending Fund Balance 6/30/2009	% of Total
General	59,698,745	208,824	749,970	59,907,569	17.57%
G. O. Debt Services	33,498,091	114,096	318,575	33,612,187	9.86%
Street & Drainage Improvements	7,439,960	25,438	91,189	7,465,398	2.19%
Sewer CIP	10,109,637	33,933	125,626	10,143,569	2.97%
Capital Reserve	37,267,374	126,895	521,918	37,394,269	10.97%
Water & Sewer Operating	(8,048,499)	(26,960)	(20,100)	(8,075,459)	-2.37%
Water & Sewer Debt Service	1,745,711	5,656	13,096	1,751,368	0.51%
W & S Impact Fees Clearing	3,926,111	13,415	51,687	3,939,526	1.16%
Park Service Area Fees	5,615,418	19,193	78,827	5,634,611	1.65%
Property/ Liability Loss	3,652,906	12,721	62,108	3,665,626	1.07%
Information Services	6,753,670	22,858	125,809	6,776,528	1.99%
Equipment Replacement	13,968,614	46,774	149,859	14,015,388	4.11%
Developer's Escrow	3,539,144	12,103	52,378	3,551,247	1.04%
G. O. Bond Funds	36,590,560	125,251	776,132	36,715,810	10.77%
Municipal Drainage Bond Clearing	5,637,179	19,284	61,353	5,656,463	1.66%
Other	118,451,331	406,594	1,268,582	118,857,926	34.85%
Total	339,845,950	1,166,075	4,427,008	341,012,026	100%

Footnote: All City funds not restricted or held in trust are included in the Treasury Pool. As of June 30, 2009 allocated interest to these funds may include an adjustment to fair value as required by GASB 31

Portfolio Statistics

Month	Total Invested (End of Month)	Portfolio Yield	# of Securities Purchased*	Maturities/ Sold/ Called	Weighted Ave. Mat. (Days)	# of Securities
December, 2007	\$ 296,692,760	4.38%	5	5	330	85
January, 2008	\$ 331,413,637	3.89%	0	7	271	78
February, 2008	\$ 355,278,178	3.74%	0	47	201	31
March, 2008	\$ 386,936,505	3.15%	2	6	185	27
April, 2008	\$ 381,286,506	2.74%	1	5	139	23
May, 2008	\$ 372,129,934	2.87%	3	1	154	25
June, 2008	\$ 359,631,853	2.80%	3	10	89	18
July, 2008	\$ 336,029,216	2.83%	5	4	114	19
August, 2008	\$ 335,093,919	2.69%	7	6	119	20
September, 2008	\$ 300,699,562	2.55%	1	5	104	16
October, 2008	\$ 288,885,757	2.73%	1	4	266	13
November, 2008	\$ 283,603,783	1.90%	1	5	82	9
December, 2008	\$ 309,132,350	1.49%	2	2	67	9
January, 2009	\$ 337,564,218	1.09%	7	3	98	13
February, 2009	\$ 355,625,399	0.82%	5	2	64	16
March, 2009	\$ 380,327,932	1.00%	4	1	112	19
April, 2009	\$ 364,025,210	1.00%	7	4	153	22
May, 2009	\$ 356,669,678	0.87%	12	3	194	31
June, 2009	\$ 347,628,523	0.92%	8	0	221	39

*Does not include investment pool purchases or changes in NOW account balances.

INVESTMENT REPORT

Equity in Treasury Pool
By Major Category
Figure IV

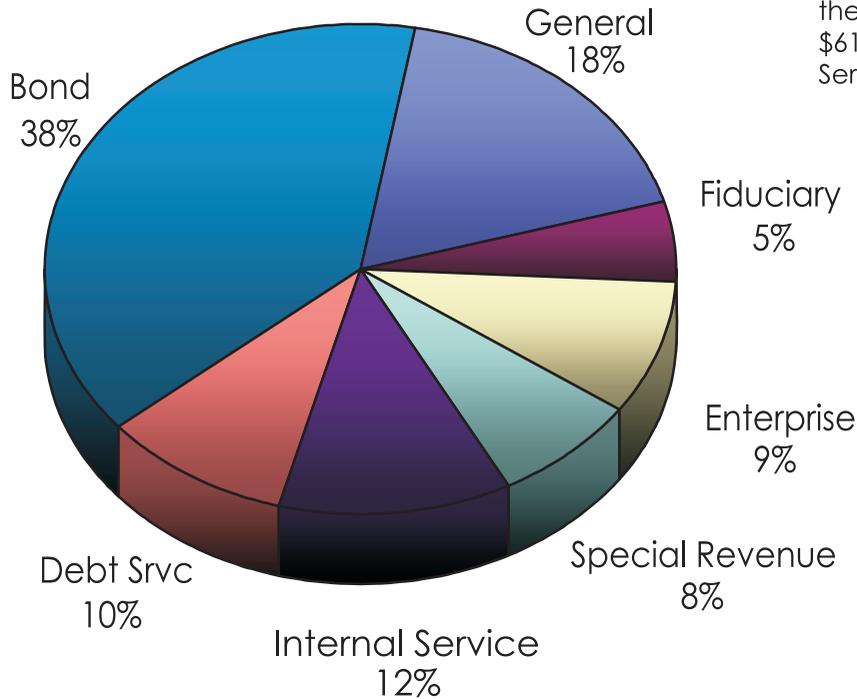
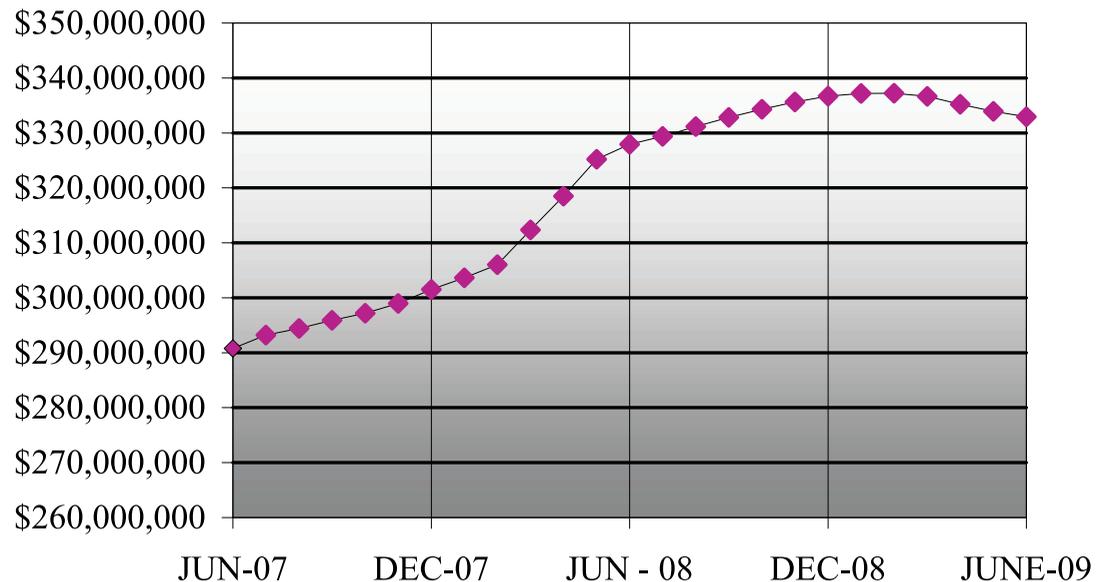


Figure IV shows a breakdown of the various sources of funds for the City's Treasury Pool as of June 30, 2009. The largest category is the Bond Fund in the amount of \$136.0 million. Closest behind is the General Fund with a total of \$61.9 million, and the Internal Service Fund with \$42.2 million.

Annualized Average Portfolio
Figure V

The annualized average portfolio for June 30, 2009 was \$332,940,462. This is an increase of \$5,003,226 when compared to the June 2008 average of \$327,937,237.



Discussion/Action Items for Future Council Agendas

August 8 – City Council Retreat Follow-up, 8 a.m.

August 10

Public Hearing on Operating Budget and CIP
Departmental Briefing – Sustainability

Zoning Case 2009-12 - Request for a Specific Use Permit for Winery on one lot on 0.1± acre located at the northwest corner of Preston Road and Plano Parkway. Zoned Planned Development-457-Retail/General Office/190 Tollway/Plano Parkway and Preston Road Overlay Districts. Neighborhood #54.

Zoning Case 2009-13 - Request to amend Subsection 4.505 of Section 4.500 (Preston Road Overlay District), Subsection 4.605 of Section 4.600 (Dallas North Tollway Overlay District), Subsection 4.705 of Section 4.700 (190 Tollway/Plano Parkway Overlay District), Subsection 4.805 of Section 4.800 (State Highway 121 Overlay District), and Subsection 4.904 of Section 4.900 (Parkway Overlay District) of Article 4 (Special District Regulations) and related sections of the Zoning Ordinance pertaining to overhead electrical regulations.

August 15 – City Council Budget Worksession

August 22 – Boards and Commissions Reception, BITR, 2 p.m.

August 24

ACC Report (Quarterly)
Mobility Report
DART Report
Comprehensive Monthly Financial Report

August 27 – Boards and Commissions Reception, PSA StarCenter, 6 p.m.

September 7 – Labor Day Holiday

September 13 – 17, ICMA Conference, Montreal

September 10 – District 4 Roundtable, PSA StarCenter, 7 p.m.

September 14

City Council Adopts Budget, CIP and sets Tax Rate
Departmental Briefing – Parks and Recreation/Emergency Management

07-16-09 – 3:12 p.m.

September 28

Mobility Report
DART Report
Comprehensive Monthly Financial Report

October 5 – City Council Office Hours – BITR – 6-7 p.m.

October 12

Departmental Briefing – Public Works/Engineering

October 13 – National Night Out

October 21-23, TML Conference, Ft. Worth

October 26

Mobility Report
DART Report
Comprehensive Monthly Financial Report

November 2 – City Council Office Hours – BITR – 6-7 p.m.

November 9

Departmental Briefing – Property Standards

November 10 – 14, NLC, San Antonio

November 23

ACC Report (Quarterly)
Mobility Report
DART Report
Comprehensive Monthly Financial Report

December 7 – City Council Office Hours – BITR – 6-7 p.m.

December 10 – District 2 Roundtable, TMC, 7 p.m.

December 14

Departmental Briefing – Building Inspections

December 22

Mobility Report
DART Report
Comprehensive Monthly Financial Report

07-16-09 – 3:12 p.m.



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input type="checkbox"/> Yes <input type="checkbox"/> Not Applicable
Council Meeting Date: 7/27/09		Reviewed by Legal	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck		Assistant City Manager	
Dept Signature:			Deputy City Manager	
		City Manager	<i>SM</i>	7/21/09
Agenda Coordinator (include phone #): Sharon Wright X7107, Cindy Pierce X5161				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER SPECIAL RECOGNITION				
CAPTION				
Special Recognition: Ben Sater, All-Stars Among Us winner				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date: 7/27/09		Purchasing		
Department: City Manager's Office		Budget		
Department Head: Tom Muehlenbeck		Legal		
Dept Signature:		Assistant City Manager		
		Deputy City Manager		
		City Manager	7/20/09	
Agenda Coordinator (include phone #): Sharon Wright X7107, Cindy Pierce X5161				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER SPECIAL RECOGNITION				
CAPTION				
Special Recognition: Corina Sadler - Outstanding New Volunteer Administrator				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing		
Council Meeting Date:	7/27/09	Budget		
Department:	City Manager's Office	Legal		
Department Head	Tom Muehlenbeck	Assistant City Manager		
Dept Signature:		Deputy City Manager		
		City Manager		
Agenda Coordinator (include phone #): Sharon Wright X7107, Cindy Pierce X5161				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER RECOGNITION OF DESIGNATION				
CAPTION				
Recognition of Designation: Pecan Hollow Golf Course as Certified Audubon Cooperative Sanctuary				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing		
Council Meeting Date: 7/27/09		Budget		
Department: City Manager's Office		Legal		
Department Head: Tom Muehlenbeck		Assistant City Manager		
Dept Signature:		Deputy City Manager		
		City Manager	<i>[Signature]</i>	7/27/09
Agenda Coordinator (include phone #): Sharon Wright x 7107, Cindy Pierce X5161				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER RECOGNITION OF AWARD				
CAPTION				
Recognition of Award: Plano Arts Program at the Americans for the Arts Annual Convention				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing		
Council Meeting Date: 07/27/09		Budget		
Department: City Manager's Office		Legal		
Department Head: Tom Muehlenbeck		Assistant City Manager		
Dept Signature:		Deputy City Manager		
		City Manager	<i>[Signature]</i>	7/21/09
Agenda Coordinator (include phone #): Sharon Wright X7107, Cindy Pierce X7121				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER PRESENTATION				
CAPTION				
Presentation: Phyllis Jarrell, Director of Planning - 25 Year Service Award				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
June 22, 2009**

COUNCIL MEMBERS

Phil Dyer, Mayor
Harry LaRosiliere, Mayor Pro Tem
Lee Dunlap, Deputy Mayor Pro Tem
Pat Miner
Ben Harris
Mabrie Jackson
Lissa Smith
Jean Callison

STAFF

Thomas H. Muehlenbeck, City Manager
Frank Turner, Deputy City Manager
Bruce Glasscock, Deputy City Manager
Rod Hogan, Deputy City Manager
Mark Israelson, Assistant City Manager
LaShon Ross, Assistant City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer called the meeting to order at 5:05 p.m., Monday, June 22, 2009, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Council Member Harris. Council Member Jackson arrived at 5:06 p.m. Mayor Dyer then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice, Section 551.071; Real Estate, Section 551.072; and Economic Development, Section 551.087 for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Dyer reconvened the meeting back into the Preliminary Open Meeting at 6:06 p.m. in the Council Chambers where the following matters were discussed:

Consideration and Action Resulting From Executive Session

No items were considered.

Personnel Appointments

Tax Increment Financing Reinvestment Zone No. 1
Tax Increment Financing Reinvestment Zone No. 2

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Callison, the Council voted 7-0 to appoint Mayor Pro Tem LaRosiliere as member and chair of TIF No. 1 and Council Member Miner as member and chair of TIF No. 2.

Health Plan Overview

Compensation and Benefits Manager Covey provided the Council an overview of the health plan advising that it is governed by the City through a risk pool, spoke to City absorption of most of the medical cost increases from 2004-2008 and development of a strategic approach and organization philosophy to manage the plan to offer affordable choices, consistent level of cost structure and encouragement for healthy living. Ms. Covey spoke to minor changes in 2007 focusing on communicating the philosophy and future changes and revisions in 2008 moving Medicare eligible retirees to a fully insured supplement, funding of GASB, and modification of the rate structure. She spoke to the contribution philosophy to share more cost with employees over time and plan year 2009 and implementation of the contribution philosophy. Ms. Covey spoke to 2008 experience with a large number of high-cost claimants, increases in medical and prescription costs, and an increase in the City contribution to cover excess claims. She spoke to claims distribution and cost drivers, the high cost of inpatient hospital room/board and the change of stop loss provider in 2009 to reduce the wait time for reimbursement. Ms. Covey spoke to the Wellness Program, implementing contribution philosophy/benefit changes sharing a larger percentage of total cost with employees, exploring additional medical plan offerings, and exploring options for a fully insured product for non-Medicare retirees. Ms. Covey responded to Council Member Jackson that the City has not utilized Health Savings Accounts. Mayor Dyer requested information on the number of spouses on the plan who are eligible for other coverage.

Discussion & Direction: Interim Proposal of Preservation Plan Update

Heritage Preservation Officer Casso spoke to the plan, which contains broad concepts and definitions creating a vision for preservation and to receiving feedback before development of more detailed information. Heritage Commission Chair Brian Chaput spoke to the establishing a basis for decision-making and the need for an update to recognize the difference between new and old historic assets utilizing a blend of economics, zoning, Plano's heritage, and urban planning. He spoke to working in concert with the decisions of tomorrow and reviewed the plan's content. Heritage Commission member Doug Cargo spoke to broadening the vision of heritage preservation to include nonphysical attributes and to future changes.

Ms. Casso spoke to challenges including limited resources, infill/redevelopment, geography, lack of active preservation groups, and limited private investment. She spoke to opportunities including City support through tax exemptions and hotel/motel taxes, ongoing restorations, historic museums, the Heritage Preservation Program and new technology. City Manager Muehlenbeck spoke the goal of becoming more self sufficient. Mr. Chaput spoke to tying heritage preservation to zoning as a revitalization tool to spur economic growth and tourism. Council Member Callison spoke to developing a grassroots effort with involvement by non-profit organizations.

Mobility Report

Transportation Engineering Manager Neal spoke to construction delays at Ohio Drive/SH 121, implementation of summer school zones, projects removed from the Safe Streets Program with remainder complete by Spring 2010, construction of SH 121 from Hillcrest Road to Hardin Road with completion by January 2010, US 75 main lanes and HOV work from SH 635 to Exchange Parkway being behind schedule, and completion of the Parker Road/US 75 interchange by October 2010. He spoke to schematic design of Plano Parkway/US 75, application for a US 75 Integrated Corridor Project, work at SH 190/Jupiter Road to relieve congestion, the Dallas North Tollway project being delayed until the electronic toll is complete, Cottonbelt discussions underway, and discussion of a partnership to expand lite rail. Mr. Neal referenced local projects including bicycle routes, median left-turn lanes, DART flex routes, retiming of signals, traffic cameras utilizing motomesh technology.

Comprehensive Monthly Financial Report

Director of Finance Tacke spoke to an increase in actual General Revenue and Water/Sewer Funds, although the percentages of budget as compared to last year are down. She spoke to declines in Civic Center and Sustainability revenue and advised that the General Fund expenses are similar to last year with increases in Water/Sewer expenditures. Ms. Tacke spoke to sales tax collection similar to last year with unemployment rates slightly lower than last month. City Manager Muehlenbeck spoke regarding an upcoming \$1.4 million adjustment to sales tax figures decreasing their level. Ms. Tacke spoke regarding housing starts, and decreases in residential and business building permits and advised that Staff is working to diversify the portfolio. Mayor Dyer spoke to refining the report and providing more useful information.

Council items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agenda

No items were discussed.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 7:01 p.m.

ATTEST

Phil Dyer, Mayor

Diane Zucco, City Secretary

PLANO CITY COUNCIL

June 22, 2009

COUNCIL MEMBERS

Phil Dyer, Mayor
Harry LaRosiliere, Mayor Pro Tem
Lee Dunlap, Deputy Mayor Pro Tem
Pat Miner
Ben Harris
Mabrie Jackson
Lissa Smith
Jean Callison

STAFF

Thomas H. Muehlenbeck, City Manager
Frank Turner, Deputy City Manager
Bruce Glasscock, Deputy City Manager
Rod Hogan, Deputy City Manager
Mark Israelson, Assistant City Manager
LaShon Ross, Assistant City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, June 22, 2009, at 7:13 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Council Member Harris.

The invocation was led by Pastor Jack Schneider of St. Paul Lutheran Church. The Pledge of Allegiance was led by Plano Chapters of the Sons of the American Revolution and the Daughters of the American Revolution.

Mayor Dyer presented special recognition to the Plano Wetcats Master Swimmers.

COMMENTS OF PUBLIC INTEREST

Citizen of the City Jay Cooper spoke regarding disconnection of his water service, struggles of those without financial resources and establishment of policies.

Citizen of the City Jack Lagos spoke to a letter of easement related to the Arts of Collin County allowing a water line through the property and monies due the City.

Citizen of the City Bill Lislett spoke to multiple citations and differences in repercussion taken against a police officer not appearing in court versus a citizen. He spoke to possible code issues in the municipal courts facility and Mayor Dyer advised that Staff would gather information on concerns.

CONSENT AGENDA

Citizen of the City Jack Lagos request Consent Agenda Item "A," Approval of Minutes, be removed for individual consideration.

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by, the Council Member Miner, the Council voted 7-0 to approve and adopt all remaining items on the agenda as recommended and as follows:

Approval of Expenditures

Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)

Bid No. 2009-110-C for an annual contract for New Tires to Southern Tire Mart and Blagg Tire Service in the total amount of \$261,000. This will establish an annual fixed price contract in the total estimated annual amount of \$261,000. (Consent Agenda Item "B")

Bid No. 2009-81-B for Razor Road from Ohio Drive to State Highway 121 to Weir Bros., Inc., in the amount of \$4,199,512. Roadway widening and extension consists of approximately 45,000 square yards of concrete paving, miscellaneous storm sewer, 5500 linear feet of 8" & 12" water mains and appurtenances, landscape and irrigation, and other miscellaneous items. (Consent Agenda Item "C")

Purchase from an Existing Contract

To approve the purchase of fleet Collision Repair Services in the estimated annual amount of \$125,000 from Metro Fleet Collision Repair through an existing Interlocal contract/agreement with the City of Richardson, and authorizing the City Manager to execute any and all necessary documents (Bid No. 30-095). (Consent Agenda Item "D")

Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)

To approve an Engineering Contract by and between the City of Plano and GWC Engineering, LP, in the amount of \$78,690 for the Erosion Control – Padre, Dunmoor, Buckboard & Rockbrook project and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item "E")

Approval of Change Order

To Natgun Corporation, increasing the contract by \$45,770 for Custer Ground Storage Tank Repairs, Change Order No. 1 (Original Bid No. 2008-224-B). This change order is for removal of contaminated soils under the existing storage tanks and for a change in the ground cover requirement for a portion of the project. (Consent Agenda Item "F")

Adoption of Resolutions

Resolution No. 2009-6-11(R): To terminate the contract by and between DiverseStaff, a Lane Staffing Company and the City of Plano for Professional Food Service Personnel; approving its execution by the City Manager; and providing an effective date. (Consent Agenda Item "G")

Resolution No. 2009-6-12(R): To approve the terms and conditions of an Agreement by and between the City of Plano and the City of Allen for a Joint Radio Communications System for Municipal Services; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "H")

Adoption of Ordinances

Ordinance No. 2009-6-13: To amend Section 12-73 of Chapter 12 Motor Vehicles and Traffic of the City of Plano City Code of Ordinances; to enact a school zone on Parker Road at P Avenue, and to revise the effective times of the school zones on Independence Parkway at Russell Creek Drive, and Shiloh Road between Cotillion Drive and 18th Street; providing a fine for criminal penalties not to exceed \$200 for each offense; and providing a repealer clause, severability clause, a publication clause, and an effective date. (Consent Agenda Item "I")

Ordinance No. 2009-6-14: To adopt and enact Supplement Number 86 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date. (Consent Agenda Item "J")

Ordinance No. 2009-6-15: To repeal Ordinance No. 2009-5-15 and adopting this ordinance to correct a clerical error; amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended regarding signage and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. (Consent Agenda Item "K")

END OF CONSENT

Approval of Minutes (Consent Agenda Item "A")

June 4, 2009

June 8, 2009

June 10, 2009

Citizen of the City Jack Lagos referenced a presentation made at the June 8, 2009, meeting and requested clarification regarding an easement letter for a water line on the Arts of Collin County property. City Attorney Wetherbee advised that the scope of this agenda item is consideration of the accuracy of minutes from previous meetings. Mr. Lagos responded to Mayor Dyer that he would provide information regarding the easement letter and come back to a future meeting.

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Jackson, the Council voted 7-0 to approve the minutes as presented.

Resolution No. 2009-6-16(R): To approve the terms and conditions of an Agreement by and between RH 15th Condos One, Ltd. and the City of Plano, Texas for the development of 15th Street Village; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item "1")

Deputy City Manager Turner provided a history to the Council advising that the project is comprised of residential development (condos and town homes) and that to date 44 units have been constructed with four remaining for sale. He spoke to terms of the extension providing the developer with 120 days to purchase remaining City-owned land, commencement of construction of an additional 20 condo units by January 1, 2011, and City responsibility for public infrastructure and waiving fees for units built for sale. Mr. Turner spoke to the developer being entitled to \$1,000 for each of up to 15 on-street parking spaces, and pavement of additional land next to the police/courts parking lot and advised that Staff recommended approval.

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Callison, the Council voted 7-0 to approve the terms and conditions of an Agreement by and between RH 15th Condos One, Ltd. and the City of Plano as recommended and further to adopt Resolution No. 2009-6-16(R).

Public Hearing and adoption of Resolution No. 2009-6-17(R): to approve the terms and conditions of an Interlocal Cooperation Agreement between the City of Plano, Texas, the City of Frisco, Texas, the City of McKinney, Texas, and the County of Collin, Texas for the disbursement of the 2009 Byrne Justice Assistance Grant Funds; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item "2")

Chief Rushin spoke to monies that can be spent in several law enforcement areas and the recommended purpose of an audio/visual system which would allow for trainings and briefings between stations. He responded to Council Member Jackson that grant funding has decreased over the years and that Regular Agenda Item No. 3 is related to application for a recovery grant.

Mayor Dyer opened the Public Hearing. No one spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Jackson and seconded by Council Member Miner, the Council voted 7-0 to approve the terms and conditions of an Interlocal Cooperation Agreement between the City of Plano, Texas, the City of Frisco, Texas, the City of McKinney, Texas, and the County of Collin, Texas as recommended and further to adopt Resolution No. 2009-6-17(R).

Resolution No. 2009-6-18(R): To authorize the Filing of Application for Federal Funds in an amount not to exceed \$80,404 under the American Recovery and Reinvestment Act of 2009; Edward Byrne Memorial Justice Assistance (JAG) State Formula Program through the Criminal Justice Division of the Office of the Governor of Texas; designating Gregory W. Rushin as authorized representative of the City for the purpose of giving required assurances and acting in connection with said application and providing required information; and declaring an effective date. (Regular Agenda Item "3")

Resolution No. 2009-6-18(R) (cont'd)

Upon a motion made by Council Member Miner and seconded by Council Member Jackson, the Council voted 7-0 to authorize the Filing of Application for Federal Funds as recommended and further to adopt Resolution No. 2009-6-18(R).

Approval of an Engineering Contract by and between the City of Plano and Halff Associates, Inc., in the amount of \$188,000 for Russell Creek Sewer Main Rehab – Phase I & II, and authorizing the City Manager to execute all necessary documents. (Regular Agenda Item “4”)

Director of Public Works and Engineering Upchurch spoke to the sewer main failure at SH 190 and Custer Road due to deterioration of the concrete pipes and evaluation of other areas around the City advising that this item covers the relining of two major sections

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Callison, the Council voted 7-0 to approve an Engineering Contract by and between the City of Plano and Halff Associates, Inc., as recommended.

Resolution No. 2009-6-19(R): To ratify the Takeover Agreement by and between Liberty Mutual Insurance Company and the City of Plano for completion of Plano Fire Station No. 12/Emergency Operations Center Complex; approving its execution by the City Manager; and providing an effective date. (Regular Agenda Item “5”)

Facilities Manager Rahzina spoke to default on the contract to construct Fire Station 12 and work with the bonding company to complete a takeover agreement. He advised that following drafting of the item, several areas were modified to offer better protection to the City and responded to Mayor Dyer that completion is anticipated in October/November.

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Jackson, the Council voted 7-0 to ratify the Takeover Agreement by and between Liberty Mutual Insurance Company and the City of Plano and further to adopt Resolution No. 2009-6-19(R) with revisions.

Ordinance No. 2009-6-20 to determine the public use, need and necessity for the acquisition of fee simple title to a 1.053 acre (45,880 square feet) tract of land and a temporary construction easement on a .034 acre (1,475 square feet) tract of land, generally located at the southeast corner of Chaparral Road and Jupiter Road in the City of Plano, Collin County, Texas, for the widening of the south side of Chaparral Road (east bound) and related public improvements in the City of Plano, Collin County, Texas, authorizing the City Attorney to file proceedings in eminent domain to acquire the needed real property; and providing an effective date. (Regular Agenda Item “1”) (Regular Agenda Item “6”)

Director of Public Works and Engineering Upchurch spoke to the need for additional right-of-way to widen Chaparral Road and the need for condemnation should negotiations prove unsuccessful. He advised that when right-of-way is acquired construction will be turned over to the City of Allen and the North Texas Municipal Water District with maintenance provided by the City of Allen.

Ordinance No. 2009-6-20 (cont'd)

Upon a motion made by Council Member Miner and seconded by Deputy Mayor Pro Tem Dunlap, the Council voted 7-0 to determine the public use, need and necessity for the acquisition of fee simple title to a tract of land and a temporary construction easement on a tract of land as recommended and further to adopt Ordinance No. 2009-6-20.

Public Hearing and Consideration of Zoning Case 2009-01 – Request for a Specific Use Permit for Arcade on 2.3± acres located on the south side of Chase Oaks Boulevard, 300± feet west of U.S. Highway 75. Tabled 3/23/09 and 5/26/09. Applicant: GBRE, LLC (Regular Agenda Item “1”) (Regular Agenda Item “7”)

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Callison, the Council voted 7-0 to remove the item from the table.

Director of Planning Jarrell advised that the applicant has requested to withdraw the item.

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Callison, the Council voted 7-0 to accept the applicant’s withdrawal of Zoning Case 2009-01.

Mayor Dyer spoke to the next Council meeting to be held on July 27 and there being no further discussion, he adjourned the meeting at 8:05 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Purchasing		<i>Jep</i>	7-16-09	
Council Meeting Date: 07/27/2009				
Department: Public Works / David Falls <i>[Signature]</i>		Budget	7-16-09	
Department Head: Alan Upchurch		Legal <i>N/A [Signature]</i>		
Dept Signature: <i>[Signature]</i>		Assistant City Manager		
		Deputy City Manager	7-17-09	
		City Manager	<i>[Signature]</i> 7/17/09	
Agenda Coordinator (include phone #): Margie Stephens (X4104)				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
<i>Award, Rejection of Bids/Proposals, Bid No. 2009-133- B, Project No. 5982, 2008-2009 Arterial Concrete Pavement Rehabilitation Project – Enterprise and Premier Drive to Smith Contracting Inc. in the amount of \$174,102.00.</i>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	2,506,850	4,314,150	2,300,000	9,121,000
Encumbered/Expended Amount	-2,506,850	-2,684,900	0	-5,191,750
This Item	0	-174,102	0	-174,102
BALANCE	0	1,455,148	2,300,000	3,755,148
FUND(S): CAPITAL RESERVE				
COMMENTS: Funds are included in the 2008-09 Capital Reserve. This item, in the amount of \$174,102, will leave a current year balance of \$1,455,148 for the Arterial Concrete Repair project. STRATEGIC PLAN GOAL: Arterial concrete repair relates to the City's Goals of Safe, Efficient Travel and Premier City in which to Live.				
SUMMARY OF ITEM				
Staff recommends the bid for the 2008- 09 Arterial Concrete Pavement Rehab Project – Enterprise and Premier Drive to Smith Contracting, Inc., in the amount of \$174,102.00 for alternate No. 2 (Cement with NOx <1.7#NOx/Ton of Clinker) which is within 5% of the base bid, be accepted as the lowest responsible bid for the project conditioned upon timely execution of all necessary documents. This project involves the repair of arterial concrete pavement on Enterprise Drive between Park Blvd and Central Expressway and on Premier Drive between Enterprise and Ruisseau Drive. The second low bid vendor being recommended is Hencie International, Inc. in the amount of \$179,557.12. Engineer's estimate for this project is \$225,000.00.				
List of Supporting Documents: Bid Tabulation, Location Map		Other Departments, Boards, Commissions or Agencies		

6-2

CITY OF PLANO

BID NO. 2009-133-B

2008-09 Arterial Concrete Pavement Rehab – Enterprise Drive and Premier Drive

Project No. 5982

BID TABULATION

Bid opening Date/Time: June 18, 2009 @ 3:30pm

Number of Bids Submitted: 8

COMPANY NAME	Total Base Bid	Alternate 1	Alternate 2	Bid Bond Present	Addendum 1
Smith Contracting Inc	\$174,102.00	\$174,102.00	\$174,102.00	Yes	Yes
Hencie International	\$179,577.12	\$174,697.80	\$179,577.12	Yes	Yes
Advanced Paving	\$186,549.25	\$186,549.25	\$186,549.25	Yes	Yes
Jim Bowman Construction	\$190,617.80	\$190,617.80	\$193,909.96	Yes	Yes
Jerusalem Corp.	\$207,821.25	\$203,657.25	\$207,821.25	Yes	Yes
Ken-Do Contracting	\$219,422.50	\$166,072.80	\$166,072.80	Yes	Yes
Texas Standard Construction	\$295,872.00	\$295,682.00	\$295,682.00	Yes	Yes
Comino Construction	\$325,872.00	\$325,872.00	\$325,872.00	Yes	Yes

Nancy Corwin

June 18, 2009

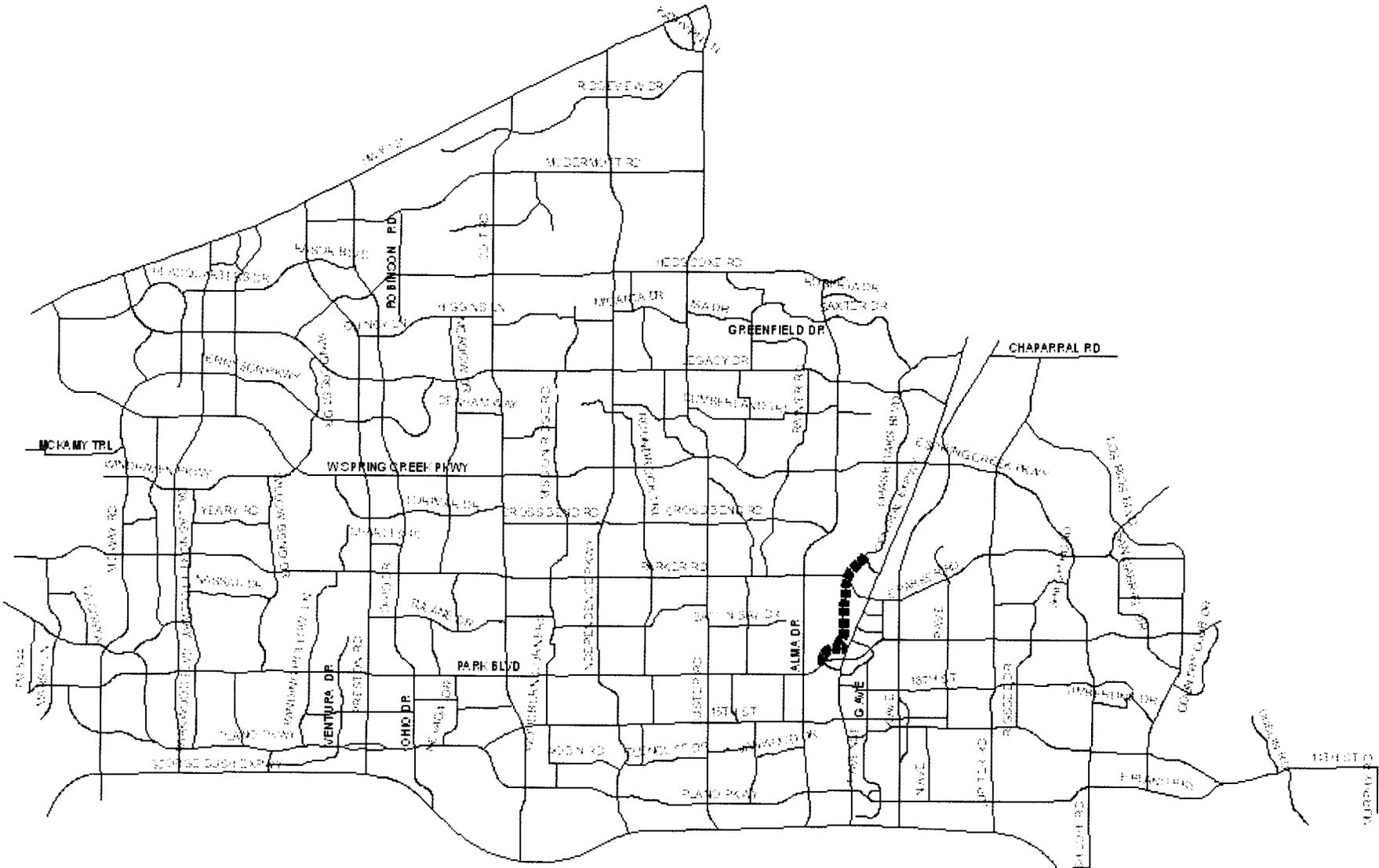
Nancy Corwin, Buyer

Date

ALL BIDS SUBMITTED FOR THE DESIGNATED PROJECT ARE REFLECTED ON THIS BID TAB SHEET. HOWEVER, THE LISTING OF A BID ON THIS SHEET SHOULD NOT BE CONSTRUED AS A COMMENT ON THE RESPONSIVENESS OF SUCH BID OR AS ANY INDICATION THAT THE CITY ACCEPTS SUCH BID AS RESPONSIVE. THE CITY WILL MAKE A DETERMINATION AS TO THE RESPONSIVENESS OF BIDS SUBMITTED BASED UPON COMPLIANCE WITH ALL APPLICABLE LAWS, CITY OF PLANO PURCHASING GUIDELINES, AND PROJECT DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS. THE CITY WILL NOTIFY THE SUCCESSFUL BIDDER UPON AWARD OF THE CONTRACT AND, ACCORDING TO LAW, ALL BIDS RECEIVED WILL BE AVAILABLE FOR INSPECTION AT THAT TIME.

PURCHASING DIVISION
CITY OF PLANO TEXAS

LOCATION MAP





**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date: 07/27/2009		Purchasing <i>Dep</i>	7/7/09	
Department: Public Works / David Falls <i>[Signature]</i>		Budget <i>C.S.</i>	7-7-09	
Department Head: Alan Upchurch		Legal <i>N/A [Signature]</i>		
Dept Signature: <i>Alan L Upchurch</i>		Assistant City Manager		
		Deputy City Manager <i>[Signature]</i>	<i>7-8-09</i>	
		City Manager <i>[Signature]</i>	<i>7/8/09</i>	
Agenda Coordinator (include phone #): Margie Stephens (X4104)				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
<i>Award, Rejection of Bids/Proposals, Bid No. 2009- 132 - B, 2008-09 Arterial Concrete Pavement Rehab, Plano Parkway and Commerce Drive, Project No. 5975 to Advanced Paving Acquisitions LTD, DBA as Advanced Paving Company in the amount of \$530,550.90.</i>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	2,506,850	4,314,000	2,300,000	9,120,850
Encumbered/Expended Amount	-2,506,850	-2,684,900	0	-5,191,750
This Item	0	-530,551	0	-530,551
BALANCE	0	1,098,549	2,300,000	3,398,549
FUND(S): CAPITAL RESERVE				
COMMENTS: Funds are included in the 2008-09 Re-Estimated Capital Reserve. This item, in the amount of \$530,551, will leave a current year balance of \$1,098,549 for the Arterial Concrete Repair project. STRATEGIC PLAN GOAL: Arterial concrete repair relates to the City's Goals of Safe, Efficient Travel and Premier City in which to Live.				
SUMMARY OF ITEM				
Staff recommends the bid for the 2008-09 Arterial Concrete Pavement Rehab Project – Plano Parkway and Commerce Drive to Advanced Paving Acquisition, LTD, DBA as Advanced Paving Company, in the amount of \$530,550.90, for alternate No. 2 (Cement with NOx <1.7#NOx/Ton of Clinker) which is within 5% of the base bid, be accepted as the lowest responsible bid for the project conditioned upon timely execution of all necessary documents.				
This project involves the replacement of arterial street pavement, curb and gutter, sidewalk repair and barrier free ramp construction on Plano Parkway between Commerce Drive and K Ave. and on Commerce Drive between 15th Street and Plano Parkway.				
The secondary vendor being recommended is Hencie International in the amount of \$549,737.82.				
Engineer's estimate for this project is \$706,650.00.				
List of Supporting Documents: Bid Tabulation Location Map		Other Departments, Boards, Commissions or Agencies		

CITY OF PLANO

BID NO. 2009-132-B

2008-09 Arterial Concrete Pavement Rehab – Plano Parkway and Commerce Drive

Project No. 5975

BID TABULATION

Bid opening Date/Time: June 11, 2009 @ 3:00pm

Number of Bids Submitted: 6

COMPANY NAME	Total Base Bid	Alternate 1	Alternate 2	Bid Bond Present	Addendum 1, 2, 3
Advanced Paving Company	\$530,550.90	\$530,550.90	\$530,550.90	Yes	Yes
Hencie International	\$549,737.82	\$528,691.45	\$549,737.82	Yes	Yes
Jim Bowman Construction	\$584,264.80	\$584,264.80	\$595,286.83	Yes	Yes
Ken-Do Contracting	\$657,252.75	\$627,252.75	\$627,252.75	Yes	Yes
Smith Contracting Inc	\$777,434.00	\$777,434.00	\$777,434.00	Yes	Yes
Texas Standard Construction	\$1,154,585.00	\$1,154,585.00	\$1,154,585.00	Yes	Yes

Nancy Corwin

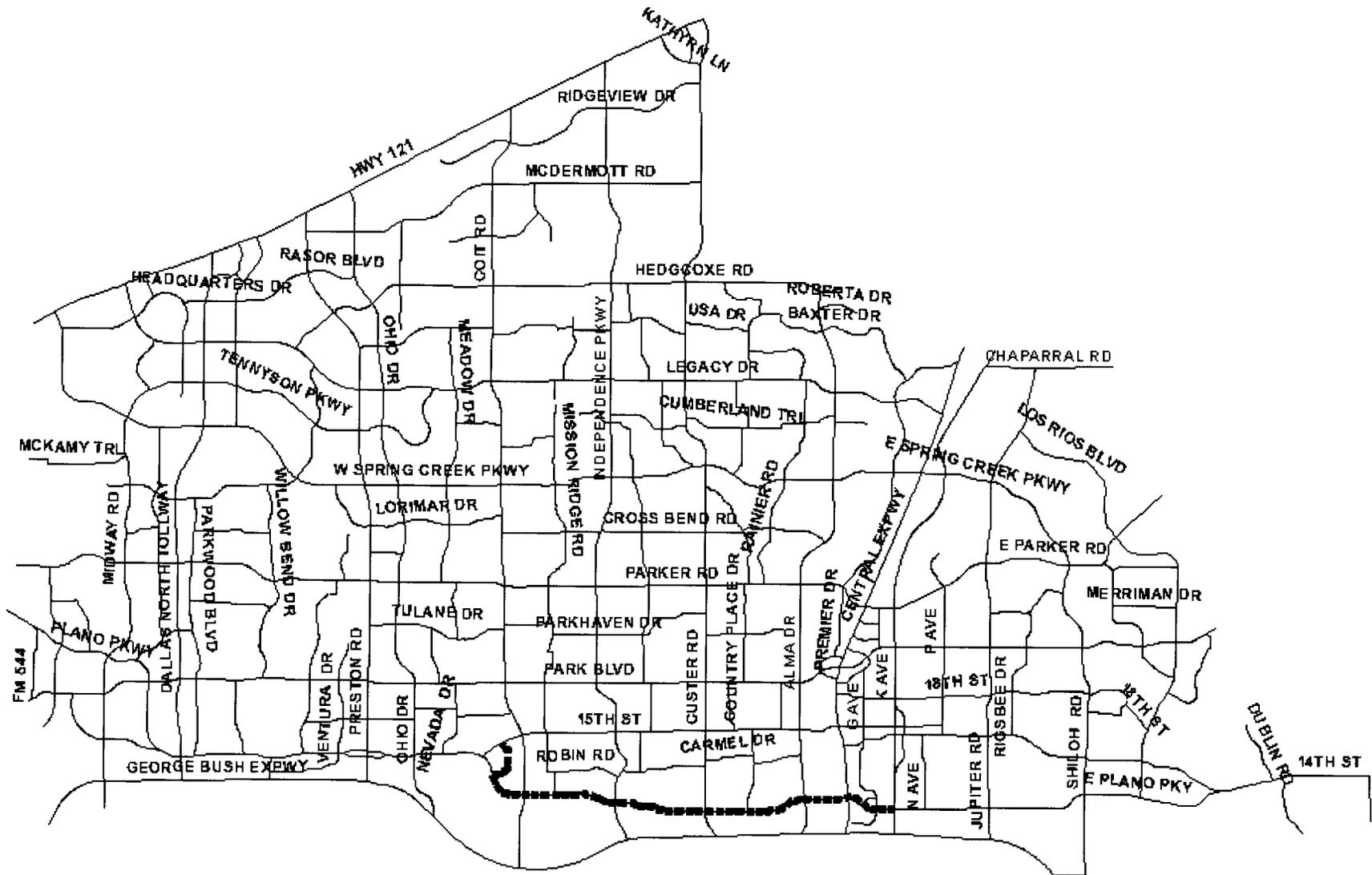
June 11, 2009

Nancy Corwin, Buyer

Date

ALL BIDS SUBMITTED FOR THE DESIGNATED PROJECT ARE REFLECTED ON THIS BID TAB SHEET. HOWEVER, THE LISTING OF A BID ON THIS SHEET SHOULD NOT BE CONSTRUED AS A COMMENT ON THE RESPONSIVENESS OF SUCH BID OR AS ANY INDICATION THAT THE CITY ACCEPTS SUCH BID AS RESPONSIVE. THE CITY WILL MAKE A DETERMINATION AS TO THE RESPONSIVENESS OF BIDS SUBMITTED BASED UPON COMPLIANCE WITH ALL APPLICABLE LAWS, CITY OF PLANO PURCHASING GUIDELINES, AND PROJECT DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS. THE CITY WILL NOTIFY THE SUCCESSFUL BIDDER UPON AWARD OF THE CONTRACT AND, ACCORDING TO LAW, ALL BIDS RECEIVED WILL BE AVAILABLE FOR INSPECTION AT THAT TIME.

LOCATION MAP





CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date: 07/27/09		<i>IR</i>	1/15/09	
Department:	Public Works & Engineering	Budget <i>C.S.</i>	7-15-09	
Department Head	Alan L. Upchurch	Legal <i>N/A</i>		
Dept Signature:	<i>Alan L. Upchurch</i>	Assistant City Manager		
		Deputy City Manager	<i>[Signature]</i> 7-16-09	
		City Manager	<i>[Signature]</i> 7/16/09	
Agenda Coordinator (include phone #): Irene Pegues (7198)		Project No. 5388		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
(Award/Rejection) of (Bid/Proposal) for Bid No. 2009-34-B for Preston at Legacy Intersection Improvements to McMahon Contracting, LP, in the amount of \$1,292,753.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	110,168	1,924,832	500,000	2,535,000
Encumbered/Expended Amount	-110,168	-257,537	0	-367,705
This Item	0	-1,292,753	0	-1,292,753
BALANCE	0	374,542	500,000	874,542
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: Funds are included in the 2008-09 Street Improvement CIP. This item, in the amount of \$1,292,753 will leave a current year balance of \$374,542 for the Preston/Legacy Intersection Improvements project.				
STRATEGIC PLAN GOAL: Intersection Improvements relate to the City's Goal of Safe, Efficient Travel.				
SUMMARY OF ITEM				
Staff recommends the Alternate No. 2 bid (low nitrous oxide dry kiln cement) of McMahon Contracting, LP, in the amount of \$1,292,753.10, be accepted as lowest responsible bid conditioned upon timely execution of any necessary documents.				
The Base Bid (dry kiln cement) was for \$1,271,801.55. Alternate No. 2 (low nitrous oxide dry kiln cement) is less than 5% over the Base Bid price at \$1,292,753.10 (4.18% over the dry kiln cement content cost). In keeping with the City's Green Purchasing Policy, staff recommends the award be based upon the low nitrous oxide dry kiln cement purchase.				
Since Alternate No. 2 is recommended, the second vendor recommended is Tiseo Paving Co., in the amount of \$1,368,984.38 (Alternate No. 2).				
Engineer's estimate was \$1,839,000.00.				



CITY OF PLANO COUNCIL AGENDA ITEM

The project consists of construction to provide modified median left turn improvements at Preston Road and Legacy Drive. This project has Federal and TxDOT funding and the City will be reimbursed 90% of the Base Bid cost. The additional cost difference between awarding the Alternate No. 2 bid and the Base Bid will be paid by the City.

List of Supporting Documents:

Bid Summary

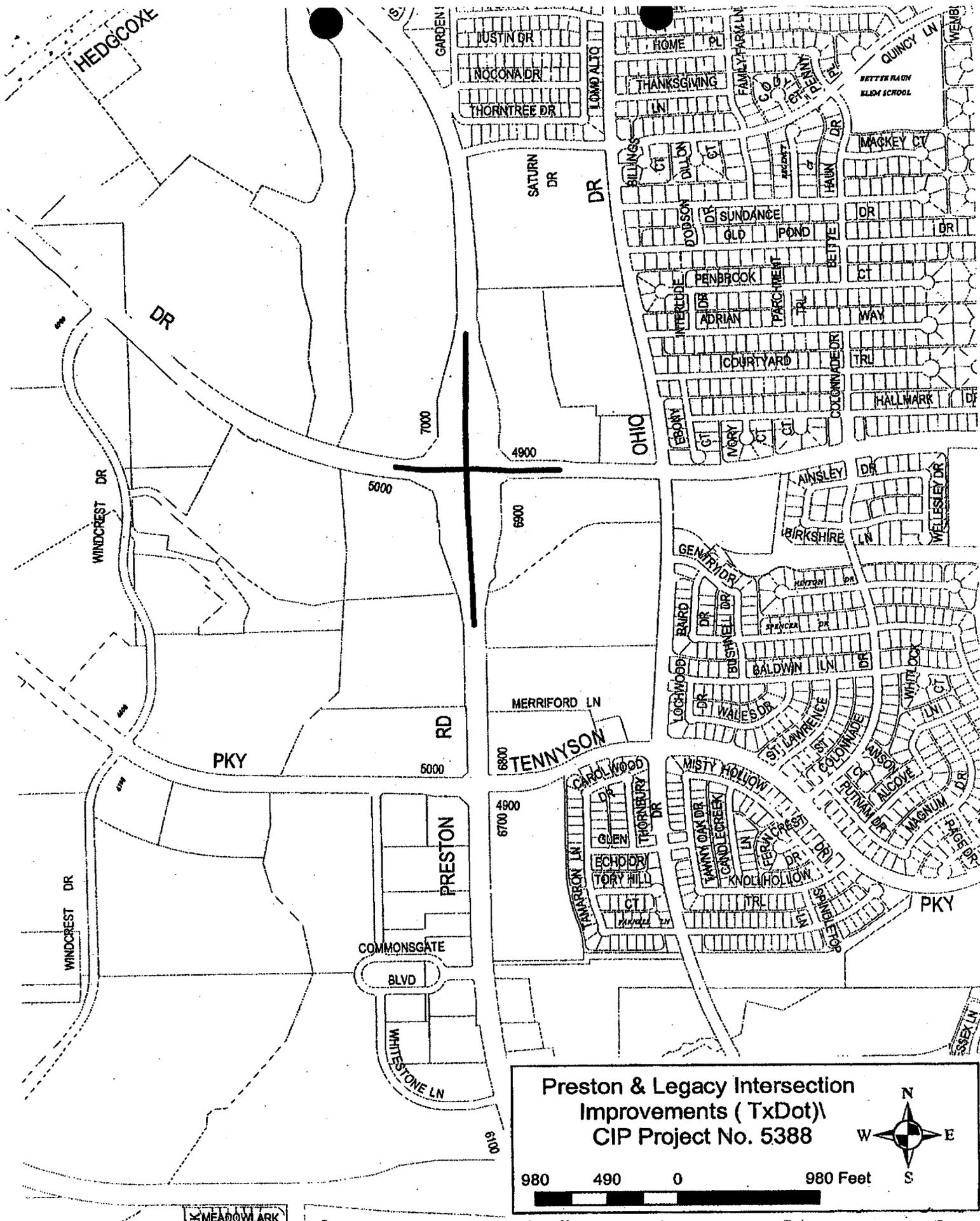
Location Map

Other Departments, Boards, Commissions or Agencies

BID SUMMARY

**PRESTON AT LEGACY INTERSECTION IMPROVEMENTS
PROJECT NO. 5388
BID NO. 2009-34-B**

BID RANK	BIDDER	BASE BID	ALTERNATE 1	ALTERNATE 2
1	McMahon Contracting, LP	\$1,271,801.55	\$1,271,801.55	\$1,292,753.10
2	Omega Contracting, Inc.	\$1,368,699.69	\$1,368,699.69	\$1,382,350.24
3	Tiseo Paving Co.	\$1,368,984.38	\$1,365,678.09	\$1,368,984.38
4	Austin Bridge & Road, LP	\$1,392,399.50	\$1,392,399.50	\$1,410,078.38
5	Rebcon, Inc.	\$1,417,131.18	\$1,405,133.48	\$1,417,131.18
6	Jim Bowman Construction Co., LP	\$1,579,159.79	\$1,579,159.79	\$1,594,368.64



**Preston & Legacy Intersection
 Improvements (TxDot)
 CIP Project No. 5388**

980 490 0 980 Feet

d-4



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory			
Purchasing		DJS	7-7-09
Council Meeting Date:	7/27/09	Budget	C.S. 7-8-09
Department:	Parks and Recreation	Legal	JPS DW 7-8-09
Department Head	Amy Fortenberry	Assistant City Manager	
Dept Signature:	<i>Amy Fortenberry</i>	Deputy City Manager	RA 7-8-09
		City Manager	DJS 7/8/09
Agenda Coordinator (include phone #): Susan Berger (7255)			
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER REJECTION OF BID			
CAPTION			
Award/Rejection of Bid/Proposal of Bid No. 2009-122-B for the Legacy Greenbelt Extension, Denbury to YMCA from all Bidders.			
FINANCIAL SUMMARY			
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP			
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years
Budget	0	0	0
Encumbered/Expended Amount	0	0	0
This Item	0	0	0
BALANCE	0	0	0
FUND(S): PARK IMPROVEMENT CIP			
COMMENTS: If this item is approved, there will be no fiscal impact. The item is requesting that the bid of \$169,350 will be rejected for the Legacy Trail project. STRATEGIC PLAN GOAL: Rejection of this park improvement bid relates to the City's Goal of Premier City in Which to Live and Service Excellence.			
SUMMARY OF ITEM			
Staff recommends that the bid received from Humphry & Morton Construction in the amount of \$169,350 be rejected. The bid was found to be nonresponsive due to their failure to submit unit pricing as requested in the bid documents. The second low bid from Ratliff Hardscape, LTD in the amount of \$213,088 is \$43,738 or 25.8% higher than the low bid. The consultants estimate for the project is \$250,000. However, the bids indicate that a lower price is in order. Staff believes it is prudent to rebid to potentially realize the cost savings. The project is for construction of concrete recreational trail along White Rock Creek (Legacy Trail) from Tennyson Parkway north through the current YMCA property on the west side of the creek.			



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Bid Tabulation Location Map	Other Departments, Boards, Commissions or Agencies

**CITY OF PLANO
CORRECTED
BID TABULATION
2009-122-B**

**LEGACY GREENBELT EXTENSION DENBURY to YMCA
PROJECT NO. 5880**

FRIDAY, MAY 29 @ 3:00 PM CDT

BIDDER:	BID BOND & ACK ADD 1	ALT B	TOTAL BID
HUMPHRY & MORTON CONSTRUCTION	YES	\$34,249.00	\$169,350.00
RATLIFF HARDSCAPE, LTD	YES	\$176,912.00	\$213,088.00
JIM BOWMAN CONSTRUCTION CO.	YES	\$170,109.00	\$220,650.00
BIRD CONSTRUCTION SERVICES	YES	\$34,000.00	\$225,724.00
METRIC CONCRETE SERVICES, INC.	YES	\$33,438.00	\$296,000.00
C. GREEN SCAPING, LP	YES	N/A	\$303,721.00
ALCS, INC.	YES	\$273,600.00	\$383,900.00

I certify that the above includes all firms contacted to bid and that replies are exactly as stated.

Aimee Storm

June 5, 2009

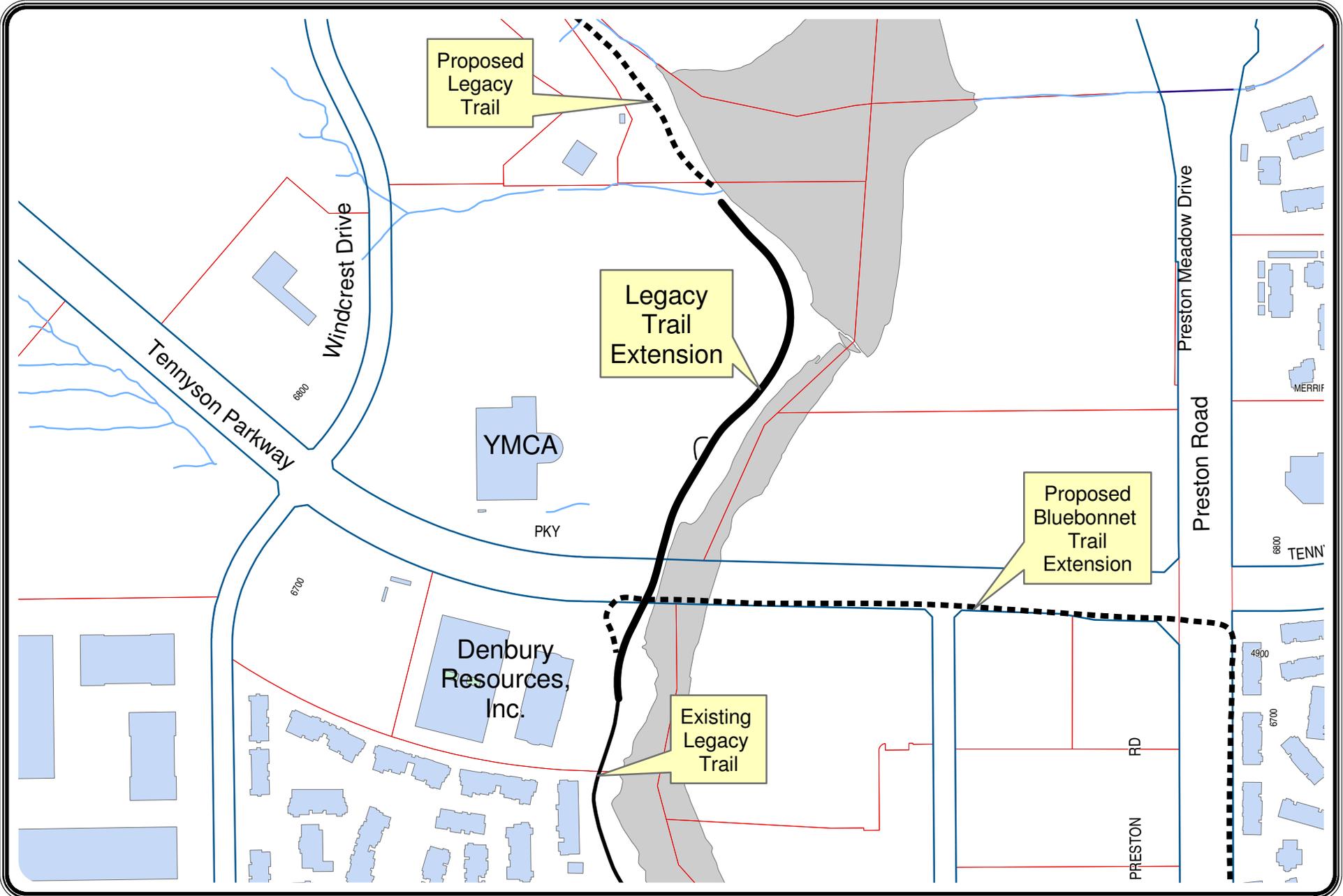
Aimee Storm
Buyer
Purchasing Division

Date

“BID TABULATION STATEMENT”

ALL BIDS SUBMITTED FOR THE DESIGNATED PROJECT ARE REFLECTED ON THIS BID TAB SHEET. **HOWEVER, THE LISTING OF A BID ON THIS SHEET SHOULD NOT BE CONSTRUED AS A COMMENT ON THE RESPONSIVENESS OF SUCH BID OR AS ANY INDICATION THAT THE CITY ACCEPTS SUCH BID AS RESPONSIVE.** THE CITY WILL MAKE A DETERMINATION AS TO THE RESPONSIVENESS OF BIDS SUBMITTED BASED UPON COMPLIANCE WITH ALL APPLICABLE LAWS, CITY OF PLANO PURCHASING GUIDELINES, AND PROJECT DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS. THE CITY WILL NOTIFY THE SUCCESSFUL BIDDER UPON AWARD OF THE CONTRACT AND, ACCORDING TO LAW, ALL BIDS RECEIVED WILL BE AVAILABLE FOR INSPECTION AT THAT TIME.

PURCHASING DIVISION
CITY OF PLANO TEXAS



Legacy Greenbelt Trail - Denbury to YMCA



Parks & Recreation Department
Park Planning



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>GP</i>	7-16-09
Council Meeting Date:	7/27/09	Budget	C.S.	7-16-09
Department:	Technology Services	Legal	<i>WA</i>	7-19-09
Department Head	David Stephens	Assistant City Manager	<i>[Signature]</i>	7-17-09
Dept Signature:	<i>David Stephens</i>	Deputy City Manager	<i>[Signature]</i>	7-20-09
		City Manager	<i>[Signature]</i>	7/20/09
Agenda Coordinator (include phone #):		Amy Powell X7342		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER EXISTING CONTRACT				
CAPTION				
Authorizing the purchase and installation of 6780 Sun Storage, in the amount of \$154,940.00, from Sigma Solutions, Incorporated, through an existing contract/agreement, with the Department of Information Resources (DIR) contract, and authorizing the City Manager or his designee to execute all necessary documents. (DIR-SDD-503).				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	1,200,000		1,200,000
Encumbered/Expended Amount	0	-106,834		-106,834
This Item	0	-154,940		-154,940
BALANCE	0	938,226		938,226
FUND(S): TECHNOLOGY FUND (062.62350)				
COMMENTS: COMMENTS: Funding for this item is included in the FY 2008-09 Budget. The remaining amount will be used for other items related to this project.				
STRATEGIC PLAN GOAL: Hardware for data and records storage relates to the City's Goal of "Service Excellence".				
SUMMARY OF ITEM				
Technology Services recommends Council approve the expenditure for the purchase and installation of an additional storage device, in the amount of \$154,940.00, to house future applications such as the City's new Exchange 2007 upgrade and new virtual environment to assist in consolidation our application environment and continue to improve continuity. Price includes cost for the additional storage device, installation and on-site support for three years. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so, satisfies any State Law requiring local government to seek competitive bids for items. (DIR-SDD-503)				
List of Supporting Documents: Contract and Staff Memo		Other Departments, Boards, Commissions or Agencies		

Interoffice Memo

Date: 07/13/09
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Sun SAN - New

We are at a point on our storage in the City where we must purchase an additional storage device to house future applications such as our new Exchange 2007 upgrade and a new virtual environment that will assist us in consolidating our application environment and continue to improve our continuity. We are recommending the purchase of the new Sun 6780 SAN from Sigma Solutions, Inc. using the State of Texas DIR contract #SDD-503. This new equipment will allow us to improve our current performance environment and to continue storing data to meet records retention requirements. The total amount is not to exceed \$ 154,940.47 for all the equipment and installation services as outlined in the quote.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND SIGMA SOLUTIONS, INC.
FOR PURCHASE AND INSTALLATION OF 6780 Sun Storage**

THIS CONTRACT is made and entered into by and between **SIGMA SOLUTIONS, INC.** whose address is 3033 Kellway Drive, Suite 110, Carrollton, Texas, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**I.
SCOPE OF SERVICES**

Contractor, independently or by agreement with its Supplier, shall Purchase and install 6780 Sun Storage. These services shall be provided in accordance with this Contract and with The Department of Information Resources Contract No. DIR-SDD-503 dated July 1, 2009 6780 Sun Storage, **copies of which, together with all its appendices and exhibits are incorporated herein and are on file and available for inspection in the City of Plano Technology Services Department.** This Contract consists of:

- (a) The Department of Information Resources Contract No. DIR-SDD-503
- (b) This Contract
- (c) Sigma Solutions, Inc. Quotation (Exhibit "A");
- (d) Certificate of Insurance (Exhibit "B"); and
- (e) Affidavit of No Prohibited Interest (Exhibit "C").

In the event there is a conflict in interpretation or terms, the documents shall control in the order listed above. These documents shall be referred to collectively as "Contract Documents."

**II.
TERM OF CONTRACT**

Performance of work under this Contract shall commence within thirty (30) days after execution of this Contract and all work shall be completed within ninety (90) days after completion of the 6780 Sun Storage.

**III.
PAYMENT**

Payments hereunder shall be made to Contractor following city's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **ONE HUNDRED FIFTY-FOUR THOUSAND NINE HUNDRED FORTY AND 47/100 DOLARS (\$154,940.47).**

Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this Contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

IV. DESCRIPTION OF SERVICES

Contractor will provide the software and services described in the Contract Documents. At City's request, Contractor may also provide additional software and services under this Contract at Contractor's then-applicable rates for such services or goods under The Department of Information Resources Contract No. DIR-SDD-503, or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

V. CITY CONTACT

City will provide Contractor with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable City's personnel to maintain contact, as needed, with Contractor.

VI. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws.

VII. TIME AND PLACE OF SERVICE, LOSSES FROM NATURAL CAUSES

Service will be provided at the location specified in the Contract Documents. When Contractor performs service at City's location, City will provide Contractor, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Contractor or its subcontractors will not be imposed as a site access requirement. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Contractor may perform its Services. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.
LIMITATION OF LIABILITY**

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Contractor's total liability, whether for breach of contract, warrant, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT CONTRACTOR WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE, LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY CONTRACTOR PURSUANT TO THIS AGREEMENT. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than two (2) years after the accrual of such cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement.

**IX.
COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall at all times observe and comply with all directly applicable Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which affect the work. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**X.
VENUE**

The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Contract. The parties agree that this Contract is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

**XI.
ASSIGNMENT AND SUBLETTING**

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract shall not be assigned without the prior written consent of City, except for assignments to a Contractor entity. Contractor may subcontract any portion of its performance under this Agreement. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract. In the event any additional or different subcontractors are required or requested by City, or in the event City rejects the use of a particular subcontractor, such rejection must be submitted in writing and be based on just and reasonable cause. Any resultant change in contract price and/or schedule shall be mutually agreed upon.

**XII.
INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

**XIII.
INSURANCE AND CERTIFICATES OF INSURANCE**

Contractor shall procure and maintain for the duration of the Contract insurance coverage as set forth in the Contract Documents including the City as a named insured (attached hereto as Exhibit "B").

**XIV.
HINDRANCES AND DELAYS**

Neither party is liable for delays or lack of performance resulting from any causes or acts of God that are beyond that party's reasonable control.

**XV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

To the extent copies are provided to Contractor, Contractor acknowledges and represents Contractor is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "C."

**XVI.
DEFAULT/TERMINATION**

If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. If City is the defaulting party, it will have thirty (30) days to provide a written plan to cure the default that is acceptable to Contractor and begin implementing the cure plan immediately after plan approval. If Contractor is the defaulting party, City's policy is to notify the City Council of such default, at which time Contractor will have the opportunity to provide a written plan to cure the default that is acceptable to the City. If the non-performing party fails to provide or implement a cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due

and owing at the time of termination. All sums owed by City to Contractor will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

**XVII.
SEVERABILITY**

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

**XVIII.
TERMINATION**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this Contract, in whole or in part by giving at least sixty (60) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the expiration of the 60-day period.

If Contractor provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and City agrees to pay for such services on a time and materials basis at Contractor's then effective hourly rates.

**IX.
PROPRIETARY INFORMATION; CONFIDENTIALITY;
INTELLECTUAL PROPERTY RIGHTS**

To the extent permitted by law, any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to City under this Agreement will remain Contractor's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Contractor's request. City may not disclose, without Contractor's written permission or as required by law, any such information, or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section will survive the expiration or termination of this Agreement.

**XX.
ENTIRE AGREEMENT**

This Contract and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

City agrees to reference this Agreement and The Department of Information Resources Contract No. DIR-SDD-503 on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a City

Service Contract

Page 5

purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XXI.
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**XXII.
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

IN WITNESS WHEREOF, the parties have executed this Contract by signing below.

SIGMA SOLUTIONS, INC., a
TX Corporation

By: Warren Wilkinson
Name: WARREN WILKINSON
Title: EXEC VP

Date: _____

CITY OF PLANO, TEXAS

Date: _____

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee
Diane C. Wetherbee, CITY ATTORNEY

City of Plano
Contractor Insurance Requirements and Agreement
Requirements

Contractors performing work on City property or public right-of-way for the City of Plano shall provide the City a certificate of insurance evidencing the coverages and coverage provisions identified herein. Contractors shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverages as required herein or that the subcontractors are included under the contractor's policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverages must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Plano.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverages or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
1. Commercial General (Public) Liability to include coverage for: a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Injury e) Contractual Liability	\$500,000 each occurrence, \$1,000,000 general aggregate; Or \$1,000,000 combined single limits	City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage. City prefers that insurer be rated B+VI or higher by A.M.Best or A or higher by Standard & Poors
2. Business Auto Liability	As required by State of Texas	
3. Workers' Compensation & Employers' Liability	Statutory Limits \$100,000 each accident	City to be provided a waiver of subrogation

Questions regarding this insurance should be directed to the City of Plano Purchasing Department (972) 941-7557.

This form must be signed and returned with your quotation to verify that you can and will meet the insurance requirements listed herein should you be selected to perform work for the City, and will provide the certificates of insurance acceptable to the City. A PURCHASE ORDER WILL NOT BE ISSUED WITHOUT EVIDENCE OF INSURANCE.

AGREEMENT

I agree to provide the above-described insurance coverages if selected to perform work for the City of Plano. I also agree to provide the City evidence of insurance coverage on any and all subcontractors performing work on the project.

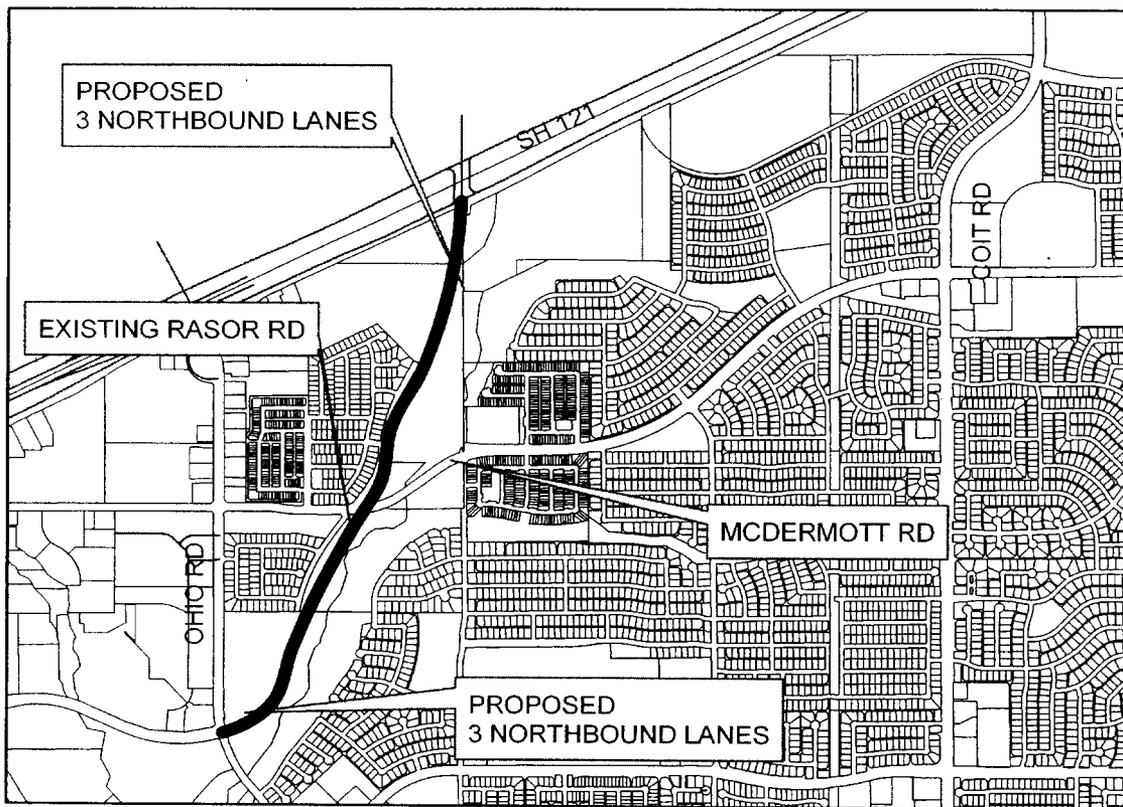
Project/Bid #: OIR-500-503 6780 SUN STORAGE
Company: SIGMA SOLUTIONS, INC
Printed Name: WARREN WILKINSON Vendor # (if applicable) _____
Signature: Warren Wilkinson Date: June 26, 2009
Return Signed Form to: GARY PEDERSON



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>IK</i>	7/15/09
Council Meeting Date: 07/27/2009		Budget	C.S.	7-15-09
Department:	Public Works & Engineering	Legal	N/A	
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>RA</i>	7/16/09
		City Manager	<i>AK</i>	7/16/09
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>IP</i>	Project No. 5715	
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER APPROVAL OF EXPENDITURE				
CAPTION				
Approval of the purchase of materials testing services for Razor Road from Ohio Drive to S.H. 121, in the amount of \$55,422.00, from Terracon Consultants, Inc., through an existing contract (Number 2009-6-D), and authorizing the City Manager or his authorized designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	73,687	2,040,000	2,342,000	4,455,687
Encumbered/Expended Amount	-73,687	-3,842,639	0	-3,916,326
This Item	0	-55,422	0	-55,422
BALANCE	0	-1,858,061	2,342,000	483,939
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: Funds are included in the Re-Estimated 2009-10 Street Improvement CIP for Razor Road – Ohio to SH121 project. This item, in the amount of \$55,422, will exceed the current year balance by \$1,858,061. The total overage will be encumbered in the current fiscal year and carry forward into the cash allocations of FY 2009-10. STRATEGIC PLAN GOAL: Material testing services for street improvements relates to the City's Goal of Safe, Efficient Travel.				
SUMMARY OF ITEM				
Staff recommends approval of this expenditure for construction materials testing, in the amount of \$55,422.00. Terracon Consultants, Inc., is one of the six contracted vendors for this service during 2008-09 (2009-6-D). Funding is available from the Street Improvement Community Investment Program; therefore, staff recommends approval.				
List of Supporting Documents: Location Map Exhibit C		Other Departments, Boards, Commissions or Agencies N/A		

Rasor Road - Ohio to SH 121



CITY OF PLANO ENGINEERING DEPARTMENT COMMUNITY INVESTMENT PROJECT



1 in = 2,000 ft

EXHIBIT C

**TERRACON CONSULTANTS, INC.
COMPENSATION**

Client: City of Plano
Attn: Mr. Husain Hamza
PO Box 860358
Plano, Texas 75086-0358

Date: March 23, 2009

Project: Razor Road Extension
From Ohio Drive to SH 121
Plano, Texas

Proposal No. : P94090352R

	Unit Rate	Quantity	Total
EARTHWORK			
Engineering technician, hour (min. 4 hrs. for testing)	42.00	36	1,512.00
Optimum Moisture/Density relationship(ASTM D698), ea.	150.00	4	600.00
Atterberg limits, each	50.00	4	200.00
Material finer than #200 sieve, each	25.00	4	100.00
Lime determination,(5 points PI & pH), each	275.00	2	550.00
In-place moisture density test, each (min. 4 per trip)	30.00	650	19,500.00
Vehicle charge, per trip	45.00	50	<u>2,250.00</u>
		Subtotal	\$ 24,712.00
CONCRETE			
Engineering technician, hour (min. 4 hours)	42.00	390	16,380.00
Concrete test cylinders, each	14.00	520	7,280.00
Concrete mix design review, each	150.00	4	600.00
Vehicle charge, per trip	45.00	70	<u>3,150.00</u>
		Subtotal	\$ 27,410.00
ENGINEERING / MANAGEMENT			
Project manager, per hour	110.00	30	<u>3,300.00</u>
		Subtotal	\$ 3,300.00
ESTIMATED TOTAL COST / BUDGET			\$ 55,422.00

EXHIBIT C

**TERRACON CONSULTANTS, INC.
COMPENSATION**

Client: City of Plano
Attn: Mr. Husain Hamza
PO Box 860358
Plano, Texas 75086-0358

Date: March 23, 2009

Project: Razor Road Extension
From Ohio Drive to SH 121
Plano, Texas

Proposal No. : P94090352R

Clarifications and Assumptions

1. The testing and observation in this Cost Estimate represents all the testing and observation services to be provided on this project unless additional services are requested by the client. No other testing or observation is included in this proposal estimate.
2. We obtained estimated quantities from drawings and typical City of Plano specifications with regard to test frequency.
3. We have assumed in-place density tests at one per 100 linear feet per lift for utility trench and wall backfill, and we have also assumed one per 5,000 sf per lift for paving and sidewalk subgrade.
4. We have assumed a concrete test frequency of one set of four (4) cylinders per 100 cy or fto per mix per day.
5. We have included project management time to attend pre-construction and progress meetings as called, to coordinate our agreed scope of QC/QA activities, to review and sign all reports, and to monitor budget issues among other normal project manager activities.

Limitations of Authority of Terracon

1. Terracon is not authorized to release, revoke, alter or enlarge the requirements of the contract documents.
2. Terracon will not approve or accept any portion of the work.
3. Terracon will not assume or perform any duties of the Contractor.
4. Terracon has no authority to stop the work.
5. Terracon will perform observations, sampling and testing of materials and construction as listed in this proposal. Additional services will be provided when required by the Architect / Engineer and authorized by the client.
6. Terracon is not responsible for site safety issues except as it pertains to the behavior of our employees on site.

EXHIBIT C

**TERRACON CONSULTANTS, INC.
COMPENSATION**

Client: City of Plano
Attn: Mr. Husain Hamza
PO Box 860358
Plano, Texas 75086-0358

Date: March 23, 2009

Project: Rasor Road Extension
From Ohio Drive to SH 121
Plano, Texas

Proposal No. : P94090352R

Other Clarifications and Requests

Our office is located at 8901 Carpenter Freeway in Dallas, Texas. Our main phone is 214-630-1010. Our fax is 214-630-7070.

services. All services must be scheduled through our dispatcher. Cancellations shall also be through our dispatcher. Our dispatch is available between the hours of 6:30 am to 4:30 pm at 214.630.1078. After hours calls are handled by our voice mail system. It is recommended that you schedule services through our dispatch during our regular working hours noted above. Voice mail is checked the following morning. Same day call-ins or after hour voice mail call-ins for work the following day are subject to the availability of personnel. We can not guarantee service for same day call-ins.

To aid us in assisting you on your project, we request a set of specifications (project manual) and a set of half-size plans to use in the field. We also request to be copied any applicable addendums, plan changes or RFI's.

Compensation for our services will be based upon the actual work and tests performed in accordance with the unit rates shown. The estimated costs we have indicated are approximate. ESTIMATED TOTAL COST does not include: any retests or reobservations; or any changes to the contract documents. Invoices for our services are payable within 30 days with no retainage.

Unit prices are for local services portal to portal, between 7:00 am and 5:00 pm, Monday through Friday. Overtime will be charged at the rate of 1.50 times the normal rate. Only those services requested and authorized will be provided.

Five (5) copies of test reports are included for distribution as directed by the client at no additional charge. Additional copies of test reports requested and approved by the client will be charged at \$0.45 per page to cover copying and mailing costs.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>[Signature]</i>	7-16-09
Council Meeting Date:	07/27/09	Budget	C.S.	7-16-09
Department:	Public Works & Engineering	Legal <i>WS</i>	DW	7/16-09
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	<i>[Signature]</i>	7-17-09
		City Manager	<i>[Signature]</i>	7/16/09
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>[Signature]</i>	Project No. 5994	

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

Approval of an Engineering contract by and between the City and Wier & Associates, Inc., in the amount of \$184,000, for the Cross Bend and Deerfield Culverts project, and authorizing the City Manager or his authorized designee to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	600,000	500,000	1,100,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-184,000	0	-184,000
BALANCE	0	416,000	500,000	916,000

FUND(S): MUNICIPAL DRAINAGE CIP

COMMENTS: Funds are included in the 2008-09 Municipal Drainage CIP. This item, in the amount of \$184,000, will leave a current year balance of \$416,000 for the Cross Bend and Deerfield Culverts project.
 STRATEGIC PLAN GOAL: Engineering design services for erosion control relates to the City's Goal of Livable and Sustainable Community.

SUMMARY OF ITEM

This project with Wier & Associates, Inc. is for engineering design for the Cross Bend and Deerfield Culverts project to include design for the reconstruction of the culverts in Cross Bend Road and Deerfield Drive where they cross Spring Creek. The design includes aesthetic enhancements to the culvert railing and headwalls.

The contract fee is for \$184,000 and is detailed as follows:	Field Surveys & FEMA Models	\$ 27,000
	Concept Plans	\$ 27,000
	Preliminary Plans	\$ 54,000
	Final Plans	\$ 54,000
	Bid & Construction Phases	\$ 18,000
	Special Services	\$ 4,000
	Total	\$184,000

Funding is available from the 2008-09 Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost \$2,000,000.

List of Supporting Documents: Engineering Services Agreement, Location Map	Other Departments, Boards, Commissions or Agencies N/A
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CROSS BEND AND DEERFIELD CULVERTS

PROJECT NO. 5994

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **WIER & ASSOCIATES, INC.**, a **TEXAS** Corporation, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **CROSS BEND AND DEERFIELD CULVERTS** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such engineering services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Engineer

The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

III. Schedule of Work

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

Engineer agrees to meet all insurance requirements, and to require all consultants who perform work for Engineer to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

VII. Indemnity

Engineer shall release, defend, indemnify and hold City and its officers, agents and employees harmless from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the services provided by Engineer and to the extent caused by the negligent act or omission or intentional wrongful act or omission of Engineer, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Engineer is legally responsible (hereinafter "Claims"). Engineer is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to approve defense counsel to be retained by Engineer in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Engineer's obligation to

defend City or as a waiver of Engineer's obligation to indemnify City pursuant to this Agreement. Engineer shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Engineer fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Engineer shall be liable for all costs incurred by City.

VIII. Independent Contractor

Engineer covenants and agrees that Engineer is an independent contractor and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Engineer's Opinion of Probable Construction Costs

The parties recognize and agree that any and all opinions of probable construction costs prepared by Engineer in connection with the Project represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Engineer.

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano
Public Works & Engineering Department
P.O. Box 860358
Plano, TX 75086-0358

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

Wier & Associates, Inc.
6849 Elm Street
Frisco, TX 75034
Attn: Ulys Lane, III

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. Miscellaneous

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Contract Interpretation:

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

SIGNED on the date indicated below.

WIER & ASSOCIATES, INC.
A Texas Corporation

DATE: _____

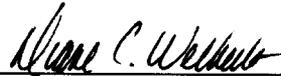
BY: _____
Ulys Lane, III
VICE PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:



Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

**STATE OF TEXAS §
 §
COUNTY OF COLLIN §**

This instrument was acknowledged before me on the _____ day of _____, 2009, by **ULYS LANE, III, VICE PRESIDENT** of **WIER & ASSOCIATES, INC.**, a **TEXAS** corporation, on behalf of said corporation.

Notary Public, State of Texas

**STATE OF TEXAS §
 §
COUNTY OF COLLIN §**

This instrument was acknowledged before me on the _____ day of _____, 2009, by **THOMAS H. MUEHLENBECK, CITY MANAGER** of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

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**EXHIBIT A
SCOPE OF SERVICES**

CROSS BEND AND DEERFIELD CULVERTS

**PROJECT NO. 5994
CIP NO. 73118**

PROJECT DESCRIPTION:

Engineering design of Culvert re-construction Deerfield Drive and Cross Bend Drive at Spring Creek for improved ConSpan Bridge Sections including Hydrologic Studies for fully developed watershed, 404 jurisdictional delineation and Permitting under Nationwide Permit, Hydraulic Stream Modeling duplicate condition, revised pre-project condition and post project condition, process CLOMR with FEMA, and process LOMR with FEMA.

BASIC SERVICES:

A. Design Standards

1. This project shall be designed in accordance with the following:
 - Geodetic Monumentation Manual
 - Manual for Right-of-Way Management
 - Storm Drainage Design Manual
 - Stream Bank Stabilization Manual
 - Erosion & Sediment Control Manual
 - Thorough Fare Standards Rules & Regulations
 - Manual for the Design of Water & Sanitary Sewer Lines
 - Standard Construction Details
 - Barrier Free Ramp Details
 - NCTCOG Standard Specifications for Public Works Construction
 - Special Provisions to Standard Specifications for Public Works Construction
 - Sample Plan Set
2. All plans submitted to the City shall be signed and sealed in accordance with state law.
3. Attend one meeting with City Parks Department and Engineering staff to confirm Esthetic Design Concepts for facing of bridges, rail design concept, and facing stream transition edge treatments.

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B. Research and Data Collection –

1. Meet with City of Plano engineering staff and obtain design criteria, pertinent utility plans, street plans, plats and right-of-way maps, existing easement information, Stream hydrologic and hydraulic modeling and other information available for the project area.
2. Meet with the City of Plano project manager and conduct an on-site review and walk through.
3. Request and obtain from FEMA affecting Stream Hydrologic and Hydraulic modeling with design reach of existing Spring Creek.

C. Design Surveys –

1. Establish a horizontal and vertical control network and project control baseline for the project areas. The network and baseline are to be tied into the existing City of Plano control network.
2. Establish horizontal and vertical project control monumentation.
3. Tie right-of-way lines and corners, property lines and corners, buildings, fence lines, trees 4-inches in diameter and larger, edges of pavements and all other visible surface features to the project control baseline. Existing utility structures shall be located and referenced by utility name (i.e. Oncor Elec., Verizon Telephone, Atmos Gas, Etc.) within limits of culvert re-construction to ConSpan prefabricated Bridge Sections.
4. Vertical topographic information tying pavement, drives, walls, manholes (top and inverts), storm drain inlets (top and inverts), and other improvements as needed within the project areas for the design.
5. Verify accuracy of existing digital terrain model prepared for City by Metropolitan Infrastructure, PLLC and provided by City. Perform additional infield topographic surveys as required for design of culvert reconstruction to ConSpan Bridge section
6. Perform field sections at culvert locations and transitions to effective FEMA model for revised Pre-Project hydraulic model
7. When underground utilities are exposed, tie to project control baseline.

D. Right-of-way and Easement Requirements –

1. No easements or additional right-of-way is anticipated and is therefore not a portion of the project Basic Services..

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E. Geotechnical Report –

1. Provide City with recommendations for infield borings and geotechnical information for design of proposed re-constructed culvert crossings to ConSpan Bridges and design of stream edge transitions from bridges to existing streams.
2. Show geotechnical boring locations on the plan view of the construction drawings and cross reference to the geotechnical report. Soil horizon and vertical bore information shall be shown on the vertical profile view of the construction plans if available.

F. Hydrologic/Hydraulic Modeling and Bridge Esthetic treatments

Conceptual Design –

1. Perform hydrologic modeling of stream affected by Culver reconstruction to determine Ultimate Condition stream 100 year storm runoff amounts for ultimate 100 water surface determination.
2. Compile duplicate FEMA existing condition HECRAS model.
3. Compile revised existing condition HECRAS Model.
4. Evaluate and established ConSpan replacement prefabricated bridge sections, entrance and stream edge treatments.
5. Present hydrologic and hydraulic modeling to City Engineering staff with conceptual designs for ConSpan prefabricated Bridge with elevations, profiles demonstrating the conceptual design.
6. Prepare bridge face, guardrail and stream edge esthetic design and facing Conceptual Plans for Review by Parks Department and Engineering Department. Met with Parks Department and Engineering staff to review conceptual designs and esthetic facing prior to design.

G. Preliminary Design –

1. Prepare preliminary construction plans. Prepare the following sheets at the engineering scale indicated:
 - Cover sheet.
 - Project layout control sheet(s). Scale 1"= 100'.
 - Quantity sheet.
 - Typical sections and detail sheets.
 - Construction phasing and temporary traffic control sheets, including temporary traffic signals. Scale 1"= 20'.
 - Paving plan & profile sheets for street improvements. Scale 1"= 20'.
 - Drainage area maps for street improvements. Scale 1"= 100'.
 - Storm drain improvement plan & profile sheets. Scale 1"= 20'.

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- SWPPP sheets meeting EPA and City of Plano requirements. Scale 1"= 40'.
- Final buttoning and signage plan sheets. Scale 1"= 40'.
- Traffic signal plans. Scale 1"= 40'.

Information required can be combined on sheets if the information can be clearly shown and is approved by the City of Plano project manager.

2. Prepare ConSpan prefabricated construction plan and profile at 1" = 20' showing prefabricated bridge section, plan and elevation.
3. Coordinate with affected utilities such as water, gas, telephone, cable TV and electric to obtain accurate information for the location of their facilities.
4. Prepare preliminary Flood Plain report, hydrologic models, hydraulic models and flood plain work maps in a bound report. Include pre and post hydraulic modeling for FEMA and fully developed conditions. Advise City of any issues meeting no rise criteria and any special flood or stream condition.
5. Provide 404 jurisdictional Delineation and report to City scope and effort required to conform to Nationwide Permit.
6. Prepare outline of any special technical specifications needed for the project (if any).
7. Prepare an estimate of construction quantities and develop the preliminary statement of probable construction cost.
8. Submit 6 sets of preliminary plans, outline of special technical specifications and preliminary statement of probable construction cost to the City for review.
 - Engineering
 - Public Works
 - Inspectors
 - Transportation
 - Parks
 - Other
9. Meet with City of Plano staff to discuss City comments on preliminary plans, specifications and cost estimates.
10. Distribute the preliminary plans and proposed schedule for bidding and start of construction to local utility companies to obtain information regarding impacts to their facilities.

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H. Pre-Construction Notification –

1. Based on Preliminary Plan Review and determination ConSpan prefabricated bridge design, prepare Pre-Construction Notification to the U.S.C.O.E. Permits Division for confirmation of project conformance to Nationwide Permit 14. Coordinate approval with U.S.C.O.E. staff.

I. Final Design –

1. Revise preliminary plans incorporating comments from the City of Plano.
2. Incorporate comments from the utility companies.
3. Show location of traffic signal bases, pull boxes and conduit on paving plans based on City design.
4. Show location of street light bases, pull boxes and conduit on paving plans based on City design.
5. Finalize construction plans for proposed improvements.
6. Finalize special technical specifications and special conditions (if any).
7. Incorporate standard details into the construction plans and prepare additional details as required.
8. Take off final construction quantities and prepare final construction cost estimates.
9. Prepare detailed Hydrologic Reports for FEMA and fully developed conditions with revisions from staff review of Preliminary Report. Compile information reading for including CLOMR submittal. Assist City staff in submittal and processing of CLOMR to FEMA.
10. Submit 4 sets of pre-final plans, special technical specifications, draft bid schedule and final statement of probable construction cost to the City for review.
11. Incorporate City final comments into the plans and bid documents.
12. Submit three sets of final blue line prints, three bound copies of the bid documents and one unbound original bid document set to the City of Plano.
13. Attend a utility coordination meeting to start relocation process with affected franchise utilities. Distribute copy of final plans and proposed schedule for bid letting and construction to all affected franchise utilities.

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J. Bid Phase Services

1. Assist the City staff in advertising for bids.
2. Furnish plans and specifications for bidding. Cost for these to be recouped by non-refundable deposit from contractors. Maintain a list of plan holders.
3. Furnish plans and bid documents for up to four plan review rooms to be determined by the City. These documents are to be furnished at no cost to the plan review rooms.
4. Assist City staff in conducting a pre-bid conference, if required.
5. Prepare and distribute addenda to bid documents as necessary.
6. Assist City staff as required in bid opening. Submit list of plan holders to the City, 48-hours prior to the bid letting.
7. Submit a CD-ROM disk of the bid set plans in a PDF format.
8. Provide bid tabulation to the City of Plano within four working days of the bid letting.
9. Evaluate the low and second low bidders. Prepare letter of recommendation to the City of Plano for awarding a contract to the lowest responsible bidder within four working days of the bid letting.
10. Assist City staff in a pre-construction conference.
11. Furnish thirteen sets of final construction plans (four half size and 9 full size).

K. Construction Administration –

1. Respond to request for information.
2. Review shop drawings for ConSpan prefabricated bridge, special bridge surface treatments and guard rail details.
3. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s). Submit one blackline set to the City and a CD-ROM disk containing scanned images of the 24" x 36" final "as constructed" blackline drawings (with "record drawing stamps" bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order. Provide two CD copies of scanned files.
4. Section stream crossings upon completion and prepare LOMR submittal to FEMA. Coordinate review and approval of LOMR submittal.

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L. Construction Control Survey –

1. Set two vertical and horizontal control stakes at each of the two crossing locations for construction phase control.

SPECIAL SERVICES:

- A. Right-of-Way and Easement Surveying – No R.O.W. or Easement documents are anticipated or included in Basic Services.**
- B. Landscaping and Irrigation – No irrigation or landscaping is anticipated or included in Basic Services.**

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**EXHIBIT B
COMPLETION SCHEDULE**

Item	Activity	Completion Time In Days
1.	Notice to proceed	0
2.	Field topographic, hydraulic sections, obtain FEMA effective model and provide geotechnical requirements	20
3.	Preliminary hydraulic and hydrologic studies, prepare concept plans for review of enhancements and basic bridge design concept plans	35
4.	Preliminary construction plans, preliminary hydrologic and hydraulic reports, and 404 stream delineation	55
5.	Pre-discharge notification to USCOE Permits Division	14
6.	Final design plans, proposal, and special technical specifications	35
7.	City second review of final plans and submit CLOMR	20
8.	Bid plans, proposal and specifications	10
9.	Receive completed plans and bid documents	0
10.	Assemble bid documents	5
11.	City final review	5
12.	Advertise for bids	12
13.	Receive bids	0
14.	Recommendations	3
15.	Prepare Council agenda	5
16.	Council award	0
17.	Prepare and execute contract	10
18.	Schedule preconstruction	7
19.	Notice to proceed	10
20.	Construction	110
21.	Field surveys for LOMR, submit LOMR and complete "As Built Plans"	14

Engineer completion times are based on working days (Monday through Friday, excluding City holidays) starting at Notice to Proceed or receipt of City reviews.

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**EXHIBIT C
PAYMENT SCHEDULE
CROSS BEND AND DEERFIELD CULVERTS**

CITY PROJECT NUMBER 5994

BASIC SERVICES

Work State, Submittal or Completion of Basic Services		% of Total Fee	Fee
1.	Field Surveys and Obtain Effective FEMA Models	15%	\$27,000.00
2.	Concept Plans and Preliminary Studies	15%	\$27,000.00
3.	Preliminary Plans, Studies and 404 Delineation	30%	\$54,000.00
4.	Final Plans 1 st Submittal	20%	\$36,000.00
5.	Final Plans and CLOMR	10%	\$18,000.00
6.	Bid Phase	5%	\$9,000.00
7.	Construction Phase and LOMR	5%	\$9,000.00
Total Fee		100%	\$180,000.00

SPECIAL SERVICES

Additional Construction Services			Fee
1.	Mock Up and Submittals Review by Landscape Architect		\$2,000.00
2.	Construction Phase Observations by Landscape Architect	5 @ \$400 per each	\$2,000.00
Total Special Services Fee			\$4,000.00

Grand Total of Basic & Special Services \$184,000.00

EXHIBIT "D"

ENGINEERING

INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.

- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.
- 1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Engineer's Insurance - "Occurrence" Basis:

- 2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;

- v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
- 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.
- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

2.2 Professional Errors and Omissions

The Engineer shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

- | | |
|--|--|
| <u> X </u> 1. Workers' Compensation & Employers' Liability | Statutory limits of State of Texas
\$100,000 accident \$100,000 disease
\$500,000 policy limit disease |
| ___ 2. For Future Use | |
| ___ 3. City Approved Alternative Workers' Comp. Program | \$150,000 medical, safety program |
| <u> X </u> 4. General Liability | Complete entry No. 26
Minimum \$500,000 each occurrence
\$1,000,000 general aggregate |
| <u> X </u> 5. General aggregate applies per project (CGL) | |
| <u> X </u> 6. Premises/Operations | (Items No. 3-10 & 12 require) |
| <u> X </u> 7. Independent Contractors | <u>\$500,000</u> combined single limit for bodily injury and property damage |
| ___ 8. Products | damage each occurrence with |
| ___ 9. Completed Operations | \$1,000,000 general aggregate that applies to project under contract |
| <u> X </u> 10. Contractual Liability | |
| <u> X </u> 11. Personal Injury Liability | \$500,000 each offense & aggregate |
| ___ 12. XCU Coverages | |
| <u> X </u> 13. Automobile Liability | \$500,000 Bodily Injury & Property |
| <u> X </u> 14. Owned, Hired & Non-owned | Damage each accident |
| ___ 15. Motor Carrier Act Endorsement | |
| <u> X </u> 16. Professional Liability | \$1,000,000 each claim and aggregate |
| ___ 17. Garage Liability | \$ _____ BI & PD each occurrence |

___ 18. Garagekeepers' Legal \$_____ - Comprehensive
\$_____ - Collision

___ 19. Owners Protective Liability \$500,000 Combined single limits

X 20. City named as additional insured on General Liability policy. This coverage is primary to all other coverages the City may possess.

X 21. City provided with Waiver of Subrogation on Workers' Compensation or Alternative program if applicable.

X 22. Ten (10) days notice of cancellation, non-renewal, material change or coverage reduction endorsement required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

X 23. The City of Plano prefers an A.M. Best's Guide Rating of "A-", "VI" or better or Standard and Poors Rating AA or better; Authorized to do business in the State of Texas (not applicable for workers' compensation assigned through pool or alternative compensation programs).

X 24. The Certificate must state project title and project number.

X 25. Other Insurance Required:

INSURANCE AGENT'S STATEMENT

I have reviewed these requirements with the Engineer named below. Additionally:

X 26. The above policy(s) carry the following deductibles: _____

Full limits of coverage available for:

General Liability _____ Professional Liability _____
Automobile Liability _____

X 27. Liability policies are (indicate):

OCCURRENCE []

CLAIMS MADE []

Signature

Date

Insurance Agent (Print)

Name of Insured

Date

h-22

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of **WIER & ASSOCIATES, INC.**, (herein "Contractor") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

By: _____
 Name of Consultant

 Signature

 Print Name

 Title

 Date

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2009.

Notary Public, State of Texas

Spring Creek Prkwy

Cross Bend and Deerfield Culverts

Project No. 5994

SCHIMELPFENIG LIBRARY

SAINT JOHN CT

DEERFIELD DR

SPARROWS POINT DR

SPARROWS POINT DR

Culvert Projects

CHISHOLM TRAIL PRK

Culvert Projects

CUSTER RD

PLEASANT VALLEY DR

BOULDER DR

KNOB HILL DR

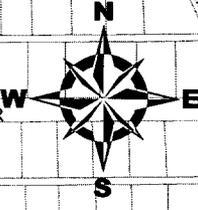
CARRIAGE LN

COUNTRY PLACE DR

FIELD COVE

CATHEDRA

WAGO



SCALE 1" = 400'

CROSS BEND RD



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>NR</i>	7/15/09
Council Meeting Date: 07/27/2009		Budget	C.S.	7-15-09
Department:	Public Works & Engineering	Legal <i>w7 / NR</i>	<i>NR</i>	7/16/09
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>RL</i>	7-15-09
		City Manager	<i>[Signature]</i>	7/16/09
Agenda Coordinator (include phone #): Irene Pegues (7198) <i>[Signature]</i>		Project No. 5788		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input checked="" type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
To Tiseo Paving Company, increasing the contract by \$36,804, for the Independence Parkway Paving Improvements – McDermott Road to SH 121, Change Order No. 2 (Bid No. 2009-21-B)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	50,581	1,441,000	0	1,491,581
Encumbered/Expended Amount	-50,581	-1,238,192	0	-1,288,773
This Item	0	-36,804	0	-36,804
BALANCE	0	166,004	0	166,004
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: Funds are included in the Re-Estimated 2008-09 Street Improvement CIP. This change order, in the amount of \$36,804, will leave a current year balance of \$166,004 for the Independence – McDermott to SH 121 project.				
STRATEGIC PLAN GOAL: Street widening relates to the City's Goal of Safe, Efficient Travel.				
SUMMARY OF ITEM				
This change order in the amount of \$36,804.10, is to modify the portion of pavement that falls inside and adjacent to the State Highway right of way so as to conform with the TxDOT specifications. This portion is located south of the intersection of Independence Parkway and SH 121.				
Staff recommends approval of Change Order No. 2. The contract total will be \$1,245,816.60 which includes change orders of 3.86% of the original contract amount of \$1,199,512.50.				
List of Supporting Documents: Change Order No. 2		Other Departments, Boards, Commissions or Agencies		

CHANGE ORDER NO. 2

**INDEPENDENCE PARKWAY PAVING IMPROVEMENTS
MCDERMOTT ROAD TO SH 121
PROJECT NO. 5788
PURCHASE ORDER NO. 103651
CIP NO. 31389
BID NO. 2009-21-B**

A. INTENT OF CHANGE ORDER

The intent of this change order is to modify the provisions of the contract entered into by the **CITY OF PLANO, TEXAS**, and **TISEO PAVING COMPANY** for the **INDEPENDENCE PARKWAY PAVING IMPROVEMENTS - MCDERMOTT ROAD TO SH 121 PROJECT**, dated December 22, 2008.

B. DESCRIPTION OF CHANGE

The change order is to modify the portion of pavement that falls inside and adjacent to State Highway 121 right of way so as to conform with the TxDOT specifications. This portion is located south of the intersection of Independence Parkway and SH 121.

C. EFFECT OF CHANGE

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

ITEM NO.	ITEM DESCRIPTION	ORIGINAL QUANTITY	REVISED QUANTITY	UNIT	UNIT PRICE	AMOUNT OF CHANGE
1	Sawcut, Remove and Disposal of Concrete curb and pavement	2500	2580	SY	\$29.75	\$2,380.00
4	Longitudinal Butt Joint	9100	9110	LF	\$6.75	\$67.50
5	8" Conc Pave, 5,000 psi	11700	11277	SY	\$38.45	-\$16,264.35
7	6" Lime Subgrade	13700	13171	SY	\$2.65	-\$1,401.85
5A	10" CRCP Pavement	0	503	SY	\$65.60	\$32,996.80
7A	20" Lime Stabilization	0	529	SY	\$6.00	\$3,174.00
8	Hydrated Lime	240	249	TN	\$145.00	\$1,305.00
9	6" Reinforced Concrete Monolithic Curb	0	57	LF	\$1.00	\$57.00
SH1	4" & 2" Asphalt	0	97.84	TN	\$125.00	\$12,230.00
SH2	Cap Existing Inlet	0	1	EA	\$750.00	\$750.00
SH3	Tx DOT Anchor	0	151	LF	\$10.00	\$1,510.00
	TOTAL:					\$36,804.10

Original Contract Amount	\$ 1,199,512.50
Contract Amount (Including Previous Change Orders)	\$ 1,209,012.50
Amount, Change Order No.2	\$ 36,804.10
Revised Contract Amount	\$ 1,245,816.60
Total Percent Increase Including Previous Change Orders	3.86%

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add **15** day(s) to this project:

Original Contract Time	120 working days
Amount (Including Previous Change Orders)	130 working days
Amount, Change Order No. 2	15 working days
Revised Contract Time	145 working days
Total Percent Increase Including Previous Change Orders	20.83%

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **TISEO PAVING COMPANY**, do hereby agree to append this Change Order No. 2 to the original contract between themselves, dated December 22, 2008.

OWNER: CITY OF PLANO

CONTRACTOR: TISEO PAVING COMPANY

By: _____
 (signature)

By: *Robert Caudill*
 (signature)

Print Name: Thomas H. Muehlenbeck

Print Name: Robert Caudill

Print Title: City Manager

Print Title: Vice President

Date: _____

Date: *6/24/09*

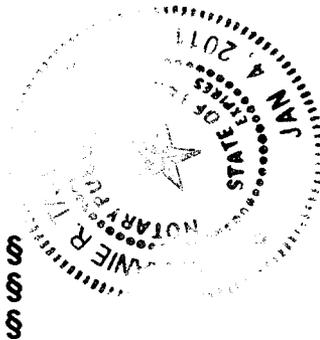
APPROVED AS TO FORM:

By: *Diane C. Wetherbee*
 Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 24th day of June, 2009, by **ROBERT CAUDILL, VICE PRESIDENT** of **TISEO PAVING COMPANY**, a **TEXAS** corporation, on behalf of said corporation.



Melani R Taylor
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **THOMAS H. MUEHLENBECK, CITY MANAGER** of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>PS</i>	7-17-09	
Council Meeting Date:	7/27/09	Budget	C.S.	7-17-09	
Department:	Planning	Legal	<i>N/A</i>	7-17-09	
Department Head	Phyllis M. Jarrell	Assistant City Manager			
Dept Signature:	<i>P. Jarrell</i>	Deputy City Manager	<i>[Signature]</i>	2/17/09	
		City Manager	<i>[Signature]</i>	2/17/09	
Agenda Coordinator (include phone #): Evelyn Trull x7566					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER APPROVAL OF MODIFICATION					
CAPTION					
Consideration of a Modification to the Substantial Amendment to the 2008-09 City of Plano Action Plan for the Community Development Block Grant Recovery Program.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	09-10, 10-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	332,930	0	332,930
BALANCE		0	332,930	0	332,930
FUND(S): GRANT FUND					
COMMENTS: This item in the amount of \$332,930 does not impact the total funding amount for the CDBG-Recovery grant.					
STRATEGIC PLAN GOAL: The modification of the Action Plan relates to the City's goal of Livable and Sustainable Community.					
SUMMARY OF ITEM					
This item requests that the Council consider modification of the adopted Substantial Amendment to the 2008-09 City of Plano Action Plan for the Community Development Block Grant Recovery (CDBG-R) Program. The Substantial Amendment was approved at the May 26, 2009 Council meeting, but HUD rejected one of the two approved projects due to late direction from the White House. Therefore, staff is requesting that the Council approve utilization of funds entirely for the one approved project.					



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Staff Memo, Substantial Amendment	Other Departments, Boards, Commissions or Agencies

Memorandum

Date: July 15, 2009

To: City Council

Via: Thomas H. Muehlenbeck, City Manager
Frank Turner, Deputy City Manager

From: Christina Day, Community Services Manager

Re: Modifying the Substantial Amendment to the 2008-09 City of Plano Action Plan for the Community Development Block Grant Recovery Program

The 2009 American Recovery and Reinvestment Act (ARRA) included U.S. Department of Housing and Urban Development (HUD) funding that was directly allocated to the City of Plano for the Community Development Block Grant Recovery Program (CDBG-R) in the amount of \$332,930. At the May 26, 2009 Council meeting, a public hearing was held, and the Council unanimously approved the CDBG-R projects proposed in the Substantial Amendment to the 2008-09 City of Plano Action Plan for the Community Development Block Grant Recovery Program as recommended by the Community Relations Commission. On June 18, 2009, HUD informed City staff that the Douglass Community Park Improvement Project submitted in the Substantial Amendment for CDBG-R was denied. Although the CDBG-R funding notice allowed park improvement projects, HUD denied the project due to a more recent White House memo advising tighter restrictions on allowable ARRA activities. HUD has requested that a replacement CDBG-R project be submitted immediately.

Given the extremely limited turnaround time, staff consulted the Chief Engineer-CIP, Facilities Manager, and others to solicit additional projects. Unfortunately, there were very limited opportunities for projects given the restrictions on the CDBG-R funds. Furthermore, a Community Relations Commission meeting was scheduled to discuss additional projects, but a quorum could not be obtained during the necessary timeframe. As a result, staff is recommending that the previously approved Day Labor Center (DLC) Technology Improvement Project be expanded to include needed Site Improvements. The Day Labor Center qualifies for the use of these Federal funds because it is a public facility in a low-income Census tract and has been approved by HUD as eligible.

Daily, approximately 250 laborers come to the DLC for employment, most of whom are Plano residents. The DLC structure is a 1,500 square foot, framed building built in the mid-1990s as a temporary facility. Six days per week it provides office space for three City of Plano staff members, restroom facilities and outdoor shelter for laborers. Since there has been a 42% increase in laborers attending this facility since 2006, the building does not adequately accommodate the amount of people that it serves. The current

patio area does not provide space for the number of workers at the Center, so many are forced to stand outside the sheltered area. The seating is also inadequate for so many workers.

The additional CDBG-R funds would bring the DLC further up to standard with other city facilities, and solve current challenges in accommodating the number of workers on site. Specifically, the outdoor shelter and seating provided for potential laborers needs to be expanded to accommodate the increase in the laborers' population. The parking lot needs to be resurfaced. Currently, the old, asphalt parking lot requires a high level of maintenance and has no curbs or wheel stops. Finally, the building needs to be weatherized. The City spends approximately \$1,500 per month on DLC utilities. Weatherizing the building would drastically reduce this cost. The proposed use of City of Plano CDBG-R funds are as follows:

Activity One: Day Labor Center Improvements
\$310,000

Description: This is a shovel ready project held up due to lack of available funds. Funds will be used for construction improvements. The project would support the City of Plano Consolidated Plan Goal of providing services to low-income persons. Estimated part-time/full-time jobs created: 10 part-time construction positions

Activity Two: CDBG-R Grant Administration
\$22,930

Description: As designated in the CDBG-R regulations, up to ten percent of the funds may be used for the planning and administrative expenses associated with the management of the aforementioned recovery projects. The budgeted amount represents 6.9% of CDBG-R funds.

Substantial Amendment to the 2008 Consolidated Plan for the Community Development Block Grant Recovery Program (CDBG-R)

A. General Information

Grantee Name	City of Plano
Name of Entity or Department Administering Funds	Planning Department – Neighborhood Services Division
CDBG-R Contact Person (person to answer questions about this amendment and CDBG-R)	Christina Day
Title	Neighborhood Services Manager
Address Line 1	1520 K Avenue
Address Line 2	Suite 250
City, State, Zip Code	Plano, TX 75074
Telephone	972-941-5262
Fax	972-941-7396
Email Address	chrisd@plano.gov
Authorized Official (if different from Contact Person)	Thomas H. Muehlenbeck
Title	City Manager
Address Line 1	1520 K Avenue
Address Line 2	Suite 300
City, State, Zip Code	Plano, TX 75074
Telephone	972-941-7121
Fax	972-423-9587
Email Address	tomm@plano.gov
Web Address where this Form is Posted	http://plano.gov/Departments/Planning/Pages/Planning.aspx

Substantial Amendment to the Consolidated Plan 2008 Action Plan for the Community Development Block Grant Recovery Program (CDBG-R)

Amount Grantee is Eligible to Receive*	\$332,930
Amount Grantee is Requesting	\$332,930

B. Distribution and Administration of Funds

The proposed use of City of Plano CDBG-R funds are as follows; no funds will be spent on public service activities:

1. Activity Name: Day Labor Center Improvements

Activity Narrative: The Day Labor Center (DLC) is one of the City of Plano's public facilities and assists hundreds of unemployed and/or under-employed individuals in obtaining contract labor jobs. On average, 250 individuals come to the DLC daily for employment. Funds will be used for site circulation, parking, building weatherization, rehabilitation, and expansion. Additionally, a new surveillance system, driveway bell, and repairs to the intercom system will be made. This "shovel ready" project was placed on-hold due to lack of general funds. With the assistance of CDBG-R funds, the project can now be completed. The project would support the City of Plano Consolidated Plan goal providing services to low-income persons.

The City of Plano has price agreements with contractors that provide services needed for this project. The City will use its "Quick Quote" method to seek bids for this project, thereby inviting all contractors under the appropriate price agreement with the City to bid. Projects awarded via the "Quick Quote" method adhere to all federal, state, and local procurement procedures and are awarded within thirty days of the bid out. Consequently, the City of Plano will meet the 120 day goal set forth in Title XII of Division A and Section 1602 of ARRA.

The project would support the City of Plano Consolidated Plan goal providing services to low-income persons. Additionally, Recovery Act goals of (1) investing in transportation, environmental protection, or other infrastructure that will provide long-term economic benefits and (2) preserving and creating jobs and promoting economic recovery. This project will improve the efficiency of the DLC while enhancing the safety and security of workers coming for assistance in obtaining work. The Day Labor Center is located in Census Tract 031900, Block Group One and has a low-to-moderate percentage of 76 per the Census 2000 data.

Estimated CDBG-R Funding Budget: \$310,000

Estimated Additional Recovery Funding Budget: \$0

Estimated part-time/full-time jobs created: 10 part-time positions

Substantial Amendment to the Consolidated Plan 2008 Action Plan for the Community Development Block Grant Recovery Program (CDBG-R)

Additional Activity Information: N/A

Responsible Organization: City of Plano, TX, 1520 K Ave. Plano, TX 75074
Christina Day, Administrator (972-941-5262)

2. Activity Name: CDBG-R Grant Administration

Activity Narrative: As designated in the CDBG-R regulations, up to ten percent of the funds may be used for the planning and administrative expenses associated with the management of the aforementioned recovery projects. The budgeted amount represents 6.9% of CDBG-R funds.

Estimated CDBG-R Funding Budget: \$22,930
Estimated Additional Recovery Funding Budget: \$0
Estimated part-time/full-time jobs created: 0

Additional Activity Information: N/A

Responsible Organization: City of Plano, TX, 1520 K Ave. Plano, TX 75074
Christina Day, Administrator (972-941-5262)

C. Citizen Participation and Public Comment

Citizen Participation:

The City of Plano initiated a process for the substantial amendment of the 2008-09 Action Plan by publishing a notice in the official newspaper, the Plano Star Courier, on May 15, 2009, and placing it on the city's website. The notice described the program and noted the address where copies were available from May 15, 2009 through May 26, 2009. Copies were placed at the Plano Municipal Center, for individuals without access to the internet, and online for those individuals with access to the internet.

Additionally, the notice included an Accessibility Statement which informed individuals with a handicap on how to access the Plano Municipal Center. For non-English Speakers, the notice could be read in Spanish on the city's website. Moreover, for those individuals that needed on-site translation or further explanation of the notice, city staff was available from 8:00 am – 5:00 pm, Monday through Friday.

Substantial Amendment to the Consolidated Plan 2008 Action Plan for the Community Development Block Grant Recovery Program (CDBG-R)

The notice directed public comments appropriately and provide a location, time and date for the public hearing by City Council. The Community Relations Commission held a public hearing on May 13, 2009, and recommended approval. The Plano City Council also held a public hearing and approved the amendment on May 26, 2009. Accessibility information was also provided to the public.

Public Comment Summary:

The City of Plano received no comments from the public regarding the use of the CDBG-R funds.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>GR</i>	7-9-09
Council Meeting Date:	July 27, 2009	Budget	<i>L.S.</i>	7-9-09
Department:	Customer and Utility Services	Legal	<i>PN</i>	
Department Head	Mark D. Israelson	Assistant City Manager	<i>MD</i>	7/9/09
Dept Signature:	<i>MD</i>	Deputy City Manager	<i>PS</i>	7/10/09
		City Manager	<i>NR</i>	7/13/09
Agenda Coordinator (include phone #):		Nancy Rodriguez X7510		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION AUTHORIZING CONTINUED PARTICIPATION WITH THE ATMOS CITIES STEERING COMMITTEE; AUTHORIZING THE PAYMENT OF 2 CENTS PER CAPITA TO THE ATMOS CITIES STEERING COMMITTEE TO FUND REGULATORY AND RELATED ACTIVITIES RELATED TO ATMOS ENERGY CORPORATION; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 08/09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	154,801	0	154,801
Encumbered/Expended Amount	0	-112,064	0	-112,064
This Item	0	-5,276	0	-5,276
BALANCE	0	37,461	0	37,461
FUND(S): GENERAL FUND (01.215)				
COMMENTS: Funding for this item is included in the 2008-09 Non-Departmental Operating Budget within the Associations account.				
STRATEGIC PLAN GOAL: Participation in Utility Steering Committees and Coalitions relates to the City's Goal of "Service Excellence".				
SUMMARY OF ITEM				
Authorizing continued participation with the Atmos Cities Steering Committee and payment of the 2009 assessment.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Memo to City Council				

MEMORANDUM

TO: City Council

THROUGH: Thomas H. Muehlenbeck, City Manager

FROM: Mark D. Israelson, Assistant City Manager 

DATE: July 27, 2009

RE: Resolution Authorizing Continued Participation with the Atmos Cities Steering Committee

Purpose of the Resolution:

Municipalities have original jurisdiction over gas utility rates and services within the city. The Atmos Cities Steering Committee ("ACSC") is composed of municipalities in the service area of Atmos Energy Corporation, Mid-Tex Division. Atmos is a monopoly provider of natural gas. Because Atmos has no competitors, regulation of the rates that it charges its customers is the only way that cities can ensure that natural gas rates are fair. Working as a coalition to review the rates charged by Atmos allows cities to accomplish more collectively than each city could do acting alone. Cities have more than 100 years experience in regulating natural gas rates in Texas.

ACSC is the largest coalition of cities served by Atmos Gas-Mid Tex. There are 151 ACSC member cities, which represent more than 60 percent of the total load served by Atmos-Mid Tex. ACSC protects the authority of municipalities over the monopoly natural gas provider and defends the interests of residential and small commercial customers within the cities. Although many of the activities undertaken by ACSC are connected to rate cases (and therefore expenses are reimbursed by the utility), ACSC also undertakes additional activities on behalf of municipalities for which it needs funding support from its members.

The ACSC Membership Assessment Supports Important Activities:

ACSC is actively involved in rate cases, appeals, rulemakings, and legislative efforts impacting the rates charged by Atmos within the City. These activities will continue throughout the calendar year. It is possible that additional efforts will be necessary on new issues that arise during the year, and it is important that ACSC be able to fund its participation on behalf of its member cities. A per capita assessment has historically been used, and is a fair method for the members to bear the burdens associated with the benefits received from that membership.

Explanation of Resolution Paragraphs:

1. The City is currently a member of ACSC; this paragraph authorizes the continuation of the City's membership.

2. This paragraph authorizes payment of the City's assessment to the ACSC in the amount of two cents (\$0.02) per capita, based on the population figure for the City as shown in the latest TML Directory of City Officials.
3. This paragraph requires notification that the City has adopted the Resolution.

Payment of Assessment

The assessment payment check should be made out to "*Atmos Cities Steering Committee*" and mailed to Mary Bunkley, Treasurer, Atmos Cities Steering Committee, c/o Arlington City Attorney's Office, Mail Stop 63-0300, PO Box 90231, Arlington, Texas 76004-3231.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING CONTINUED PARTICIPATION WITH THE ATMOS CITIES STEERING COMMITTEE; AUTHORIZING THE PAYMENT OF 2 CENTS PER CAPITA TO THE ATMOS CITIES STEERING COMMITTEE TO FUND REGULATORY AND RELATED ACTIVITIES RELATED TO ATMOS ENERGY CORPORATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano is a regulatory authority under the Gas Utility Regulatory Act (GURA) and has exclusive original jurisdiction over the rates and services of Atmos Energy Corporation, Mid-Tex Division (Atmos) within the municipal boundaries of the city; and

WHEREAS, the Atmos Cities Steering Committee (ACSC) has historically intervened in Atmos rate proceedings and gas utility related rulemakings to protect the interests of municipalities and gas customers residing within municipal boundaries; and

WHEREAS, ACSC is participating in Railroad Commission dockets and projects, as well as court proceedings, affecting gas utility rates; and

WHEREAS, the City is a member of ACSC; and

WHEREAS, in order for ACSC to continue its participation in these activities which affects the provision of gas utility service and the rates to be charged, it must assess its members for such costs;

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

Section I. That the City is authorized to continue its membership with the Atmos Cities Steering Committee to protect the interests of the City of Plano and protect the interests of the customers of Atmos Energy Corporation, Mid-Tex Division residing and conducting business within the City limits.

Section II. It is further authorized to pay its 2009 assessment to the ACSC in the amount of two cents (\$0.02) per capita based on the population figures for the City shown in the latest TML Directory of City Officials.

Section III. A copy of this Resolution and approved assessment fee payable to "*Atmos Cities Steering Committee*" shall be sent to:

RESOLUTION NO. _____

Page 2

Mary Bunkley
Treasurer, Atmos Cities Steering Committee
c/o Arlington City Attorney's Office, Mail Stop 63-0300
Post Office Box 90231
Arlington, Texas 76004-3231

Section IV. This resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED ON THIS _____ DAY OF _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>DB</i>	7-17-09
Council Meeting Date: 7/27/09		Budget	<i>C.S.</i>	7-17-09
Department: Planning/Community Services		Legal	<i>id</i>	7-17-09
Department Head: Phyllis M. Jarrell		Assistant City Manager		
Dept Signature: <i>P. Jarrell</i>		Deputy City Manager	<i>[Signature]</i>	7-17-09
		City Manager	<i>[Signature]</i>	7/20/09
Agenda Coordinator (include phone #): Evelyn Trull x7566				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, RATIFYING THE ADDITIONAL EXPENDITURE OF \$23,100 FROM THE BUFFINGTON COMMUNITY SERVICES FUND TO INCREASE THE NUMBER OF MEALS DELIVERED TO AT-RISK PLANO SENIORS AND TO INCREASE THE INDIVIDUAL SENIORS BEING SERVED WEEKDAY MEALS BY 50 PEOPLE; AUTHORIZING THE EXECUTION OF ANY AND ALL DOCUMENTS IN CONNECTION THEREWITH BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	524,600	0	524,600
Encumbered/Expended Amount	0	-479,600	0	-479,600
This Item	0	-23,100	0	-23,100
BALANCE	0	21,900	0	21,900
FUND(S): GENERAL FUND				
COMMENTS: Funds are available in the General Fund Buffington Community Services Grant. This item in the amount of \$23,100 will leave a balance of \$21,900 in the General Fund Buffington Community Services Grant.				
SUMMARY OF ITEM				
Collin County Committee on Aging provides meals to at-risk seniors without access to regular nutrition through their Meals-On-Wheels program. In the last quarter, the program came to a point of financial crisis due to rising costs, increasing demand on services, and fewer financial donations. The Buffington Community Services Grant has a total of \$45,000 in remaining 2008-09 funds from two agencies budgeted for funds that were not utilized. We are asking the Council to ratify the additional expenditure in order to ensure that Plano's most vulnerable seniors are provided with basic nutrition rather than being placed on the agency's waiting list.				



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Resolution, Staff memo, Letter from Recipient	Other Departments, Boards, Commissions or Agencies

Memorandum

Date: July 15, 2009

To: City Council

Via: Thomas H. Muehlenbeck, City Manager
Frank Turner, Deputy City Manager

From: Christina Day, Community Services Manager 

Re: Collin County Committee on Aging 2008-09 Buffington Community Services Grant Contract

You may be aware, due to recent media coverage, that the non-profit agency providing the Plano Meals-On-Wheels program, Collin County Committee on Aging, has recently stopped the evening and weekend meal program (105 Plano seniors) and suspended an additional 35 Plano seniors from weekday noon meals due to lack of funding. They had utilized all their Buffington Community Services Grant (BCSG) funds for the year (\$50,000) by the end of the third quarter due to the increase in costs, growing community need, and declining financial donations. A letter from the agency is attached, which further describes the situation.

Considering the economic state and in an effort to ensure that Plano Seniors have access to this critical program, the City Manager authorized this expenditure on July 1, 2009. We are asking the Council to support this decision by ratifying the \$23,100 expenditure and allowing a modification to the agency's 2008-09 contract to provide for at least 50 seniors through the end of the fiscal year. The BCSG funds for the current fiscal year include \$45,000 in unexpended funds from two agencies which will cover this additional expenditure.

CC: Phyllis M. Jarrell, Planning Director
Warren Spencer, Assistant City Attorney III



Collin County Committee On Aging

RECEIVED
JUN 24 2009
PLANNING DEPT

Board of Trustees

June 25, 2009

John Boaz
Lyn Chambers
Deb Fitzgerald
Dayle Griffin
Mark Heidenheimer, Chairman
Jill Hickman
Mike Howard, Past Chairman
Catherine Jamison, Secretary
Harry Kepner, Treasurer
Carolyn Lovell
Artelle Stiff
Tucker Thompson

Mr. Tom Muehlenbeck
Plano City Manager
City of Plano
P.O. Box 860358
Plano, TX 75086-0358

Marilyn Stidham
President /CEO

Dear Mr. Muehlenbeck,

Yesterday I spoke with Christina Day regarding Plano's commitment to the nutrition of its senior citizens. We are gratified by your assistance and the timeliness of your response in extending the additional funding for the noon meals.

Advisory Council

Currently there are ten Plano seniors on the waiting list and we have assessed, as of today, five Plano seniors who were referred for meals. There are several more Plano seniors who had their meals suspended who will benefit if their meals are resumed. We are in the process of contacting each of these seniors to notify them the City of Plano will be funding their noon meals and their meal service will resume on Monday, July 6th. My projection is the \$23,100.00 will provide meals for fifty-one (51) seniors through October; possibly longer depending on supplemental funding received.

Mayor David Dorman
Joe Hill
Ron Thompson
Arthur Young

The agency is still committed to the Evening and Weekend Meal Program. Our goal is to strengthen the infrastructure for the noon meal program with the target of providing one meal to a larger number of seniors rather than fragment our resources and energy by trying to maintain several programs. In doing this we fulfill the secondary purpose for Meals on Wheels which is to have a volunteer personally check on the wellbeing of each senior receiving a meal.

Senior Center Meal Sites

Again, thank you and the City of Plano for your support at this difficult time.

Blue Ridge Center
(972) 752-5686

Sincerely,

Juli Smith
Director of Senior Services

Celina Center
(972) 382-4885

Farmersville Center
(972) 782-8231

Frisco Center
(972) 335-5515

McKinney Center
(972) 547-7491

Plano Center
(972) 941-7155

cc: ✓ Christina Day
Marilyn Stidham



Community Partner

2-4

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, RATIFYING THE ADDITIONAL EXPENDITURE OF \$23,100 FROM THE BUFFINGTON COMMUNITY SERVICES FUND TO INCREASE THE NUMBER OF MEALS DELIVERED TO AT-RISK PLANO SENIORS AND TO INCREASE THE INDIVIDUAL SENIORS BEING SERVED WEEKDAY MEALS BY 50 PEOPLE; AUTHORIZING THE EXECUTION OF ANY AND ALL DOCUMENTS IN CONNECTION THEREWITH BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Collin County Committee on Aging entered into a Funding Agreement to provide community services to the City's citizens; and

WHEREAS, the parties have agreed that the original Agreement should be modified to provide an additional \$23,100 for the provision of meals delivered to at-risk Plano seniors and to increase the individual seniors being served weekday meals by 50 people; and

WHEREAS, due to the immediate need of the at-risk seniors, the funds were released prior to approval by the City Council; and

WHEREAS, the City has determined that it is in the best interests of the citizens of Plano that the Buffington Community Services funds be utilized for the purposes for which they were granted to the entity listed herein, and that each such purpose is a valid public purpose; and

WHEREAS, upon full review and consideration of all matters attendant and related hereto the City Council is of the opinion that the additional expenditure and the increase of individual seniors being served weekly evening meals should be ratified, and the City Manager or his authorized designee should be authorized to execute any and all documents on behalf of the City of Plano for this purpose.

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

Section I. The City Council hereby finds and determines that the ratification of the additional expenditure of funds and the increase of individual seniors being served weekly evening meals are in the best interest for the health and welfare of the citizens of Plano.

Section II. The City Manager, or his designee, is authorized to execute any and all other documents in connection therewith on behalf of the City of Plano.

Section III. This resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED THIS THE 27TH DAY OF JULY, 2009

Phil Dyer, Mayor

ATTEST:

Diane Zucco, City Secretary

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	[Signature] 7-17-09	
Council Meeting Date: 7/27/09		Budget	C.S. 7-17-09	
Department: Purchasing		Legal	[Signature] 7-17-09	
Department Head: Mike Ryan		Assistant City Manager	[Signature] 7-19-09	
Dept Signature: <i>Dean Palmer for</i>		Deputy City Manager	[Signature] 7-19-09	
		City Manager	[Signature] 7/20/09	
Agenda Coordinator (include phone #): Sharron Mason (x7247)				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE CITY OF MURPHY, TEXAS TO ALLOW CITY OF MURPHY'S EMPLOYEES TO TAKE CLASSES OFFERED BY CITY OF PLANO PROFESSIONAL DEVELOPMENT CENTER. AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 09/10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	6,000	0	6,000
BALANCE	0	6,000	0	6,000
FUND(S): GENERAL FUND				
COMMENTS: If this Interlocal Agreement is approved, the City of Murphy will reimburse the City of Plano for providing classes to City of Murphy employees through the City of Plano Professional Development Center. STRATEGIC PLAN GOAL: Interlocal Agreements for professional development classes relate to the City's goal of "Service Excellence".				
SUMMARY OF ITEM				
Interlocal Agreement by and between the City of Plano, Texas and the City of Murphy, Texas allowing the City of Murphy's employees to take classes offered by the City of Plano Professional Development Center.				
List of Supporting Documents: Resolution and Interlocal Agreement		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE CITY OF MURPHY, TEXAS TO ALLOW CITY OF MURPHY'S EMPLOYEES TO TAKE CLASSES OFFERED BY CITY OF PLANO PROFESSIONAL DEVELOPMENT CENTER, AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes governmental entities to contract with each other to perform governmental functions and services under the terms of thereof; and

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between City of Plano and City of Murphy for educational services, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager, or his designee shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective from and after its passage.

RESOLUTION NO. _____

Page 2

DULY PASSED AND APPROVED this the _____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF PLANO, TEXAS AND THE CITY OF MURPHY, TEXAS
FOR MURPHY'S EMPLOYEES TO TAKE PLANO CLASSES**

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "Plano", and the **CITY OF MURPHY, TEXAS**, a Home-Rule Municipal Corporation hereinafter referred to as "Murphy", as follows:

WITNESSETH:

WHEREAS, Plano and Murphy are political subdivisions within the meaning of Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the "Act"); and

WHEREAS, the Act provides authority for entities such as Plano and Murphy to enter into interlocal agreements with each other to perform governmental functions and services as set forth in the Act; and

WHEREAS, City of Plano Professional Development Center offers Business Productivity education courses ("Program") and desires to offer the Program to Murphy employees; and

WHEREAS, Murphy desires to offer its employees the opportunity to attend the Program taught by the City of Plano. The classes in the Program are as shown on the City of Plano Professional Development Center Class List, attached hereto and marked **Exhibit "A"**; and

WHEREAS, Murphy has current revenues available to satisfy the fees and/or expenses incurred pursuant to this Agreement; and

WHEREAS, the Program will provide Murphy employees with additional knowledge and skills to more effectively serve the citizens.

NOW, THEREFORE, Plano and Murphy, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

I.
TERM OF CONTRACT

This Contract shall commence on October 1, 2009 and end on September 30, 2010. Murphy and Plano herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this Program, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

II.
THE PROGRAM

The parties agree that Plano shall offer the courses as identified in **Exhibit "A"** attached hereto and incorporated herein by reference. The parties understand and agree that any deviations or modifications in the terms of the Agreement may be authorized from time to time, but said authorization must be made in writing.

III.
ROLES AND GENERAL RESPONSIBILITIES OF THE PARTIES

1. Murphy shall designate a program liaison who will manage program details and work with the Plano's program manager in content and logistics planning. Murphy shall provide Plano with required student-employee information for the purpose of registration and documentation. Murphy shall also provide appropriate training facilities and all reasonably necessary equipment, including AV equipment, for any session that is presented within the boundaries of the City of Murphy.
2. Plano shall provide curriculum design, program delivery, assembly of program materials, development of materials for participants, and a program manager to work with Murphy.

IV.
CONSIDERATION / FEES

A. Murphy shall pay Plano according to the terms set out in **Exhibit "A"** attached hereto and made a part hereof. Payment shall be made within 30 days of receipt of invoice for services provided.

B. Plano recognizes that this Agreement shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Plano and Murphy herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this

Program, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

V. TERMINATION

Either party may terminate this Agreement at any time without cause or penalty by giving thirty (30) days advance written notice. Murphy shall pay all fees and costs, if any, incurred by Plano pursuant to this Agreement through the effective date of termination.

VI. RELEASE AND HOLD HARMLESS

Plano, to the extent authorized under the constitution and laws of the State of Texas, agrees to be responsible for its own acts of negligence and Murphy, to the extent allowed by law and without waiving any rights or protections provided therein, agrees to be responsible for its own acts of negligence which may arise in connection with any and all claims for damages, cost, and expenses to person or persons and property that may arise out of or be occasioned by this Agreement.

In the event of joint and concurrent negligence, Murphy and Plano agree that responsibility shall be apportioned comparatively. This obligation shall be construed for the benefit of the parties hereto, and not for the benefit of any third parties, nor to create liability for the benefit of any third parties, nor to deprive the parties hereto of any defenses each may have as against third parties under the laws and court decisions of the State of Texas.

VII. NOTICE

Any notice provided under this Agreement shall be delivered by mail or personal service to the parties named below:

City of Murphy Representative

Stacy Buckley
Human Resources Coordinator
City of Murphy
206 N Murphy Road
Murphy, Texas 75094
972-468-4018

City of Plano Representative:

Mr. Greg Carpenter
Organizational Development Manager
City of Plano
1520 Avenue K
Plano, Texas 75074
(972) 941-5300

VIII.
AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto. Plano has executed this Agreement pursuant to duly authorized action of the Plano City Council. Murphy has executed this Agreement pursuant to the authority granted by its governing body. Each of the parties shall provide written documentation evidencing the grant of approval by its respective governing body.

IX.
SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

X.
VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XI.
INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by Plano, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

XII.
REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

**XIII.
SUCCESSORS AND ASSIGNS**

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement by signing below.

CITY OF MURPHY, TEXAS

Date: _____

By: _____
Name: James Fisher
Title: CITY MANAGER

APPROVED AS TO FORM:

Andy Messer, CITY ATTORNEY

CITY OF PLANO, TEXAS

Date: _____

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200____, by James Fisher, City Manager of **CITY OF MURPHY, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200____, by **THOMAS H. MUEHLENBECK**, City Manager of **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

MA

City of Plano Professional Development Center

Class List for Plano Area Consortium

Mandatory Class Title	Hours	Cost per person	Cost for up to 24 participants	Category
Diversity in Public Service	4	\$60	\$720	Mandatory
Employment Life Cycle	6	\$90	\$1,080	Mandatory
Ethics in Public Service	4	\$60	\$720	Mandatory
Intro to Local Government	4	\$60	\$720	Mandatory
Workplace Harassment	2	\$30	\$360	Mandatory
Onboarding Class Title	Hours	Cost per person	Cost for up to 24 participants	Category
New Employee Orientation	6	N/A	N/A	Onboarding
Workplace Harassment	2	\$30	\$360	Onboarding
Performance Essentials	4	\$60	\$720	Onboarding
Intro to Local Government	4	\$60	\$720	Onboarding
Diversity	4	\$60	\$720	Onboarding
Ethics	4	\$60	\$720	Onboarding
Open Class Title	Hours	Cost per person	Cost for up to 24 participants	Category
7 Habits of Highly Effective People (Cost includes materials)	24	\$360 + \$125 each for materials	\$2000 + \$125 each for materials	Open
Business Writing	7	\$105	N/A	Open
CPR First Aid	6	\$120	N/A	Open
CSE - Challenge of Service Excellence	7	\$105	\$1,600	Open
CSE - Face of Service Excellence	4	\$60	\$720	Open
CSE - Facilitating Service Excellence	6	\$90	\$1,080	Open
CSE - Service Excellence in the 21st Century	4	\$60	\$720	Open
Cut Your Cholesterol	2	\$15	N/A	Open
Defensive Driving	6	\$90	\$1,080	Open
DiSC (Cost includes materials)	6	\$100	\$1,200	Open
Diversity Issues - Generations	4	\$60	\$720	Open
Diversity Issues - Sexual Orient.	4	\$60	\$720	Open
Glucose 101	2	\$15	N/A	Open
Mediation Training	40	\$500	N/A	Open
Performance Management	6	\$90	\$1,000	Open
Program	Hours	Cost per person	Cost for program	Category
Supervisor Mini-Camp (20)	16	\$200	\$2,400	Program
Leadership for the 21st Century (24)(Supervisors)	150	\$2,000	\$24,000	Program
MP3 Program (8)(Executive)	120 + Project	\$3,500	\$28,000	Program



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>DP</i>	7-16-09	
Council Meeting Date:	7/27/09	Budget	C.S.	7-16-09	
Department:	Technology Services	Legal	<i>MS</i>	7/27/09	
Department Head	David Stephens	Assistant City Manager	<i>MS</i>	7/20/2009	
Dept Signature:	<i>David Stephens</i>	Deputy City Manager	<i>MS</i>	7-20-09	
		City Manager	<i>MS</i>	7/20/09	
Agenda Coordinator (include phone #): Amy Powell X7342					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A SOFTWARE MAINTENANCE AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC., THE SOLE SOURCE PROVIDER OF THE RECORDS MANAGEMENT SYSTEM AND AUTOMATED FIELD REPORTING SYSTEM, IN AN AMOUNT NOT TO EXCEED \$246,993.00; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	08/09, 09/10, 10/11, 11/12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	858,038	0	858,038
Encumbered/Expended Amount		0	-401,048	0	-401,048
This Item		0	-246,993	0	-246,993
BALANCE		0	209,997	0	209,997
FUND(S): TECHNOLOGY SERVICES FUND (CC396)					
COMMENTS: Funds are included in the 2008/09 Approved Budget for the maintenance of the Public Safety Police Records Management System. Expenditures for system and software maintenance are included in the Technology Services Recommended Budget each year as part of the regular budget process.					
STRATEGIC PLAN GOAL: Software Maintenance Contracts relate to the City's Goal of "Service Excellence".					
SUMMARY OF ITEM					
Technology Services recommends Council approve Resolution for a maintenance agreement between Northrop Grumman Information Technology, Inc. and the City of Plano, Inc. in the amount of \$246,993.00 for the first year and an amount not to exceed an increase of 10% for each subsequent year for a period of three years. This maintenance is necessary for software services to the City's Automated Field Reporting (AFR) System and Information Center Records Management System used for the City's public safety.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
Resolution and Staff Memo					

MEMORANDUM

Date: 07/07/2009

To: David Stephens, Technology Services Director

From: Earl Atencio

Subject: Police Records Management Software Maintenance Renewal

Public Safety Support recommends council approve an expenditure of \$246,993.00 for the renewal of annual software maintenance support of the Police Records Management System. Northrop Grumman is the developer of the Records management system and the sole source vendor able to provide this software maintenance.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A SOFTWARE MAINTENANCE AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC., THE SOLE SOURCE PROVIDER OF THE RECORDS MANAGEMENT SYSTEM AND AUTOMATED FIELD REPORTING SYSTEM, IN AN AMOUNT NOT TO EXCEED \$246,993.00; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Technology Services Department of the City of Plano utilizes a Records Management System and Automated Field Reporting System developed by Northrop Grumman Information Technology, Inc.; and

WHEREAS, Northrop Grumman Information Technology, Inc. is the sole source provider of the software maintenance and support for the Records Management System and Automated Field Reporting System ; and

WHEREAS, the City Council has been presented a proposed Agreement between the City of Plano and Northrop Grumman Information Technology, Inc., for software maintenance and support for the Records Management System and Automated Field Reporting System, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement should be approved, and that the City Manager or his designee shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The City Council hereby finds and determines that Northrop Grumman Information Technology, Inc. is the sole source provider for the software maintenance and support for the Records Management System and Automated Field Reporting System and, thus, the purchase of such is exempt from competitive bid as provided for in *V.T.C.A., Local Government Code, Section 252.022(a)(7)*.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this _____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC. MASTER MAINTENANCE AGREEMENT

This Agreement is entered into between **Northrop Grumman Information Technology, Inc.** (represented herein by their Commercial State and Local Programs Business Unit), a Delaware corporation, with an office at 15010 Conference Center Drive, Chantilly, VA 20151-3801, hereinafter referred to as "NORTHROP GRUMMAN", and **the City of Plano, Texas**, hereinafter referred to as "Customer".

1. SCOPE OF AGREEMENT

NORTHROP GRUMMAN will provide the following services:

- Services provided for by the NORTHROP GRUMMAN Software Maintenance Sub-Agreement, (copy attached), which includes NORTHROP GRUMMAN provided software as shown on Exhibit A of the Software Agreement.

The above shall be referred to as sub-agreements.

2. TERM OF AGREEMENT

The term of this Agreement shall commence on June 25, 2009 and shall continue for a term of one year, with the option to renew for four additional one year periods at the prices outlined in Exhibit "A".

3. TERMINATION

This Agreement may be terminated at any time by either party by providing a 90 day written notice of termination. As such, the Agreement shall terminate with no further financial obligation of the Customer with respect to payment of obligations due after 90 days from the date of such notice. . Advance payments from Customer for the remainder of the contract period following termination shall be refunded to Customer on a pro-rata basis.

4. TERMS AND CONDITIONS

In the event of a conflict, the terms of this Agreement shall take precedence over the terms and conditions of the sub-agreements.

**NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC.
MASTER MAINTENANCE AGREEMENT**

5. PRICE AND PAYMENT

The Customer shall pay the amount labeled "Total Due," with respect to the period identified, in Exhibit "A" (attached).

The fees for Basic Software Maintenance shall be paid annually in advance. Per call and block time charges in Item 2 of Exhibit B NORTHROP GRUMMAN SOFTWARE MAINTENANCE SUB-AGREEMENT will be invoiced after the service is performed.

Prices in this Agreement are exclusive of applicable taxes, if any. Taxes are the responsibility of the Customer and will be added to the invoices.

Payment terms are net thirty (30) days from date of invoice. NORTHROP GRUMMAN reserves the right to charge interest for late payments at the rate of one and one-half percent (1.5%) per month.

6. AMENDMENT OF THIS AGREEMENT

The Customer reserves the right to request changes which would include alterations, deviations, additions to or deletions from the scope of work of this Agreement, as may be deemed by the Customer to be necessary or required for the proper completion of the whole work contemplated.

Any such changes will be set forth in an Amendment/Changes Orders to this Agreement which will specify the change in work to be performed and any increase/decrease in compensation due NORTHROP GRUMMAN for such work. No such requested changes shall be effective until the execution of an appropriate amendment of this Agreement by both parties.

7. NOTICES

Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the same is sent by certified mail, postage prepaid, or courier service to the respective parties as follow:

Customer:
The City of Plano
Earl Atencio
1117 E. 15th St.
Plano, TX 75074

Northrop Grumman Information
Technology, Inc.
Sue Jun
15010 Conference Center Drive
Chantilly, VA 20151-3801

**NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC.
MASTER MAINTENANCE AGREEMENT**

8. INDEPENDENT CONTRACTOR

NORTHROP GRUMMAN is an independent contractor under this Agreement, and not an employee or agent of Customer. All payments hereunder shall be made to NORTHROP GRUMMAN. No deductions shall be made from the payments provided for under Article V above for any reason including taxes, workman's compensation or insurance.

9. LIMITATION OF LIABILITY AND REMEDIES

a. Limited Warranty

NORTHROP GRUMMAN MAKES NO WARRANTIES HEREUNDER, EITHER EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE).

b. Limitation of Remedy

Except for damages to third parties as set forth in Section 10, customer agrees that NORTHROP GRUMMAN's liability hereunder for damages shall not exceed the annual maintenance fee paid to NORTHROP GRUMMAN for the maintenance period in which the cause of the action occurred.

c. Limitation of Damages

IN NO EVENT SHALL NORTHROP GRUMMAN BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

**NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC.
MASTER MAINTENANCE AGREEMENT**

10. INDEMNIFICATION

NORTHROP GRUMMAN shall indemnify, defend, and hold harmless Customer from and against any and all claim, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorneys' fees) and liabilities, of, by or with respect to third parties, which arise solely from the intentional misconduct or negligence of NORTHROP GRUMMAN, NORTHROP GRUMMAN's employees, agents or subcontractors. NORTHROP GRUMMAN shall not be responsible for, and Customer shall, within the limits of Texas law and without waiving any of its rights, privileges or governmental immunities from suit or liability, indemnify, defend, and hold harmless NORTHROP GRUMMAN from and against, any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorneys' fees) and liabilities, of, by or with respect to third parties, which arise solely from Customers' negligence. With respect to any and all claims, demand, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees) and liabilities, of, by or with respect to third parties, which arise from the joint or concurrent negligence of NORTHROP GRUMMAN and Customer, each party shall assume responsibility in proportion to the degree of its respective fault.

11. FUNDING

The customer has reviewed their funding and verifies to Northrop Grumman that none of their funding to be used in this quotation will include American Recovery and Reinvestment Tax act of 2009 ("ARRA") funds, funds from the Emergency Economic Stabilization Act ("ESSA") or funds from the Trouble Assist Relief Program ("TARP"). Prior to applying any funds from any of the three identified sources of the funds above onto this contract the customer shall notify Northrop Grumman. If ARRA, TARP or ESSA finds are to be applied towards this contract, Northrop Grumman may either elect to terminate the effort for convenience prior to the application of any funds from the identified sources or to ratify the contract.

**NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC.
MASTER MAINTENANCE AGREEMENT**

12. ENTIRE CONTRACT

This Agreement and attached Sub-Agreement(s) represent the entire and integrated agreement between the parties hereto and supersedes all prior and contemporaneous negotiations, representations, understandings, and agreements, whether written or oral, with respect to the subject matter hereof. This Agreement may be amended only by written instrument signed by the parties hereto.

The City of Plano:

**Northrop Grumman Information
Technology, Inc. :**

Signature of Authorized Representative

John Kouri
Contracts Manager

Printed Name

Date

Title

Date

**NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC.
MASTER MAINTENANCE AGREEMENT**

Exhibit "A"

Price and Payment:

Period No. 1 – June 25, 2009 – June 24, 2010

Basic Software Maintenance	
Info Center RMS	\$149,381.00
AFR	\$ 97,612.00
Total Due, Period No. 1	<u>\$246,993.00</u>

Period No. 2 – June 25, 2010 – June 24, 2011

Basic Software Maintenance	
Info Center RMS:	\$156,850.00
AFR	\$102,493.00
Total Due, Period No. 2	<u>\$259,343.00</u>

Period No. 3 – June 25, 2011 – June 24, 2012

Basic Software Maintenance	
Info Center RMS:	\$164,693.00
AFR	\$107,617.00
Total Due, Period No. 3	<u>\$272,310.00</u>

Period No. 4 – June 25, 2012 – June 24, 2013

Basic Software Maintenance	
Info Center RMS:	\$172,928.00
AFR	\$112,998.00
Total Due, Period No. 4	<u>\$285,926.00</u>

Period No. 5 – June 25, 2013 – June 24, 2014

Basic Software Maintenance	
Info Center RMS:	\$181,574.00
AFR	\$118,648.00
Total Due, Period No. 5	<u>\$300,222.00</u>

NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC. SOFTWARE MAINTENANCE SUB-AGREEMENT

SUB-AGREEMENT effective June 25, 2009, between **Northrop Grumman Information Technology, Inc.** (represented herein by its Commercial State and Local Programs Business Unit), 15010 Conference Center Drive, Chantilly, VA 20151-3801 ("NORTHROP GRUMMAN") and the **City of Plano, Texas**, ("Customer").

1. SOFTWARE SYSTEM

For the purpose of this Sub-Agreement, the "Software System" shall mean the NORTHROP GRUMMAN Computer Software System (Software System) identified in Exhibit A.

2. SOFTWARE SUPPORT SERVICES

a. **Maintenance Support**

With respect to the Software System, NORTHROP GRUMMAN agrees to perform, or cause to be performed, the following maintenance services:

1. NORTHROP GRUMMAN will retain a complete copy of the NORTHROP GRUMMAN application source code to guard against the permanent loss of system functions in the event of disaster.
2. If during the term of this Agreement, (a.) the Customer discovers defects in the Software System such that same will not perform in accordance with NORTHROP GRUMMAN's design; (b.) the Customer notifies NORTHROP GRUMMAN of such defects; and, (c.) such defects are reproducible, then NORTHROP GRUMMAN shall provide, or cause to be provided, timely corrections of such defects. As applicable and required, Customer shall be responsible for installing corrections to applicable workstation software.
3. If problems arise concerning the Software System, NORTHROP GRUMMAN will provide telephone assistance within the schedule stated in Section 3, Problem Reporting.
4. If Critical problems arise from the NORTHROP GRUMMAN application (see 3. *Problem Reporting*) and the Customer cannot correct them by following system management training and/or procedures previously supplied by NORTHROP GRUMMAN or Masi, NORTHROP GRUMMAN will provide assistance to restore the Software System operations 24 hours a day, 365 days a year without additional charge to the Customer.

NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC. SOFTWARE MAINTENANCE SUB-AGREEMENT

b. **Software Improvements and Upgrades**

During the term of this Agreement, NORTHROP GRUMMAN shall supply Customer with improvements and upgrades to those functions or features of the Software Products which were described in the Functional Specification Design and supplied under the applicable contract and which are not priced separately. NORTHROP GRUMMAN will provide one (1) software upgrade per year.

c. **Installation of Corrections, Improvements or Upgrades**

NORTHROP GRUMMAN shall provide changes and installation support to the Software Products including updates, upgrades, releases, patches, corrections or improvements by telephone modem or the appropriate transport media, all at the option of NORTHROP GRUMMAN. Customer shall provide installation, distribution, support or access as may be reasonably required to successfully install the changes.

3. **PROBLEM REPORTING**

Problems are logged into NORTHROP GRUMMAN's problem tracking system and the Customer is given a problem ticket number. The call is prioritized based on what is being reported, and how serious the Customer perceives the problem. Priority one problems receive immediate attention and are worked continuously until resolved. Priority two, three and four calls are placed in the queue, assigned to programmers and are addressed based on order received and priority. Customers may escalate problems to the CSG Service Manager if they feel they are not being addressed in a timely manner. The following are NORTHROP GRUMMAN's prioritizations:

Priority One: Critical

Guaranteed response time of 2 hours; worked continuously until resolved

Software Errors that prevent or substantially interfere with operation of the NORTHROP GRUMMAN installed software for its primary intended purpose on a system wide basis, as described in the Functional Design Specification, such as those errors that can cause loss of data or prevent the product from running. Examples include, but are not limited to:

- Complete system outage (system down) of a major application
 - Computer Aided Dispatch
 - Message Switching System
 - Records Management System
 - Mobile Data Computing System

NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC. SOFTWARE MAINTENANCE SUB-AGREEMENT

- Workstation failure of a critical workstation; mission critical tasks that cannot be performed on another workstation.
- Database failure or performance degradation to the point of inoperability

Priority Two: High

Guaranteed response time of 4 hours

Software Errors that do not prevent or substantially interfere with operation of the NORTHROP GRUMMAN system for its primary intended purpose or are not system wide, but that do prevent or materially interfere with end user performance of common functions described in the Functional Design Specification. Examples include, but are not limited to:

- Workstation failure of a non-mission critical workstation, where there is no alternate workstation for that functionality
- Loss of communications with the mobile data controller, other than such loss due to malfunction occurring outside of the NORTHROP GRUMMAN system
- System response times doubling and continuing beyond fifteen (15) minutes, other than such doubling due to malfunction occurring outside of the NORTHROP GRUMMAN system.

Priority Three: Medium

Guaranteed response time of 1 business day

Minor problems that do not prevent the users from performing their job, but there is no reasonable work-around.

Priority Four: Low

Guaranteed response time of 5 business days

Informational, or suggestion for future functionality of the software.

4. RESPONSIBILITIES OF CUSTOMER

The obligations of NORTHROP GRUMMAN under this Agreement are conditioned upon:

- a. Customer assigning a Coordinator to ensure that Customer's assignments in connection with this Agreement are met, to coordinate appropriate schedules in connection with NORTHROP GRUMMAN's services hereunder, and to serve to provide other coordination activities which are necessary for NORTHROP GRUMMAN to perform its services hereunder. As applicable and required,

NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC. SOFTWARE MAINTENANCE SUB-AGREEMENT

Coordinator shall also be responsible for distributing Software System corrections to the individual client workstations.

- b. Customer will assign at least one (1) technically capable individual, as required by NORTHROP GRUMMAN to assist NORTHROP GRUMMAN in performing its services hereunder.
- c. Customer establishing an on-site dial-up line or VPN access to enable NORTHROP GRUMMAN to remotely access the Software System. Customer, in accordance with a schedule mutually agreed upon by NORTHROP GRUMMAN and Customer, shall connect the dial-in modem, at customer's cost and expense, in order to enable NORTHROP GRUMMAN to remotely access the Software System. Where applicable, Customer shall also compile programs and run appropriate tests following each remote access by NORTHROP GRUMMAN.
- d. Customer shall be responsible for controlling security and access to the computer systems. The Customer shall connect the dial-in modem or VPN access in a timely manner to allow NORTHROP GRUMMAN to perform maintenance activities, and the Customer shall provide the appropriate usernames and authorization codes to NORTHROP GRUMMAN whenever maintenance work is to be done.
- e. Customer shall not perform any modifications or enhancements to the Software System or allow any person or entity not specifically authorized by NORTHROP GRUMMAN to perform any modifications or enhancements to the Software System.
- f. As applicable and necessary, during the term of the Master Maintenance Agreement, and any subsequent extensions of the term, Customer shall provide NORTHROP GRUMMAN with a verified copy of the Software System back-up, including Source Code, on an annual basis, at no cost to NORTHROP GRUMMAN, for use in assisting the Customer during disaster recovery efforts if requested.
- g. It is the Customer's sole responsibility for insuring System Management Procedures are performed for continuous operation of the RMS systems. This includes, but is not limited to, performing system and file backups, routine configuration changes, installation of operating system and patches, system and database backups, system and database performance tuning, network problem diagnosis, and system monitoring and preventive maintenance.
- h. Customer shall coordinate hardware repairs with the appropriate third-party hardware maintenance provider.

**NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC.
SOFTWARE MAINTENANCE SUB-AGREEMENT**

5. TERM

The term during which NORTHROP GRUMMAN shall be obligated to perform under Section 2 shall commence June 25, 2009, and, unless terminated pursuant to the NORTHROP GRUMMAN MASTER MAINTENANCE AGREEMENT shall continue for a period of one year. NORTHROP GRUMMAN and Customer may, by mutual agreement in writing, renew the term or any renewal thereof, for an additional period of four years.

6. LICENSE

With respect to each correction to the Software System furnished to Customer under this Agreement, Customer is granted a non-exclusive, non-assignable, non-transferable license to use such correction solely as appropriate as part of the Software System as defined in the "License" Article of the Agreement for the System(s).

**NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC.
SOFTWARE MAINTENANCE SUB-AGREEMENT**

- EXHIBIT A -

SOFTWARE SYSTEM

The software system to be maintained under this Agreement including any unique technical conditions is as follows:

1. The Customer's Info Center Records Management System as defined in the original Functional Specification Document as submitted to and accepted by the Customer including any additional contractual work performed by Northrop Grumman.
2. The Customer's Automated Field Reporting System as defined in the Functional Specification Document as well as any enhancements submitted to and accepted by the Customer including any additional contractual work performed by Northrop Grumman.

NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC. SOFTWARE MAINTENANCE SUB-AGREEMENT

- EXHIBIT B -

SERVICES TO BE PROVIDED

1. Basic software service shall be provided five (5) days per week from 5:30 a.m. through 5:30 p.m. Pacific Time excluding NORTHROP GRUMMAN holidays.

Calls made outside the above Basic service times will be billable as follows:

Year 1 - \$1,140 per call for the first four hours of consultation and \$285/hour for an additional consultation
Year 2 - \$1,200 per call for the first four hours of consultation and \$300/hour for an additional consultation
Year 3 - \$1,260 per call for the first four hours of consultation and \$315/hour for an additional consultation
Year 4 - \$1,320 per call for the first four hours of consultation and \$330/hour for an additional consultation
Year 5 - \$1,388 per call for the first four hours of consultation and \$347/hour for an additional consultation

However, if Serious problems arise (see 3. Severity Level) and the Customer cannot correct them by following the system management procedures previously supplied by NORTHROP GRUMMAN, calls made outside of the Basic service times will not be billable. The determination of whether an after-hours call is billable will be made solely by NORTHROP GRUMMAN.

2. ON DEMAND MAINTENANCE SERVICES - ODMS

ODMS is defined as forty (40) contiguous hours of remote NORTHROP GRUMMAN Programmer services for the "NORTHROP GRUMMAN installed system" (System). Services to be performed by the NORTHROP GRUMMAN Programmer are at the discretion of the Customer. It is advisable to transmit to NORTHROP GRUMMAN, prior to the NORTHROP GRUMMAN Programmer service, a list of work descriptions desired by the Customer. The ODMS to be performed by the NORTHROP GRUMMAN Programmer will be on a "best effort" basis. If the work is not complete or task finished by the NORTHROP GRUMMAN Programmer at the end of forty (40) hours, the Customer has the option to contract for additional ODMS or have NORTHROP GRUMMAN complete the work on a "time and materials" (T&M) basis. The additional ODMS or T&M work will have to be mutually agreed to and scheduled. ODMS work completed by NORTHROP GRUMMAN will then be transferred and maintained under the Master Maintenance Agreement.

The annual ODMS rates for forty (40) hour blocks is as follows:

Year 1 - \$10,000
Year 2 - \$10,500
Year 3 - \$11,025
Year 4 - \$11,500
Year 5 - \$12,000

Customer has the option to have the NORTHROP GRUMMAN Programmer on site. Travel is not included in the rates as defined as above. Travel shall be billed at cost plus 10%.



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>DBP</i>	7-16-09
Council Meeting Date: 7/27/09		Budget	<i>KM</i>	7-17-09
Department:	Public Works & Engineering	Legal <i>wh</i>		7.20.09
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>DA</i>	7-20-09
		City Manager	<i>[Signature]</i>	7/20/09
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>v SP</i>		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A resolution of the City Council of the City of Plano, Texas, ratifying the Takeover Agreement by and between Liberty Mutual Insurance Company and the City of Plano for completion of Plano Centre Storage Expansion; approving its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s): N/A				
COMMENTS: This item has no fiscal impact.				
SUMMARY OF ITEM				
<p>On May 1, 2009, the City of Plano received a letter dated April 29, 2009, from Hisaw and Associates General Contractors, Inc., stating Hisaw was ceasing operations. Hisaw was contracted with the City of Plano to construct Plano Centre Storage Expansion. On May 12, 2009, the City of Plano sent Hisaw a notice of intent to terminate their contract for failure to staff the project and pay their subcontractors and suppliers. Hisaw did not respond by the stated deadline of May 20, 2009. Neither did Hisaw correct the reasons City of Plano cited for termination.</p> <p>The City of Plano officially notified Hisaw on May 21, 2009, of the termination of the contract between the City of Plano and Hisaw and Associates General Contractors, Inc., as ratified by the City Council on June 8, 2009.</p> <p>This agenda item ratifies the Takeover Agreement between the bonding company, Liberty Mutual Insurance Company, and the City of Plano by which Liberty Mutual Insurance Company agreed to take over completion of the project.</p>				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
N/A		N/A		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, RATIFYING THE TAKEOVER AGREEMENT BY AND BETWEEN LIBERTY MUTUAL INSURANCE COMPANY AND THE CITY OF PLANO FOR COMPLETION OF PLANO CENTRE STORAGE EXPANSION; APPROVING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano and Hisaw & Associates General Contractors, Inc., entered into a contract on August 15, 2008, for the construction of Plano Centre Storage Expansion; and

WHEREAS, Hisaw and Associates General Contractors, Inc., ceased operations on or about April 29, 2009, before completion of Plano Centre Storage Expansion; and

WHEREAS, the City of Plano terminated the contract with Hisaw and Associates General Contractors, Inc., on May 21, 2009, a copy of which is attached as Exhibit "A"; and

WHEREAS, the City of Plano notified Liberty Mutual Insurance Company on May 21, 2009, of the termination and made demand on Liberty Mutual Insurance Company to complete the project as Surety for the performance bond, pursuant to the terms of the performance bond; and

WHEREAS, the City of Plano and Liberty Mutual Insurance Company have agreed to the terms for the Takeover Agreement to complete the Plano Centre Storage Expansion, a copy of which is attached as Exhibit "B"; and

WHEREAS, to minimize further delay of the project, City staff has authorized Liberty Mutual Insurance Company to resume construction on the project.

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

Section I. The Takeover Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, is hereby in all things ratified and execution by the City Manager or his authorized designee on behalf of the City of Plano is hereby approved.

Section II. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED the _____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



May 21, 2009

CERTIFIED MAIL
7001 2510 0003 8794 3352

Pat Evans
Mayor

Jean Callison
Mayor Pro Tem

Harry LaRosiliere
Deputy Mayor Pro Tem

Pat Miner
Place 1

Scott Johnson
Place 2

Mabrie Jackson
Place 3

Sally Magnuson
Place 4

Lee Dunlap
Place 8

Thomas H. Muehlenbeck
City Manager

Mr. Richard Hisaw
Hisaw and Associates General Contractors
4301 Reeder Drive, Suite 100
Carrollton, Texas 75010

Re: Plano Centre Storage Expansion – CIP No. 54423

Dear Mr. Hisaw:

Per the attached copy of our letter dated May 12, 2009, we notified you of our intent to terminate the subject contract for failure to staff the project and failure to pay subcontractors and suppliers. As we have not heard from you within the time allowed by our letter, we conclude that you have no intent to cure these defects and therefore advise you that your contract with the City of Plano for the Plano Centre Storage Expansion, CIP No. 54423, is terminated effective immediately.

Sincerely,

James Razinha
Facilities Manager

Is

Attachment

xc: Frank Hucks, Liberty Mutual
Warren Spencer, Asst. City Attorney III
Alan L. Upchurch, Director of Public Works & Engineering
Mike Ryan, Chief Purchasing Officer

P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
www.plano.gov

TAKEOVER AGREEMENT

This Takeover Agreement (the "Agreement") is made and entered into this 22nd day of June, 2009, by and between Liberty Mutual Insurance Company (the "Surety") and the City of Plano (the "Owner").

RECITALS:

WHEREAS, Hisaw & Associates General Contractors, Inc. (the "Original Contractor") and the Owner entered into a construction contract dated September 4, 2008 (the "Prime Contract") for the construction of the Plano Centre Storage Expansion located at 2000 E. Spring Creek Parkway, Plano, Texas 75074 (the "Project");

WHEREAS, as required by Texas law and under the terms of the Prime Contract, Original Contractor and the Surety made, executed and delivered to the Owner Performance Bond No. 22016597 and Payment Bond No. 22016597 (collectively, the "Bonds"), both in the penal sum of \$299,592;

WHEREAS, the Original Contractor notified the Surety in writing on April 27, 2009 that it ceased operations, that it would not be completing any projects, and that it was taking all necessary steps to close down the projects;

WHEREAS, the Original Contractor notified the Owner in writing on April 29, 2009 that it ceased operations, that it closed its offices, and that it would not complete the Project;

WHEREAS, the Owner issued a letter dated April 30, 2009 notifying the Surety that Hisaw no longer had a presence on the Project, that progress had stopped on the Project, and that the Owner considered Hisaw in breach of the Prime Contract;

WHEREAS, the Owner formally terminated the Original Contractor under the Prime Contract on May 21, 2009 and made demand on the Surety to complete the Project;

NOW, THEREFORE, based on the exchange of valuable consideration, the receipt and sufficiency of which is acknowledged, and based on the Recitals set forth above which form a part of this Agreement, the Surety and the Owner agree to the following terms and conditions:

AGREEMENTS:

1. The Surety agrees to undertake the completion of the scope of work under the Prime Contract, including all modifications thereto, and agrees to be bound by the Prime Contract all express warranties contained in the Prime Contract. The Surety will also be bound by the indemnity obligations in the Prime Contract on claims against the Owner that solely relate to work performed on the Project pursuant to this Agreement.

The Owner acknowledges that the Surety, by its execution of this Agreement, is acting in its capacity as the surety for the Original Contractor in making arrangements for the performance and completion of the Prime Contract, and not as a completing contractor, and that the Surety is not assuming any obligations or liabilities beyond those set forth in the Bonds. As to the completion of the Prime Contract, except as otherwise provided in this Agreement, the Surety is entitled to all rights, title and interest of the Original Contractor in and to the Prime Contract in all respects as if the Surety were the original party to the Prime Contract. The Surety is not to be considered a contractor, however, for any other purpose.

2. The Owner acknowledges that the Surety will subcontract the performance of the work under the Prime Contract to a completion contractor (the "Completion Contractor"). The Owner consents to the Surety's choice of Lee Lewis Construction as the Completion Contractor. The Surety may satisfy the required insurance obligations under the Prime Contract by providing evidence of the required insurance coverage carried by the Completion Contractor, with the Surety being named as an additional insured under the policy or policies. The Surety reserves the right to require the Completion Contractor to obtain a new payment bond (the "New Bond") covering the completion of the Project. The Surety further reserves the right to contend that any claims against the Completion Contractor are covered by the New Bond. The Surety reserves the right to terminate its contract with the Completion Contractor at any time, subject to seven business days' prior written notice to Owner, and to contract with another Completion Contractor.

3. The Owner and the Surety agree that as of the date of this Agreement:

- (a) The authorized amount of the Prime Contract, including all approved change orders, through Pay Application No. 4 dated March 25, 2009, is the sum of \$305,546.30;
- (b) The Original Contractor has been paid through Pay Application No. 4 the sum of \$225,469;
- (c) The Owner is holding the sum of \$0 as retainage pursuant to the terms of the Prime Contract through Pay Application No. 4;
- (d) The "Contract Balance" shall be hereinafter defined as the sum of \$80,077.30. The Contract Balance shall be increased or decreased, as appropriate, as a result of certain pending change orders to the Prime Contract submitted by the Original Contractor and/or the Owner, and as a result of any change orders for extra work (work that is different from, in excess of, or beyond the scope of the work required by the Prime Contract) requested or required by the Owner after the date of the execution of this Agreement; and
- (e) As of the date of the execution of this Agreement, the Owner represents and warrants that, according to the records available to it, the Contract Balance as defined herein is accurate. The Surety reserves the right to verify the accuracy of the Contract Balance. The Surety's remedy against

the Owner for breach of this representation and warranty is reformation of the Contract Balance to the proper amount.

4. The Contract Balance is dedicated to and will be applied to the completion of the Prime Contract pursuant to this Agreement. The remaining payment of any additional Contract Balance to the Surety shall be made in accordance with the terms of the Prime Contract as to the time, amount and method of payment, and no payment shall be delayed by reason of any slow down or cessation of work in connection with the takeover of the Prime Contract by the Surety. The Contract Balance is not subject to any set-off or back-charges. Liquidated damages under this Agreement shall be calculated using the new completion date established pursuant to Paragraph 6 of this Agreement. The assessment of any liquidated damages, if applicable, shall be made against the retainage only.

5. The Owner shall not withhold any payments from the Surety because of or on account of any latent defects caused by any action or inaction of the Original Contractor or the Completion Contractor. The Surety agrees to spend its own funds as may be necessary from time to time to pay for the performance of the Prime Contract by the Completion Contractor in the event that the Contract Balance is insufficient, with any such payments being credited against the penal sum of the Performance Bond.

6. The Surety shall complete the work required under the Prime Contract pursuant on or before August 1, 2009. (the "Completion Date").

7. To the extent the Owner has any right, title or interest therein, the Owner agrees that the Surety and its Completion Contractor shall have the right to use, without charge, any of the equipment, materials and appurtenances furnished or supplied by the Original Contractor which may be stored on or about the premises of the Project site or materials which may have been fabricated for use in connection with the Prime Contract, whether or not presently on the Project site.

8. The Surety shall be represented at the Project by the Completion Contractor with the Completion Contractor having no authority to bind the Surety to any additional work or changes to the Prime Contract, unless expressly provided in this Agreement. The Surety designates the Completion Contractor to prepare and process pay requisitions on the Prime Contract. However, the Surety will sign all pay requisitions submitted to the Owner. Payments from the Owner shall be made payable to the Surety and transmitted to the Surety at the following address, unless and until the Owner is notified in writing of any different address:

Frank Hucks
Senior Surety Counsel
Interchange Corporate Center
450 Plymouth Road, Suite 400
Plymouth Meeting, PA 19462

The Completion Contractor shall have, on behalf of the Surety, the authority to negotiate and sign change orders for extra work (work that is different from, in excess of, or beyond the scope of the work required by the Prime Contract) requested or required by the Owner (hereinafter "Change Order") without the Surety's prior written approval, provided the Change Order does not exceed \$15,000 and the Completion Contractor is given additional time to perform the Change Order. If no additional time is given to the Completion Contractor to perform the Change Order, then the Surety's prior written approval is required to negotiate the Change Order and the final Change Order must be signed by the Surety. The prior written approval of the Surety shall be required on all other Change Orders. The Completion Contractor has no authority to negotiate deductive Change Orders, credits, backcharges or net deductions from the Prime Contract or the Contract Balance of any nature whatsoever without the Surety's prior written approval. Any agreements with respect to the warranty work of the Original Contractor or corrective work as a result of latent defect in the work performed by the Original Contractor shall require the written approval of the Surety. The written approval requirement of the Surety does not effect the obligations of the Surety related to express warranties under the Prime Contract addressed in Paragraph 1 above

9. The total liability of the Surety under this Agreement and the Performance Bond for the performance of the work, after the expenditure of the Contract Balance, is limited to and shall not exceed the penal sum of the Performance Bond in the amount of \$299,592. All payments properly made by the Surety for the performance of the Prime Contract shall be credited against the penal sum of the Performance Bond. Any costs incurred due to the refusal of the Subcontractors to complete their work shall be credited against the penal sum. Nothing in this Agreement constitutes a waiver of such penal sum or an increase in the liability of the Surety under the Performance Bond.

10. In no event shall the Owner withhold any of the Contract Balance from the Surety because of or on account of any claims, liens, suits or demands by any persons or entities furnishing or alleging to have furnished labor and/or materials to the Project. The Payment Bond shall remain in full force and effect. The total liability of the Surety under the Payment Bond is limited to and shall not exceed the penal sum of the Payment Bond in the amount of \$299,592. All Payment Bond payments properly made by the Surety shall be credited against the penal sum of the Payment Bond. Nothing in this Agreement constitutes a waiver of such penal sum or an increase in the liability of the Surety under the Payment Bond.

11. The Owner agrees that the scope of the work for the Project is confined to terms of the Prime Contract.

12. The Owner agrees to provide the Surety and the Completion Contractor with reasonable access and/or copies of documents submitted by the Original Contractor (or its subcontractors or vendors) to the Owner in connection with the Project or the Contract, including correspondence, contract documents, plans, specifications, and submittals.

13. This Agreement is solely for the benefit of the Owner and the Surety. The Owner and the Surety do not intend by any provision of this Agreement to create any rights in or increase the rights of any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the Owner and the Surety. Specifically, the Owner and the Surety acknowledge that nothing in this Agreement shall extend or increase the rights of any third-party claimants or the liabilities or obligations of the Surety under the Bonds.

14. This Agreement constitutes the whole of the understanding, discussions, and agreements by and between the Owner and the Surety. The terms and provisions of this Agreement are contractual and not mere recitals. The Owner and the Surety acknowledge that there have been no oral, written or other agreements of any kind as a condition precedent to or to induce the execution and delivery of this Agreement. Any written or oral discussions conducted prior to the effective date of this Agreement shall not in any way vary or alter the terms of this Agreement.

15. This Agreement shall not be changed, amended or altered in any way except in writing and executed by both the Owner and the Surety.

16. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.

17. This Agreement shall be governed by and controlled by the laws of the State of Texas.

18. Any notices which are required to be given by the terms of this Agreement or the Bonds shall be made as follows:

As to the Owner:

Via certified mail, return receipt required, postage prepaid to:

James Razinha
Facilities Manager
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

As to the Surety:

Via certified mail, return receipt required, postage prepaid to:

Frank Hucks
Senior Surety Counsel
Interchange Corporate Center
450 Plymouth Road, Suite 400
Plymouth Meeting, PA 19462

With a copy to:

Gregory M. Weinstein
Langley Weinstein Hamel LLP
901 Main Street, Suite 600
Dallas, Texas 75202

19. This Agreement is effective as of the date first written above.
20. This Agreement shall be binding upon the parties and their respective successors and assigns.
21. In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.
22. All representations and warranties made in this Agreement shall survive the execution and delivery of this Agreement and the consummation of the transaction contemplated thereby.
23. The Surety and the Owner mutually reserve all rights, claims, causes of actions, demands and defenses, known or unknown, now existing or accruing after the execution of this Agreement that they have or may have against each other. It is not the intention of the Surety in entering into this Takeover Agreement to waive, prejudice, amend, alter, revise, release or in any way adversely affect any claim, cause of action or defense, known or unknown, that it, as Surety, or the Original Contractor, might have against the Owner or any other person, party, or entity. Furthermore, the Surety explicitly reserves all of the rights available to the Original Contractor under the Contract.
24. All claims, rights, causes of action of or against the Original Contractor arising prior to the execution of this Agreement are preserved. The Surety shall have the right to pursue these claims in its own name or in the name of the Original Contractor. The parties do not intend for this Agreement to be a settlement of claims or an accord and satisfaction.

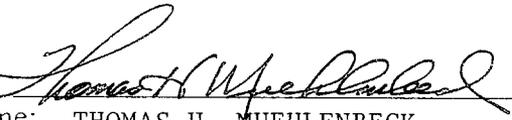
25. In addition to the contract documents previously referenced in this Agreement, the parties incorporate herein by reference the following documents:

- a. Most Recent Payment Application of the Original Contractor;
- b. Most Recent Unpaid Payment Application of the Original Contractor;
- c. The Prime Contract;
- d. The Bonds;
- e. All Change Orders and Time Extension Requests;
- f. All Notices of Defective Work;
- g. All Claims of Notices on the Project from Subcontracts or Vendors;
- h. A listing of all payments made by the Owner to the Original Contractor, showing the payment date, the amount paid, the check number, and the payee.

26. In case of conflict between the provisions of this Agreement and the provisions of the Prime Contract and/or the Bonds, the documents in this following order shall control: (1) this Agreement; (2) the Bonds; and (3) the Prime Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above, and each of the undersigned personally represent and warrant that they have the full right, power and authority to execute this Agreement on behalf of the respective parties.

OWNER

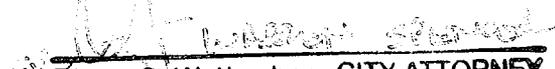
By: 
 Name: THOMAS H. MUEHLENBECK
 Title: CITY MANAGER

SURETY

By: 
 Name: Frank Hicks
 Title: Senior Surety Counsel

11721.0076/City of Plano (Storage Expansion)

APPROVED AS TO FORM:


Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>MP</i>	7/15/09
Council Meeting Date:	7/27/09	Budget	C.S.	7-15-09
Department:	Public Works & Engineering	Legal	<i>WS K</i>	<i>RL</i>
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>R.D.</i>	7-16-09
		City Manager	<i>Y.M.</i>	7/16/09
Agenda Coordinator (include phone #):		Irene Pegues X-7198	<i>IP</i>	Proj. #5791
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A resolution of the City Council of the City of Plano, Texas, approving the dedication of four tracts of land, a 0.371 acre tract, a 1.173 acre tract, a 1.302 acre tract, and a 3.575 acre tract, owned by the City of Plano, Texas designated as park property but not yet utilized as park for dedication as a public right-of-way for Chaparral Road, said tracts being situated in the Jeremiah Muncy Survey, Abstract No. 621 and the R. C. Whisenant Survey, Abstract No. 1012, in the City of Plano, Collin County, Texas, and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
The Public Works and Engineering Department is finalizing plans to construct the south side of Chaparral Road from K Avenue to west of Cottonwood Creek. There are four tracts of land totaling 6.421 acres of park land that are needed for right-of-way. The tracts have not been utilized as a park, and can therefore be dedicated as right-of-way. Staff recommends approval.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map				

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE DEDICATION OF FOUR TRACTS OF LAND, A 0.371 ACRE TRACT, A 1.173 ACRE TRACT, A 1.302 ACRE TRACT, AND A 3.575 ACRE TRACT, OWNED BY THE CITY OF PLANO, TEXAS DESIGNATED AS PARK PROPERTY BUT NOT YET UTILIZED AS PARK FOR DEDICATION AS A PUBLIC RIGHT-OF-WAY FOR CHAPARRAL ROAD, SAID TRACTS BEING SITUATED IN THE JEREMIAH MUNCY SURVEY, ABSTRACT NO. 621 AND THE R. C. WHISENANT SURVEY, ABSTRACT NO. 1012, IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, additional public right-of-way is needed for the widening of Chaparral Road from K Avenue to west of Cottonwood Creek in accordance with the City of Plano Thoroughfare Plan; and,

WHEREAS, said additional right-of-way is described in the field notes and shown on the drawings attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, City Council is aware that the property is designated as park property but has not yet been utilized as a park, and

WHEREAS, upon full review and consideration of this Resolution, and all matters attendant and related thereto, the City Council is of the opinion that the four tracts of land totaling 6.421 acres should be dedicated as public right-of-way for Chaparral Road, and the City Manager or his authorized designee, is hereby authorized to record this Resolution in the Land Records of Collin County, Texas to evidence this dedication.

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

Section I. The City Council hereby authorizes the dedication of the additional public right-of-way for Chaparral Road from K Avenue to west of Cottonwood Creek and determines that the dedication is acceptable and is hereby in all things approved.

Section II. The City Manager or his authorized designee, is hereby authorized to record this Resolution in the Land Records of Collin County, Texas to evidence this dedication.

Section III. This Resolution shall become effective from and after its adoption.

DULY PASSED AND APPROVED this the ____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
CITY OF PLANO, TEXAS
CHAPARRAL ROAD WIDENING
PARCEL NO. 1 ROW PART 1

RIGHT-OF-WAY ACQUISITION
JEREMIAH MUNCY SURVEY, ABSTRACT No. 621
THE CITY OF PLANO, TEXAS
COLLIN COUNTY, TEXAS

Being a 0.371 acre tract of land situated in the Jeremiah Muncy Survey, Abstract No. 621, City of Plano, Collin County, Texas and being a portion of a remainder of a 71.888 acre tract of land (by deed) deeded to The City of Plano, Texas, as recorded in Volume 1629, Page 87 of the Deed Records of Collin County, Texas, said 0.371 acre tract of land being more particularly described by metes and bounds as follows:

COMMENCING at a point for the southwest corner of the Upper Rowlett Creek Lift Station Addition, an addition to the City of Plano, Collin County, Texas as recorded in Cabinet G, Page 365 of the Plat Records of Collin County, Texas, from which a 1/4 inch iron rod found for reference bears North 18 degrees 22 minutes 50 seconds West, a distance of 0.30 feet; **THENCE** North 01 degrees 33 minutes 39 seconds East, with the west line of said Upper Rowlett Creek Lift Station Addition, a distance of 218.37 feet to a 5/8 inch iron rod with cap stamped "GORRONDONA" set for the **POINT OF BEGINNING** of the herein described 0.371 acre tract of land, said point having a grid coordinate of N=7,078,082.07 and E=2,525,671.22, said 5/8 inch iron rod with cap stamped "GORRONDONA" being in the proposed south right-of-way line of Chaparral Drive (a variable width right-of-way);

THENCE North 88 degrees 24 minutes 38 seconds West, with the proposed south right-of-way line of said Chaparral Drive, a distance of 302.45 feet to a 5/8 inch iron rod with cap stamped "GORRONDONA" set for corner in a northwest line of said 71.888 acre tract of land, said 5/8 inch iron rod with cap stamped "GORRONDONA" being in the existing southeast right-of-way line of State Highway 5 (South Greenville Avenue) a variable width right-of-way;

THENCE North 31 degrees 55 minutes 30 seconds East, with the west line of said 71.888 acre tract of land and with the southeast right-of-way line of said State Highway 5, a distance of 65.46 feet to a point for the northwest corner of said 71.888 acre tract of land, said point being the intersection of the southeast right-of-way line of said State Highway 5 with the existing south right-of-way line of Chaparral Drive;

THENCE South 88 degrees 26 minutes 21 seconds East, with the north line of said 71.888 acre tract of land and with the existing south right-of-way line of said Chaparral Drive, a distance of 269.36 feet to a point for the northwest corner of said Upper Rowlett Creek Lift Station Addition, said point being an interior ell corner in the existing south right-of-way line of said Chaparral Drive;

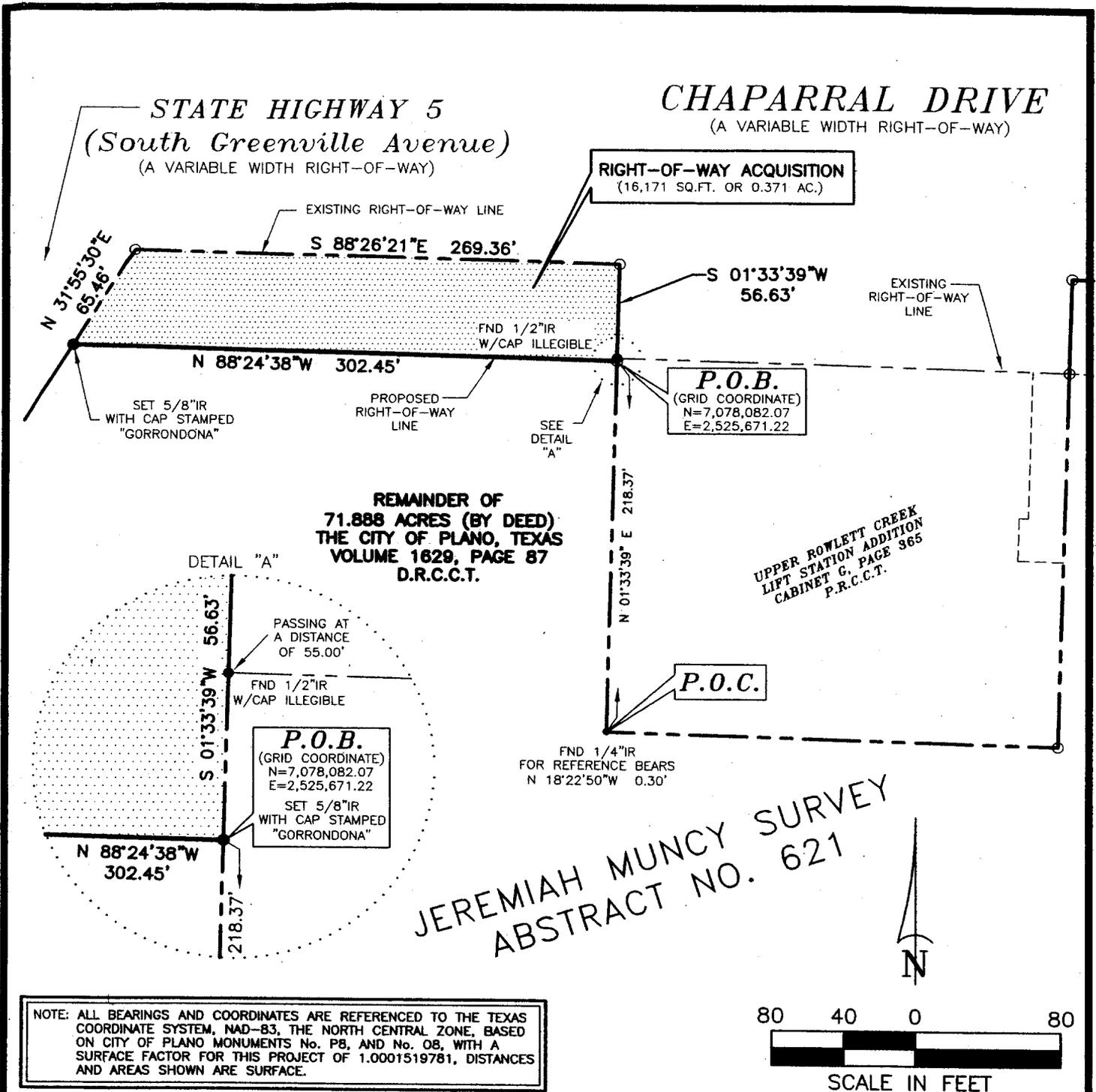
THENCE South 01 degrees 33 minutes 39 seconds West, with the existing south right-of-way line of said Chaparral Drive and with the west line of said Upper Rowlett Creek Lift Station Addition, passing at a distance of 55.00 feet a 1/2 inch iron rod with an illegible cap found for an exterior ell corner in the existing south right-of-way line of Chaparral Drive, in all, a distance of 56.63 feet the **POINT OF BEGINNING** and containing 16,171 square feet or 0.371 acres of land, more or less.

Note: All bearings and coordinates are referenced to the Texas Coordinate System, NAD-83, the North Central Zone, based on City of Plano Monuments No. P8, and No. O8, with a surface factor for this project of 1.0001519781, distances and areas shown are surface.

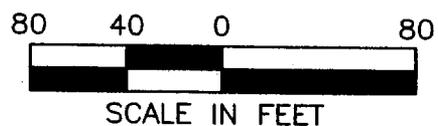
Date: February 9, 2009

By: 
Curtis Smith
Registered Professional Land Surveyor,
Texas No. 5494





NOTE: ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE TEXAS COORDINATE SYSTEM, NAD-83, THE NORTH CENTRAL ZONE, BASED ON CITY OF PLANO MONUMENTS No. P8, AND No. 08, WITH A SURFACE FACTOR FOR THIS PROJECT OF 1.0001519781, DISTANCES AND AREAS SHOWN ARE SURFACE.



 CITY OF PLANO, TEXAS 1520 AVENUE K • PLANO, TEXAS 75086-0358		
CHAPARRAL ROAD WIDENING		
PARCEL NO. 1ROW PART 1		
OWNER: CITY OF PLANO		
LOCATION: CITY OF PLANO, COLLIN COUNTY, TEXAS		
RIGHT-OF-WAY ACQUISITION AREA: 16,171 SQ. FT OR 0.371 ACRES		
WHOLE PROPERTY ACREAGE: REMAINDER OF 71.888 ACRES (BY DEED)		
JOB NO. 0708-2098	DRAWN BY: T.T.W.	CADD FILE: 2098 ESMT.dwg
PAGE 1 OF 1	DATE: FEBRUARY 9, 2009	SCALE: 1" = 80'
GORRONDONA & ASSOCIATES, INC. • 6707 BRENTWOOD STAIR ROAD, SUITE 50 FORT WORTH, TX. 76112 • PH. 817/496-1424 FAX 817/496-1768		



CURTIS SMITH
 REGISTERED PROFESSIONAL LAND SURVEYOR
 NO. 5494

P-6

EXHIBIT "A"
CITY OF PLANO, TEXAS
CHAPARRAL ROAD WIDENING
PARCEL NO. 1ROW PART 2

RIGHT-OF-WAY ACQUISITION
JEREMIAH MUNCY SURVEY, ABSTRACT No. 621
CITY OF PLANO
COLLIN COUNTY, TEXAS

Being a 1.173 acre tract of land situated in the Jeremiah Muncy Survey, Abstract No. 621, City of Plano, Collin County, Texas and being a portion of a remainder of a 71.888 acre tract of land (by deed) deeded to The City of Plano, Texas, as recorded in Volume 1629, Page 87 of the Deed Records of Collin County, Texas, said 1.173 acre tract of land being more particularly described by metes and bounds as follows:

COMMENCING at a point for the southeast corner of the Upper Rowlett Creek Lift Station Addition, an addition to the City of Plano, Collin County, Texas, as recorded in Cabinet G, Page 365 of the Plat Records of Collin County, Texas from which a 1/4 inch iron rod found for the southeast corner of said Upper Rowlett Creek Lift Station Addition bears North 51 degrees 09 minutes 31 seconds West, a distance of 0.52 feet; **THENCE** North 01 degrees 33 minutes 39 seconds East, with the east line of said Upper Rowlett Creek Lift Station Addition, a distance of 218.24 feet to a 5/8 inch iron rod with cap stamped "GORRONDONA" set for the **POINT OF BEGINNING** of the herein described 1.173 acre tract of land, said 5/8 inch iron rod with cap stamped "GORRONDONA" having a grid coordinate of N=7,078,075.14 and E=2,525,921.09, said 5/8 inch iron rod with cap stamped "GORRONDONA" also being in the proposed south right-of-way line of Chaparral Drive (a variable width right-of-way);

THENCE North 01 degrees 33 minutes 39 seconds East, with the east line of said Upper Rowlett Creek Lift Station Addition, passing at a distance of 1.76 feet a 3/4 inch iron rod found for an exterior ell corner in the existing south right-of-way line of said Chaparral Drive, in all, a distance of 56.76 feet to a point for an exterior ell corner in the existing south right-of-way line of said Chaparral Drive, said point being the northeast corner of said Upper Rowlett Creek Lift Station Addition;

THENCE South 88 degrees 27 minutes 27 seconds East, with the existing south right-of-way line of said Chaparral Drive, a distance of 891.30 feet to a point for the northeast corner of said 71.888 acre tract of land, said point being the intersection of the existing south right-of-way line of said Chaparral Drive with the existing west right-of-way line of Emerald Coast Drive (a 92.0' right-of-way);

THENCE South 01 degrees 49 minutes 23 seconds West, with the east line of said 71.888 acre tract of land and with the existing west right-of-way line of said Emerald Coast Drive, a distance of 77.61 feet to a 5/8 inch iron rod with cap stamped "GORRONDONA" set for corner in the proposed south right-of-way line of Chaparral Drive;

THENCE North 43 degrees 07 minutes 03 seconds West, with the proposed south right-of-way line of said Chaparral Drive, a distance of 28.31 feet to a 5/8 inch iron rod with cap stamped "GORRONDONA" set for corner;

THENCE North 88 degrees 24 minutes 38 seconds West, with the proposed south right-of-way line of Chaparral Road, a distance of 871.03 feet the **POINT OF BEGINNING** and containing 51,108 square feet or 1.173 acres of land, more or less.

Note: All bearings and coordinates are referenced to the Texas Coordinate System, NAD-83, the North Central Zone, based on City of Plano Monuments No. P8, and No. O8, with a surface factor for this project of 1.0001519781, distances and areas shown are surface.

Date: February 9, 2009

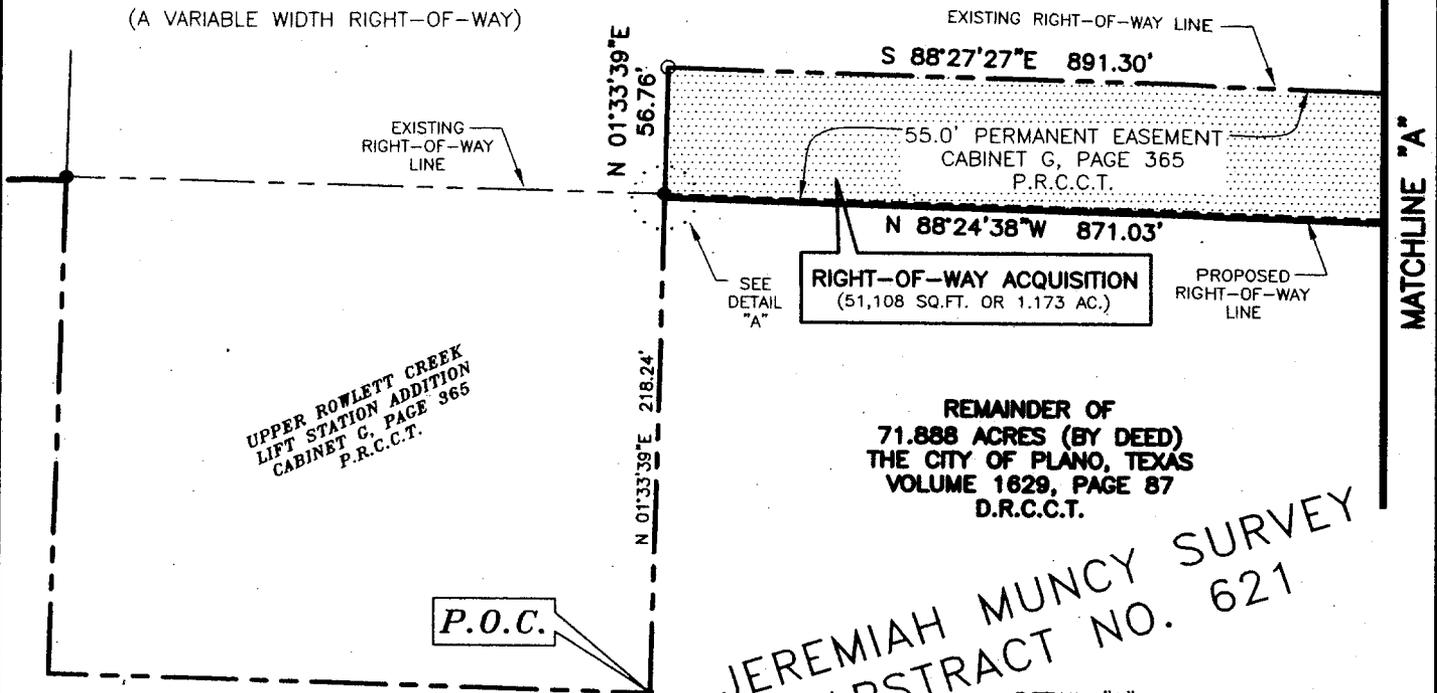
By: 
Curtis Smith
Registered Professional Land Surveyor,
Texas No. 5494



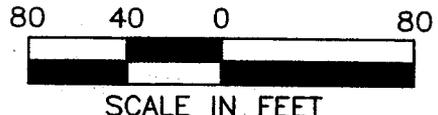
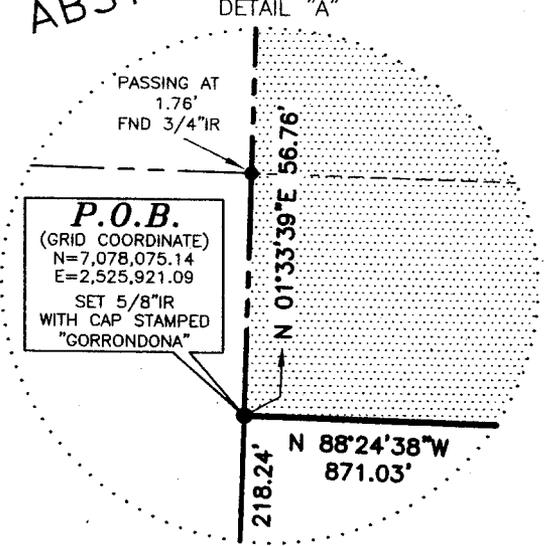
P-8

CHAPARRAL DRIVE

(A VARIABLE WIDTH RIGHT-OF-WAY)

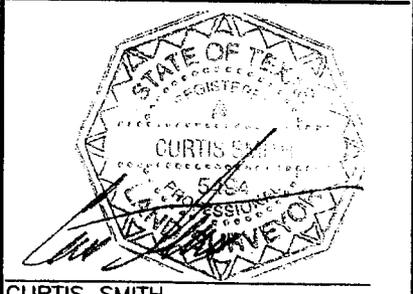


FND 1/4"IR
FOR REFERENCE BEARS
N 51°09'31"W 0.52'



NOTE: ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE TEXAS COORDINATE SYSTEM, NAD-83, THE NORTH CENTRAL ZONE, BASED ON CITY OF PLANO MONUMENTS No. PB, AND No. 08, WITH A SURFACE FACTOR FOR THIS PROJECT OF 1.0001519781, DISTANCES AND AREAS SHOWN ARE SURFACE.

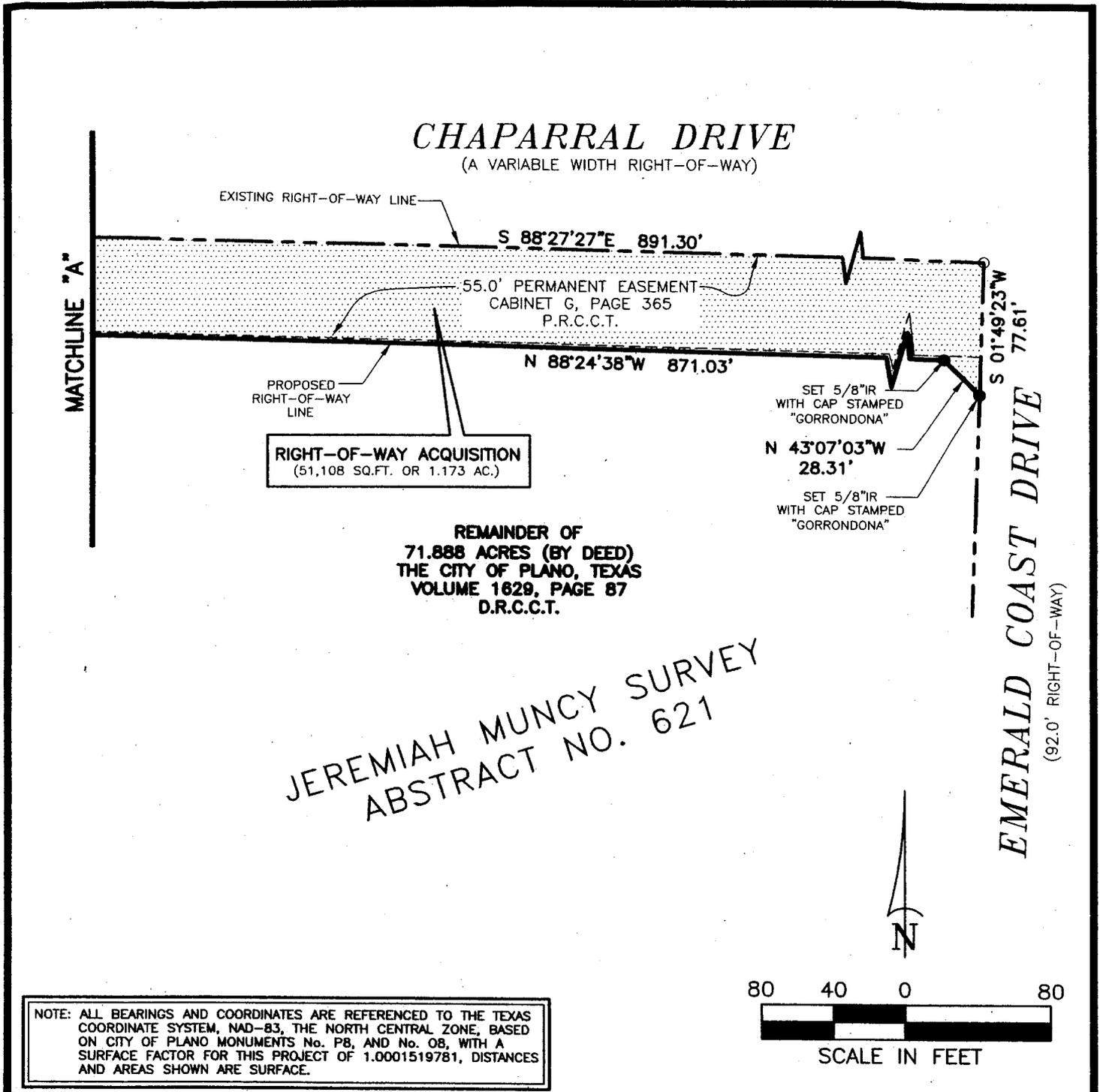
THE CITY OF PLANO, TEXAS
1520 AVENUE K • PLANO, TEXAS 75086-0358



CHAPARRAL ROAD WIDENING		
PARCEL NO. 1ROW PART 2		
OWNER: CITY OF PLANO		
LOCATION: CITY OF PLANO, COLLIN COUNTY, TEXAS		
RIGHT-OF-WAY ACQUISITION AREA: 51,108 SQ. FT OR 1.173 ACRES		
WHOLE PROPERTY ACREAGE: REMAINDER OF 71.888 ACRES (BY DEED)		
JOB NO. 0708-2098	DRAWN BY: T.T.W.	CADD FILE: 2098 ESMT.dwg
PAGE 1 OF 2	DATE: FEBRUARY 9, 2009	SCALE: 1" = 80'

CURTIS SMITH
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 5494

P-9



JEREMIAH MUNCY SURVEY
ABSTRACT NO. 621

NOTE: ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE TEXAS COORDINATE SYSTEM, NAD-83, THE NORTH CENTRAL ZONE, BASED ON CITY OF PLANO MONUMENTS No. P8, AND No. O8, WITH A SURFACE FACTOR FOR THIS PROJECT OF 1.0001519781, DISTANCES AND AREAS SHOWN ARE SURFACE.



CITY OF PLANO, TEXAS
1520 AVENUE K • PLANO, TEXAS 75086-0358

CHAPARRAL ROAD WIDENING		
PARCEL NO. 1ROW PART 2		
OWNER: CITY OF PLANO		
LOCATION: CITY OF PLANO, COLLIN COUNTY, TEXAS		
RIGHT-OF-WAY ACQUISITION AREA: 51,108 SQ. FT OR 1.173 ACRES		
WHOLE PROPERTY ACREAGE: REMAINDER OF 71.888 ACRES (BY DEED)		
JOB NO. 0708-2098	DRAWN BY: T.T.W.	CADD FILE: 2098 ESMT.dwg
PAGE 2 OF 2	DATE: FEBRUARY 9, 2009	SCALE: 1" = 80'



CURTIS SMITH
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 5494

P-10

EXHIBIT "A"
CITY OF PLANO, TEXAS
CHAPARRAL ROAD WIDENING
PARCEL NO. 4 ROW

RIGHT-OF-WAY ACQUISITION
119.454 ACRES (BY DEED)
CITY OF PLANO, TEXAS
CITY OF PLANO
COLLIN COUNTY, TEXAS

Being a 1.302 acre tract of land situated in the R.C. Whisenant Survey, Abstract No. 1012, City of Plano, Collin County, Texas and being a portion of a 119.454 acre tract of land (by deed) deeded to the City of Plano, Texas, as recorded in Volume 1938, Page 929 of the Deed Records of Collin County, Texas, said 1.302 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with cap stamped "Carter & Burgess" found for corner in the south line of a proposed 3.575 acre tract of land, said proposed 3.575 acre tract of land being a portion of said 119.454 acre tract of land, said 5/8 inch iron rod with cap stamped "Carter & Burgess" being in the proposed south right-of-way line of Chaparral Drive (a variable width right-of-way), said 5/8 inch iron rod with cap stamped "Carter & Burgess" also being the beginning of a curve to the left having a radius of 750.00 feet, a central angle of 16 degrees 01 minutes 31 seconds and whose chord bears North 82 degrees 41 minutes 01 seconds West, a distance of 209.09 feet, said 5/8 inch iron rod with cap stamped "Carter & Burgess" have a grid coordinate of N=7,078,087.48 and E=2,532,269.50, from which a 5/8 inch iron rod with cap stamped "Carter & Burgess" found for corner in the south line of said proposed 3.575 acre tract of land bears a chord bearing of South 82 degrees 39 minutes 44 seconds East, a distance of 237.56 feet;

THENCE with said curve to the left and with the proposed south right-of-way line of said Chaparral Drive, an arc length of 209.77 feet to a 5/8 inch iron rod with cap stamped "GORRONDONA" set for corner;

THENCE South 89 degrees 21 minutes 01 seconds West, with the proposed south right-of-way line of said Chaparral Drive, a distance of 888.85 feet to a 5/8 inch iron rod with cap stamped "GORRONDONA" set for the beginning of a curve to the left having a radius of 795.00 feet, a central angle of 08 degrees 12 minutes 26 seconds and whose chord bears South 85 degrees 14 minutes 48 seconds West, a distance of 113.78 feet;

THENCE with said curve to the left and with the proposed south right-of-way line of said Chaparral Drive, an arc length of 113.88 feet to a 5/8 inch iron rod with cap stamped "GORRONDONA" set for the intersection of the proposed south right-of-way line of said Chaparral Drive with the existing east right-of-way line of Cloverhaven Way (a 60.0' right-of-way) as recorded in Volume 5125, Page 1515 of said Deed Records of Collin County, Texas;

- THENCE** North 08 degrees 20 minutes 52 seconds West, with the existing east right-of-way line of said Cloverhaven Way, a distance of 10.29 feet to a point for the intersection of the existing east right-of-way line of said Cloverhaven Way with the existing south right-of-way line of said Chaparral Drive, said point being the beginning of a non-tangent curve to the right having a radius of 416.60 feet, a central angle of 02 degrees 51 minutes 54 seconds and whose chord bears North 87 degrees 12 minutes 53 seconds East, a distance of 20.83 feet;
- THENCE** with said non-tangent curve to the right and with the existing south right-of-way line of said Chaparral Drive, an arc length of 20.83 feet to a point for corner;
- THENCE** North 01 degrees 21 minutes 09 seconds West, with the existing south right-of-way line of said Chaparral Drive, a distance of 55.41 feet to a point for corner;
- THENCE** North 89 degrees 22 minutes 37 seconds East, with the existing south right-of-way line of said Chaparral Drive, a distance of 816.91 feet to a point for corner;
- THENCE** North 00 degrees 12 minutes 43 seconds West, with the existing south right-of-way line of said Chaparral Drive, a distance of 16.14 feet to a point for corner;
- THENCE** North 89 degrees 00 minutes 48 seconds East, with the existing south right-of-way line of said Chaparral Drive, a distance of 50.01 feet to a point for the northwest corner of said proposed 3.575 acre tract of land;
- THENCE** South 00 degrees 32 minutes 38 seconds East, with the west line of said proposed 3.575 acre tract of land, a distance of 41.81 feet to a point for the southwest corner of said proposed 3.575 acre tract of land, said point being the beginning of a non-tangent curve to the right having a radius of 770.00 feet, a central angle of 15 degrees 33 minutes 06 seconds and whose chord bears South 82 degrees 46 minutes 05 seconds East, a distance of 208.36 feet;
- THENCE** with said non-tangent curve to the right and with the south line of said proposed 3.575 acre tract of land, an arc length of 209.00 feet to a point for corner;
- THENCE** South 74 degrees 59 minutes 31 seconds East, with the south line of said proposed 3.575 acre tract of land, passing at a distance of 5.47 feet a 5/8 inch iron rod with cap stamped "Carter & Burgess" found for reference, in all, a distance of 121.82 feet to the **POINT OF BEGINNING** and containing 56,717 square feet or 1.302 acres of land, more or less.

Note: All bearings and coordinates are referenced to the Texas Coordinate System, NAD-83, the North Central Zone, based on City of Plano Monuments No. P8, and No. O8, with a surface factor for this project of 1.0001519781, distances and areas shown are surface.

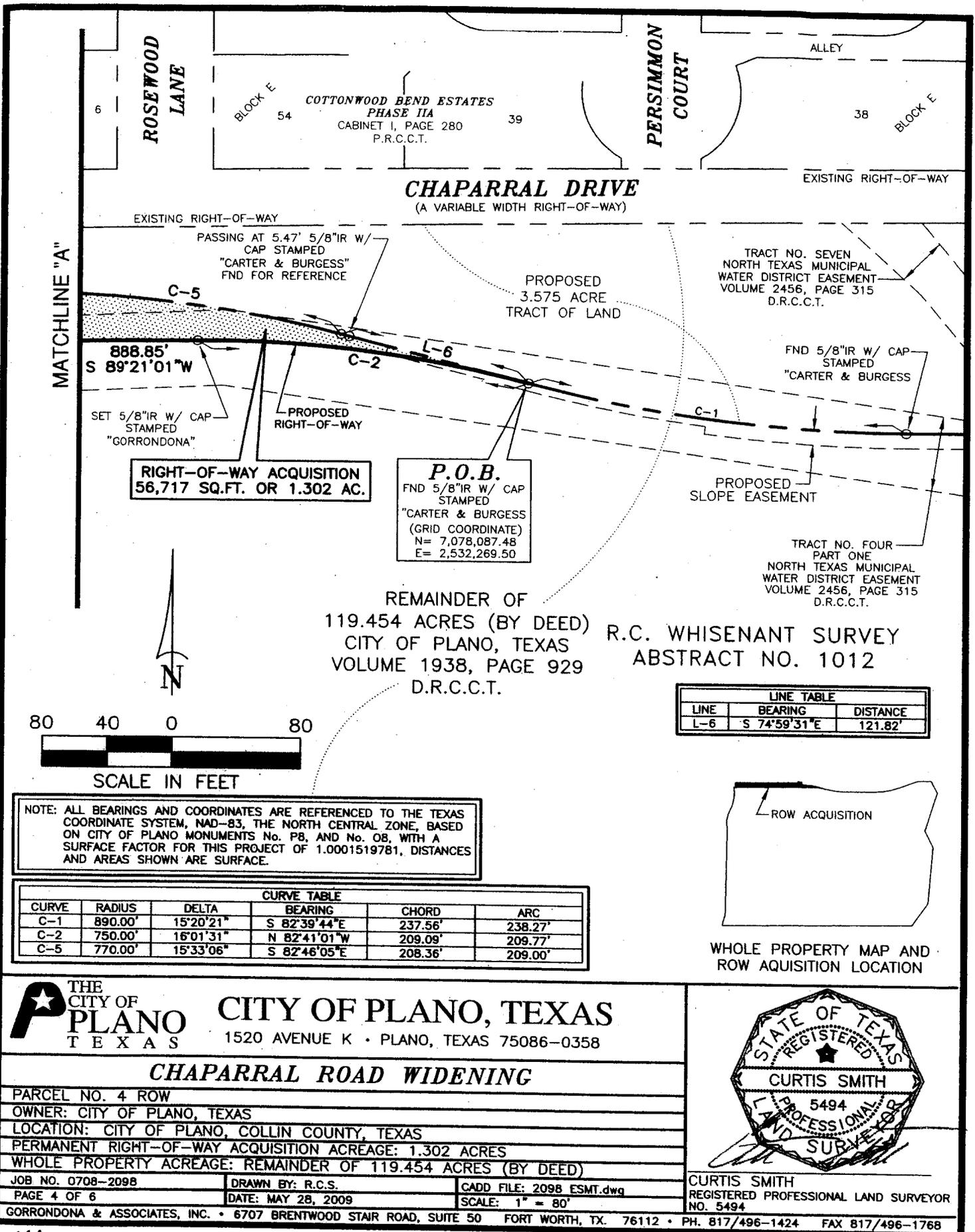
Date: May 28, 2009

By: _____



Curtis Smith
Registered Professional Land Surveyor,
Texas No. 5494





MATCHLINE "A"

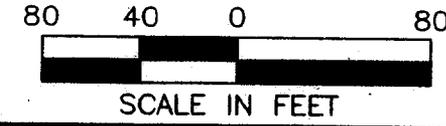
RIGHT-OF-WAY ACQUISITION
56,717 SQ.FT. OR 1.302 AC.

P.O.B.
FND 5/8"IR W/ CAP STAMPED
"CARTER & BURGESS"
(GRID COORDINATE)
N= 7,078,087.48
E= 2,532,269.50

REMAINDER OF
119.454 ACRES (BY DEED)
CITY OF PLANO, TEXAS
VOLUME 1938, PAGE 929
D.R.C.C.T.

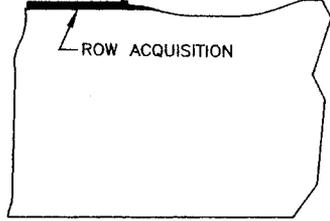
R.C. WISENANT SURVEY
ABSTRACT NO. 1012

LINE TABLE		
LINE	BEARING	DISTANCE
L-6	S 74°59'31"E	121.82'



NOTE: ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE TEXAS COORDINATE SYSTEM, NAD-83, THE NORTH CENTRAL ZONE, BASED ON CITY OF PLANO MONUMENTS No. PB, AND No. OB, WITH A SURFACE FACTOR FOR THIS PROJECT OF 1.0001519781, DISTANCES AND AREAS SHOWN ARE SURFACE.

CURVE TABLE					
CURVE	RADIUS	DELTA	BEARING	CHORD	ARC
C-1	890.00'	15°20'21"	S 82°39'44"E	237.56'	238.27'
C-2	750.00'	16°01'31"	N 82°41'01"W	209.09'	209.77'
C-5	770.00'	15°33'06"	S 82°46'05"E	208.36'	209.00'

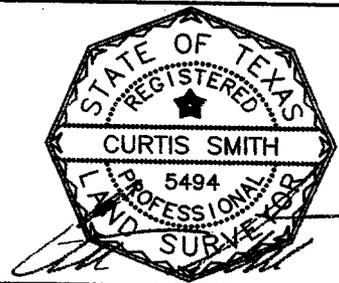


WHOLE PROPERTY MAP AND ROW ACQUISITION LOCATION

THE CITY OF PLANO, TEXAS
CITY OF PLANO, TEXAS
1520 AVENUE K • PLANO, TEXAS 75086-0358

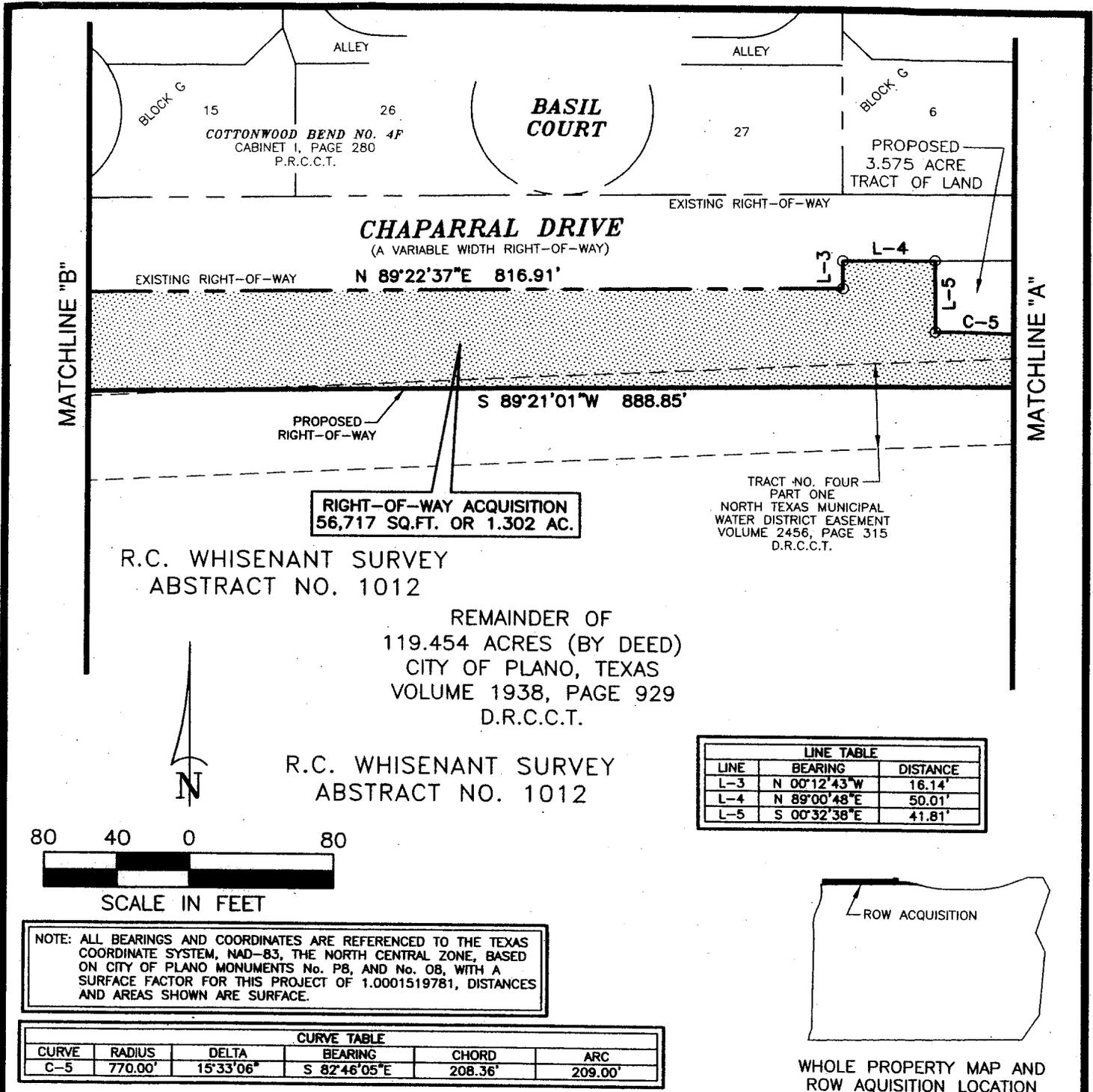
CHAPARRAL ROAD WIDENING

PARCEL NO. 4 ROW		
OWNER: CITY OF PLANO, TEXAS		
LOCATION: CITY OF PLANO, COLLIN COUNTY, TEXAS		
PERMANENT RIGHT-OF-WAY ACQUISITION ACREAGE: 1.302 ACRES		
WHOLE PROPERTY ACREAGE: REMAINDER OF 119.454 ACRES (BY DEED)		
JOB NO. 0708-2098	DRAWN BY: R.C.S.	CADD FILE: 2098 ESMT.dwg
PAGE 4 OF 6	DATE: MAY 28, 2009	SCALE: 1" = 80'
GORRONDONA & ASSOCIATES, INC. • 6707 BRENTWOOD STAIR ROAD, SUITE 50 FORT WORTH, TX. 76112 • PH. 817/496-1424 FAX 817/496-1768		



CURTIS SMITH
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 5494

P-14



RIGHT-OF-WAY ACQUISITION
56,717 SQ.FT. OR 1.302 AC.

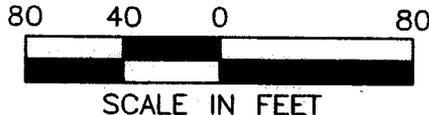
TRACT NO. FOUR
PART ONE
NORTH TEXAS MUNICIPAL
WATER DISTRICT EASEMENT
VOLUME 2456, PAGE 315
D.R.C.C.T.

R.C. WHISENANT SURVEY
ABSTRACT NO. 1012

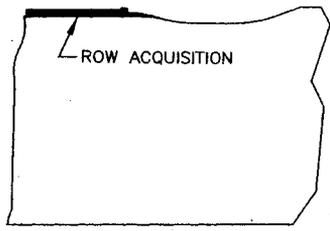
REMAINDER OF
119.454 ACRES (BY DEED)
CITY OF PLANO, TEXAS
VOLUME 1938, PAGE 929
D.R.C.C.T.

R.C. WHISENANT SURVEY
ABSTRACT NO. 1012

LINE TABLE		
LINE	BEARING	DISTANCE
L-3	N 00°12'43"W	16.14'
L-4	N 89°00'48"E	50.01'
L-5	S 00°32'38"E	41.81'



NOTE: ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE TEXAS COORDINATE SYSTEM, NAD-83, THE NORTH CENTRAL ZONE, BASED ON CITY OF PLANO MONUMENTS No. PB, AND No. OB, WITH A SURFACE FACTOR FOR THIS PROJECT OF 1.0001519781, DISTANCES AND AREAS SHOWN ARE SURFACE.



WHOLE PROPERTY MAP AND
ROW ACQUISITION LOCATION

CURVE TABLE					
CURVE	RADIUS	DELTA	BEARING	CHORD	ARC
C-5	770.00'	15°33'06"	S 82°46'05"E	208.36'	209.00'

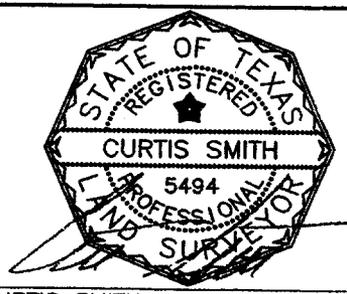
THE CITY OF PLANO, TEXAS
CITY OF PLANO, TEXAS
1520 AVENUE K • PLANO, TEXAS 75086-0358

CHAPARRAL ROAD WIDENING

PARCEL NO. 4 ROW
OWNER: CITY OF PLANO, TEXAS
LOCATION: CITY OF PLANO, COLLIN COUNTY, TEXAS
PERMANENT RIGHT-OF-WAY ACQUISITION ACREAGE: 1.302 ACRES
WHOLE PROPERTY ACREAGE: REMAINDER OF 119.454 ACRES (BY DEED)

JOB NO. 0708-2098
PAGE 5 OF 6
DRAWN BY: R.C.S.
DATE: MAY 28, 2009
CADD FILE: 2098 ESMT.dwg
SCALE: 1" = 80'

GORRONDONA & ASSOCIATES, INC. • 6707 BRENTWOOD STAIR ROAD, SUITE 50 FORT WORTH, TX. 76112 • PH. 817/496-1424 FAX 817/496-1768



CURTIS SMITH
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 5494

**TRACT 1 - 3.575 ACRES
RIGHT-OF-WAY DEDICATION**

BEING A 3.575 ACRE TRACT OF LAND SITUATED IN THE R.C. WISENANT SURVEY, ABSTRACT NO.1012, IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS AND BEING A PART OF A 119.454 ACRE TRACT OF LAND DESCRIBED IN DEED TO THE CITY OF PLANO RECORDED IN VOLUME 1938, PAGE 929, OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS (D.R.C.C.T.). BEARING BASIS IS GEODETIC NORTH (TRUE NORTH) DERIVED FROM GPS OBSERVATIONS. SAID 3.575 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID CITY OF PLANO TRACT AND THE COMMON SOUTHEAST CORNER OF A 6.535 ACRE TRACT OF LAND CONYVED TO F. LILES ARNOLD, ET UX BY DEED RECORDED IN COUNTY CLERK'S FILE NO. 94-0050644, DEED RECORDS, COLLIN COUNTY, TEXAS;

THENCE S 89°35'34" W, ALONG THE NORTH LINE OF SAID CITY OF PLANO TRACT AND THE COMMON SOUTH LINE OF SAID ARNOLD TRACT, A DISTANCE OF 173.55 FEET TO A 5/8" IRON ROD CAPPED "CARTER & BURGESS" SET FOR THE POINT OF BEGINNING;

THENCE OVER AND ACROSS SAID CITY OF PLANO TRACT, THE FOLLOWING COURSES AND DISTANCES:

S 69°45'24" W, A DISTANCE OF 268.54 FEET TO A 5/8" IRON ROD CAPPED "CARTER & BURGESS" SET FOR CORNER;

ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 890.00 FEET, A DELTA ANGLE OF 20°29'28", A LONG CHORD THAT BEARS S 80°00'09" W A DISTANCE OF 316.60 FEET, AN ARC DISTANCE OF 318.30 FEET TO A 5/8" IRON ROD CAPPED "CARTER & BURGESS" SET FOR CORNER;

N 89°45'07" W, A DISTANCE OF 377.31 FEET TO A 5/8" IRON ROD CAPPED "CARTER & BURGESS" SET FOR CORNER;

ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 890.00 FEET, A DELTA ANGLE OF 15°20'22", A LONG CHORD THAT BEARS N 82°04'56" W A DISTANCE OF 237.56 FEET, AN ARC DISTANCE OF 238.27 FEET TO A 5/8" IRON ROD CAPPED "CARTER & BURGESS" SET FOR CORNER;

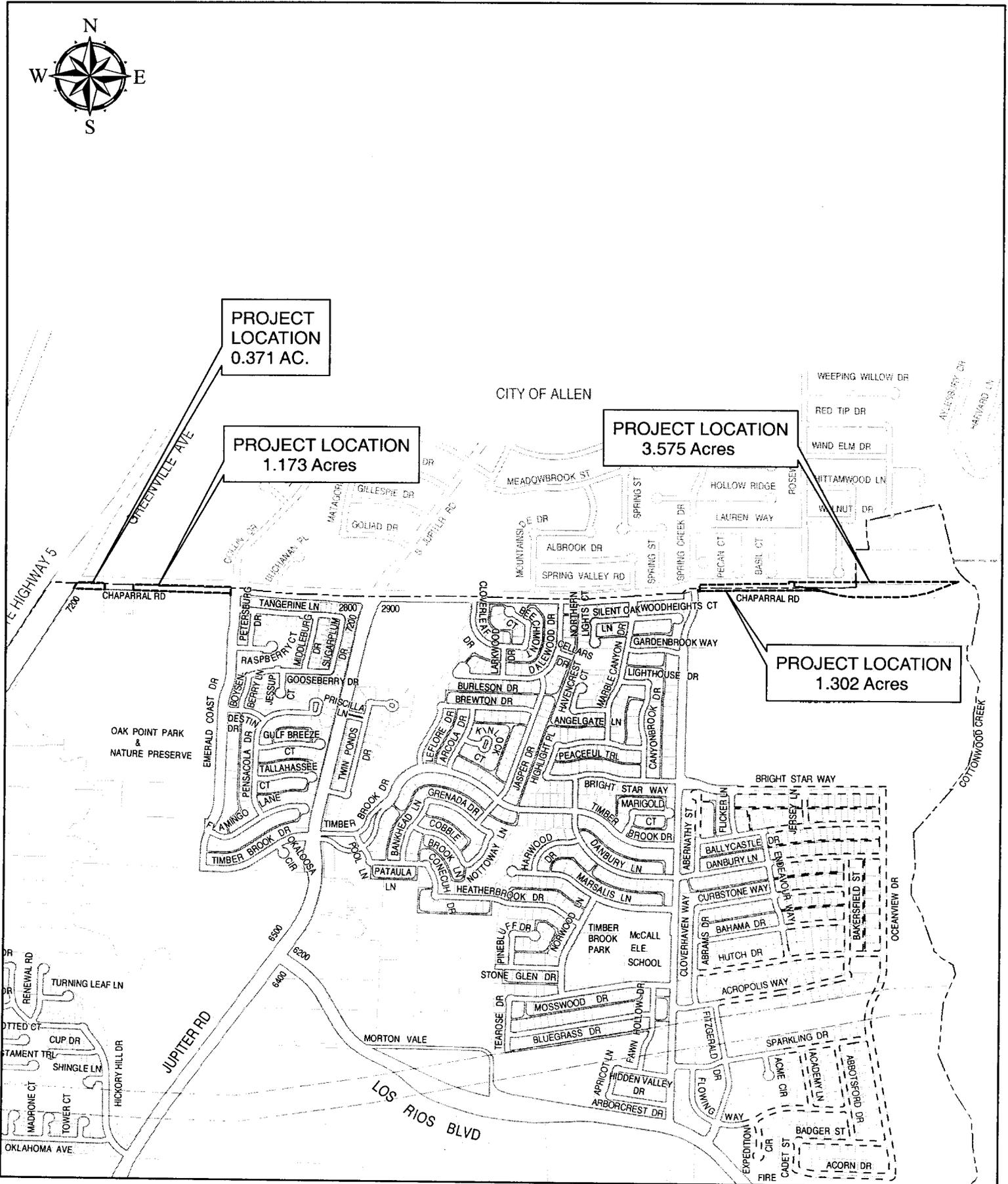
N 74°24'45" W, A DISTANCE OF 121.82 FEET TO A 5/8" IRON ROD CAPPED "CARTER & BURGESS" SET FOR CORNER;

ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 770.00 FEET, A DELTA ANGLE OF 15°33'07", A LONG CHORD THAT BEARS N 82°11'19" W A DISTANCE OF 208.36 FEET, AN ARC DISTANCE OF 209.00 FEET TO A 5/8" IRON ROD CAPPED "CARTER & BURGESS" SET FOR CORNER;

N 00°02'08" E, A DISTANCE OF 41.81 FEET TO A 5/8" IRON ROD CAPPED "CARTER & BURGESS" SET FOR CORNER;

THENCE N 89°35'34" E, A DISTANCE OF 1500.14 FEET THE POINT OF BEGINNING, AND CONTAINING 3.575 ACRES OF LAND, MORE OR LESS.

CHAPARRAL ROAD WIDENING





CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	DJP 7/16/09	
Council Meeting Date: 7/27/09		Budget	C.S. 7-16-09	
Department:	Public Works & Engineering	Legal	✓	
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	RH 2-16-09	
		City Manager	[Signature] 2/16/09	
Agenda Coordinator (include phone #): Irene Pegues (7198) ✓		Project No. 5387.1		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, for Intersection Improvements at McDermott Road and Robinson Road; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	190,000	0	190,000
BALANCE	0	190,000	0	190,000
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: This item modifies an interlocal agreement with Collin County for the McDermott – Robinson Intersection Improvements project. If this request is approved, it will limit Collin County's participation in this project to \$190,000 for intersection improvements at McDermott Road and Robinson Road.				
STRATEGIC PLAN GOAL: Interlocal agreements for intersection improvements relate to the City's Goal of Safe, Efficient Travel.				
SUMMARY OF ITEM				
The City Council previously approved this agreement on May 26, 2009. Since that approval, Collin County has requested that Article V be removed as it says the County and City shall share in excess costs but limits the County's participation to \$190,000. This revised agreement provides for Collin County to remit to the City the sum of \$190,000 for Intersection Improvements at McDermott Road and Robinson Road. Half of the County funds will be provided after a notice to proceed is issued, the remaining half when the project is half completed. These funds were allocated from the 2007 Collin County Bond Program.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map			N/A	

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND COLLIN COUNTY, TEXAS, FOR INTERSECTION IMPROVEMENTS AT MCDERMOTT ROAD AND ROBINSON ROAD; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform government functions and services under the terms thereof; and

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas, and Collin County, Texas, providing terms and conditions for Intersection Improvements at McDermott Road and Robinson Road, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee should be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interest of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED the _____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF PLANO
CONCERNING INTERSECTION IMPROVEMENTS
AT MCDERMOTT ROAD AND ROBINSON ROAD**

**2007 BOND PROJECT #07-058
2008 Partial Funding**

WHEREAS, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), desire to enter into an agreement concerning Intersection Improvements at McDermott Road and Robinson Road (the "Project") in Plano, Collin County, Texas; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the City and County have determined that the improvements may be constructed most economically by implementing this agreement.

NOW, THEREFORE, this agreement is made and entered into by the County and the City upon and for the mutual consideration stated herein.

WITNESSETH:

ARTICLE I.

The City shall arrange to construct Intersection Improvements at McDermott Road and Robinson Road, hereinafter called the "Project". The Project shall consist of constructing six lanes for McDermott Road at the intersection of Robinson Road. These improvements will extend approximately 350 feet each side of Robinson Road. All improvements shall be designed to meet or exceed the current Collin County design standards and shall be constructed in accordance with the plans and specifications approved by the City.

ARTICLE II.

The City shall prepare plans and specifications for the improvements, accept bids and award a contract to construct the improvements and administer the construction contract. In all such activities, the City shall comply with all

state statutory requirements. The City shall provide the County with a copy of the executed construction contract(s) for the Project.

ARTICLE III.

The City will acquire no real property in the vicinity of the improvements for use as right-of-way.

ARTICLE IV.

The City estimates the total actual cost of the project to be \$380,000. The County agrees to fund one half of the total cost to construct the improvements in an amount not to exceed \$190,000. The County shall remit 50 percent of this amount, \$95,000, to the City within thirty (30) days after the City issues a notice to proceed to the lowest responsible bidder and the City requests payment. The County will remit the remaining 50 percent within thirty (30) days after receipt of notice from the City that the Project is 50 percent complete. Following completion of the Project, the City shall provide a final accounting of expenditures for the Project. If the actual cost to construct the Project is less than the estimated amount set forth herein, the City shall remit the County 50 percent of the difference between the estimated cost and the actual cost. The Commissioners Court may revise this payment schedule based on the progress of the Project. The "total cost of the Project" shall include land acquisition, engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies.

ARTICLE V.

The City shall prepare for the County an itemized statement specifying Project costs that have been incurred to date and submit detailed Project cost and progress reports every thirty (30) days until Project completion.

ARTICLE VI.

The City and County agree that the party paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party.

ARTICLE VII.

INDEMNIFICATION. To the extent allowed by law, each party agrees to release, defend, indemnify, and hold harmless the other (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments and costs, including reasonable

attorneys' fees and expenses, in any way arising out of, related to, or resulting from its performance under this agreement, or caused by its negligent acts or omissions (or those of its respective officers, agents, employees, or any other third parties for whom it is legally responsible) in connection with performing this agreement.

ARTICLE VIII.

VENUE. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this agreement. The parties agree that this agreement is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

ARTICLE IX.

SEVERABILITY. The provisions of this agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the agreement shall be enforced as if the invalid provision had never been included.

ARTICLE X.

ENTIRE AGREEMENT. This agreement embodies the entire agreement between the parties and may only be modified in writing executed by both parties.

ARTICLE XI.

SUCCESSORS AND ASSIGNS. This agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this agreement without the written consent of the other party.

ARTICLE XII.

IMMUNITY. It is expressly understood and agreed that in the execution of this agreement neither party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this agreement, the parties do not create any obligations, express or implied, other than those set forth herein; and this agreement shall not create any rights in parties not signatories hereto.

ARTICLE XIII.

TERM. This agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project. This agreement shall automatically renew annually during this period.

APPROVED AS TO FORM:

COUNTY OF COLLIN, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Keith Self
Title: County Judge
Date: _____

Executed on this ____ date of _____, 2009, by the County of Collin, pursuant to Commissioners' Court Order No. _____

ATTEST:

CITY OF PLANO, TEXAS

By: _____
Name: Diane Zucco
Title: City Secretary
Date: _____

By: _____
Name: Thomas H. Muehlenbeck
Title: City Manager
Date: _____

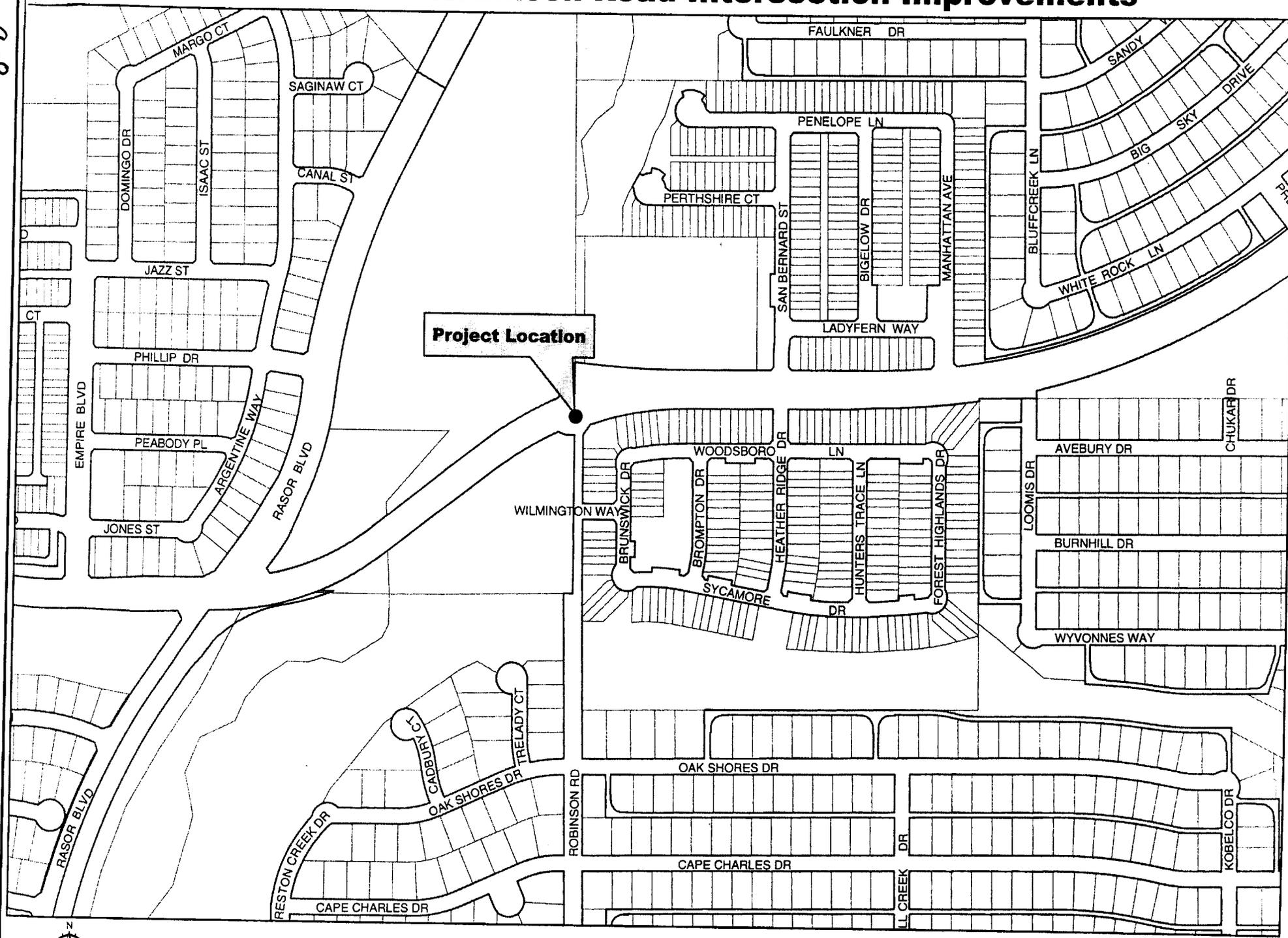
Executed on behalf of the City of Plano pursuant to City Council Resolution No. _____

APPROVED AS TO FORM:

By: _____
Name: Diane Wetherbee
Title: City Attorney
Date: _____

McDermott and Robinson Road Intersection Improvements

8-6



Location Map



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		D.S.	7-16-09	
Council Meeting Date: 7/27/09		C.S.	7-16-09	
Department: Public Works & Engineering		Legal WY	7-16-09	
Department Head: Alan L. Upchurch		Assistant City Manager		
Dept Signature: <i>Alan L. Upchurch</i>		B.H.	7-17-09	
		City Manager	7-17-09	
Agenda Coordinator (include phone #): Irene Pegues (7198)		Project No. 5542		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, concerning the Design and Right of Way Acquisitions for the Parker Road and US 75 Interchange and repealing Resolution No. 2004-9-25(R); authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	837,098	0	837,098
BALANCE	0	837,098	0	837,098
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: This item allows the City to enter into an interlocal agreement with Collin County for the Parker Road at US 75 project. If this request is approved, Collin County will remit to the City \$837,098 for design and right-of-way acquisitions for the Parker Road and US 75 Interchange.				
STRATEGIC PLAN GOAL: Interlocal agreements for street improvements relate to the City's Goal of Safe, Efficient Travel.				
SUMMARY OF ITEM				
The City and Collin County previously entered into an agreement for the schematic design of the Parker Road and US 75 Interchange at a maximum cost of \$117,424. Since then the City has spent \$1,674,195.00 for final design and right of way acquisitions, of which we are requesting that the County fund one half, or \$837,097.50, of which they have already paid \$58,714.00. The County has also paid TxDOT \$2,684,711.00 for the project. The County has \$6,000,000.00 allocated to the project. Deducting the County's \$2,684,711.00 and half the City cost of \$1,674,195.00, it leaves an unallocated balance of \$2,478,191.50. The City and County agree to reallocate the \$2,478,191.50 to another mutually agreed upon project. The attached interlocal agreement provides for the additional funding and reallocation of the remaining funding.				
List of Supporting Documents: Location Map		Other Departments, Boards, Commissions or Agencies N/A		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND COLLIN COUNTY, TEXAS, CONCERNING THE DESIGN AND RIGHT OF WAY ACQUISITIONS FOR THE PARKER ROAD AND US 75 INTERCHANGE AND REPEALING RESOLUTION NO. 2004-9-25(R); AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform government functions and services under the terms thereof; and

WHEREAS, the City of Plano had entered into an Interlocal Cooperation Agreement with Collin County addressing this same project on September 20, 2004 in Resolution No. 2004-9-25(R); and

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas, and Collin County, Texas, providing terms and conditions concerning the Design and Right of Way Acquisitions for the Parker Road and US 75 Interchange, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that Resolution No. 2004-9-25(R) should be repealed and the terms and conditions of this Agreement should be approved, and that the City Manager or his authorized designee should be authorized to execute it on behalf of the City of Plano.

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

Section I. Resolution No. 2004-9-25(R) is repealed in its entirety. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interest of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED the _____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF PLANO
CONCERNING THE DESIGN AND RIGHT OF WAY ACQUISITIONS FOR THE
PARKER ROAD AND U.S. 75 INTERCHANGE**

2003 BOND PROJECT # 03-046

WHEREAS, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), entered into an agreement concerning the design of the Parker Road and U.S. 75 Interchange (the "Project") in Plano on October 12, 2004, in which the County agreed to provide 50% of the cost of design of the project in the estimated amount of \$117,428.00; and

WHEREAS, the City has completed the design of the Parker Road and U.S. 75 Interchange project. The Project shall include an environmental assessment of the Project. All improvements were designed to meet or exceed the current Texas Department of Transportation (TxDOT) design standards; and

WHEREAS, the City acquired 3,972 square feet of real property in the vicinity of the improvements for use as right of way; and

WHEREAS, the City and County have entered into a Local Transportation Project Advance Funding Agreement with the Texas Department of Transportation to provide funding for the project in which the City agreed to provide funding in the amount of \$1,700,000.00 for design and right of way, and the County agreed to provided funding in the amount of \$2,684,711.00 for construction.

NOW, THEREFORE, this Amended Agreement is made and entered into by the County and the City upon and for the mutual consideration stated here.

WITNESSETH:

ARTICLE I.

The City's actual total cost of the design and right of way is \$1,674,195.00. The County agrees to fund one-half of the total cost to design the improvements in an amount not to exceed \$837,097.50. The County has previously paid the City \$58,714.00, leaving a balance of \$778,383.50. The County agrees to pay the City the balance within 30 days of receiving a final notice and accounting of the City's expenditures.

ARTICLE II.

The City and County acknowledge that there is an allocation of \$6,000,000.00 from the 2003 Collin County Bond Program. The County has paid TxDOT \$2,684,711.00 and agrees to pay Plano \$837,097.50 for a total of \$3,521,808.50. This leaves a balance of \$2,478,191.50 which the City and County agree to reallocate to a mutually agreed upon project.

ARTICLE III.

The City and County agree that the party paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party.

ARTICLE IV.

INDEMNIFICATION. To the extent allowed by law, each party agrees to release, defend, indemnify, and hold harmless the other (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments and costs, including reasonable attorneys' fees and expenses, in any way arising out of, related to, or resulting from its performance under this agreement, or caused by its negligent acts or omissions (or those of its respective officers, agents, employees, or any other third parties for whom it is legally responsible) in connection with performing this agreement.

ARTICLE V.

VENUE. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this agreement. The parties agree that this agreement is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

ARTICLE VI.

SEVERABILITY. The provisions of this agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the agreement shall be enforced as if the invalid provision had never been included.

ARTICLE VII.

ENTIRE AGREEMENT. This agreement embodies the entire agreement between the parties and may only be modified in writing executed by both parties.

ARTICLE VIII.

SUCCESSORS AND ASSIGNS. This agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this agreement without the written consent of the other party.

ARTICLE IX.

IMMUNITY. It is expressly understood and agreed that in the execution of this agreement neither party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of

governmental powers and functions. By entering into this agreement, the parties do not create any obligations, express or implied, other than those set forth herein; and this agreement shall not create any rights in parties not signatories hereto.

ARTICLE X.

TERM. This agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project. This agreement shall automatically renew annually during this period.

APPROVED AS TO FORM:

COUNTY OF COLLIN, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Keith Self
Title: County Judge
Date: _____

Executed on this _____ date of _____, 2009, by the County of Collin, pursuant to Commissioners' Court Order No. _____

ATTEST:

CITY OF PLANO, TEXAS

By: _____
Name: Diane Zucco
Title: City Secretary
Date: _____

By: _____
Name: Thomas H. Muehlenbeck
Title: City Manager
Date: _____

Executed on behalf of the City of Plano pursuant to City Council Resolution No. _____

APPROVED AS TO FORM:

By: _____
Name: Diane Wetherbee
Title: City Attorney
Date: _____



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	D.P. 7-16-09	
Council Meeting Date: 7/27/09		Budget	C.S. 7-16-09	
Department: Public Works & Engineering		Legal <i>WS</i>	7-16-09	
Department Head: Alan L. Upchurch		Assistant City Manager		
Dept Signature: <i>Alan L. Upchurch</i>		Deputy City Manager	R.H. 7-17-09	
		City Manager	<i>[Signature]</i> 7/17/09	
Agenda Coordinator (include phone #): Irene Pegues (7198) <i>[Signature]</i>			Project No. 5732	
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, for the Widening of Communications Parkway from Parker Road to Spring Creek Parkway and repealing Resolution No. 2009-3-6(R); authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	1,547,109	0	1,547,109
BALANCE	0	1,547,109	0	1,547,109
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: This item modifies an existing interlocal agreement with Collin County for the Communications Parkway – Parker to Spring Creek project. If this request is approved, it will limit Collin County's participation in this project to \$1,547,109 for the widening of Communications Parkway from Parker Road to Spring Creek Parkway.				
STRATEGIC PLAN GOAL: Interlocal agreements for street improvements relate to the City's Goal of Safe, Efficient Travel.				
SUMMARY OF ITEM				
The City Council previously approved this agreement on March 9, 2009. Since that approval, Collin County has requested that Article V be removed as it says the County and City shall share in excess costs but limits the County's participation to \$1,547,109.00. This revised agreement provides for Collin County to remit to the City the sum of \$1,547,109.00 for the Widening of Communications Parkway from Parker Road to Spring Creek Parkway. Half of the County funds will be provided after a notice to proceed is issued, the remaining half when the project is half completed. County funding is coming from the following projects:				
Communications Parkway	#03-52	\$	1,075,000	
Midway Road	#99-63	\$	50,826	
McDermott Road	#03-54	\$	21,283	
Los Rios Boulevard	#03-58	\$	400,000	
Total County Participation		\$	1,547,109	
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map		N/A		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND COLLIN COUNTY, TEXAS, FOR THE WIDENING OF COMMUNICATIONS PARKWAY FROM PARKER ROAD TO SPRING CREEK PARKWAY AND REPEALING RESOLUTION NO. 2009-3-6(R); AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform government functions and services under the terms thereof; and

WHEREAS, The City of Plano had entered into an Interlocal Cooperation Agreement with Collin County addressing this same project on March 9, 2009, in Resolution No. 2009-3-6(R); and

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas, and Collin County, Texas, providing terms and conditions for the Widening of Communications Parkway from Parker Road to Spring Creek Parkway, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that Resolution No. 2009-3-6-(R) should be repealed and the terms and conditions of this Agreement should be approved, and that the City Manager or his authorized designee should be authorized to execute it on behalf of the City of Plano.

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

Section I. Resolution No. 2009-3-6(R) is hereby repealed in its entirety. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interest of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED the _____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF PLANO
CONCERNING THE WIDENING OF COMMUNICATIONS PARKWAY
FROM PARKER ROAD TO SPRING CREEK PARKWAY**

2003 BOND PROJECT #03-52

WHEREAS, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), desire to enter into an agreement concerning the Widening of Communications Parkway from Parker Road to Spring Creek Parkway (the "Project"), in Plano, Collin County, Texas; and

WHEREAS, the 2003 Collin County Bond Program includes the Widening of Communications Parkway from Parker Road to Spring Creek Parkway, Project #03-52, with County allocation of \$1,075,000.00. The total Project cost is estimated to be \$3,094,218, and the County's 50% participation is \$1,547,109.00, thus \$472,109.00 additional funding is needed as the County's match; and

WHEREAS, the 1999 Collin County Bond Program includes the Widening of Midway Road from Parker Road to Spring Creek Parkway, Project #99-63, with a remaining County allocation of \$50,826.00, which the City proposes to reallocate to the Project; and

WHEREAS, the 2003 Collin County Bond Program includes the Widening of McDermott Road from Coit Road to Custer Road, Project #03-54, with a remaining County allocation of \$21,283.00, which the City proposes to reallocate to the Project; and

WHEREAS, the 2003 Collin County Bond Program includes the Improvement to Los Rios Boulevard from Los Robles to Parker Road, Project #03-58, with a County allocation of \$400,000.00, which the City proposes to reallocate to the Project; and

WHEREAS, the County agrees with the City's proposal to reallocate the County's remaining allocations of \$50,826.00 from Midway Road, \$21,283.00 from McDermott Road and \$400,000 from Los Rios Boulevard to the original \$1,075,000.00 for the Project for a total County participation of \$1,547,109.00; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the City and County have determined that the improvements may be constructed most economically by implementing this agreement.

NOW, THEREFORE, this agreement is made and entered into by the County and the City upon and for the mutual consideration stated herein.

WITNESSETH:

ARTICLE I.

The City shall arrange to construct the Widening of Communications Parkway from Parker Road to Spring Creek Parkway. The Project will widen Communications Parkway from a two- and four-lane divided road to a six-lane divided thoroughfare a total distance of approximately 7,500 feet. The Project shall also include construction of additional turn lanes at Windhaven Parkway and underground storm sewers as part of the road improvements. All improvements shall be designed to meet or exceed the current Collin County design standards and shall be constructed in accordance with the plans and specifications approved by the City.

ARTICLE II.

The City shall prepare plans and specifications for the improvements, accept bids and award a contract to construct the improvements and administer the construction contract. In all such activities, the City shall comply with all state statutory requirements. The City shall provide the County with a copy of the executed construction contract(s) for the Project.

ARTICLE III.

The City will acquire approximately 3.0 acres of real property in the vicinity of the improvements for use as right-of-way.

ARTICLE IV.

The City estimates the total actual cost of the Project to be \$3,094,218.00. The County agrees to fund one half of the total cost to construct the Project in an amount not to exceed \$1,547,109.00. The County shall remit 50% of this amount, \$773,554.50, to the City within thirty (30) days after the City issues a notice to proceed to the lowest responsible bidder and the City requests payment. The County will remit the remaining 50% within thirty (30) days after receipt of notice from the City that the Project is 50% complete. Following completion of the Project, the City shall provide a final accounting of expenditures for the Project. If the actual cost to construct the Project is less than the estimated amount set forth herein, the City shall remit the County 50% of the difference between the estimated cost and the actual cost. The Commissioners' Court may revise this payment schedule based on the progress of the Project. The total cost of the Project shall include land acquisition, engineering, construction, inspection, testing, street lighting, landscaping, irrigation and construction administration costs including contingencies.

ARTICLE V.

The City shall prepare for the County an itemized statement specifying Project costs that have been incurred to date and submit detailed Project cost and progress reports every thirty (30) days until Project completion.

ARTICLE VI.

The City and County agree that the party paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party.

ARTICLE VII.

INDEMNIFICATION. To the extent allowed by law, each party agrees to release, defend, indemnify, and hold harmless the other (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments and costs, including reasonable attorneys' fees and expenses, in any way arising out of, related to, or resulting from its performance under this agreement, or caused by its negligent acts or omissions (or those of its respective officers, agents, employees, or any other third parties for whom it is legally responsible) in connection with performing this agreement.

ARTICLE VIII.

VENUE. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this agreement. The parties agree that this agreement is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

ARTICLE IX.

SEVERABILITY. The provisions of this agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the agreement shall be enforced as if the invalid provision had never been included.

ARTICLE X.

ENTIRE AGREEMENT. This agreement embodies the entire agreement between the parties and may only be modified in writing executed by both parties.

ARTICLE XI.

SUCCESSORS AND ASSIGNS. This agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this agreement without the written consent of the other party.

ARTICLE XII.

IMMUNITY. It is expressly understood and agreed that in the execution of this agreement neither party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this agreement, the parties do not create any obligations, express or implied, other than those set forth herein; and this agreement shall not create any rights in parties not signatories hereto.

ARTICLE XIII.

TERM. This agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project. This agreement shall automatically renew annually during this period.

APPROVED AS TO FORM:

COUNTY OF COLLIN, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Keith Self
Title: County Judge
Date: _____

Executed on this _____ date of _____, 2009, by the County of Collin, pursuant to Commissioners' Court Order No. _____

ATTEST:

CITY OF PLANO, TEXAS

By: _____
Name: Diane Zucco
Title: City Secretary
Date: _____

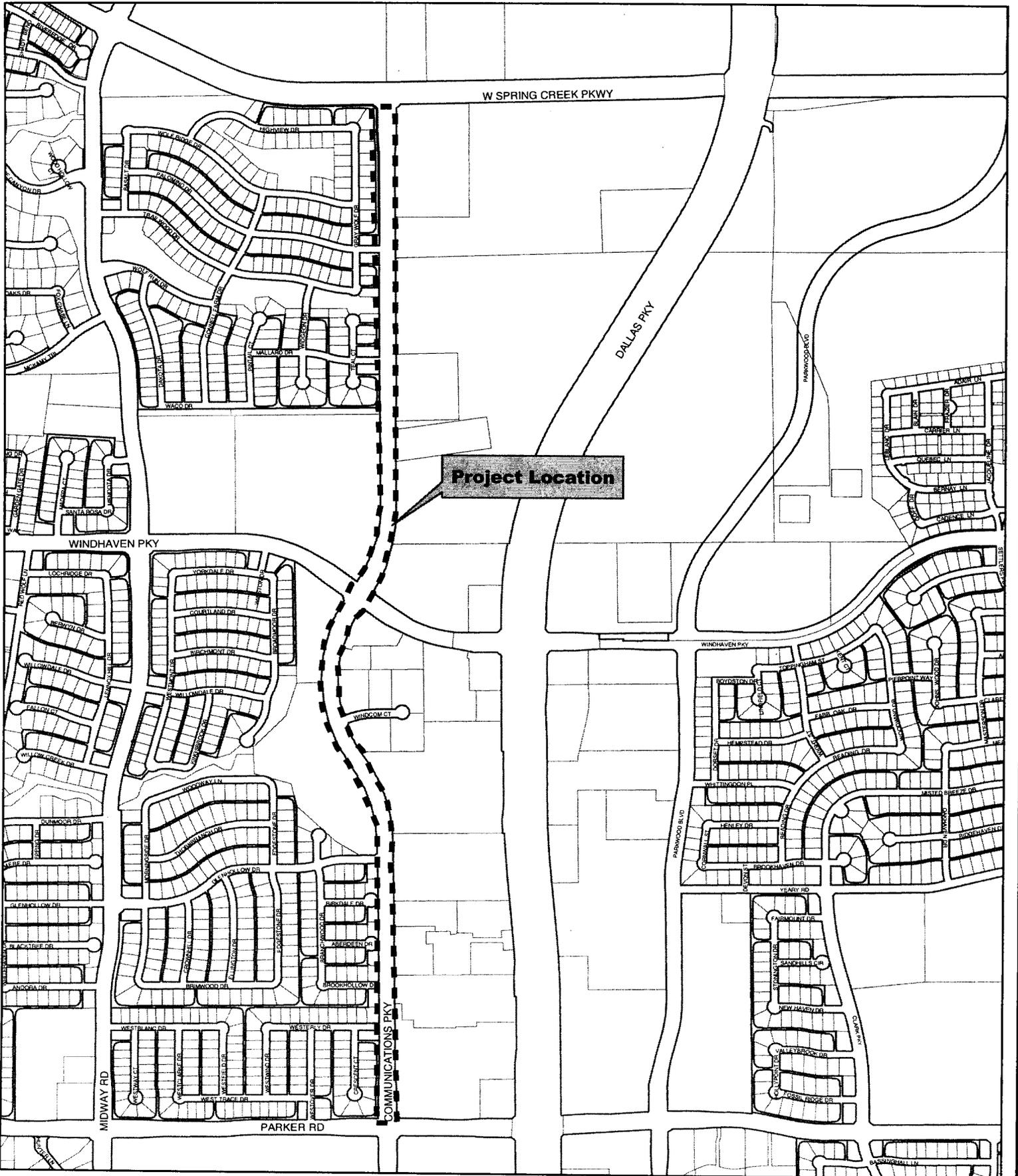
By: _____
Name: Thomas H. Muehlenbeck
Title: City Manager
Date: _____

Executed on behalf of the City of Plano pursuant to City Council Resolution No. _____

APPROVED AS TO FORM:

By: _____
Name: Diane Wetherbee
Title: City Attorney
Date: _____

WIDENING OF COMMUNICATIONS PKY FROM PARKER RD TO W. SPRING CREEK PKY



Project Location





**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>DB</i>	7-16-09
Council Meeting Date: 7/27/09		Budget	C.S.	7-16-09
Department:	Public Works & Engineering	Legal <i>W</i>		7-16-09
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>BA</i>	7-17-09
		City Manager	<i>BA</i>	7-17-09
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>IP</i>	Project No. 5789	
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, for Ridgeview Drive Widening from Coit Road to Independence Parkway and repealing Resolution No. 2009-5-22(R); authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	700,000	0	700,000
BALANCE	0	700,000	0	700,000
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: This item modifies an interlocal agreement with Collin County for the Ridgeview – Coit to Independence project. If this request is approved, it will limit Collin County's participation in this project to \$700,000 for widening of Ridgeview – Coit to Independence.				
STRATEGIC PLAN GOAL: Interlocal agreements for street improvements relate to the City's Goal of Safe, Efficient Travel.				
SUMMARY OF ITEM				
The City Council previously approved this agreement on May 26, 2009. Since that approval, Collin County has requested that Article V be removed as it says the County and City shall share in excess costs but limits the County's participation to \$700,000. This agreement provides for Collin County to remit to the City the sum of \$700,000 for Ridgeview Drive Widening from Coit Road to Independence Parkway. Half of the County funds will be provided after a notice to proceed is issued, the remaining half when the project is half completed. These funds were allocated from the 2003 and 2007 Collin County Bond Programs.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map		N/A		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND COLLIN COUNTY, TEXAS, FOR RIDGEVIEW DRIVE WIDENING FROM COIT ROAD TO INDEPENDENCE PARKWAY AND REPEALING RESOLUTION NO. 2009-5-22(R); AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform government functions and services under the terms thereof; and

WHEREAS, the City of Plano had entered into an Interlocal Cooperation Agreement with Collin County addressing this same project on May 26, 2009, in Resolution No. 2009-5-22(R); and

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas, and Collin County, Texas, providing terms and conditions for Ridgeview Drive Widening from Coit Road to Independence Parkway, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that Resolution No. 2009-5-22(R) should be repealed and the terms and conditions of this Agreement should be approved, and that the City Manager or his authorized designee should be authorized to execute it on behalf of the City of Plano.

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

Section I. Resolution No. 2009-5-22(R) is repealed in its entirety. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interest of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED the _____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF PLANO
CONCERNING RIDGEVIEW DRIVE WIDENING
FROM COIT ROAD TO INDEPENDENCE PARKWAY**

2007 BOND PROJECT #07-076

WHEREAS, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), desire to enter into an agreement concerning Ridgeview Drive Widening from Coit Road to Independence Parkway (the "Project") in Plano, Collin County, Texas; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the City and County have determined that the improvements may be constructed most economically by implementing this agreement.

WHEREAS, the City requests that the balance of \$592,868.83 left over from the 2003 Bond Project 03-051, Ridgeview from Independence to Custer, be reallocated to this 2007 Bond Project #07-076, Ridgeview from Coit to Independence, which has an allocation of \$500,000, for a total allocation of \$1,092,868.83.

NOW, THEREFORE, this agreement is made and entered into by the County and the City upon and for the mutual consideration stated herein.

WITNESSETH:

ARTICLE I.

The City shall arrange to construct Ridgeview Drive Widening from Coit Road to Independence Parkway, hereinafter called the "Project". The Project shall consist of widening from four lanes to six lanes, a distance of approximately one mile. All improvements shall be designed to meet or exceed the current Collin County design standards and shall be constructed in accordance with the plans and specifications approved by the City.

ARTICLE II.

The City shall prepare plans and specifications for the improvements, accept bids and award a contract to construct the improvements and administer the construction contract. In all such activities, the City shall comply with all state

statutory requirements. The City shall provide the County with a copy of the executed construction contract(s) for the Project.

ARTICLE III.

The City will acquire no real property in the vicinity of the improvements for use as right-of-way.

ARTICLE IV.

The City estimates the total actual cost of the project to be \$1,400,000. The County agrees to fund one half of the total cost to construct the improvements in an amount not to exceed \$700,000. The County shall remit 50 percent of this amount, \$350,000, to the City within thirty (30) days after the City issues a notice to proceed to the lowest responsible bidder and the City requests payment. The County will remit the remaining 50 percent within thirty (30) days after receipt of notice from the City that the Project is 50 percent complete. Following completion of the Project, the City shall provide a final accounting of expenditures for the Project. If the actual cost to construct the Project is less than the estimated amount set forth herein, the City shall remit the County 50 percent of the difference between the estimated cost and the actual cost. The Commissioners Court may revise this payment schedule based on the progress of the Project. The "total cost of the Project" shall include land acquisition, engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies.

ARTICLE V.

The City shall prepare for the County an itemized statement specifying Project costs that have been incurred to date and submit detailed Project cost and progress reports every thirty (30) days until Project completion.

ARTICLE VI.

The City and County agree that the party paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party.

ARTICLE VII.

INDEMNIFICATION. To the extent allowed by law, each party agrees to release, defend, indemnify, and hold harmless the other (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments and costs, including reasonable attorneys' fees and expenses, in any way arising out of, related to, or resulting from its

performance under this agreement, or caused by its negligent acts or omissions (or those of its respective officers, agents, employees, or any other third parties for whom it is legally responsible) in connection with performing this agreement.

ARTICLE VIII.

VENUE. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this agreement. The parties agree that this agreement is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

ARTICLE IX.

SEVERABILITY. The provisions of this agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the agreement shall be enforced as if the invalid provision had never been included.

ARTICLE X.

ENTIRE AGREEMENT. This agreement embodies the entire agreement between the parties and may only be modified in writing executed by both parties.

ARTICLE XI.

SUCCESSORS AND ASSIGNS. This agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this agreement without the written consent of the other party.

ARTICLE XII.

IMMUNITY. It is expressly understood and agreed that in the execution of this agreement neither party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this agreement, the parties do not create any obligations, express or implied, other than those set forth herein; and this agreement shall not create any rights in parties not signatories hereto.

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ARTICLE XIII.

TERM. This agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project. This agreement shall automatically renew annually during this period.

APPROVED AS TO FORM:

COUNTY OF COLLIN, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Keith Self
Title: County Judge
Date: _____

Executed on this ____ date of _____, 2009, by the County of Collin, pursuant to Commissioners' Court Order No. _____

ATTEST:

CITY OF PLANO, TEXAS

By: _____
Name: Diane Zucco
Title: City Secretary
Date: _____

By: _____
Name: Thomas H. Muehlenbeck
Title: City Manager
Date: _____

Executed on behalf of the City of Plano pursuant to City Council Resolution No. _____

APPROVED AS TO FORM:

By: _____
Name: Diane Wetherbee
Title: City Attorney
Date: _____

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Ridgeview Dr. Widening - Coit Rd. to Independence Pkwy

Project Location



Location Map



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	MR	7/13/09
Council Meeting Date:	7/27/2009	Budget	G.S.	7-13-09
Department:	Customer and Utility Services	Legal	DM	
Department Head	Mark D. Israelson	Assistant City Manager	MD	7/8/09
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	RL	7-15-09
		City Manager	[Signature]	7/14/09
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, ("CITY") APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC" OR "STEERING COMMITTEE") AND ATMOS ENERGY CORP., MID-TEX DIVISION ("ATMOS MID-TEX" OR "COMPANY") REGARDING THE COMPANY'S RATE REVIEW MECHANISM FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; APPROVING ATMOS' PROOF OF REVENUES; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(s):

COMMENTS:

SUMMARY OF ITEM

This Ordinance approves Rate Tariffs and Proof of Revenues that reflect the negotiated rate change pursuant to the RRM process with Atmos Mid-Tex Division.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Memorandum to City Council	Other Departments, Boards, Commissions or Agencies

M E M O R A N D U M

TO: City Council

THROUGH: Thomas H. Muehlenbeck, City Manager

FROM: Mark D. Israelson, Assistant City Manager 

DATE: July 27, 2009

RE: Ordinance Approving Settlement of Atmos RRM Filing

The City, along with 150 other cities served by Atmos Energy Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"). On March 6, 2009, Atmos Mid-Tex filed with the City an application to increase natural gas rates pursuant to the Rate Review Mechanism ("RRM") tariff approved by the City as part of the settlement of the Atmos Mid-Tex 2007 Statement of Intent to increase rates.

The Atmos Mid-Tex March RRM filing sought a \$20.2 million rate increase. The City worked with ACSC to analyze the schedules and evidence offered by Atmos Mid-Tex to support its request to increase rates. The Ordinance and attached RRM tariff are the result of negotiation between ACSC and the Company to resolve issues raised by ACSC during the review and evaluation of ACSC's RRM filing. The Ordinance and RRM tariffs approve rates that will increase the Company's revenues by \$2.6 million effective for bills rendered on or after August 1, 2009. The monthly bill impact for the average residential customer will be a \$0.15 increase (about a 0.22% increase in the total bill).

Please note that current rates contain a true-up component (\$9 million to be collected over twelve months) from the first RRM in 2008. Collection of the 2008 true-up amount is scheduled to end on November 1, 2009. The rate impact of that 2008 true-up amount for the period August 1 – October 31, 2009 is \$1,006,073. To simplify the process and to reduce rate fluctuations, the parties have agreed to eliminate collection of the 2008 true-up on August 1, 2009 rather than November 1, 2009. The remaining \$1,006,073 that is still owed from the 2008 true-up will be recovered as part of the 2009 true-up over 12 months rather than 3 months. This change related to the 2008 true-up amount is revenue and rate impact neutral.

The ACSC Executive Committee recommends that all ACSC Cities adopt the Ordinance implementing the rate change.

RRM Background:

The RRM tariff was approved by ACSC Cities as part of the settlement agreement to resolve the Atmos Mid-Tex 2007 rate increase case. Atmos Mid-Tex's current action represents the second filing pursuant to the three-year trial project known as the RRM process. The RRM

process was created collaboratively by ACSC and Atmos Mid-Tex as an alternative to the GRIP surcharge process. The RRM process allows for a more comprehensive rate review and annual adjustment that will function as a substitute for future GRIP filings during the three-year trial period specified by the tariff.

There are two components to the RRM adjustment. The prospective component adjusts rates for known and measurable changes in O&M and net plant investment. Atmos Mid-Tex and ACSC agreed to cap changes to expenses and invested capital at no more than 5%. The true-up component evaluates whether the Company has over or underrecovered its earnings for the previous year. For purposes of the RRM true-up component, the Atmos Mid-Tex rate of return on equity and its capital structure are frozen to avoid the parent company from manipulating the overall rate of return. Costs expressly prohibited from recovery through the RRM include first-class air fare, travel, meals or entertainment for an employee's spouse, alcohol, sports events, entertainment, arts and cultural events, sponsorship of sports, arts or cultural events, and social club membership dues.

Purpose of the Ordinance:

The purpose of the Ordinance is to approve rate tariffs (“Attachment A”) and Proof of Revenues (“Attachment B”) that reflect the negotiated rate change pursuant to the RRM process. In addition to the RRM tariffs, the Ordinance also approves a revision to the Atmos Mid-Tex current Gas Cost Recovery (“GCR”) tariff to allow the Company to recover certain hedging costs associated with natural gas futures through the GCR tariff.

As a result of the negotiations, ACSC was able to reduce the Company's requested \$20.2 million RRM increase by more than 70%. Approval of the Ordinance will result in rates that implement a \$2.6 million increase in Atmos' revenues effective August 1, 2009.

Reasons Justifying Approval of the Negotiated Resolution:

During the time that the City has retained original jurisdiction in this case, consultants working on behalf of ACSC cities have investigated the support for the Company's requested rate increase. While the evidence does not support the \$20.2 million increase requested by the Company, ACSC consultants agree that the Company can justify a slight increase in revenues. The agreement on \$2.6 million is a compromise between the positions of the parties.

The alternative to a settlement of the RRM filing would be a contested case proceeding before the Railroad Commission of Texas (“RRC”) on the Company's current application, would take several months and cost ratepayers millions of dollars in rate case expenses and would not likely produce a result more favorable than that to be produced by the settlement. The ACSC Executive Committee recommends that ACSC members take action to approve the Ordinance authorizing new rate tariffs.

With regard to the revision to the GCR tariff, ACSC has advocated that the Company use hedging as a risk management tool to help mitigate volatile natural gas prices. The tariff change is consistent with ACSC's prior position.

Explanation of "Be It Ordained" Paragraphs:

1. This paragraph approves all findings in the Ordinance.
2. This section adopts the attached tariffs ("Attachment A") and the Company's Proof of Revenues ("Attachment B") in all respects and finds the rates set pursuant to the attached tariffs to be just, reasonable and in the public interest. Note that only new tariffs or existing tariffs being revised are attached to the Ordinance. Existing tariffs not being changed in any way are not attached to the Ordinance.
3. This section requires the Company to reimburse ACSC for reasonable rate making costs associated with reviewing and processing the RRM application.
4. This section repeals any resolution or ordinance that is inconsistent with this Ordinance.
5. This section finds that the meeting was conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.
6. This section is a savings clause, which provides that if any section(s) is later found to be unconstitutional or invalid, that finding shall not affect, impair or invalidate the remaining provisions of this Ordinance. This section further directs that the remaining provisions of the Ordinance are to be interpreted as if the offending section or clause never existed.
7. This section is a "Most Favored Nations" clause, which protects the City by mandating that if the City determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in the Company's RRM filing would be more beneficial to the City than the terms of the attached tariff, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the City.
8. This section allows the Company to recover certain costs associated with natural gas hedging through the GCR tariff.
9. This section provides for an effective date upon passage.
10. This paragraph directs that a copy of the signed Ordinance be sent to a representative of the Company and legal counsel for ACSC.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, ("CITY") APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC" OR "STEERING COMMITTEE") AND ATMOS ENERGY CORP., MID-TEX DIVISION ("ATMOS MID-TEX" OR "COMPANY") REGARDING THE COMPANY'S RATE REVIEW MECHANISM FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; APPROVING ATMOS' PROOF OF REVENUES; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL.

WHEREAS, the City of Plano, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or " Company"), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"), a coalition of more than 150 similarly situated cities served by Atmos Mid-Tex that have joined together to facilitate the review and response to natural gas issues affecting rates charged in the Atmos Mid-Tex service area (such participating cities are referred to herein as "ACSC Cities"); and

WHEREAS, pursuant to the terms of the agreement settling the Company's 2007 Statement of Intent to increase rates, ACSC Cities and the Company worked collaboratively to develop the Rate Review Mechanism ("RRM") tariff that allows for an expedited rate

review process controlled in a three year experiment by ACSC Cities as a substitute to the current GRIP process instituted by the Legislature; and

WHEREAS, the City took action in 2008 to approve a Settlement Agreement with Atmos Mid-Tex resolving the Company's 2007 rate case and authorizing the RRM Tariff; and

WHEREAS, the 2008 Settlement Agreement contemplates reimbursement of ACSC Cities' reasonable expenses associated with RRM applications; and

WHEREAS, on or about March 6, 2009, Atmos Mid-Tex filed with the City its second application pursuant to the RRM tariff to increase natural gas rates by approximately \$20.2 million, such increase to be effective in every municipality that has adopted the RRM tariff within its Mid-Tex Division; and

WHEREAS, ACSC Cities coordinated its review of Atmos' RRM filing and designated a Settlement Committee made up of ACSC representatives and assisted by ACSC attorneys and consultants to resolve issues identified by ACSC in the Company's RRM filing; and

WHEREAS, the Company has filed evidence that existing rates are unreasonable and should be changed; and

WHEREAS, independent analysis by ACSC's rate expert concluded that Atmos Mid-Tex is able to justify a slight rate increase over current rates; and

WHEREAS, the Steering Committee has advocated in other proceedings that Atmos Mid-Tex hedge natural gas futures in order to mitigate the volatility of natural gas prices, which are a flow through to customers; and

WHEREAS, the ACSC Executive Committee, as well as ACSC lawyers and consultants, recommend that ACSC members approve the attached rate tariffs ("Attachment A" to this Ordinance), which will increase the Company's revenue requirement by \$2.6 million; and

WHEREAS, the attached tariffs implementing new rates and Atmos' Proof of Revenues ("Attachment B" to this Ordinance) are consistent with the negotiated resolution reached by ACSC Cities and are just, reasonable, and in the public interest; and

WHEREAS, it is the intention of the parties that if the City determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in the Company's RRM filing would be more beneficial to the City than the terms of the attached tariff, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the City; and

WHEREAS, the negotiated resolution of the Company's RRM filing and the resulting rates are, as a whole, in the public interest.

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

Section I. That the findings set forth in this Ordinance are hereby in all things approved.

Section II. That the City Council finds that the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable and new tariffs and Atmos' Proof of

Revenues, which are attached hereto and incorporated herein as Attachments A and B, are just and reasonable and are hereby adopted.

Section III. That Atmos Mid-Tex shall reimburse the reasonable rate making expenses of the ACSC Cities in processing the Company's rate application.

Section IV. That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Ordinance, it is hereby repealed.

Section V. That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

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

Section VII. That if the City determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in the Company's RRM filing would be more beneficial to the City than the terms of the attached tariff, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the City.

Section VIII. That the Company's Gas Cost Recovery tariff is revised to permit recovery of certain costs associated with hedging natural gas futures.

Section IX. That this Ordinance shall become effective from and after its passage with rates authorized by attached Tariffs to be effective for bills rendered on or after August 1, 2009.

Section X. That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of David Park, Vice President Rates and Regulatory Affairs, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

DULY PASSED AND APPROVED ON THIS _____ DAY OF _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**

REVISION NO: 0

RATE SCHEDULE:	R – RESIDENTIAL SALES	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 29

Application

Applicable to Residential Customers for all natural gas provided at one Point of Delivery and measured through one meter.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and Mcf charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Bill	\$ 7.00 per month
Commodity Charge – All Mcf	\$2.2707 per Mcf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Rate Review Mechanism: Plus or Minus an amount for rates as calculated in accordance with Rider RRM.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**

REVISION NO: 0

RATE SCHEDULE:	C -- COMMERCIAL SALES	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 30

Application

Applicable to Commercial Customers for all natural gas provided at one Point of Delivery and measured through one meter and to Industrial Customers with an average annual usage of less than 3,000 Mcf.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and Mcf charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Bill	\$ 13.50 per month
Commodity Charge - All Mcf	\$ 0.9877 per Mcf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Rate Review Mechanism: Plus or Minus an amount for rates as calculated in accordance with Rider RRM.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**REVISION NO: 0

RATE SCHEDULE:	I – INDUSTRIAL SALES	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 31

Application

Applicable to Industrial Customers with a maximum daily usage (MDU) of less than 3,500 MMBtu per day for all natural gas provided at one Point of Delivery and measured through one meter. Service for Industrial Customers with an MDU equal to or greater than 3,500 MMBtu per day will be provided at Company's sole option and will require special contract arrangements between Company and Customer.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and MMBtu charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Meter	\$ 425.00 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.2583 per MMBtu
Next 3,500 MMBtu	\$ 0.1884 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0404 per MMBtu

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Rate Review Mechanism: Plus or Minus an amount for rates as calculated in accordance with Rider RRM.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Curtailment Overpull Fee

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**REVISION NO: 0

RATE SCHEDULE:	I – INDUSTRIAL SALES	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 32

Replacement Index

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Special Conditions

In order to receive service under Rate I, Customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

U-14

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**

REVISION NO: 0

RATE SCHEDULE:	T – TRANSPORTATION	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 33

Application

Applicable, in the event that Company has entered into a Transportation Agreement, to a customer directly connected to the Atmos Energy Corp., Mid-Tex Division Distribution System (Customer) for the transportation of all natural gas supplied by Customer or Customer's agent at one Point of Delivery for use in Customer's facility.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's bill will be calculated by adding the following Customer and MMBtu charges to the amounts and quantities due under the riders listed below:

Charge	Amount
Customer Charge per Meter	\$ 425.00 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.2583 per MMBtu
Next 3,500 MMBtu	\$ 0.1884 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0404 per MMBtu

Upstream Transportation Cost Recovery: Plus an amount for upstream transportation costs in accordance with Part (b) of Rider GCR.

Rate Review Mechanism: Plus or Minus an amount for rates as calculated in accordance with Rider RRM.

Retention Adjustment: Plus a quantity of gas as calculated in accordance with Rider RA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Imbalance Fees

All fees charged to Customer under this Rate Schedule will be charged based on the quantities determined under the applicable Transportation Agreement and quantities will not be aggregated for any Customer with multiple Transportation Agreements for the purposes of such fees.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**REVISION NO: 0

RATE SCHEDULE:	T – TRANSPORTATION	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 34

Monthly Imbalance Fees

Customer shall pay Company the greater of (i) \$0.10 per MMBtu, or (ii) 150% of the difference per MMBtu between the highest and lowest "midpoint" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" during such month, for the MMBtu of Customer's monthly Cumulative Imbalance, as defined in the applicable Transportation Agreement, at the end of each month that exceeds 10% of Customer's receipt quantities for the month.

Curtailement Overpull Fee

Upon notification by Company of an event of curtailement or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailement or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

Replacement Index

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

Agreement

A transportation agreement is required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Special Conditions

In order to receive service under Rate T, customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

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Date Issued:

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**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**

REVISION NO: 0

RIDER:	WNA – WEATHER NORMALIZATION ADJUSTMENT	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 45

Provisions for Adjustment

The base rate per Mcf (1,000,000 Btu) for gas service set forth in any Rate Schedules utilized by the cities of the Mid-Tex Division service area for determining normalized winter period revenues shall be adjusted by an amount hereinafter described, which amount is referred to as the "Weather Normalization Adjustment." The Weather Normalization Adjustment shall apply to all temperature sensitive residential, and commercial bills based on meters read during the revenue months of November through April. The five regional weather stations are Abilene, Austin, Dallas, Waco, and Wichita Falls.

Computation of Weather Normalization Adjustment

The Weather Normalization Adjustment Factor shall be computed to the nearest one-hundredth cent per Mcf by the following formula:

$$WNAF_i = R_i \frac{(HSF_i \times (NDD-ADD))}{(BL_i + (HSF_i \times ADD))}$$

Where

- i = any particular Rate Schedule or billing classification within any such particular Rate Schedule that contains more than one billing classification
- $WNAF_i$ = Weather Normalization Adjustment Factor for the i^{th} rate schedule or classification expressed in cents per Mcf
- R_i = base rate of temperature sensitive sales for the i^{th} schedule or classification approved by the entity exercising original jurisdiction.
- HSF_i = heat sensitive factor for the i^{th} schedule or classification calculated as the slope of the linear regression of average sales per bill (Mcf) and actual heating degree days by month for the test year by schedule or classification and weather station as part of the RRM filing.
- NDD = billing cycle normal heating degree days calculated as the simple ten-year average of actual heating degree days.
- ADD = billing cycle actual heating degree days.
- BL_i = base load sales for the i^{th} schedule or classification calculated as the y-intercept of the linear regression of average sales per bill (Mcf) and actual heating degree days by month for the test year by schedule or classification and weather station as part of the RRM filing.

The Weather Normalization Adjustment for the j^{th} customer in i^{th} rate schedule is computed as:

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Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**

REVISION NO: 0

RIDER:	WNA – WEATHER NORMALIZATION ADJUSTMENT	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 46

$$WNA_i = WNAF_i \times q_{ij}$$

Where q_{ij} is the relevant sales quantity for the j th customer in i th rate schedule.

Filings with Entities Exercising Original Jurisdiction

As part of its annual RRM filing the Company will file (a) a copy of each computation of the Weather Normalization Adjustment Factor, (b) a schedule showing the effective date of each such Weather Normalization Adjustment, (c) a schedule showing the factors of values used in calculating such Weather Normalization Adjustment and (d) a random sample and audit of thirty (30) actual customer bills, with customer information deleted, for each rate schedule or classification to which the WNA was applied in the preceding 12 month period. To the extent that source data is needed to audit the WNA application, such data will be provided by the Company as part of the annual RRM filing.

If the RRM is discontinued, as provided in the Rider RRM tariff, the information required herein to be filed with the entities exercising original jurisdiction shall be filed on March 1 of each year.

Base Use/Heat Use Factors

Weather Station	<u>Residential</u>		<u>Commercial</u>	
	Base use Mcf	Heat use Mcf/HDD	Base use Mcf	Heat use Mcf/HDD
Abilene	0.98	.0140	9.64	.0629
Austin	1.30	.0161	20.00	.0815
Dallas	1.60	.0212	20.12	.1018
Waco	1.12	.0139	11.69	.0608
Wichita Falls	1.12	.0159	11.67	.0649

Sample WNAF_i Calculation:

$$.3393 \text{ per Mcf} = 2.2707 \times \frac{(.0140 \times (30-17))}{(0.98 + (.0140 \times 17))}$$

Where

i = Residential Single Block Rate Schedule

R_i = 2.2707 per MCF

HSF_i = .0140 (Residential - Abilene Area)

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Vice President, Rates and Regulatory Affairs

Date Issued:

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**

REVISION NO: 0

RIDER:	WNA - WEATHER NORMALIZATION ADJUSTMENT	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 47

NDD = 30 HDD (Simple ten-year average of Actual HDD for Abilene Area - 9/15/06 - 10/14/06)

ADD = 17 HDD (Actual HDD for Abilene Area - 9/15/06 - 10/14/06)

BI_i = 0.98 Mcf (Residential - Abilene Area)

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Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**

REVISION NO: 0

RIDER:	GCR – GAS COST RECOVERY	
APPLICABLE TO:	All Cities Except Dallas	
EFFECTIVE DATE:	Bills Rendered on or after 8/1/2009	PAGE: 68

Applicable to Rate R, Rate C, and Rate I for all gas sales made by Company, and applicable to Rate R, Rate C, Rate I, and Rate T for recovery of Pipeline System costs. The total gas cost recovery amount due is determined by adding the gas cost calculated in Section (a) below and the pipeline cost calculated in Section (b) below.

The amount due for gas cost (Section (a)) is determined by multiplying the Gas Cost Recovery Factor (GCRF) by the Customer's monthly volume. For Customers receiving service under Rate R and Rate C, monthly volume will be calculated on a Mcf basis. For Customers receiving service under Rate I, monthly volume will be calculated on an MMBtu basis and the quantities will be adjusted as necessary to recover actual gas costs.

The amount due for pipeline cost (Section (b)) is determined by multiplying the Pipeline Cost Factor (PCF) by the Customer's monthly volume. For Customers receiving service under Rate R and Rate C, monthly volume will be calculated on an Mcf basis. For Customers receiving service under Rate I and Rate T, monthly volume will be calculated on an MMBtu basis and the quantities will be adjusted as necessary to recover actual gas costs.

(a) Gas Cost

Method of Calculation

The monthly gas cost adjustment is calculated by the application of a Gas Cost Recovery Factor (GCRF), as determined with the following formula:

$$GCRF = \text{Estimated Gas Cost Factor (EGCF)} + \text{Reconciliation Factor (RF)} + \text{Taxes (TXS)}$$

EGCF = Estimated cost of gas, including lost and unaccounted for gas attributed to residential, commercial, and industrial sales, and any reconciliation balance of unrecovered gas costs, divided by the estimated total residential, commercial, and industrial sales. Lost and unaccounted for gas is limited to 5%.

RF = Calculated by dividing the difference between the Actual Gas Cost Incurred, inclusive of interest over the preceding twelve-month period ended June 30 and the Actual Gas Cost Billed over that same twelve-month period by the estimated total residential, commercial, and industrial sales for the succeeding October through June billing months. The interest rate to be used is the annual interest rate on overcharges and under charges by a utility as published by the Public Utility Commission each December. The interest rate for calendar year 2009 is 2.09%.

Actual Gas Cost Incurred = The sum of the costs booked in Atmos Energy Corp., Mid-Tex Division account numbers 800 through 813 and 858 of the FERC Uniform System of Accounts, including the net impact of injecting and withdrawing gas from storage. Also includes a credit or debit for any out-of-period adjustments or unusual or nonrecurring costs typically considered gas costs and a credit for amounts received as Imbalance Fees or Curtailment Overpull Fees. Also includes any

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REVISION NO: 0

RIDER:	GCR – GAS COST RECOVERY	
APPLICABLE TO:	All Cities Except Dallas	
EFFECTIVE DATE:	Bills Rendered on or after 8/1/2009	PAGE: 69

prudently incurred transaction-related fees, gains or losses and other transaction costs associated with the use of various financial instruments that are executed by the Company for the purpose of price volatility mitigation.

Actual Gas Cost Billed = EGCF multiplied by the monthly volumes billed to Residential, Commercial and Industrial Sales customers, less the total amount of gas cost determined to have been uncollectible and written off which remain unpaid for each month of the reconciliation period.

Any amount remaining in the reconciliation balance after the conclusion of the period of amortization will be maintained in the reconciliation balance and included in the collection of the next RF.

Atmos Energy shall file annual reports with the Commission, providing by month the following amounts: Gas Cost Written Off, Margin Written Off, Tax and Other Written Off, Total Written Off, Gas Cost Collected and Margin Collected.

TXS = Any statutorily imposed assessments or taxes applicable to the purchase of gas divided by the estimated total residential, commercial, and industrial sales.

ADJ = Any surcharge or refund ordered by a regulatory authority, inclusive of interest, divided by the estimated total residential, commercial, and industrial sales is to be included as a separate line item surcharge.

(b) Pipeline Cost

Method of Calculation

Each month, a Pipeline Cost Factor (PCF) is calculated separately for each Pipeline Cost Rate Class listed below. The formula for the PCF is:

PCF = PP / S, where:

PP = (P - A) x D, where:

P = Estimated monthly cost of pipeline service calculated pursuant to Rate CGS

D = Pipeline service allocation factor for the rate class as approved in the Company's most recent rate case, as follows:

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Date Issued:

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**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**

REVISION NO: 0

RIDER:	GCR – GAS COST RECOVERY	
APPLICABLE TO:	All Cities Except Dallas	
EFFECTIVE DATE:	Bills Rendered on or after 8/1/2009	PAGE: 70

Pipeline Cost Rate Class	Allocation Factor (D)
Rate R - Residential Service	.634698
Rate C - Commercial Service	.302824
Rate I - Industrial Service and Rate T - Transportation Service	.062478

A = Adjustment applied in the current month to correct for the difference between the actual and estimated pipeline cost revenue of the second preceding month, calculated by the formula:

$$A = R - (C - A2), \text{ where:}$$

R = Actual revenue received from the application of the PP component in the second preceding month.

C = Actual pipeline costs for the second preceding month.

A2 = The adjustment (A) applied to the PP component in the second preceding month.

S = Estimated Mcf or MMBtu for the rate class for the current billing month.

The PCF is calculated to the nearest 0.0001 cent.

The Pipeline Cost to be billed is determined by multiplying the Mcf or MMBtu used by the appropriate PCF. The Pipeline Cost is determined to the nearest whole cent.

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**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**REVISION NO: 0

RIDER:	CEE – CONSERVATION & ENERGY EFFICIENCY	
APPLICABLE TO:	All Cities except Dallas	
EFFECTIVE DATE:	Bills Rendered on or after 8/1/2009	PAGE: 84

Purpose

Atmos Energy Mid-Tex is proposing to institute a complete Conservation & Energy Efficiency program which will offer assistance to qualified customer segments in reducing energy consumption and lowering energy utility bills. The proposal is one where Atmos Energy shareholders will fund a percentage of the allowable expenses incurred annually, with a customer rate component providing the remainder of the funding. Following is a high-level, concept summary of the proposal. Atmos Energy Mid-Tex Division proposes to work with the communities it serves to develop the details of a new tariff and programs addressing conservation and energy efficiency.

Synopsis:

Voucher system to provide free energy savings materials and supplies to qualifying customers of Atmos Mid-Tex. Qualified Customers will receive up to one thousand five hundred dollars (\$1,500.00) worth of caulking, weather-stripping, sheathing, sealing, water heater blankets, related gas plumbing, and like materials, other energy saving devices such as clock-thermostats, set-back devices ("covered items") from approved suppliers / retailers including necessary labor.

Company will undertake efforts to enlist support from community groups, including its own Employee Action Program, to assist customers with installation. If it is determined that professional installation capabilities are necessary, the parties will agree on labor assistance amounts.

Eligibility

Low Income – Low-income rate-payers that qualify for heating bill assistance through LIHEAP and other government energy efficiency program agencies and all agencies that distribute Atmos "Share the Warmth" funds. Agencies that allocate assistance funds denote customer as Low Income, a status that lasts for one year.

Senior Citizen – Primary account holder can request eligibility through ATM call center or web-site. Customer provides primary SSN which is verified through Social Security Administration. And account holder that is or turns 65 years old in that year becomes eligible.

Funding

Initial annual program funding will be at two million dollars (\$2,000,000). Atmos Energy shareholders will contribute one million dollars (\$1,000,000.00) to this initiative annually with ratepayers providing one million dollars (\$1,000,000.00) per year. It is proposed that the program operate on an October 1 through September 30 year, with regulatory asset/liability accounting employed by Atmos to track the difference between program funding and qualifying program expenditures. No Atmos employee labor will be charged as a program expenditure.

Administration:

A third-party administrator will coordinate qualification of customers, voucher distribution, subsequent verification and reimbursement of eligible expenditures and general program administration. Program administration expenses will be funded from the annual approved budget.

Issued By: David J. Park

Vice President, Rates and Regulatory Affairs

Date Issued:

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**

REVISION NO: 0

RIDER:	CEE – CONSERVATION & ENERGY EFFICIENCY	
APPLICABLE TO:	All Cities except Dallas	
EFFECTIVE DATE:	Bills Rendered on or after 8/1/2009	PAGE: 85

Audits will be provided all interested parties within 120 days of the end of each program year to determine effectiveness.

Report

Atmos shall file an annual report detailing cost to administer the program including the amounts paid out of the program for energy conversation assistance. The report shall also detail the number of applicants and expenditures by geographic location, including the numbers of applications rejected and accepted and reason if rejected. The report shall be filed with the Director of the Gas Services Division of the Railroad Commission within 120 days of the end of each program year and with counsel of record for municipalities served by the Mid-Tex Division.

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Date Issued:

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**ATMOS ENERGY CORP., MID-TEX DIVISION
PROOF OF REVENUES
TEST YEAR ENDING DECEMBER 31, 2008
(2009 RRM SETTLEMENT PROPOSAL)**

Line No.	Description (a)	Prospective Rate Increase (b)	2008 True-up (c)	Total change from current rates (d)
1	Rate R			
2	Consumption Charge per MCF			
3	Change from Current Rate	\$0.1047	\$0.0060	\$0.0297
4	Billing Units for Specified Period	82,321,960	82,321,960	82,321,960
5	Total Change in Base Revenue	\$8,619,109	\$493,932	\$2,444,962
6	Associated Revenue Taxes	<u>\$532,144</u>	<u>\$30,495</u>	<u>\$150,952</u>
7	Total Rate Impact	\$9,151,253	\$524,427	\$2,595,914
8	Number of Bills for Specified Period	17,244,058	17,244,058	17,244,058
9	Average Impact per Bill	\$0.53	\$0.03	\$0.15
10	Rate C			
11	Consumption Charge per MCF			
12	Change from Current Rate	\$0.0383	\$0.0052	\$0.0068
13	Billing Units for Specified Period	52,439,100	52,439,100	52,439,100
14	Total Change in Base Revenue	\$2,008,418	\$272,683	\$356,586
15	Associated Revenue Taxes	<u>\$124,000</u>	<u>\$16,835</u>	<u>\$22,016</u>
16	Total Rate Impact	\$2,132,417	\$289,519	\$378,601
17	Number of Bills for Specified Period	1,452,943	1,452,943	1,452,943
18	Average Impact per Bill	\$1.47	\$0.20	\$0.26
19	Rates I&T - 1st block			
20	Consumption Charge per MCF			
21	Change from Current Rate	\$0.0144	\$0.0087	(\$0.0150)
22	Billing Units for Specified Period	9,681,181	9,681,181	9,681,181
23	Total Change in Base Revenue	\$139,409	\$84,226	(\$145,218)
24	Associated Revenue Taxes	<u>\$8,607</u>	<u>\$5,200</u>	<u>(\$8,966)</u>
25	Total Rate Impact	\$148,016	\$89,426	(\$154,183)
26	Rates I&T - 2nd block			
27	Consumption Charge per MCF			
28	Change from Current Rate	\$0.0105	\$0.0064	(\$0.0109)
29	Billing Units for Specified Period	10,782,882	10,782,882	10,782,882
30	Total Change in Base Revenue	\$113,220	\$69,010	(\$117,533)
31	Associated Revenue Taxes	<u>\$6,990</u>	<u>\$4,261</u>	<u>(\$7,257)</u>
32	Total Rate Impact	\$120,210	\$73,271	(\$124,790)
33	Rates I&T - 3rd block			
34	Consumption Charge per MCF			
35	Change from Current Rate	\$0.0023	\$0.0014	(\$0.0023)
36	Billing Units for Specified Period	19,798,632	19,798,632	19,798,632
37	Total Change in Base Revenue	\$45,537	\$27,718	(\$45,537)
38	Associated Revenue Taxes	<u>\$2,811</u>	<u>\$1,711</u>	<u>(\$2,811)</u>
39	Total Rate Impact	\$48,348	\$29,429	(\$48,348)
40	Rates I&T - Total			
41	Total Rate Impact	\$316,575	\$192,127	(\$327,322)
42	Number of Bills for Specified Period	11,571	11,571	11,571
43	Average Impact per Bill	\$12.79	\$7.73	(\$13.32)
44				
45	Total Change in Base Revenue	\$10,925,693	\$947,570	\$2,493,260
46	Total Rate Impact (Inc. Rev. Taxes)	\$11,600,245	\$1,006,073	\$2,647,194



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory			
Council Meeting Date: July 27, 2009		Purchasing	MP 7/17/09
Department: Sustainability & Env. Services		Budget	C.S. 7-17-09
Department Head: Nancy Nevil		Legal <i>WS</i>	
Dept Signature: <i>[Signature]</i>		Assistant City Manager	
		Deputy City Manager	RA 7/17/09
		City Manager	AM 7/17/09
Agenda Coordinator (include phone #): Rita Keys x4393			

ACTION REQUESTED:

<input checked="" type="checkbox"/> ORDINANCE	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> CHANGE ORDER	<input type="checkbox"/> AGREEMENT
<input type="checkbox"/> APPROVAL OF BID	<input type="checkbox"/> AWARD OF CONTRACT	<input type="checkbox"/> OTHER	

CAPTION

AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING ARTICLE I OF CHAPTER 18, SOLID WASTE OF THE CODE OF ORDINANCES OF THE CITY OF PLANO TEXAS TO ADD CERTAIN DEFINITIONS TO SECTION 18-1 AND ADDING SECTION 18-25 DOWNTOWN COLLECTION ACCOMMODATION AND RATES TO CREATE ACCOMMODATION FOR THE COLLECTION OF SOLID WASTE FOR SPECIFIED DOWNTOWN PROPERTIES INCLUDING A RATE STRUCTURE; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S): TIF #2 - East Side (05-275)

COMMENTS: Funding to enact this program and funding to establish the applicable merchant usage fees will be covered by available resources in the TIF #2 - East Side Fund. Total usage fees for all downtown merchants are projected at \$1,484 per month or \$17,808 annual.

STRATEGIC PLAN GOAL: Establishing a program whereby collection of solid waste material is consolidated into a central location for downtown merchants relates to the City's Goal of Livable and Sustainable Community and also the City's Goal of "Service Excellence."

SUMMARY OF ITEM

This item will require Downtown Merchants to utilize shared containers provided by the City of Plano and will charge restaurants greater than 1000 square feet \$0.06 per square foot (\$0.05 if participating in organic recycling); restaurants less than 1000 square feet \$0.04 per square foot (\$0.035 per square foot if participating in organic recycling); retail greater than 1000 square feet \$0.02 per square foot; retail less than 1000 square feet \$0.01 per square foot; and offices \$0.015 per square foot.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents:

Memo from Jon Hubach & Christopher Day
Downtown Waste Service Plan 2009 Spreadsheet

Other Departments, Boards, Commissions or Agencies

Memorandum

Date: July 15, 2009

To: City Council

Via: Thomas H. Muehlenbeck, City Manager
Frank Turner, Deputy City Manager

From: Jon Hubach, Downtown Planner
Christopher Day, Commercial Recycling Supervisor

Re: Solid Waste Program for Downtown Plano

As new restaurants and other stores and shops have opened and the popularity of Downtown Plano has increased, so has the pressure on the existing infrastructure, specifically solid waste and environmental services. Most of the properties are small and lack space for each business to have its own dumpster and recycling container. As a result, there is no uniform level of solid waste service, with some businesses utilizing residential carts, others sharing dumpsters, and some with no trash service at all. This problem is most critical for the businesses in the block bounded by 15th Street, K Avenue, 14th Street and the J Place parking lot, since it contains several restaurants. As of July 2009, trash service for these businesses is at or near capacity and there are frequent problems with overflowing dumpsters and litter.

As a result, the Planning, Public Works, Customer and Utility Services, Parks and Recreation and Sustainability and Environmental Services departments have developed a proposal that will consolidate solid waste services into one location. Using TIF funds, the city will construct a screened enclosure in the Municipal Center South parking lot to contain a large compactor, a recycling container and an area set aside for organic waste carts. The enclosure will have locked gates and will only be accessible to the businesses in this block. The compactor and recycling container will also serve the Parks and Recreation Department.

The City will maintain the master account for the containers with Allied Waste Services, and will bill the businesses in the block through their utility billing statements. The cost to the businesses will be based on the type of business and its size, plus a 10% service fee to cover the costs of electricity for the compactor. For example, restaurants will pay more than offices, and larger restaurants will pay more than smaller ones. This consolidated solid waste management program will replace all individual dumpsters, carts and trash service with no exceptions. Businesses in this block must utilize the communal facilities and may no longer have individual service. We believe this is the most equitable and balanced solution we can offer to meet the area's solid waste disposal needs.

Attached is an ordinance to enact the specific program and the usage fees that will apply to businesses in this block. Please let us know if you need additional information.

CC: Phyllis M. Jarrell, Planning Director
Christina Day, Community Services Manager
Nancy Nevil, Director of Sustainability & Environmental Services
Christopher Day, Commercial Recycling Supervisor
Alan Upchurch, Public Works Director
Mark Israelson, Customer and Utility Service Director
Warren J Spencer, Assistant City Attorney III
Amy Fortenberry, Director of Parks and Recreation

Downtown Waste Service Plan 2009

Address	Business Name	Lvl Svc	Current			Proposed			Solid Waste Future
			Cost	Sq Ft	Use	Sq ft \$	Total Cost		
1004 E. 15th	Fillmore	8yd - 2	\$264.78	3600	Rest	.06	\$216	6 yd Vertical compactor	
1006 E. 15th	Urban Crust	8yd - 2	\$264.78	3600	Rest	.06	\$216	Delivery/Install \$650	
1008 E. 15th	Embellish			2400	R2	.02	\$48	Mo. Lease \$190	
1010 E. 15th	Ambiance	2yd - 1	\$53.35	2270	R2	.02	\$45	2 x wk (32 yds) \$613	
1012 E. 15th	Natures Finest	.4yds	\$26.45	2537	R2	.02	\$51	\$803	
1016 E. 15th	Toast of Texas	.4yds	\$26.45	1144	R2	.02	\$23	3 x wk recycle \$130.33	
1018 E. 15th	Pink Paparazzi (Tuscan Lights)	.4yds	0	948	R1	.01	\$9	\$933	
1020 E. 15th	Pink Cadillac (Accountre)	.4yds	\$26.45	793	R1	.01	\$8		
1022 E. 15th	Gregory's	.8yds	\$39.70	1749	Rest	.06	\$105	Mo. Lease \$190	
1024 E. 15th	CYA Architect			2016	O	.015	\$36	3 x week (40 yds) \$919.05	
1030 E. 15th	Sutton Place	4yd -1	\$84.22	2375	R2	.02	\$47	\$1,109.05	
" "	Sutton Place	.4yds	\$26.45	1347	R2	.02	\$27	3 x wk recycle \$130.33	
" "	Sutton Place			2345	R2	.02	\$47	\$1,239.38	
1416 J Place	Fairway Group			2880	O	.015	\$43		
1414 J Place	Masonic Lodge	2yd - 1	\$53.35	3262	O	.015	\$49	Total monthly trash is approximately 204 yds	
1410 J Place	Broadhead Realty			1903	O	.015	\$29	Recycling 30% recycled leaves 140 yards of trash	
1408 J Place	Nanny Grannies	MCS		3000	R2	.02	\$60	6 yard compactor at a 3 to 1 ratio; 140/3 = 46.6 mo.	
1001 E. 14th	Lillies Garden Shop	3yd -1	\$69.51	3095	R2	.02	\$62	46.6/4 = 11.6	
1400 J Place	Cobwebs			4200	R2	.02	\$84		
1400 J Place	Neer Nees			468	Rest	.04	\$19		
1409 K Ave.	MCS	8yd-R + 8yd T	\$192	15020	O	.015	\$225		
1032 E. 15th	Queen of Hearts			4000	R2	.02	\$80		
			204 yds mo. T	\$1,127.49					\$1,529
			32yds mo. R	\$52.13					
				\$1,179.62					

Fees

Retail 1 (R1) = 1000 SF > = .01

Retail 2 (R2) = 1000 SF < = .02

Restaurant 1 (Rest1) = 1000 SF > = .04 without Organics, .035 with Organics

Restaurant 2 (Rest 2) = 1000 SF < = .06 without Organics, .05 with Organics

Office (O) = .015

* Due to anticipated participation in organic recycling (restaurants only), Total Cost will be less (est. \$1390.00)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING ARTICLE I OF CHAPTER 18, SOLID WASTE OF THE CODE OF ORDINANCES OF THE CITY OF PLANO TEXAS TO ADD CERTAIN DEFINITIONS TO SECTION 18-1 AND ADDING SECTION 18-25 DOWNTOWN COLLECTION ACCOMMODATION AND RATES TO CREATE ACCOMMODATION FOR THE COLLECTION OF SOLID WASTE FOR SPECIFIED DOWNTOWN PROPERTIES INCLUDING A RATE STRUCTURE; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Council passed Ordinance No. 2008-9-35 on September 22, 2008 which set forth rules and regulations pertaining to the collection of solid waste in the City of Plano; and

WHEREAS, the efficient collection of solid waste is critical to the health and safety of the residents of Plano; and

WHEREAS, the development patterns of the Downtown area provide special challenges for businesses and residents in existing heritage structures to accommodate efficient waste collection; and

WHEREAS, the City staff recommends, and the Council finds, the most practical solution to waste collection in this area to be a cooperative effort among all properties; and

WHEREAS, the City Council desires to amend Article I of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano to accommodate the collection of solid waste for specified Downtown properties.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. Section 18-1 of Article I of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano is hereby amended to add the following definitions:

“Downtown Merchants means any business operating in the block bounded on the north by 15th Street, south by 14th Street, east by K Avenue and west by DART right-of-way.

Office means any use categorized in the “Office & Professional Uses” category in the Schedule of Permitted Uses in the City of Plano Zoning Ordinance, including but not limited to medical office, professional/general administrative office, and clinic.

Restaurant means an establishment where food and drink are prepared and consumed primarily on the premises.

Retail means an establishment engaged in the selling of goods and merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.”

Section II Article I of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano is hereby amended to add the following section to read in its entirety as follows:

“Sec. 18-25 Downtown Collection Accommodation and Rates

Downtown Merchants are required to utilize shared solid waste service containers as designated by the City of Plano. The City will provide designated containers for shared use including both recycling and solid waste in a centralized location. Merchants will be charged monthly by the City of Plano based on the use and floor area of the building occupied by the use. Service rates are established as follows:

- (1) Restaurants greater than 1000 square feet of floor area will be charged \$0.06 per square foot with the following exception. Those restaurants electing to separate their solid waste by participating in organic recycling will be charged \$0.05 per square foot.
- (2) Restaurants less than 1000 square feet of floor area will be charged \$0.04 per square foot with the following exception. Those restaurants electing to separate their solid waste by participating in organic recycling will be charged \$0.035 per square foot.
- (3) Retail uses of greater than 1000 square feet of floor area will be charged \$0.02 per square foot.
- (4) Retail uses of less than 1000 square feet of floor area will be charged \$0.01 per square foot.
- (5) Office uses will be charged \$0.015 per square foot.”

Section III. All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section IV. The repeal of any ordinance or part of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section V. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VI. It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

Section VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 27th DAY OF JULY, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>JK</i> 7-17-09
Council Meeting Date:	7/27/09	Budget	<i>JK</i> 7-17-09
Department:	Budget	Legal	<i>JK</i> 7/17/09
Department Head	Karen Rhodes	Assistant City Manager	
Dept Signature:	<i>Karen Rhodes</i>	Deputy City Manager	<i>JK</i> 7/17/09
		City Manager	<i>JK</i> 7/20/09
Agenda Coordinator (include phone #): Anita x7194			

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, TRANSFERRING THE SUM OF \$183,610 FROM THE GENERAL FUND OPERATING APPROPRIATION FOR FISCAL YEAR 2008-09 TO THE GRANT FUND OPERATING APPROPRIATION TO REPAY HUD FOR PLANO INTERNATIONAL PRESCHOOL'S FAILURE TO FULLY COMPLY WITH THE NATIONAL OBJECTIVES DURING THE RELEVANT PERIODS; AMENDING THE BUDGET OF THE CITY AND ORDINANCE 2008-9-15, AS AMENDED, TO REFLECT THE ACTIONS TAKEN HEREIN; DECLARING THIS ACTION TO BE A CASE OF PUBLIC NECESSITY; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	203,641,350	0	203,641,350
Encumbered/Expended Amount	0	0	0	0
This Item	0	183,610	0	183,610
BALANCE	0	203,827,960	0	203,827,960

FUND(S): **GENERAL FUND**

COMMENTS: Supplemental appropriations approved to date for the General Fund, including this item, total increases of \$183,610.

STRATEGIC PLAN GOAL: Reimbursement to the CDBG Fund for a HUD regulation is related to the City's Goal of "Service Excellence."

SUMMARY OF ITEM

Supplemental Appropriation No. 2

This supplemental appropriation will allow the City to reimburse HUD as required.



CITY OF PLANO COUNCIL AGENDA ITEM

List of Supporting Documents: FY 2008-09 Supplemental Appropriations Log Interoffice Memo	Other Departments, Boards, Commissions or Agencies Letter from HUD

Memorandum

Date: July 14, 2009

To: City Council

Via: Thomas H. Muehlenbeck, City Manager
Frank Turner, Deputy City Manager

From: Christina Day, Community Services Manager



Re: Plano International Preschool 2001, 2002, and 2003 CDBG Grant Contracts

In 2001, 2002, and 2003, the City of Plano entered into contracts with Plano International Preschool for expenditure of Community Development Block Grant (CDBG) funds to acquire and improve a facility in Plano. Those contracts required, per the United States Department of Housing and Urban Development (HUD), the agency meet the National Objective of serving 51% or more low- to moderate-income (LMI) clientele for five years after the contract's final expenditure.

In monitoring the agency files, staff discovered that the agency failed to meet that objective in 2005 (50.0% LMI clientele) and 2006 (49.2% LMI clientele). Those findings have resulted in a HUD determination that the preschool did not meet the National Objective for the entire five year period, dating from the last disbursement of the 2001 grant funds on December 20, 2002. Per the attached letter from HUD dated June 1, 2009, the City's CDBG program must be reimbursed based on HUD's formula for repayment.

This formula results in a repayment of \$183,610 to Plano's CDBG program. Typically, the City would receive payment from the grant recipient, which would be deposited into the CDBG account; however, the recipient's Board of Directors has been unwilling to return any funds, insisting that they met the National Objective but unable to provide documentation. HUD states that the repayment must occur by July 30, 2009 in order to avoid a finding of non-compliance and holds the City fully responsible for the funds. Therefore, we are asking that the Council authorize a transfer of general funds to the CDBG account so that we may maintain compliance with our HUD agreements.

The City Attorney continues to pursue repayment of this debt from Plano International Preschool. An untenable financial situation for the preschool ended in the dissolution of the non-profit in 2007 after 27 years of service to the community. The property was sold to a new owner, Custer Parkway Preschool, who continued to serve LMI children. If funds are recovered from the preschool, they will be returned to the City's general fund, rather than CDBG, since the CDBG debt will be satisfied.

CC: Phyllis M. Jarrell, Planning Director
Victoria Huynh, Assistant City Attorney III



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Fort Worth Regional Office, Region IV
Office of Community Planning and Development
801 Cherry Street, Unit #45, Suite 2500
Fort Worth, TX 76102
www.hud.gov

RECEIVED

JUN 03 2009

PLANNING DEPT

JUN 01 2009

Christina Day, Manager
Neighborhood Services
City of Plano
P.O. Box 860358
Plano, TX 75086-0358

Dear Ms. Day:

SUBJECT: Plano International Preschool (PIP)
Community Development Block Grant (CDBG) Program
Request for Waiver of the National Objective Regulations at 24 CFR 570.208(a)(2)
and Reversion of Assets Regulations at 24 CFR 570.503(b)(7)

Thank you for your letter of May 12, 2009, requesting a waiver of the CDBG regulations at 570.208(a)(2), limited clientele activities, and 570.503(b)(7), reversion of assets, related to the subject property, which was acquired and improved with CDBG funds in excess of \$25,000.

The City contends that application of the CDBG regulations at 570.208(a)(2) and 570.503(b)(7) will cause undue hardship and adversely affect the purposes of the Housing and Community Development Act of 1974, as amended (the Act). Section 570.5 authorizes waivers of the CDBG regulations not required by law when it is determined that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purposes of the Act. However, the Department does not grant waivers after a violation of the regulations has occurred. In our letter dated March 11, 2009, HUD concluded that the property did not meet the CDBG national objective of benefit to low- and moderate-income persons through limited clientele activities until five years after expiration of any related agreements between the City and PIP, as required by 570.208(a)(2) and 570.503(b)(7).

Therefore, within 60 days from the date of this letter, the City should reimburse its CDBG program account as required by 570.503(b)(7)(ii). Failure to take the appropriate remedial action will result in a finding of non-compliance. The appropriate amount of program income due back to the CDBG program account may be determined by utilizing the sample sources and uses table and calculation as provided in the enclosure. CDBG amounts subject to reversion do not incorporate interest or penalty.

If you have any questions about this letter, please contact Mark Roy, Senior Community Planning and Development Representative, at (817) 978-5944.

Sincerely,

Handwritten signature of Gary Holtberg in black ink.Handwritten initials for Katie S. Worsham in black ink.

Katie S. Worsham
Director

Enclosure

Sample Sources and Uses Table

Sources:

2001, 2002 & 2003 CDBG (subject to reversion)	\$172,917
2001, 2002 & 2003 CDBG (not subject to reversion)	\$ 0
2001-2007 non-CDBG	<u>\$231,797</u>
Total	<u>\$404,714</u>

Uses:

2001 acquisition – CDBG	\$ 67,952
2001 acquisition – non-CDBG	\$230,952
2001, 2002 & 2003 rehabilitation – CDBG	\$104,965
2001, 2002 & 2003 rehabilitation – non-CDBG	\$ 845
2001-2007 other non-CDBG facility improvements	<u>\$ 0</u>
Total	<u>\$404,714</u>

Sample CDBG Subject to Reversion Calculation

(1) Current Fair Market Value (FMV):	\$430,000
(2) CDBG subject to reversion (2001, 2002 & 2003) ratio to total sources: [\$172,917 divided by \$404,714]	42.7%
(3) Total CDBG amount subject to reversion: [42.7% of \$430,000]	\$183,610

FY 2008-09
SUPPLEMENTAL APPROPRIATIONS

Description	Department	Amount
Supplemental Appropriation for reimbursement to Grant Fund for HUD requirements.		183,610
TOTAL GENERAL FUND APPROPRIATIONS		<u>\$ 183,610</u>
TOTAL CATV FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL MUNICIPAL DRAINAGE FUND APPROPRIATIONS		<u>\$ -</u>
Supplemental Appropriation for funding increased costs related to the Fixed Network Meter Project.	041 - Water & Sewer	\$ 1,715,906
TOTAL WATER & SEWER FUND		<u>\$ 1,715,906</u>
TOTAL SUSTAINABILITY & ENVIRONMENTAL FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL CONVENTION & TOURISM FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL PROPERTY/LIABILITY FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL GOLF COURSE FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL RECREATION FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL INTERNAL SERVICE FUNDS AND OTHER FUNDS APPROPRIATIONS		<u>\$ -</u>
GRAND TOTAL ALL FUNDS		<u>\$ 1,899,516</u>

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, TRANSFERRING THE SUM OF \$183,610 FROM THE GENERAL FUND OPERATING APPROPRIATION FOR FISCAL YEAR 2008-09 TO THE GRANT FUND OPERATING APPROPRIATION TO REPAY HUD FOR PLANO INTERNATIONAL PRESCHOOL'S FAILURE TO FULLY COMPLY WITH THE NATIONAL OBJECTIVES DURING THE RELEVANT PERIODS; AMENDING THE BUDGET OF THE CITY AND ORDINANCE 2008-9-15, AS AMENDED, TO REFLECT THE ACTIONS TAKEN HEREIN; DECLARING THIS ACTION TO BE A CASE OF PUBLIC NECESSITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano approved and adopted the budget for the City for Fiscal Year 2008-09 setting the appropriations for the General Fund at \$203,641,350; and

WHEREAS, Plano International Preschool (PIP), a subrecipient of Community Development Block Grant (CDBG) funds, failed to fully comply with the mandatory national objectives during the relevant periods; and

WHEREAS, the United States Department of Housing and Urban Development (HUD) has determined that due to PIP's failure, the City is required to remit ONE HUNDRED EIGHTY THREE THOUSAND SIX HUNDRED TEN DOLLARS (\$183,610) to HUD for Plano's CDBG program; and

WHEREAS, such costs cannot be fully met through appropriations in the existing budget; and

WHEREAS, the City Council deems it to be in the best interest of the City of Plano and its citizens to ensure that all requirements are met; and

WHEREAS, the City Council now finds that additional appropriations to the Grant Fund Operating Appropriation should be made in order to provide additional funding for the repayment to HUD, and that such action is a public necessity.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

SECTION I. The sum of ONE HUNDRED EIGHTY THREE THOUSAND SIX HUNDRED TEN DOLLARS (\$183,610) is hereby transferred from the General Fund Unappropriated Fund Balance to the Grant Fund Operating Appropriation.

SECTION II. The budget of the City of Plano for Fiscal Year 2008-09 as adopted by Ordinance No. 2008-9-15 is amended to reflect the action taken herein.

SECTION III. This supplemental appropriation Ordinance No. 2 shall become effective immediately from and after the date of its passage.

DULY PASSED AND APPROVED THIS THE _____ DAY OF _____, 2009.

Phil Dyer, **MAYOR**

ATTEST:

Diane Zucco, **CITY SECRETARY**

Diane C. Wetherbee, **CITY ATTORNEY**



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>JCF</i>	7-16-09
Council Meeting Date: 7/27/2009		Budget	C.S.	7-16-09
Department:	Public Works & Engineering	Legal <i>WS</i>		
Department Head	Alan Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan Upchurch</i>	Deputy City Manager	<i>RL</i>	2-17-09
		City Manager	<i>[Signature]</i>	7/17/09
Agenda Coordinator (include phone #): I. Pegues - 7152 <i>[Signature]</i>		Project No. 5841		
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
An ordinance of the City of Plano, Texas, amending Section 12-101 of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances to temporarily prohibit until February 1, 2010 the stopping, standing, or parking of motor vehicles on certain sections of Buckboard Drive and Windmill Lane, within the city limits of the City of Plano; declaring it unlawful and a misdemeanor to park motor vehicles upon such sections of such roadway within the limits herein defined; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: This item, if approved, implements a fine for criminal penalties of up to \$200. STRATEGIC PLAN GOAL: Fines associated with street improvements relate to the City's Goals of Safe, Efficient Travel and Livable and Sustainable Community.				
SUMMARY OF ITEM				
Public Works & Engineering Department Community Investment Program Project 5841 - Baffin Bay Drive & Morton Vale Reconstruction recently began construction. The reconstruction of Morton Vale requires fully closing the road for approximately six to eight weeks. To facilitate access for Police, Fire, and the public during the time that Morton Vale is closed for construction, the Public Works & Engineering Department is proposing to temporarily prohibit on-street stopping, standing, or parking of vehicles at the entrance to the subdivision. The temporary parking restrictions will remain in effect until acceptance of the project. The Public Works & Engineering Department supports approval of this ordinance.				
List of Supporting Documents: Map		Other Departments, Boards, Commissions or Agencies		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING SECTION 12-101 OF CHAPTER 12 (TRAFFIC CODE) OF THE CITY OF PLANO CODE OF ORDINANCES TO TEMPORARILY PROHIBIT UNTIL FEBRUARY 1, 2010 THE STOPPING, STANDING, OR PARKING OF MOTOR VEHICLES ON CERTAIN SECTIONS OF BUCKBOARD DRIVE AND WINDMILL LANE, WITHIN THE CITY LIMITS OF THE CITY OF PLANO; DECLARING IT UNLAWFUL AND A MISDEMEANOR TO PARK MOTOR VEHICLES UPON SUCH SECTIONS OF SUCH ROADWAY WITHIN THE LIMITS HEREIN DEFINED; PROVIDING A FINE FOR CRIMINAL PENALTIES NOT TO EXCEED \$200.00 FOR EACH OFFENSE; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, A PUBLICATION CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano finds it necessary to temporarily prohibit parking of motor vehicles along certain sections of Buckboard Drive and Windmill Lane within the city limits of the City of Plano in order to provide for the timely reconstruction of Morton Vale and the safety of the general public within the area.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. When signs are erected giving notice to such effect, it shall be unlawful for any person to stop, stand, or park a motor vehicle along the sections of Buckboard Drive and Windmill Lane described herein, except when necessary to avoid conflict with other traffic or in compliance with law or directions of a police officer.

Section II. Section 12-101 of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances is hereby amended by the addition of the following Subsections entitled and to read as follows:

Buckboard Drive, along the west side from its intersection with East Parker Road northward to its intersection with Windmill Lane. This provision shall expire on February 1, 2010.

Windmill Lane, along the north side from its intersection with Buckboard Drive westward to its intersection with Wood Rail Drive. This provision shall expire on February 1, 2010.

Section III. The Traffic Engineer of Plano is hereby authorized and directed to cause placement of traffic control signs at each approach to the portions of the roadways described herein, and such sign shall give notice to all persons of the prohibition against stopping, standing, or parking in this area.

Section IV. All provisions of this ordinance shall expire and cease to be in effect on February 1, 2010.

Section V. All provisions of the ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section VI. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

Section VII. Any person, firm, or corporation violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction in the Municipal Court, shall be subject to a fine not to exceed TWO HUNDRED AND NO/100 DOLLARS (\$200.00) for each offense. Each and every violation shall be deemed to constitute a separate offense.

Section VIII. The repeal of any ordinance or part of an ordinance affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this Ordinance.

Section VIII. This Ordinance shall become effective from and after its passage and publication as required by law.

DULY PASSED AND APPROVED this 27th day of July, 2009.

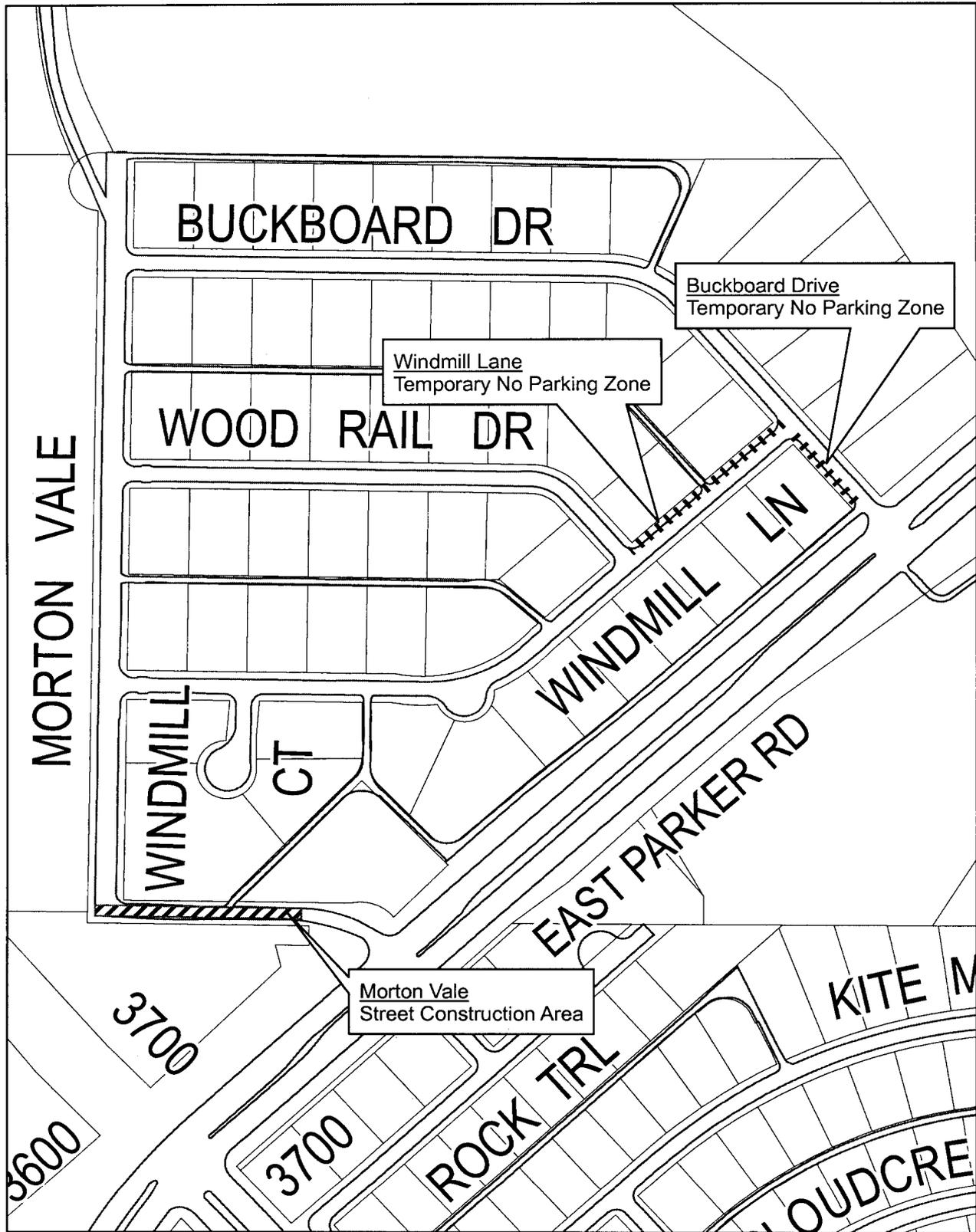
Phil Dyer, MAYOR

ATTEST:

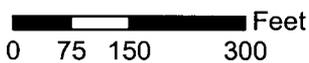
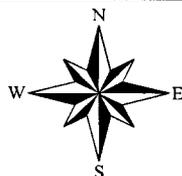
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



Proposed Buckboard Drive and
Windmill Lane Temporary
No Parking, Stopping, or
Standing at any Time Zones



Transportation Engineering Division

X-4

July 2009



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	NR 6/29/09	
Council Meeting Date:	7/27/2009	Budget	C.S. 7/2/09	
Department:	Purchasing	Legal	N/A DW	
Department Head	Mike Ryan	Assistant City Manager	[Signature] 7-7-09	
Dept Signature:	[Signature]	Deputy City Manager	[Signature] 7-7-09	
		City Manager	[Signature] 7/14/09	
Agenda Coordinator (include phone #): Dianna Wike x7549 or 5512				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
Award/Rejection of Competitive Sealed Proposal No 2009-90-B for the construction of the Environmental Education Complex – Project No. 5119, in the amount of \$1,185,314.00, to Turner Construction Company, and authorizing the City Manager or his designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	69,979	1,268,000	0	1,337,979
Encumbered/Expended Amount	-69,979	-32,347	0	-102,326
This Item	0	-1,185,314	0	-1,185,314
BALANCE	0	50,339	0	50,339
FUND(S): WATER & SEWER FUND				
COMMENTS: Funds are included in the 2008-09 Water & Sewer Fund. This item, in the amount of \$1,185,314, will leave a current year balance of \$50,339 for the Environmental Education Building project.				
STRATEGIC PLAN GOAL: Construction of an environmental education building relates to the City's Goals of Service Excellence and Premier City in Which to Live.				
SUMMARY OF ITEM				
Staff recommends the Competitive Sealed Proposal of Turner Construction Company, in the amount of \$1,185,314.00 be accepted as the best value, and conditioned upon timely execution of any necessary contract documents. This is for the construction of the Environmental Education Complex – Project No. 5119.				
List of Supporting Documents: CSP Recap Recommendation Memo		Other Departments, Boards, Commissions or Agencies N/A		

Cindy Pierce

From: Tom Muehlenbeck
Sent: Friday, July 10, 2009 9:41 AM
To: Cindy Pierce
Subject: Fw: Annual Operating Cost for Environmental Education Building

Tom Muehlenbeck

From: Jim Razinha
To: Tom Muehlenbeck
Cc: Mike Ryan; Alan Upchurch; Cindy Pierce; Nancy Nevil
Sent: Fri Jul 10 09:37:47 2009
Subject: RE: Annual Operating Cost for Environmental Education Building
Mr. Muehlenbeck,

Estimated annual O&M costs for the Environmental Education Center are about \$26,500.

Caveat – we think our estimate for maintenance support for the specialized equipment (solar panels, solar heater, wind turbine) is high, but won't know until we actually know what is installed, so that may go down.

r/

Jim Razinha
Facilities Manager, LEED AP
City of Plano
P.O. Box 860358
Plano, TX 75086-0358
Phone: 972-941-7152
jimraz@plano.gov

From: Cindy Pierce
Sent: Wednesday, July 08, 2009 3:17 PM
To: Jim Razinha
Cc: Mike Ryan
Subject: Annual Operating Cost for Environmental Education Building

Hi Jim –
I'm copying Mike because I started with him yesterday via voice mail. Just wanted to let you know Mr. Muehlenbeck would like the annual operating cost associated with the Environmental Education Complex which is listed as an agenda item for July 27th. Mr. Muehlenbeck would like this information before approving the item for the agenda.

Thanks,
Cindy

Cindy Pierce
Exec Asst to City Manager
City of Plano
P. O. Box 860358
Plano, TX 75086
(972) 941-7121



MEMORANDUM

TO: Dianna Wike, Purchasing
FROM: James Razinha, Facilities Manager *JR*
SUBJECT: Environmental Education Complex – Project No. 5119
DATE: June 25, 2009

I am recommending award of this project to Turner Construction in the amount of \$1,185,314. The CSP Number is 2009-90-B.

ls

JR031

CITY OF PLANO

**CSP NO. 2009-90-B
ENVIRONMENTAL EDUCATION COMPLEX – PROJECT NO. 5119
CSP RECAP**

CSP opening Date/Time: April 15, 2009 @ 3:00 PM

Number of Vendors Notified: 1008

Vendors Submitting “No Bids”: 0

<u>Number of Proposals Submitted:</u>	8	<u>Total Weighted Score</u>
Turner Construction Company		4.62
Hillwood Construction Services, LP		4.06
Constructors & Associates, Inc.		3.98
Mitchell Enterprises, LTD.		3.87
SCM Construction, Inc.		2.59
3i Construction, LLC		2.57
Falkenberg Construction Company, Inc.		2.13

Proposals Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s):

Turner Construction Company

Dianna Wike

June, 23, 2009

Dianna Wike, Senior Buyer

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>WP</i>	7/14/09
Council Meeting Date:	7/27/09	Budget	C.S.	7-14-09
Department:	Purchasing	Legal <i>RL</i>	<i>MS</i>	7-17-09
Department Head	Mike Ryan	Assistant City Manager	<i>RA</i>	7-19-09
Dept Signature:	<i>Mike Ryan</i>	Deputy City Manager	<i>[Signature]</i>	7-19-09
		City Manager	<i>[Signature]</i>	7/20/09
Agenda Coordinator (include phone #): Aimee Storm Ext 7248				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER RESCIND AWARD				
CAPTION				
Rescind Award for Median Right of Way Landscape Maintenance (Proposal # 2009-94-C)				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
<p>At the City Council Meeting of 5/26/09, Council awarded Proposal # 2009-94-C for Median and Landscape Maintenance to VMC Landscaping. Soon after the award, Texas Tree and Turf filed a formal protest with the Chief Purchasing Officer alleging irregularities on the part of Staff during the evaluation process. A thorough investigation was done by the Purchasing Staff in conjunction with Parks/Recreation Administration, and the Chief Purchasing Officer has determined the process used for evaluation by staff was not in accordance with written guidelines for proposals, and therefore may/may not have influenced the resulting scores of vendors being evaluated. Because of this irregularity, it is the opinion of the Chief Purchasing Officer that the integrity of this proposal has been compromised and all proposals received under Proposal 2009-94-C, should be rejected and the project rebid as a "lowest responsible bid" as opposed to the proposal process previously used.</p>				
List of Supporting Documents: Memorandum		Other Departments, Boards, Commissions or Agencies /		

ME MORANDUM

DATE: July 14, 2009

TO: Thomas H. Muehlenbeck
City Manager

FROM: Mike Ryan, CPPO
Chief Purchasing Officer

SUBJECT: Rescission of All Proposals – Proposal # 2009-94-C

At the City Council Meeting of 5/26/09, Council awarded Proposal #2009-94-C for Median and Landscape Maintenance to VMC Landscaping. On Monday, June 15, 2009, a Protest was received (in the form of an email) from Robert Vorwerk, of Texas Tree and Turf (the second highest ranked firm) alleging some possible irregularities in the evaluation process done by City Personnel. I was asked to investigate these irregularities and respond back to Mr. Vorwerk. The formal Contract Document had not been signed by all parties, so I issued the instruction to not pursue full execution of the contract until I had a chance to address the protest.

The Purchasing Division's investigation, in conjunction with representatives from the Parks/Recreation Department, revealed that the outlined process for evaluation of these proposals was not followed by the evaluators. It is my determination, these irregularities in the evaluation process may/may not have had a direct impact on the way all the proposals were rated; thereby possibly resulting in a faulty award process. For that reason, it is my recommendation to rescind the original award and rebid the entire project.

This project was competed as a **Competitive Sealed Proposal** according to State Law, as opposed to a traditional **Competitive Sealed Bid**. Competitive Sealed Bids are awarded to the lowest bid price, from a vendor that not only meets our specifications, but are also a "responsible" bidder. Competitive Sealed Proposals are awarded to the offerer who proposes the best solution to our needs, with price being a factor, but not the only factor. We are required by law to outline how the bids will be evaluated, as part of the bid document, and are expected to adhere to these evaluation methods.

To insure all proposals are evaluated in a fair and ethical manner by each evaluation committee, "Evaluation Form Instructions" and "Evaluation Committee Agreements" have been developed by the Purchasing Division that each evaluator of a proposal for the City receives a copy of and is required to sign prior to evaluations of proposal being conducted. To highlight some portions of the Instructions/Agreements:

- "Each proposal shall be evaluated on an individual basis. Once all initial evaluations are completed, the committee will compare all reviews to ensure the best proposal or best value purchase is made on behalf of the City."
- "Point Scores always shall be assigned in an impartial and objective manner."
- "Each member must perform an individual evaluation of each proposal."

- “When finished with the independent review, total the scores for each offeror.”

Investigation revealed in this instance, 12 proposals were received for Median and Landscape Maintenance. Three (3) Parks Department Employees participated in the evaluation committee. Instead of all members evaluating all proposals as called for in the instructions for the process, the 12 proposals were divided among the 3 employees (4 each) for thorough evaluation and scoring. The score and comments were then shared with the other members for concurrence in the final evaluation. The downside to this method of evaluation being used, is two evaluators are being required to depend on a third party evaluation, as opposed to making their own determinations on each proposal. In short, all proposers did not have the opportunity to be evaluated by all committee members as required.

In my determination, because each evaluator did not do an independent evaluation of each proposal as called for, there was a major inconsistency in our evaluation process, which may or may not have resulted in a differing contract award. Just because the “best” vendor may or may not have been the end result, is no defense in my opinion. The major inconsistency in the process potentially calls into question the integrity of the entire process and results. Public Procurement is based upon a transparent process where all vendors are placed on a level playing field as much as possible. Hence the reason we have multiple evaluators, evaluating all proposals.

One of the problems that exist in rejecting all proposals and doing the entire process again is, in essence, all vendors have already exposed their pricing. For that reason, it is further recommended that a Competitive Sealed Proposal process not be used for the new process. It is our plan to separate the mowing project into multiple areas and use a traditional Competitive Sealed Bid process to gather new pricing. This will allow vendors to bid any or all of the various sections of the project. Any possible loss of “aggregate” pricing will be hopefully made up by better bid pricing due to the poor economy, and the ability of smaller contractors to participate in a smaller scope project.

It is my recommendation to rescind the Competitive Sealed Proposal award to VMC Landscaping by City Council on 5/26/09 and compete a revised scope of work as a Competitive Sealed Bid as soon as possible.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	6-25-09	
Council Meeting Date:	July 27, 2009	Budget	6-30-09	
Department:	Finance Department	Legal	6-30-09	
Department Head	Denise Tacke <i>DT</i>	Assistant City Manager	7-1-09	
Dept Signature:		Deputy City Manager	7-1-09	
		City Manager	7/1/09	
Agenda Coordinator (include phone #): Katherine Crumbley - x7479				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AMENDMENT TO TAX ABATEMENT AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE SHOPS AT LEGACY (NORTH) LLC; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
This amendment changes the date that Shops at Legacy lessee must occupy the improvements on or before, from 8/1/2009 to 1/31/2010.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Amended Tax Abatement Agreement				

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AMENDMENT TO TAX ABATEMENT AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE SHOPS AT LEGACY (NORTH) LLC; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Amendment to Tax Abatement Agreement By and Between the City of Plano, Texas and The Shops at Legacy (North) LLC, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Amendment"); and,

WHEREAS, upon full review and consideration of the Amendment, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Amendment, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Amendment and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Amendment.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the _____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

**AMENDMENT TO
TAX ABATEMENT AGREEMENT BY AND BETWEEN
THE CITY OF PLANO, TEXAS AND THE SHOPS AT LEGACY (NORTH) LLC, A TEXAS
LIMITED LIABILITY COMPANY**

THIS AMENDMENT ("Amendment") is entered into by and between the CITY OF PLANO, a Texas municipal corporation of Collin County, Texas (the "City"), and THE SHOPS AT LEGACY (NORTH) LLC (the "Owner").

RECITALS:

WHEREAS, the Plano City Council on May 27, 2008 approved the establishment of Reinvestment Zone 113 and also authorized a tax abatement agreement between the City and the Owner for the abatement of real property improvement taxes on certain property located within Reinvestment Zone 113; and

WHEREAS, City and Owner executed a tax abatement agreement on December 22, 2008 (the "Agreement"); and

WHEREAS, City and District have agreed to amend the Agreement as set forth below.

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

1. Paragraph 1 is amended to read as follows:

"The real property subject to this Agreement is described by metes and bounds in EXHIBIT "A" (the "Real Property"). At the time of this Agreement The Shops at Legacy (North) LLC is the owner of the Real Property. This Agreement shall be terminated should the Real Property not be leased by a lessee ("Lessee" or "Owner's Lessee") by February 1, 2010 or should said lease be terminated during the term of this Agreement and a suitable substitute tenant not occupy the Real Property within ninety (90) days from the date of lease termination. A suitable substitute tenant shall be subject to the approval of the City which approval shall not be unreasonably withheld."

2. Paragraph 6(c) is amended to read as follows:

"(c) Owner's Lessee fails to occupy the Improvements on or before February 1, 2010; or"

Exhibit A to Resolution No. _____

3. Except as expressly amended by this Amendment, the Agreement remains in full force and effect as provided therein.

EXECUTED on the _____ day of _____, 2009, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. _____(R) approved by the City Council on July 27, 2009, and by Owner, signing by and through its authorized representative.

CITY OF PLANO:

APPROVED AS TO FORM:

Thomas H. Muehlenbeck
CITY MANAGER

Diane C. Wetherbee, City Attorney

THE SHOPS AT LEGACY (NORTH) LLC, a
Texas limited liability company

ATTEST:

By: _____
Name:
Title:



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Purchasing		<i>JSF</i>	7-21-09	
Council Meeting Date:	7/27/09	Budget	<i>C.S.</i> 7-20-09	
Department:	Finance	Legal	<i>JW</i> 7-10-09	
Department Head	Denise Tacke	Assistant City Manager	<i>DL</i> 7-21-09	
Dept Signature:	<i>Denise Tacke</i>	Deputy City Manager	<i>DL</i> 7-21-09	
		City Manager	<i>DL</i> 7-21-09	
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER PUBLIC HEARING				
CAPTION				
AN ORDINANCE OF THE CITY OF PLANO, TEXAS, DESIGNATING A CERTAIN AREA WITHIN THE CITY OF PLANO AS REINVESTMENT ZONE NO. 119 FOR A TAX ABATEMENT CONSISTING OF A 14.36 ACRE TRACT OF LAND LOCATED AT THE SOUTHWEST CORNER OF EAST PLANO PARKWAY AND SHILOH ROAD, IN THE CITY OF PLANO, TEXAS ESTABLISHING THE BOUNDARIES OF SUCH ZONE; ORDAINING OTHER MATTERS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: Notice of public hearing published on July 19, 2009 to create reinvestment zone 119. The real property improvements amount is \$4,721,000 while the business personal property amount to be maintained is \$5,800,000.				
SUMMARY OF ITEM				
This is related to Lineage Power Corporation, a Nevada Corporation, request for tax abatement on reinvestment zone 119 and creation of the zone.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

INTEROFFICE MEMORANDUM

TO: Thomas H. Muehlenbeck
City Manager

DATE: July 21, 2009

FROM: Denise Tacke
Director of Finance

CC: Cindy Pierce
Exec. Admin. Asst.

SUBJECT: Tax Abatement for Lineage Power Corporation - Reinvestment Zone 119

Lineage Power will complete real property improvements to the Real Property consisting of 100,000 sq. ft. of office space. The tax abatement will be based on the following values; the real property improvements will have an approximate taxable value of not less than \$4,721,000 by 12/31/09 and the business personal Property will have an approximate taxable value of not less than \$5,800,000 for atotal of \$10,521,000. Reinvestment Zone 119 will consist of a 14.36 acre tract of land located at the southwest corner of East Plano Parkway and Shiloh Road in the City of Plano. Lineage Power agrees to retain, transfer or create 185 full time jobs by 9/1/2009

The term of this tax abatement will be 10 years beginning January 1, 2010 and ending on December 31, 2019 and shall be based on amounts equal to 50% for real property and 50% for business personal property which is a savings of \$11,176.97 annually for real property and \$13,731.50 annually for business personal property, at the current rate of .4735.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, DESIGNATING A CERTAIN AREA WITHIN THE CITY OF PLANO AS REINVESTMENT ZONE NO. 119 FOR A TAX ABATEMENT CONSISTING OF A 14.36 ACRE TRACT OF LAND LOCATED AT THE SOUTHWEST CORNER OF EAST PLANO PARKWAY AND SHILOH ROAD, IN THE CITY OF PLANO, TEXAS ESTABLISHING THE BOUNDARIES OF SUCH ZONE; ORDAINING OTHER MATTERS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano, Texas (the "City"), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a reinvestment zone for retail tax abatement, as authorized by V.T.C.A. Tax Code Chapter 312 (referred to as the "Property Redevelopment and Tax Abatement Act" or the "Act"); and

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 27th day of July, 2009, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

WHEREAS, the City held such public hearing after giving written notice of said hearing to all taxing units overlapping the territory inside the proposed reinvestment zone; and

WHEREAS, the City at such hearing invited any interested person or his representative to appear for or against the creation of the reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory described in the notice calling such public hearing should be included in such proposed reinvestment zone, and the concept of tax abatement; and

WHEREAS, the proponents of the reinvestment zone offered evidence, both oral and documentary, in favor of all matters relating to the creation of the reinvestment zone.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct.

Section II. Definitions. For the purposes of this Ordinance, the following terms and phrases shall have the following meanings ascribed to them:

- a) Improvements - Improvements shall include, for the purpose of establishing eligibility under the Act, any activity at the location, including, but not limited to, new construction.
- b) Taxable Real Property - Taxable real property shall be as defined in the Texas Property Tax Code and shall not include personal property as defined in said code, nor shall it include land.
- c) Taxable Tangible Personal Property - Shall be defined, for purposes of this Ordinance, as tangible personal property, such as office machines and office furnishings, but shall specifically exclude inventory or supplies.
- d) Base Year - The base year for determining increased value shall be the taxable real property value assessed the year in which the agreement is executed.

Section III. The City, after conducting the above-mentioned hearing and having heard such evidence and testimony, has made the following findings and determinations based on the testimony presented to it:

- a) That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone; and
- b) That the boundaries of the reinvestment zone should be the area as described in the metes and bounds description attached hereto as Exhibit "A"; and
- c) That creation of the reinvestment zone for commercial/industrial tax abatement with boundaries as described in Exhibit "A" will result in benefits to the City and to the land included in the zone and the improvements sought are feasible and practical; and
- d) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Act in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that

would be a benefit to the property and that would contribute to the economic development of the City"; and

- e) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in the City of Plano Revised Policy Statement for Tax Abatement.

Section IV. Pursuant to Section 312.201 of the Act, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by metes and bounds in Exhibit "A" attached hereto and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. 119, City of Plano, Texas.

Section V. The zone shall be effective as of January 1, 2010.

Section VI. To be eligible for tax abatement a retail project shall:

- a) Be located wholly within the zone as established herein.
- b) Not include property that is owned or leased by a member of the City Council of the City of Plano or by a member of the Planning and Zoning Commission.
- c) Conform to the requirements of the City's Zoning Ordinance and all other applicable laws and regulations.
- d) Have and maintain all land located within the designated zone, appraised at market value for tax purposes.

Section VII. Written tax abatement agreements with property owner(s) located within the zone shall provide the terms regarding duration of exemption and share of taxable real property (and personalty) value from taxation as approved hereunder as shown below:

- a) Duration of Exemption – ten (10) consecutive tax years beginning with and including the January 1, 2010 assessment date.
- b) Share of taxes abated - percentage of taxes on total value of appraised Real and Business Personal Property and Improvements at the rate of: 50% for the years 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019.

Section VIII. Any written agreements authorized under this Ordinance must include provisions for:

- a) Listing the kind, number and location of all proposed improvements of the property;
- b) Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specification and conditions of the agreements;
- c) Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; and
- d) Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement.

Section IX. If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof.

Section X. This Ordinance shall become effective from and after its date of passage.

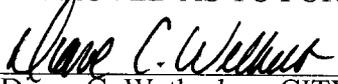
DULY PASSED AND APPROVED this 27th day of July, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 119
Real Property
Metes and Bounds

BEING a tract of land situated in the J.B. Roundtree survey, Abstract No. 759 and J.T. McCullough Survey, Abstract No. 633, and being all of Lot 5, Block 1 of Plano Tech Center II, an addition to the city of Plano as recorded in Cabinet N, Page 862 of the Plat Records of Collin County, Texas (P.R.C.C.T.), same being part of a tract of land described in Special Warranty Deed to Argent Plano Realty, L.P., dated May 24, 2000, as recorded in Volume 4678, Page 2236, Deed Records of Collin County, Texas, (D.R.C.C.T.), and being more particularly described as follows:

BEGINNING at the Northeast corner of a tract of land described by deed to Patrick Hillary as recorded in Volume 2206, Page 185, D.R.C.C.T., said point being on the West right-of-way line of Shiloh Road (variable width);

THENCE South 87 degrees 10 minutes 35 seconds West, departing said West right-of-way line and along the North line of said Hillary Tract, a distance of 570.20 feet to a ½-inch found iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC", (hereinafter referred to as "with cap") for corner, said corner being the Northwest corner of said Hillary Tract;

THENCE North 01 degree 26 minutes 31 seconds West, a distance of 16.55 feet to a point for corner;

THENCE South 89 degrees 40 minutes 24 seconds West, a distance of 312.80 feet to a ½-inch found iron rod with cap for corner;

THENCE North 00 degrees 21 minutes 11 seconds West, a distance of 138.22 feet to an aluminum disk found in concrete for corner, said corner being the most southerly Southeast corner of Lot 1, Block 1 of Plano Tech Center II, an addition to the City of Plano as recorded in Cabinet N, Page 459, P.R.C.C.T.;

THENCE North 64 degrees 59 minutes 53 seconds East, along the common line between said Lot 1 and said Lot 5, a distance of 50.51 feet to a ½-inch found iron rod with cap for corner;

THENCE North, continuing along said common line, a distance of 681.25 feet to a found "X"-cut in concrete for corner;

THENCE North 89 degrees 51 minutes 32 seconds East, departing said common line, a distance of 313.72 feet to a ½-inch found iron rod with cap for corner;

THENCE South 00 degrees 15 minutes 46 seconds East, a distance of 99.57 feet to a found "X"-cut in concrete for corner;

THENCE South 89 degrees 56 minutes 16 seconds East, a distance of 419.48 feet to a found "X"-cut in concrete for corner, said point being on the West line of a tract of land described by deed to Texas Power & Light Company (known as Tract 2) as recorded in Volume 874, Page 566, D.R.C.C.T.;

THENCE South 00 degrees 11 minutes 54 seconds West, along said West line, a distance of 646.72 feet to a ½-inch found iron rod with cap for corner, said corner being the Southwest corner of said Tract 2;

THENCE North 87 degrees 11 minutes 54 seconds East, along the South line of said Tract 2, a distance of 76.77 feet to a ½-inch found iron rod with cap for corner, said corner being the Southeast corner of said Tract 2;

THENCE North 00 degrees 35 minutes 54 seconds East, along the East line of said Tract 2, a distance of 1194.03 feet to a ½-inch found iron rod with cap for corner on the West right-of-way line of said Shiloh Road, said corner being on a non-tangent circular curve to the left, having a radius of 1255.00 feet and whose chord bears South 09 degrees 55 minutes 53 seconds East, a distance of 42.48 feet;

THENCE Southerly, along said West right-of-way line and along said circular curve to the left, through a central angle of 01 degree 56 minutes 23 seconds and an arc distance of 42.49 feet to a ½-inch found iron rod with cap for the point of reverse curvature of a circular curve to the right, having a radius of 1145.00 feet and whose chord bears South 05 degrees 09 minutes 05 seconds East, a distance of 229.42 feet;

THENCE Southerly, continuing along said West right-of-way line and along said circular curve to the right, through a central angle of 11 degrees 29 minutes 58 seconds and an arc distance of 229.81 feet to a ½-inch found iron rod for the point of tangency;

THENCE South 00 degrees 35 minutes 54 seconds West, continuing along said West right-of-way line, a distance of 858.99 feet to a found "X"-cut in concrete for corner;

THENCE South 00 degrees 39 minutes 42 seconds West, continuing along said West right-of-way line, a distance of 149.97 feet to the POINT OF BEGINNING AND CONTAINING 625,615 square feet or 14.36 acres of land, more or less.

TRACT 2

Nonexclusive easement and right of way created by Easement and Right of Way by TXU Electric Delivery Company filed 12/15/2006, under cc# 20061215001769580, Real Property Records of Collin County, Texas.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>DS</i>	7-21-09
Council Meeting Date:	7/27/09	Budget	C.S.	7-20-09
Department:	Finance	Legal	<i>MS</i>	7-20-09
Department Head	Denise Tacke	Assistant City Manager	<i>[Signature]</i>	7-21-09
Dept Signature:	<i>Denise Tacke</i>	Deputy City Manager	<i>[Signature]</i>	7-21-09
		City Manager	<i>[Signature]</i>	7/21/09
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, LINEAGE POWER CORPORATION, A NEVADA CORPORATION, AND PLANO TECH CENTER PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP; PROVIDING FOR A REAL AND BUSINESS PERSONAL PROPERTY TAX ABATEMENT, AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE..				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: Notice of public hearing published on July 19, 2009 to create reinvestment zone 119. The real property improvements amount is \$4,721,000 while the business personal property amount to be maintained is \$5,800,000.				
SUMMARY OF ITEM				
This is related to Lineage Power Corporation, a Nevada Corporation, request for tax abatement on reinvestment zone 119 and creation of the zone.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Tax Abatement Agreement				

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, LINEAGE POWER CORPORATION, A NEVADA CORPORATION, AND PLANO TECH CENTER PARTNERS, LTD., A TEXAS LIMITED PARTNERSHIP; PROVIDING FOR A REAL AND BUSINESS PERSONAL PROPERTY TAX ABATEMENT, AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, Lineage Power Corporation, a Nevada Corporation, and Plano Tech Center Partners, Ltd., a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager, or his designee, shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED this the ____ day _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

TAX ABATEMENT AGREEMENT

This Agreement is entered into by and between the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "City"; Plano Tech Center Partners, Ltd., a Texas limited partnership, duly acting by and through its general partner, hereinafter "Owner," and Lineage Power Corporation, a Nevada corporation, duly acting by and through its officers, hereinafter "Lessee."

WITNESSETH:

WHEREAS, on the ____ day of _____, 2009, the City Council of the City of Plano, Texas, passed Ordinance No. _____ establishing Reinvestment Zone No. 119, for commercial/industrial tax abatement, hereinafter referred to as the "Ordinance," as authorized by V.T.C.A. Tax Code, Chapter 312.001, et seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as "Acts"; and

WHEREAS, the City has adopted a revised policy statement for Tax Abatement by Resolution No. 2007-8-27(R) stating that it elects to be eligible to participate in tax abatement (the "Policy Statement"); and

WHEREAS, the Policy Statement sets forth appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Act; and

WHEREAS, the tax abatement will maintain and enhance the commercial/industrial economic and employment base of the Plano area thereby benefiting the City in accordance with the said Ordinance and Act; and

WHEREAS, the contemplated use of the Real Property, as hereinafter defined, the contemplated improvements to the Real Property in the amount as set forth in this Agreement and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 119 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law.

NOW THEREFORE, the parties hereto do mutually agree as follows:

REAL PROPERTY

1. The real property subject to this Agreement is located at 601 Shiloh Road, Plano, Texas, 75074 and described by metes and bounds in **EXHIBIT "A"** (the "Real Property") and the Improvements as shown on **EXHIBIT "B"** thereon (the "Development") attached hereto and made a part hereof.

TANGIBLE PERSONAL PROPERTY

2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No. 119, which shall be hereinafter referred to as the "Personalty." The Personalty will have an approximate initial taxable value, of not less than **Five Million Eight Hundred Thousand Dollars (\$5,800,000)** and is or will be owned by the Lessee and/or their affiliates. Lessee shall timely render their personal property value each year to the Central Appraisal District.

3. Lessee may not relocate, for purposes of maintaining taxable situs of tangible personal property, the Personalty on the Real Property in other Reinvestment Zones in the City.

JOBS

4. The Lessee estimates the proposed development of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in not less than 185 Job Equivalents at the Development when the new the improvements are completed. "Job Equivalent" shall mean one or more Company job positions located at the Development which individually or when combined total two thousand eighty (2,080) hours (inclusive of holidays, vacation and sick leave) annually.

IMPROVEMENTS

5. The Lessee shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as Improvements) consisting primarily of new buildings consisting of a total of not less than 100,000 gross square feet of commercial space with an initial taxable value, of not less than **Four Million Seven Hundred and Twenty One Thousand Dollars (\$4,721,000)** on or before December 31, 2009 provided that Lessee shall have such additional time to complete the Improvements as may be required in the event of "force majeure," if Lessee is diligently and faithfully pursuing the completion of the Improvements, or if in the reasonable opinion of the City, the Lessee has made substantial progress toward completion of the Improvements. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of Lessee including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by the intentional wrongful acts or omissions of Lessee), fire, earthquake, shortages of material and/or labor, explosion or flood, strikes, lockouts, slowdowns, work stoppages or labor disturbances. The "date of completion" of the Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano.

6. The Lessee agrees and covenant that it will diligently and faithfully in a good and workmanlike manner pursue the substantial completion of the Improvements as a good and valuable consideration of this Agreement. Lessee further covenants and agrees that all construction of the Improvements will be in accordance with all applicable federal, state and local laws and regulations or valid waiver thereof.

7. The Lessee agrees and covenants that they shall occupy not less than 100,000 gross square feet of commercial space on the Real Property and employ thereon at least 185 Job Equivalents at time of occupancy, referred to herein as the "Purposes."

DEFAULT

8. Any of the following events shall be deemed a breach of this agreement resulting in default:

- (a) The Improvements are not completed in accordance with this Agreement;
- (b) Owner or Lessee allows their real or personal property taxes owed the **City** on the Real Property, Improvements, or Personalty to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes;
- (c) Lessee fails to occupy the Improvements for the Purposes set forth in paragraph 7 above on or before December 31, 2009; or
- (d) The initial taxable value on the Improvements to Real Property, and the initial taxable value of Personalty placed on the improved Real Property on or before December 31, 2009 and maintained on the Real Property during the term of this Agreement is less than the minimum amounts set forth in paragraphs 2 and 5 above as the result of removal of Improvements or Personalty from the Property or Owner/Lessee filed protest of assessed values; or
- (e) Lessee fails to employ at least 75% of their employee commitments on or before December 31, 2009, as provided in paragraph 4 above;
- (f) Owner or Lessee fail to provide annual certifications as required in paragraph 11 below; or
- (g) Owner or Lessee has been convicted of a violation under 8 U.S.C. Section 1324a (f) regarding the unlawful employment of aliens with respect to the Development.

9. In the event that the Owner or the Lessee defaults under this Agreement then the **City** shall give the defaulting party written notice of such default and if the defaulting party has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated, as to the defaulting party, by the **City**; provided, however, that such 30 day period shall be extended if the default is of a nature that cannot be cured within such 30-day period and the defaulting party is diligently pursuing such remedy. Notice shall be in writing as provided below. Upon the occurrence of an event of default

other than under Paragraph 8(b) or 8(g) above and after the defaulting party fails to cure same in accordance herewith, this Agreement shall immediately terminate as to the defaulting party and all taxes due after the event of default shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

10. Upon the occurrence of an event of default under Paragraph 8(b) or 8(g) above, then the **City** shall give the defaulting party written notice of such default and if the defaulting party has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the **City** and all taxes, including previously abated taxes which would have been paid to the **City** without the benefit of this Agreement, shall become due and owing to the **City**, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

11. On or before the 1st day of November of each calendar year during the term of this Agreement, the Owner and the Lessee, or their successors or assigns, each must provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

12. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by Owner or Lessee unless written permission is first granted by **City**, which permission shall be at the reasonable discretion of the **City**, except under the following conditions:

(a) Assignment to an affiliate of Owner or Lessee is permissible;

(b) A transfer or assignment of the Real Property and Improvements, or an assignment of this Agreement, by Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Lessee shall continue to conduct business on the subject premises.

However, Owner and Lessee agree to give written notice to the **City** of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

ABATEMENT PROVISIONS

13. Subject to the terms and conditions of this Agreement, a portion of ad valorem real and personal property taxes from the Real Property, Improvements, and Personalty otherwise owed to the **City** shall be abated as follows:

(a) The tax abatements as to the Real Property, Improvements, and Personalty, as provided for herein, shall be for a period of the earlier of ten (10) years ending on December 31, 2019 (the "Abatement Term").

(b) In accordance with all applicable federal, state, and local laws and regulations, the City's abatement shall be based on amounts equal to fifty percent (50%) of the improved value of the Real Property and Improvements and fifty percent (50%) of the Personalty for each tax year during the Abatement Term.

(c) The Owner and Lessee shall have the right to protest and/or contest any assessment of the Real Property, Improvements or Personalty, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this agreement if assessed values fall below those in paragraphs 2 and 5 as a result of an Owner or Lessee filed protest and/or contest.

NOTICE

14. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Thomas H. Muehlenbeck
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Owner by notice to:

Plano Tech Center Partners, Ltd.
c/o Peloton Real Estate Partners
Attn: Chuck Sellers
1616 Woodall Rodgers Freeway, #600
Dallas, TX 75202

For Lessee by notice to:

Lineage Power Corporation
Attention: Stephen Gilhooly
General Counsel
3000 Skyline Drive
Mesquite, TX 75149

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

MISCELLANEOUS PROVISIONS

15. The Owner and Lessee further agree that the **City**, its agents and employees, shall have reasonable right (upon reasonable prior notice to Owner and Lessee) to access the Real Property to inspect the Improvements and Personalty in order to insure that the construction of the Improvements and locations of the Personalty are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. After completion of the Improvements, **City** shall have the continuing right (upon reasonable prior notice to Owner and Lessee) to inspect the Real Property and Personalty to insure that the Real Property and Personalty is thereafter maintained, operated and occupied in accordance with this Agreement.

16. It is understood and agreed between the parties that the Owner and Lessee, in performing their obligations hereunder, are acting independently, and the **City** assumes no responsibilities or liabilities in connection therewith to third parties and Owner and Lessee agree to indemnify and hold harmless **City** from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of Owner's or Lessee's default of their obligations hereunder ("Claims").

17. The **City** represents and warrants that the Real Property, Improvements and Personalty do not include any property that is owned by a member of its council approving, or having responsibility for the approval of this Agreement.

18. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 27th day of July, 2009, authorizing the City Manager to execute the Agreement on behalf of the City.

19. This Agreement was entered into by Owner and Lessee pursuant to authority granted by their partner and officer, respectively, whereby the partner of the limited partnership and the officer of the corporation were authorized to execute this Agreement on behalf of their respective parties.

20. This instrument shall constitute a valid and binding agreement between the **City**, **Owner** and **Lessee** when executed in accordance herewith.

21. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement is performable in Collin County, Texas. Signed this 27th day of July, 2009.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule
municipal corporation

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

PLANO TECH CENTER PARTNERS,
LTD., a Texas limited partnership

By: Peloton PTC. Inc.
a Texas corporation, General Partner

By: _____

Name:

Title:

Exhibit "A" to Resolution No. _____

Page 8 of 12

ATTEST:

LINEAGE POWER CORPORATION, a
Nevada corporation

By: _____

Name:

Title:

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 119
Real Property
Metes and Bounds

BEING a tract of land situated in the J.B. Roundtree survey, Abstract No. 759 and J.T. McCullough Survey, Abstract No. 633, and being all of Lot 5, Block 1 of Plano Tech Center II, an addition to the city of Plano as recorded in Cabinet N, Page 862 of the Plat Records of Collin County, Texas (P.R.C.C.T.), same being part of a tract of land described in Special Warranty Deed to Argent Plano Realty, L.P., dated May 24, 2000, as recorded in Volume 4678, Page 2236, Deed Records of Collin County, Texas, (D.R.C.C.T.), and being more particularly described as follows:

BEGINNING at the Northeast corner of a tract of land described by deed to Patrick Hillary as recorded in Volume 2206, Page 185, D.R.C.C.T., said point being on the West right-of-way line of Shiloh Road (variable width);

THENCE South 87 degrees 10 minutes 35 seconds West, departing said West right-of-way line and along the North line of said Hillary Tract, a distance of 570.20 feet to a ½-inch found iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC", (hereinafter referred to as "with cap") for corner, said corner being the Northwest corner of said Hillary Tract;

THENCE North 01 degree 26 minutes 31 seconds West, a distance of 16.55 feet to a point for corner;

THENCE South 89 degrees 40 minutes 24 seconds West, a distance of 312.80 feet to a ½-inch found iron rod with cap for corner;

THENCE North 00 degrees 21 minutes 11 seconds West, a distance of 138.22 feet to an aluminum disk found in concrete for corner, said corner being the most southerly Southeast corner of Lot 1, Block 1 of Plano Tech Center II, an addition to the City of Plano as recorded in Cabinet N, Page 459, P.R.C.C.T.;

THENCE North 64 degrees 59 minutes 53 seconds East, along the common line between said Lot 1 and said Lot 5, a distance of 50.51 feet to a ½-inch found iron rod with cap for corner;

THENCE North, continuing along said common line, a distance of 681.25 feet to a found "X"-cut in concrete for corner;

THENCE North 89 degrees 51 minutes 32 seconds East, departing said common line, a distance of 313.72 feet to a ½-inch found iron rod with cap for corner;

THENCE South 00 degrees 15 minutes 46 seconds East, a distance of 99.57 feet to a found "X"-cut in concrete for corner;

THENCE South 89 degrees 56 minutes 16 seconds East, a distance of 419.48 feet to a found "X"-cut in concrete for corner, said point being on the West line of a tract of land described by deed to Texas Power & Light Company (known as Tract 2) as recorded in Volume 874, Page 566, D.R.C.C.T.;

THENCE South 00 degrees 11 minutes 54 seconds West, along said West line, a distance of 646.72 feet to a ½-inch found iron rod with cap for corner, said corner being the Southwest corner of said Tract 2;

THENCE North 87 degrees 11 minutes 54 seconds East, along the South line of said Tract 2, a distance of 76.77 feet to a ½-inch found iron rod with cap for corner, said corner being the Southeast corner of said Tract 2;

THENCE North 00 degrees 35 minutes 54 seconds East, along the East line of said Tract 2, a distance of 1194.03 feet to a ½-inch found iron rod with cap for corner on the West right-of-way line of said Shiloh Road, said corner being on a non-tangent circular curve to the left, having a radius of 1255.00 feet and whose chord bears South 09 degrees 55 minutes 53 seconds East, a distance of 42.48 feet;

THENCE Southerly, along said West right-of-way line and along said circular curve to the left, through a central angle of 01 degree 56 minutes 23 seconds and an arc distance of 42.49 feet to a ½-inch found iron rod with cap for the point of reverse curvature of a circular curve to the right, having a radius of 1145.00 feet and whose chord bears South 05 degrees 09 minutes 05 seconds East, a distance of 229.42 feet;

THENCE Southerly, continuing along said West right-of-way line and along said circular curve to the right, through a central angle of 11 degrees 29 minutes 58 seconds and an arc distance of 229.81 feet to a ½-inch found iron rod for the point of tangency;

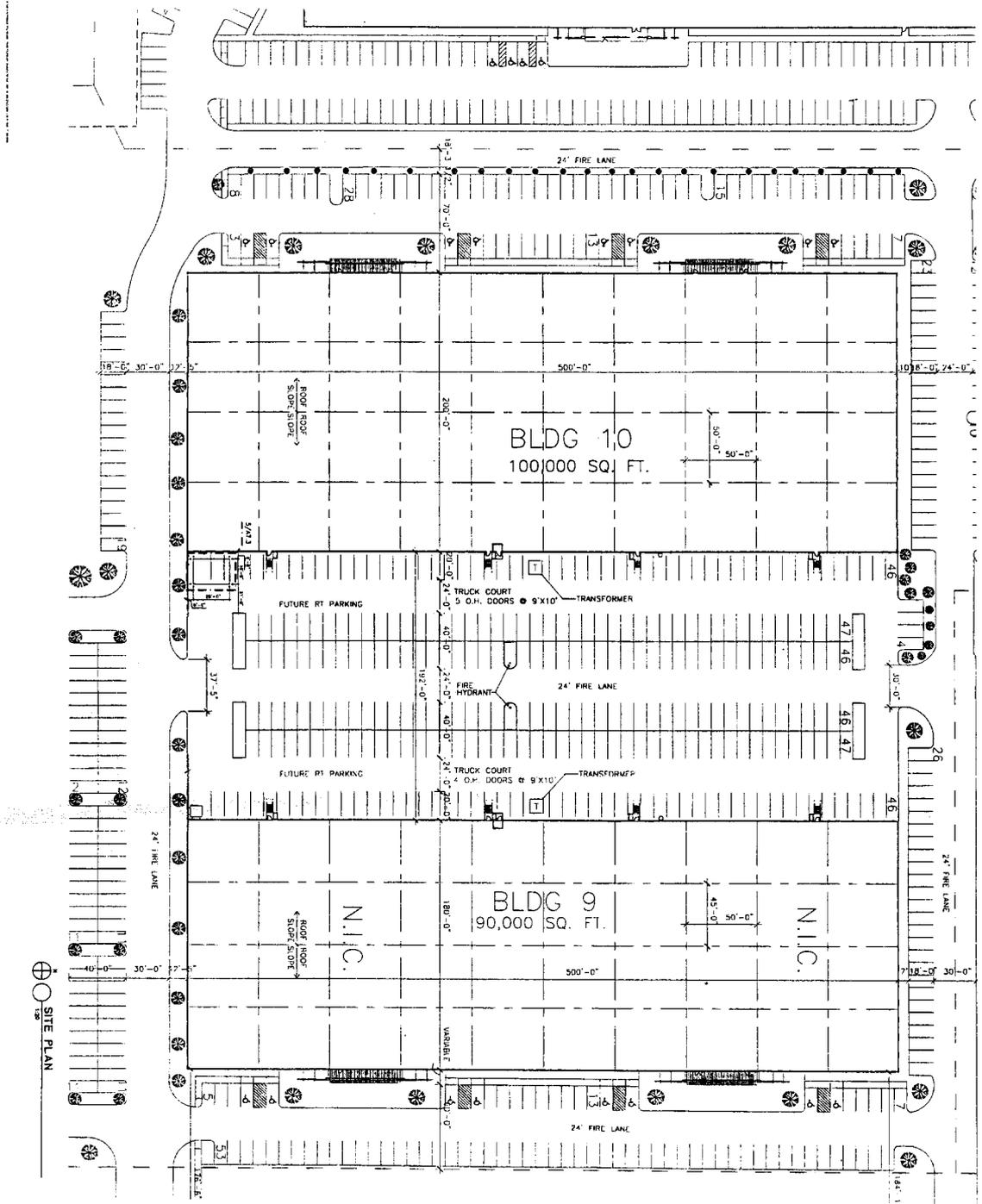
THENCE South 00 degrees 35 minutes 54 seconds West, continuing along said West right-of-way line, a distance of 858.99 feet to a found "X"-cut in concrete for corner;

THENCE South 00 degrees 39 minutes 42 seconds West, continuing along said West right-of-way line, a distance of 149.97 feet to the POINT OF BEGINNING AND CONTAINING 625,615 square feet or 14.36 acres of land, more or less.

TRACT 2

Nonexclusive easement and right of way created by Easement and Right of Way by TXU Electric Delivery Company filed 12/15/2006, under cc# 20061215001769580, Real Property Records of Collin County, Texas.

EXHIBIT "B"
THE DEVELOPMENT
REINVESTMENT ZONE NO. 119



PROJECT NUMBER	003	DATE	MARCH 8, 2007
PROJECT SITE	158	SCALE	AS SHOWN
PROJECT NAME	PLANO OFFICE COMMONS	DESIGNED BY	BENSON HAYATY ARCHITECTS
PROJECT ADDRESS	501 BHILOH ROAD	PLANNED BY	LINEAGE POWER
CITY	PLANO, TEXAS	APPROVED BY	[Signature]
COUNTY	COLLETT COUNTY	DATE	MARCH 8, 2007

SITE 1.1

LINEAGE POWER
PLANO OFFICE COMMONS
501 BHILOH ROAD
PLANO, TEXAS 75074

BENSON HAYATY ARCHITECTS



5-14

EXHIBIT "C"
CERTIFICATION FORM
REINVESTMENT ZONE NO. _____

This letter certifies that _____ is in compliance with each applicable term as set forth in the Tax Abatement Agreement as of _____, 20___. The term of this agreement shall be for a period of the earlier of ten (10) years from the date of completion or December 31, 2020. This form is due on November 1 of each year this tax abatement is in force.

ATTEST:

Lineage Power Corporation, a Nevada corporation

By: _____

Name
Title

NOTE: This certification form should be mailed to:

**City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358**



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date: 7-27-09		Purchasing	<i>DEJ</i> 7-21-09	
Department: Finance		Budget	<i>C.S.</i> 7-20-09	
Department Head: Denise Tacke		Legal <i>DU</i>	<i>DU</i> 7-20-09	
Dept Signature: <i>Denise Tacke</i>		Assistant City Manager	<i>DK</i> 7-21-09	
		Deputy City Manager	<i>DK</i> 7-21-09	
		City Manager	<i>DK</i> 7/21/09	
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND LINEAGE POWER CORPORATION, A NEVADA CORPORATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,391,869	0	12,391,869
Encumbered/Expended Amount		-1,194,773	-3,244,477	-4,439,250
This Item		-277,500	0	-277,500
BALANCE	0	10,919,596	-3,244,477	7,675,119
FUND(S):				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the city's goal of diverse business center.				
SUMMARY OF ITEM				
A request from Lineage Power Corporation for an Economic Development incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Lineage Power Corporation agrees to occupy not less than 100,000 square feet of office space and they agree to retain, transfer or create 185 full time jobs by 9/1/09.				
List of Supporting Documents: Economic Development Agreement.		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND LINEAGE POWER CORPORATION, A NEVADA CORPORATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement By and Between the City of Plano, Texas and Lineage Power Corporation., a Nevada corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager, or his authorized designee, shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his authorized designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 27th day of July, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City"), and Lineage Power Corporation, a Nevada Corporation, acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Lineage Power Corporation, (hereinafter referred to as the "Company") is a manufacturer of power supply and power conversion systems; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company agrees to occupy not less than 100,000 square feet of commercial space located at 601 Shiloh Road, Plano, Texas 75074, (the "Property") for the full term of this Agreement; add real property improvements on the Property of a taxable value of not less than **Four Million Seven Hundred and Twenty One Thousand Dollars (\$4,721,000.00)** and add business personal property improvements on the Property of a taxable value of not less than **Five Million Eight Hundred Thousand Dollars (\$5,800,000.00)** and to retain, transfer or create 185 Job Equivalents on the Property by September 1, 2009 and maintain those positions for the full term of this Agreement; and

WHEREAS, the real and business personal property improvements to the Property and the retention, creation or transfer of 185 Job Equivalents at the Property within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

**Article I
Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Commencement Date" shall mean the earlier of the date of occupancy of the Property by the Company or September 1, 2009, whichever occurs first.

"Effective Date" shall mean the last date on which all of the parties hereto have executed this Agreement.

"Event of Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

"Job Equivalent" shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours (inclusive of holidays, vacation and sick leave) annually.

**Article II
Term**

The term of this Agreement shall begin on the Commencement Date and continue until August 31, 2019, unless sooner terminated as provided herein.

**Article III
Obligations of Company**

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- (a) Occupy not less than 100,000 square feet of commercial space on the Property on or before September 1, 2009;
- (b) Add real property improvements to the Property of a taxable value of not less than **Four Million Seven Hundred and Twenty One Thousand Dollars (\$4,721,000.00)**;

- (c) Add business personal property improvements to the Property of a taxable value of not less than **Five Million Eight Hundred Thousand Dollars (\$5,800,000.00)**;
- (d) Retain, create or transfer 185 Job Equivalents to the Property on or before September 1, 2009;
- (e) Maintain those Job Equivalents for the full term of this Agreement; and
- (f) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

**Article IV
Economic Development Grant**

4.01 **Grant.** The City agrees to provide the Company a one-time cash grant of **Two Hundred Seventy-Seven Thousand Five Hundred Dollars (\$277,500.00)** for the occupancy of 100,000 square feet of commercial space on the Property; real property improvements on the Property of not less than **Four Million Seven Hundred and Twenty One Thousand Dollars (\$4,721,000.00)**; business personal property improvements on the Property of not less than **Five Million Eight Hundred Thousand Dollars (\$5,800,000.00)**; and to assist in the retention, transfer or addition of 185 new Job Equivalent positions to the Property. The Company agrees to maintain the 185 Job Equivalents throughout the term of this Agreement as provided in Section 4.03 below.

4.02 **Grant Payments.** Except as otherwise indicated, payment by the City under this Agreement shall be made within thirty (30) days after the Company verifies to the City on the Initial Certification attached hereto as Exhibit "A" that the Company has met its initial obligations as set forth in Article III (a), (b), (c), and (d) above.

4.03 **Refunds.**

(a) In the event the Company allows Job Equivalents at the Property to fall below 185 Job Equivalents for 180 consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to **One Thousand Five Hundred Dollars (\$1,500.00)** for each Job Equivalent that falls below 185. For the purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer shall certify to the City by January 31, 2010 and by January 31 of each year thereafter during the term of this agreement the actual number of Job Equivalents at the Property for the preceding calendar year using the Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30 days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this

Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

Article V Termination

5.01 This Agreement terminates upon any one or more of the following:

- (a) By mutual written agreement of the parties;
- (b) Upon expiration of the term of this Agreement;
- (c) By either party upon written notice to the other, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and
- (d) By either party upon written notice to the other if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any rights or obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above in this Section 5.02 shall survive the termination of this Agreement.

Article VI Miscellaneous

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
Lineage Power Corporation
Attention: Stephen Gilhooly
General Counsel
3000 Skyline Drive
Mesquite, TX 75149
With cc to: Greg German, Operations

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.08 **Legal Construction**. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09 **Recitals**. The recitals to this Agreement are incorporated herein.

6.10 **Counterparts**. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants**. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution**. Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this 27th day of July, 2009.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By:

Thomas H. Muehlenbeck

CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

LINEAGE POWER CORPORATION, a
Nevada Corporation

By:

Name:

Title:

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

I hereby certify that LINEAGE POWER CORPORATION has occupied not less than 100,000 square feet of commercial space on the Property, has made real property improvements on the Property of a taxable value of not less than **Four Million Seven Hundred and Twenty One Thousand Dollars (\$4,721,000.00)**; has made business personal property improvements on the Property of a taxable value of not less than **Five Million Eight Hundred Thousand Dollars (\$5,800,000.00)**; and has retained, transfered or added 185 new Job Equivalent positions to the Property. LINEAGE POWER CORPORATION is in compliance with subsections (a), (b), (c), and (d) of Article III of the Economic Development Agreement as of _____, and is entitled to receive payment under the terms of that Agreement.

ATTEST:

LINEAGE POWER CORPORATION, a
Nevada Corporation

By: _____

Name:

Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that LINEAGE POWER CORPORATION, is in compliance with each applicable term as set forth in Article III of the Economic Development Agreement as of _____. The term of the Agreement is September 1, 2009 through August 31, 2019. "The number of new, transferred or retained Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below 185 for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance." If the number herein reported is below the number required to be maintained pursuant to the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

ATTEST:

LINEAGE POWER CORPORATION, a
Nevada Corporation

By: _____
Name:
Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	Dey 7-21-09	
Council Meeting Date: 7/27/09		Budget	C.S. 7-20-09	
Department:	Finance	Legal DW	7-20-09	
Department Head	Denise Tacke <i>DT</i>	Assistant City Manager	7-21-09	
Dept Signature:	<i>Denise Tacke</i>	Deputy City Manager	7/21/09	
		City Manager	7/21/09	
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND ATOS ORIGIN, INC., A DELAWARE CORPORATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		12,391,869	0	12,391,869
Encumbered/Expended Amount	0	-1,194,773	-3,244,477	-4,439,250
This Item	0	-\$50,000	0	-\$50,000
BALANCE	0	11,147,096	-3,286,077	7,902,619
FUND(S):				
COMMENTS: STRATEGIC PLAN GOAL: PROVIDING ECONOMIC DEVELOPMENT INCENTIVES RELATES TO THE CITY'S GOAL OF DIVERSE BUSINESS CENTER				
SUMMARY OF ITEM				
A request from Atos Origin, Inc., for an Economic Development incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Atos Origin, Inc. agrees to occupy not less than 12,000 square feet of office space and they agree to retain, transfer or create 34 full time jobs by 8/1/09.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND ATOS ORIGIN, INC., A DELAWARE CORPORATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement By and Between the City of Plano, Texas and Atos Origin, Inc., a Delaware corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager, or his authorized designee, shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his authorized designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 27th day of July, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City"), and Atos Origin, Inc., a Delaware Corporation, ("Company") acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is an international information technology services provider; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company agrees to occupy not less than a total of 12,000 square feet of commercial space located at 6500 International Parkway, Suite 1000 and 6504 International Parkway, Suite 1050, Plano, Texas 75093, (the "Property") for the full term of this Agreement; add real property improvements on the Property of a taxable value of not less than One Hundred and Fifty Six Thousand Dollars (\$156,000.00); add business personal property improvements on the Property of a taxable value of not less than Six Hundred and Fifty Thousand Dollars (\$650,000.00); and to retain, transfer or create 34 Job Equivalents on the Property by August 1, 2009 and maintain those positions for the full term of this Agreement; and

WHEREAS, the real and business personal property improvements to the Property and the retention, creation or transfer of 34 Job Equivalents at the Property within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

**Article I
Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Commencement Date" shall mean the earlier of the date of occupancy of the Property by the Company or August 1, 2009, whichever occurs first.

"Effective Date" shall mean the last date on which all of the parties hereto have executed this Agreement.

"Event of Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

"Job Equivalent" shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours (inclusive of holidays, vacation and sick leave) annually.

**Article II
Term**

The term of this Agreement shall begin on the Commencement Date and continue until July 31, 2013, unless sooner terminated as provided herein.

**Article III
Obligations of Company**

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- (a) Occupy not less than 12,000 square feet of commercial space on the Property on or before August 1, 2009;
- (b) Add real property improvements to the Property of a taxable value of not less than One Hundred and Fifty Six Thousand Dollars (\$156,000.00) by August 1, 2009;

- (c) Add business personal property improvements to the Property of a taxable value of not less than Six Hundred and Fifty Thousand Dollars (\$650,000.00) by August 1, 2009;
- (d) Retain, create or transfer 34 Job Equivalents to the Property on or before August 1, 2009;
- (e) Maintain those Job Equivalents for the full term of this Agreement; and
- (f) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a one-time cash grant of Fifty Thousand Dollars (\$50,000.00) for the occupancy of 12,000 square feet of commercial space on the Property; real property improvements on the Property of a taxable value of not less than One Hundred and Fifty Six Thousand Dollars (\$156,000.00); business personal property improvements on the Property of a taxable value of not less than Six Hundred and Fifty Thousand Dollars (\$650,000.00); and to assist in the retention, transfer or addition of 34 new Job Equivalent positions to the Property. The Company agrees to maintain the 34 Job Equivalents throughout the term of this Agreement as provided in Section 4.03 below.

4.02 **Grant Payments.** Except as otherwise indicated, payment by the City under this Agreement shall be made within thirty (30) days after the Company verifies to the City on the Initial Certification attached hereto as Exhibit "A" that the Company has met its initial obligations as set forth in Article III (a) and (d) above. Company's initial certification verifying compliance with Article III (a) and (d) above must be filed with the City no later than December 31, 2009.

4.03 **Refunds.**

(a) In the event the Company allows Job Equivalents at the Property to fall below 34 Job Equivalents for 180 consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Fourteen Hundred and Seventy Dollars (\$1,470.00) for each Job Equivalent that falls below 34. For the purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer shall certify to the City by January 31, 2010 and by January 31 of each year thereafter during the term of this agreement the actual number of Job Equivalents at the Property for the preceding calendar year using the Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30 days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of

undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

Article V Termination

5.01 This Agreement terminates upon any one or more of the following:

- (a) By mutual written agreement of the parties;
- (b) Upon expiration of the term of this Agreement;
- (c) By either party upon written notice to the other, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and
- (d) By either party upon written notice to the other if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02 **Effect of Termination**. The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above in this Section 5.02 shall survive the termination of this Agreement.

Article VI Miscellaneous

6.01 **Binding Agreement**. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture**. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint

venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
Atos Origin, Inc.
Attention: Ron de Vries
6500 International Parkway, Suite 1000
Plano, Texas 75093
With cc to: General Counsel

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this 27th day of July, 2009.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

Atos Origin, Inc., a Delaware Corporation

By: _____
Name:
Title:

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

I hereby certify that ATOS ORIGIN, INC., has occupied not less than 12,000 square feet of commercial space on the Property and has retained, transfered or added 34 new Job Equivalent positions to the Property. ATOS ORIGIN, INC., is in compliance with subsections (a) and (d) of Article III of the Agreement to Resolution No. _____ (R) as of _____, and is entitled to receive payment under the terms of that Agreement.

ATTEST:

ATOS ORIGIN, INC., a Delaware Corporation

By: _____

Name:
Chief Financial Officer

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that ATOS ORIGIN, INC., is in compliance with each applicable term as set forth in Article III of the Agreement to Resolution No. _____(R) as of _____. The term of the Agreement is August 1, 2009 through July 31, 2013. "The number of new, transferred or retained Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below 34 for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance." If the number herein reported is below the number required to be maintained pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

ATTEST:

ATOS ORIGIN, INC., a Delaware Corporation

By: _____
Name:
Chief Financial Officer

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	7-9-09	
Council Meeting Date:	7/27/09	Budget	7-8-09	
Department:	Finance	Legal	7-8-09	
Department Head	Denise Tacke <i>DT</i>	Assistant City Manager	7-9-09	
Dept Signature:		Deputy City Manager	7-9-09	
		City Manager	7-9-09	
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND ENTERPRISE MOBILE INC., A DELAWARE CORPORATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		12,391,869	0	12,391,869
Encumbered/Expended Amount	0	-1,194,773	-3,244,477	-4,439,250
This Item	0	-22,400	-41,600	-64,000
BALANCE	0	11,174,696	-3,286,077	7,888,619
FUND(S):				
COMMENTS: STRATEGIC PLAN GOAL: PROVIDING ECONOMIC DEVELOPMENT INCENTIVES RELATES TO THE CITY'S GOAL OF DIVERSE BUSINESS CENTER				
SUMMARY OF ITEM				
A request from Enterprise Mobile Inc., for an Economic Development incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Enterprise Mobile Inc. agrees to occupy not less than 22,000 square feet of office space and they agree to retain, transfer or create 28 full time jobs by 10/1/09 up to an additional 52 full time jobs by 12/31/10.				
List of Supporting Documents: Economic Development Incentive Agreement		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND ENTERPRISE MOBILE INC., A DELAWARE CORPORATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement By and Between the City of Plano, Texas and Enterprise Mobile, Inc., a Delaware corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager, or his authorized designee, shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his authorized designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the _____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City"), and Enterprise Mobile Inc., a Delaware Corporation, acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Enterprise Mobile Inc., (hereinafter referred to as the "Company") helps large corporations manage their mobile communication devices with planning, deployment, logistics, and management services; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company agrees to occupy not less than 22,000 square feet of office space located at 3801 East Plano Parkway, Suite 400, Plano, Texas 75074, (the "Property") for the full term of this Agreement; retain, transfer or create 28 Job Equivalents on the Property by October 1, 2009; retain, transfer or create up to an additional 52 Job Equivalents on the Property by December 31, 2010; and maintain those positions for the full term of this Agreement; and

WHEREAS, the retention, creation or transfer up to 80 Job Equivalents at the Property within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

**Article I
Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Commencement Date" shall mean the earlier of the date of occupancy of the Property by the Company or October 1, 2009, whichever occurs first.

"Effective Date" shall mean the last date on which all of the parties hereto have executed this Agreement.

"Event of Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

"Job Equivalent" shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours (inclusive of holidays, vacation and sick leave) annually.

**Article II
Term**

The term of this Agreement shall begin on the Commencement Date and continue until September 30, 2014, unless sooner terminated as provided herein.

**Article III
Obligations of Company**

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- (a) Occupy not less than 22,000 square feet of office space on the Property on or before October 1, 2009;
- (b) Retain, create or transfer 28 Job Equivalents to the Property on or before October 1, 2009;
- (c) Retain, create or transfer up to an additional 52 Job Equivalents to the Property on or before December 31, 2010;

- (d) Maintain all created Job Equivalents for the full term of this Agreement; and
- (e) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV
Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a cash grant of up to Sixty Four Thousand Dollars (\$64,000.00) for the occupancy of not less than 22,000 square feet of office space on the Property; the retention, transfer or creation of 28 Job Equivalent positions on the Property by October 1, 2009; and the retention, transfer or creation of up to 52 Job Equivalents on the Property by December 31, 2010. For the Job Equivalents for which the Company receives a grant, the Company agrees to maintain those Job Equivalents throughout the term of this Agreement as provided in Section 4.03 below.

4.02 **Grant Payments.** Except as otherwise indicated, payment by the City under this Agreement shall be made as follows: (1) within thirty (30) days after the Company verifies to the City on the Initial Certification attached hereto as Exhibit "A" that the Company has occupied 22,000 square feet of office space on the Property and has retained, created or transferred 28 Job Equivalents to the Property by October 1, 2009, the Company shall receive a grant payment of Twenty Two Thousand Four Hundred Dollars (\$22,400.00); and (2) within thirty (30) days after the Company verifies to the City that the Company has retained, created or transferred up to an additional fifty-two (52) Job Equivalents on the Property by December 31, 2010, the Company shall receive a grant payment of Eight Hundred Dollars (\$800.00) for each additional Job Equivalent up to a maximum of Forty One Thousand Six Hundred Dollars (\$41,600.00). No cash grant payment shall be paid by the City for any verification that is not filed with the City within ninety days of its due dates.

4.03 **Refunds.**

(a) In the event the Company allows Job Equivalents at the Property to fall below the number of Job Equivalents for which it has received a grant payment for 180 consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Eight Hundred Dollars (\$800.00) for each lost Job Equivalent. For the purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer shall certify to the City by January 31, 2010 and by January 31 of each year thereafter during the term of this agreement the actual number of Job Equivalents at the Property for the preceding calendar year using the Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30 days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this

Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 31.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

**Article V
Termination**

5.01 This Agreement terminates upon any one or more of the following:

(a) By mutual written agreement of the parties;

(b) Upon expiration of the term of this Agreement;

(c) By either party upon written notice to the other, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and

(d) By either party upon written notice to the other if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above in this Section 5.02 shall survive the termination of this Agreement.

**Article VI
Miscellaneous**

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
Enterprise Mobile Inc.,
Attention: Ronald R. Benanto
Chief Financial Officer
321 Arsenal Street
Watertown, Massachusetts 02472
With cc to: General Counsel

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this _____ day of _____, 2009.

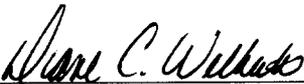
ATTEST:

CITY OF PLANO, TEXAS, a home rule municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

ENTERPRISE MOBILE, INC., a Delaware Corporation

By: _____
Name:
Title:

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE*

I hereby certify that ENTERPRISE MOBILE, INC., a Delaware Corporation has occupied not less than 22,000 square feet of office space on the Property, and has retained, transferred or added 28 Job Equivalent positions to the Property. ENTERPRISE MOBILE INC., is in compliance with subsections (a) and (b) of Article III of the Agreement to Resolution No. _____(R) as of _____, and is entitled to receive payment under the terms of that Agreement.

ATTEST:

ENTERPRISE MOBILE, INC., a Delaware Corporation

By: _____
Name:
Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

*This form is for illustration purposes and Company should revise the language to fit the certification of subsequent initial Job Equivalents added pursuant to Article III (c). For verification of compliance with Article III (a) and (b) this form is due in the City of Plano Finance Department no later than December 31, 2009 and by March 31, 2011 for verification of compliance with Article III (c).

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that ENTERPRISE MOBILE INC., is in compliance with each applicable term as set forth in Article III of the Agreement to Resolution No. _____(R) as of _____. The term of the Agreement is April 1, 2009 through September 1, 2017. "The number of new, transferred or retained Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below _____ for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance." If the number herein reported is below the number required to be maintained pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

ATTEST:

ENTERPRISE MOBILE INC., a Delaware Corporation

By: _____

Name:

Title:

Date

NOTE:

This Certificate of Compliance should be mailed to: City of Plano

Finance Department
P.O. Box 860358
Plano, Texas 75086-0358



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	7-21-09	
Council Meeting Date: 7-27-09		Budget	7-20-09	
Department: Finance		Legal	7-20-09	
Department Head: Denise Tacke		Assistant City Manager	7-21-09	
Dept Signature: <i>Denise Tacke</i>		Deputy City Manager	7-21-09	
		City Manager	7/21/09	
Agenda Coordinator (include phone #): Katherine Crumbley				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND PUBLICIS INC., A DELAWARE CORPORATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,391,869	0	12,391,869
Encumbered/Expended Amount	0	-1,194,773	-3,244,477	-4,439,250
This Item	0	-110,000	-55,000	-165,000
BALANCE	0	11,087,096	-3,299,477	7,787,619
FUND(S):				
COMMENTS: STRATEGIC PLAN GOAL: PROVIDING ECONOMIC DEVELOPMENT INCENTIVES RELATES TO THE CITY'S GOAL OF DIVERSE BUSINESS CENTER				
SUMMARY OF ITEM				
A request from Publicis, Inc, for an Economic Development incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Publicis, Inc. agrees to occupy not less than 58,000 square feet of office space and they agree to retain, transfer or create 110 full time jobs by 2/1/10 up to an additional 55 full time jobs by 9/1/2010.				
List of Supporting Documents: Economic Development Incentive Agreement		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND PUBLICIS INC., A DELAWARE CORPORATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement By and Between the City of Plano, Texas and Publicis Inc., a Delaware corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager, or his authorized designee, shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his authorized designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the ____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City"), and Publicis Inc., a Delaware Corporation, ("Company") acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is a multi-national advertising firm; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company agrees to occupy not less than a total of 58,000 square feet of commercial space located at 7301 Lone Star Drive, Building C, 2nd Floor, Plano, Texas, 75024 (the "Property") for the full term of this Agreement and to transfer or create 110 Job Equivalents on the Property by February 1, 2010 and maintain those positions for the full term of this Agreement; and

WHEREAS, the retention, creation or transfer of 110 Job Equivalents at the Property within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

**Article I
Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Commencement Date" shall mean the earlier of the date of occupancy of the Property by the Company or February 1, 2010, whichever occurs first.

"Effective Date" shall mean the last date on which all of the parties hereto have executed this Agreement.

"Event of Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

"Job Equivalent" shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours (inclusive of holidays, vacation and sick leave) annually.

**Article II
Term**

The term of this Agreement shall begin on the Commencement Date and continue until January 31, 2020, unless sooner terminated as provided herein.

**Article III
Obligations of Company**

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- (a) Occupy not less than 58,000 square feet of commercial space on the Property on or before February 1, 2010;
- (b) Create or transfer 110 Job Equivalents to the Property on or before February 1, 2010;
- (c) Maintain those Job Equivalents for the full term of this Agreement; and
- (d) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV
Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a one-time cash grant of One Hundred and Ten Thousand Dollars (\$110,000.00) for the occupancy of 58,000 square feet of commercial space on the Property and to transfer or add 110 new Job Equivalent positions to the Property. The Company will receive an additional grant of One Thousand Dollars for each additional new Job Equivalent position created or transferred to the Property prior to September 1, 2010 up to a maximum of 55 additional Job Equivalent positions and maintain those positions throughout the term of this Agreement as provided in Section 4.03 below.

4.02 **Grant Payments.** Except as otherwise indicated, payment by the City under this Agreement shall be made within thirty (30) days after the Company verifies to the City on the Initial Certification attached hereto as Exhibit "A" that the Company has met its initial obligations as set forth in Article III (a) and (b) above. Company's initial certification verifying compliance with Article III (a) and (b) above must be filed with the City no later than August 31, 2010. Initial certifications for additional Job Equivalents above 110 up to 165 must be filed before March 1, 2011.

4.03 **Refunds.**

(a) In the event the Company allows Job Equivalents at the Property to fall below the number of Job Equivalents for which it has received a grant payment for 180 consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to One Thousand Dollars (\$1,000.00) for each Job Equivalent that falls below that number. For the purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer shall certify to the City by January 31, 2011 and by January 31 of each year thereafter during the term of this agreement the actual number of Job Equivalents at the Property for the preceding calendar year using the Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30 days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

Article V Termination

5.01 This Agreement terminates upon any one or more of the following:

- (a) By mutual written agreement of the parties;
- (b) Upon expiration of the term of this Agreement;
- (c) By either party upon written notice to the other, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and
- (d) By either party upon written notice to the other if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above in this Section 5.02 shall survive the termination of this Agreement.

Article VI Miscellaneous

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
Publicis Inc.
Attention: Doug Henderson, President
14185 North Dallas Parkway, Suite 400
Dallas, Texas 75254
With cc to: General Counsel

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect,

such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this 27th day of July, 2009.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By:

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

Publicis Inc., a Delaware Corporation

By: _____

Name:

Title:

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

I hereby certify that PUBLICIS INC., has occupied not less than 58,000 square feet of commercial space on the Property and has transferred or created ___ new Job Equivalent positions to the Property. PUBLICIS INC., is in compliance with subsections (a) and (b) of Article III of the Agreement as of _____, and is entitled to receive payment under the terms of that Agreement.

ATTEST:

PUBLICIS INC., a Delaware Corporation

By: _____

Name:
Chief Financial Officer

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that PUBLICIS INC., is in compliance with each applicable term as set forth in Article III of the Agreement as of _____. The term of the Agreement is February 1, 2010 through January 31, 2020. "The number of new or transferred Job Equivalentents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below ____ for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance." If the number herein reported is below the number for which a grant payment was received pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

ATTEST:

PUBLICIS INC., a Delaware Corporation

By: _____

Name:
Chief Financial Officer

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358