

PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON OCTOBER 12, 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 | 5 min. |
| A. | Respond to questions and receive legal advice on agenda items | | |
| II. | Litigation | | |
| A. | Combs, Appellant v. City of Webster, Webster Economic Development Corporation, City of Plano, and other named Appellees” | Wetherbee | 5 min. |
| III. | Economic Development | Muehlenbeck | 5 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. | | |
| IV. | Personnel | Council | 15 min. |
| A. | Appointments
- Planning and Zoning Commission | | |
| B. | Evaluation of Council Appointees | | |

PRELIMINARY OPEN MEETING

- | | | | |
|----|--|---------|--------|
| I. | Consideration and action resulting from Executive Session discussion:
Personnel Appointments – Planning and Zoning Commission | Council | 5 min. |
|----|--|---------|--------|

II.	Personnel	Council	5 min.
	A. Appointments		
	- Animal Shelter Advisory Committee (Chair)		
	- Plano Housing Authority		
	- Retirement Security Plan Committee (Chair)		
	- Senior Citizens Advisory Board (Chair)		
III.	Discussion and direction re providing a notice to proceed for Pond Excavation and Tennis Court Lighting Renovations	Fortenberry	10 min.
IV.	Sign Reduction – Digital Billboard Trade-in Program	Mata	10 min.
V.	Departmental Briefing – Public Works/Engineering	Upchurch	10 min.
VI.	Council items for discussion/action on future agendas	Council	5 min.
VII.	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: October 12, 2009

CALL TO ORDER: 7:00 p.m.

INVOCATION: Sr. Pastor Gene Wilkes
Legacy Church

PLEDGE OF ALLEGIANCE: Representatives of Boys & Girls Club
of Collin County Plano

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> <p>Proclamation: HopeLine Domestic Violence Awareness Month Special Recognition: Michael Carroll, Good Samaritan</p> <p><u>OATHS OF OFFICE</u></p> <p><u>Animal Shelter Advisory Committee</u> Elizabeth Ann Bodden Amanda Earl Sunny Ruth</p> <p><u>Arts of Collin County Commission Board of Directors</u> Dr. Betty Muns</p> <p><u>Board of Adjustment</u> Carolyn Kalchthaler Joe Wolens Milkes Steven D. Patten</p> <p><u>Building Standards Commission</u> Kevan I. Benkowitz Mark Greer Cindy Nye Arthur Stone</p> <p><u>Civil Service Commission</u> Robert J. Barraclough</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Community Relations Commission</u> Shirley Aguilar Richard Grady Mary Jane Ketcham Philip F. Pollacia Al Valente</p> <p><u>Cultural Affairs Commission</u> James Banks, CMA Andrea Stroh Margaret S.C. Tsai</p> <p><u>Heritage Commission</u> Karen Bellessa Gregory Carter Edward L. Coyle Brian E. Mosby</p> <p><u>Library Advisory Board</u> Gary Graham, PE Russ Kissick Robert R. Marquardt Erma J. Spencer</p> <p><u>Parks and Recreation Planning Board</u> Paul Jasina Kayci Prince Beth S. Webb</p> <p><u>Planning and Zoning Commission</u> Christopher J. Caso James Duggan Jim Norton</p> <p><u>Plano Housing Authority</u> Earnest Burke Kathy D. Hines</p> <p><u>Public Arts Committee</u> Richard E. Allison Mary Jo Forbes Maury Hal Marcus Denver Joseph Tracy</p> <p><u>Retirement Security Plan Committee</u> Greg Carpenter John Kortenhaus</p> <p><u>Self Sufficiency Committee</u> Cathie Stanford Alexander Peter J. Calabrese Kellie Hanford Pat Hartman Stephen E. Vitasek Prissy Wisnewski</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Senior Citizens Advisory Board</u> Robert D. Albrecht Barbara Jane Sackett Kandi Sigona Ronald L. Sunshine</p> <p><u>Tax Increment Financing Reinvestment Zone No. 2 Board</u> Russell G. Coolik Shawn Gay Chris Hatcher Alan L. Johnson Brett Little Pat Miner Nathan Phillip Nash James F. Schell Alan Michael Then</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> <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) September 28, 2009 September 28, 2009 - Special Called Session</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. 2009-193-P for the 2009-2010 Residential and Arterial Pavement Under-sealing and Raising Contract to Nortex Concrete Lift & Stabilization, Inc. in the amount of \$1,470,000. This involves the injection of high density polyurethane foam to under-seal and raise street and alley pavement on residential and arterial thoroughfare locations identified by the City. The use of this material allows repairs to be made without having to replace concrete paving, reducing traffic lane closures and the disruptions associated with concrete replacement. This will establish a fixed price requirements contract with two optional renewals.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>Purchase from an Existing Contract</p>	
(c)	To approve the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$175,000 from Brodart through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents.	
(d)	To approve the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$225,000 from Ingram Library Services through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents.	
(e)	To approve the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$250,000 from Midwest Tapes through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents.	
(f)	To approve the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$350,000 from Baker & Taylor through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents.	
	<p>Approval of Change Order</p>	
(g)	To Control Specialist, Inc. increasing Purchase Order No. 103697 by \$75,000 for emergency repairs to Ridgeview Pump No. 13 and Ridgeview Pump No. 16. Change Order No. 1.	
(h)	To HPA, LLP, dba hatch & ulland owen architects, decreasing the Professional Services Contract by \$161,995 for the Oak Point Park Visitor Center design. Contract Modification No. 1 is for additional engineering and design services necessary to complete the construction documents and deletion of post design services.	
	<p><u>Adoption of Resolutions</u></p>	
(i)	To approve the terms and conditions of an Interlocal Cooperation Agreement for Library Services by and between the City of Plano and Denton County, Texas; providing the terms and conditions for receipt of funding in the amount of \$10,300 from Denton County; authorizing the City Manager to execute all necessary documents; and providing an effective date.	
(j)	To approve the terms and conditions of an Agreement by and between the City of Plano and Action Target Inc., the sole source provider of a Dust Collection Unit for the Total Containment Trap; authorizing its execution by the City Manager; and providing an effective date.	
(k)	To approve the terms and conditions of an Agreement by and between the City of Plano and Maurice Barnett Geriatric Wellness Center, Inc., for administration of the Senior Transportation Program; and authorizing its execution by the City Manager; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(l)	To approve the terms and conditions of Funding Agreements between the City of Plano, Texas, and various special event organizers. The City Manager is hereby authorized to execute such Agreements with these organizations and providing an effective date.	
(m)	To approve the terms and conditions of Funding Agreements between the City of Plano, Texas, and various arts organizations, which all render services that are beneficial to the public and serve a valid public purpose. The City Manager is hereby authorized to execute such Agreements with these organizations for provision of support of the arts and providing an effective date.	
(n)	To review and approve the City’s written Public Funds Investment Policy; and providing an effective date.	
(o)	To authorize the purchase of street light standards and associated equipment for Parkwood Boulevard from Windhaven Parkway to Spring Creek Parkway from CoServ Electric Company, who is the selected provider of electric service and the selected provider of such equipment; authorizing its execution by the City Manager; and providing an effective date.	
<u>Adoption of Ordinances</u>		
(p)	To amend Ordinance No. 96-9-29, codified in subsection entitled “State Highway 121” under Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the City of Plano Code of Ordinances, Motor Vehicles and Traffic, to lower the prima facie maximum speed limit from 60 miles per hour (60 mph) to 55 miles per hour (55 mph) on the section of State Highway 121 from the west city limits to the east city limits, providing a fine for criminal penalties not to exceed \$200 for each offense; and providing a repealer clause, a penalty clause, a severability clause, a savings clause, a publication clause and an effective date.	
(q)	To repeal Ordinance No. 2003-5-20 codified as Division 1.5, Cross Connection Control Program, of Article II, Water, of Chapter 21, Utilities, of the Code of Ordinances of the City of Plano, Texas; adopting a new Division 1.5 of Article II, Chapter 21 of the Code of Ordinances of the City of Plano, Texas; to revise definitions, processes, regulations and enforcement provisions; providing a repealer clause, a savings clause, a severability clause, a penalty clause, a publication clause and an effective date.	
<u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u>		
<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>		

ITEM NO.	EXPLANATION	ACTION TAKEN
	<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> <p>(1) Public Hearing and consideration of an Ordinance as requested in Zoning Case 2009-14 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-189-Retail/General Office on 114.0± acres located at the southeast corner of Preston Road and Park Boulevard, in the City of Plano, Collin County, Texas, to allow for an increase to the maximum lot coverage; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. Applicant: Regency Centers, L.P. and other PD Property Owners (Tabled 9/28/09)</p> <p>(2) Public Hearing and consideration of an Appeal of the Planning and Zoning Commission’s Denial of Zoning Case 2009-15 - Request for a Specific Use Permit for Public Storage/Mini-Warehouse on 3.1± acres located on the west side of Preston Park Boulevard, 550± feet south of Park Boulevard. Zoned Planned Development-189-Retail/Office-2. Neighborhood #55. Applicant: Regency Centers L.P.</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. 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.</u></p>	



Phil Dyer
Mayor

October 8, 2009

Harry LaRosiliere
Mayor Pro Tem

Lee Dunlap
Deputy Mayor Pro Tem

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

Pat Miner
Place 1

Honorable Mayor and City Council:

Ben Harris
Place 2

We will begin our meeting on Monday in Executive Session where we will receive legal advice from the City Attorney and information on litigation. These will be followed by Item III. – Discussion of Potential Economic Development Prospects and Consideration of Personnel Appointments and Evaluation of Council Appointees will be addressed under Item IV.

Mabrie Jackson
Place 3

Lissa Smith
Place 4

The Preliminary Open Meeting will begin with results from the Executive Session followed by Personnel Appointments and Discussion/Direction regarding Pond Excavation and Tennis Court Lighting Renovations. The meeting will continue with Item IV. Sign Reduction and Item V. the Public Works/Engineering Departmental Briefing.

Jean Callison
Place 7

I look forward to seeing you on Monday.

Thomas H. Muehlenbeck
City Manager

Sincerely yours,

Thomas H. Muehlenbeck

MEMO

DATE: October 8, 2009

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

FROM: Alice Snyder, Assistant City Secretary

RE: Personnel Appointments
Executive and Worksession Meetings

The following appointments will be considered at the October 12, 2009 Council Meeting.

<p><u>Executive Session</u></p> <p><u>Appointments:</u></p> <ul style="list-style-type: none">-Planning and Zoning Commission	<p><u>Worksession Meeting</u></p> <p><u>Appointments:</u></p> <ul style="list-style-type: none">-Animal Shelter Advisory Committee - Chair-Plano Housing Authority-Retirement Security Plan Committee - Chair-Senior Citizens Advisory Board - Chair
--	--

Memo

To: Thomas H. Muehlenbeck, City Manager
From: Amy Fortenberry, Director of Parks and Recreation
Date: 10/5/2009
Re: Parks Projects - CRF

The Parks and Recreation Department is nearing completion of bid documents for a couple of projects and are seeking your approval to proceed. The projects are:

Pond Excavation – Silt removal is needed at Hoblitzelle Park, Russell Creek Park, and Prairie Meadow Park (adjacent to Davis Library). The shallow conditions are resulting in citizen complaints due to excessive algae and weeds. Estimated cost is \$600,000 and funds are available in the FY 2009-10 Capital Reserve Fund. Removal of silt at these locations has been deferred a couple of times due to budget concerns and have become costly and labor intensive to maintain as a result.

Tennis Court Lighting Renovations – The tennis court lighting renovation will upgrade and improve service for area tennis enthusiasts and is projected to save an estimated \$30,000 annually in electrical costs by using more efficient fixtures. The contract for replacement also includes a 25 year maintenance agreement with the manufacturer which will reduce staff time and costs for repairs. Renovation is planned for the courts at Carpenter Middle School, Williams High School, Vines High School, and Plano Senior High School. Existing lighting will be removed from Wilson Middle School and Bowman Middle School. The estimated cost of the project is \$417,500 and funds are available in the FY 2009-10 Capital Reserve Fund.

C: Rod Hogan, Deputy City Manager
Jim Fox, Parks Services Manager



P.O. Box 860358
Plano, Texas 75086-0358
Off 972-941-7140
Fax 972-941-7177
www.buildinginspections.org

MEMORANDUM

DATE: October 1, 2009

TO: Tom Muehlenbeck, City Manager

CC: Frank Turner, Deputy City Manager
Phyllis Jarrell, Planning Director

FROM: Selso Mata, Chief Building Official

SUBJECT: Sign Reduction - Digital Billboard Trade-in Program

Staff requests the opportunity to discuss a billboard signage reduction program with Council at their October 12, 2009 preliminary meeting.

The zoning ordinance has a prohibition on new billboards but allows existing billboards to remain based on their non-conforming use. While content of a billboard sign can be modified, no enlargement or new billboard sign types are permitted. There are currently sixty-eight (68) legal non-conforming billboard signs located throughout the city.

In an effort to decrease billboard signage, staff would like to explore a trade-in program that would allow the billboard industry to erect a digital billboard in exchange for removal of existing billboards. By reducing the total number of billboards within the community, the overall impact of signage will diminish. Removal of billboard signs would be an aesthetic improvement, create a positive impact for residential or commercial development, and add to the overall safety of our city.

The most concentrated area of billboard signage is along the U.S. Highway 75 corridor where the reduction of signage could provide the best remedies and incentives for industry and the city towards billboard sign removal. The selection of U.S. 75 has further advantages due to similar business signage and the allowance of pole signs along the corridor.

In order to determine interest and feasibility, several local billboard companies were invited to discuss development of a "trade-in" program for billboard signs. Industry is interested but suggested certain issues to consider, such as:

- Maximum square footage allowance
- Sign locations and distance requirements
- Reduction requirements
- Trade or transfer of rights and sign equity
- Program duration

While the trade-in ratio is a detail yet to be established, the intent is to have a significant net reduction in off-premise signage. The program has the potential to eliminate a third or more of existing billboard signs.

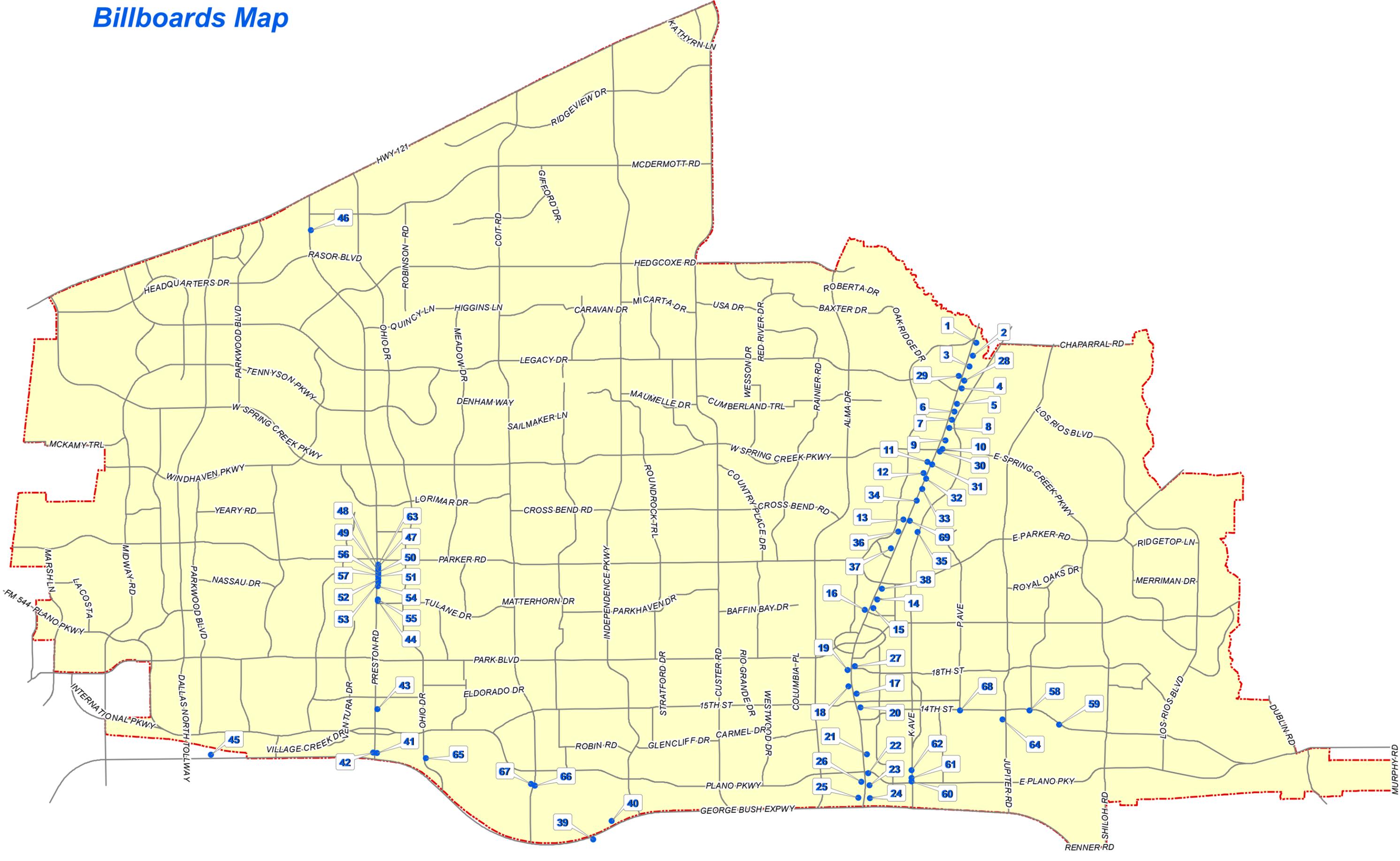
At Council's direction, staff can begin review of a "trade-in" program with the Planning and Zoning Commission that would permit new digital signs by removal of existing billboards resulting in a net reduction of total signage.

Billboard List

Number on Map	Owner Name	Size	Location
1	CLEAR CHANNEL	12X24	NEC OF US 75 & LEGACY DR
2	CLEAR CHANNEL	12X24	NEC OF US 75 & LEGACY DR
3	LAMAR	10X30	NEC US 75 & LEGACY DR
4	UNKNOWN	10X20	NEC OF US 75 & LEGACY DR
5	PLANO OUTDOOR	10X30	NEC OF US 75 & SPRING CREEK PKY
6	PLANO OUTDOOR	10X30	NEC OF US 75 & SPRING CREEK PKY
7	PLANO OUTDOOR	10X30	NEC OF US 75 & SPRING CREEK PKY
8	PLANO OUTDOOR	10X30	NEC OF US 75 & SPRING CREEK PKY
9	CLEAR CHANNEL	12X24	NEC OF US 75 & SPRING CREEK PKY
10	CLEAR CHANNEL	12X24	NEC OF US 75 & SPRING CREEKPKY
11	CBS	10X30	6001 CENTRAL EXPY
12	CBS	10X30	5001 CENTRAL EXPY
13	UNKNOWN	12X40	3631 CENTRAL EXPY
14	UNKNOWN	10X30	SEC OF US 75 & OZARK DR
15	DALLAS DAILY	10X30	NEC OF US 75 & EXCHANGE DR
16	UNKNOWN	10X30	2401 CENTRAL EXPY
17	GENE SPARKS	10X30	1516 CENTRAL EXPY
18	CLEAR CHANNEL	10X30	1611 CENTRAL EXPY
19	CBS	10X30	1729 CENTRAL EXPY
20	CBS	10X30	1414 CENTRAL EXPY
21	PLANO OUTDOOR	10X30	800 CENTRAL EXPY
22	RALSTON	10X30	SEC OF US 75 & PLANO PKY
23	CBS	10X30	500 CENTRAL EXPY
24	CBS	10X30	SEC OF US 75 & EXECUTIVE DR
25	UNKNOWN	10X30	SWC OF US 75 & PLANO PKY
26	UNKNOWN	10X30	SWC OF US 75 & PLANO PKY
27	LAMAR	10X30	1800 CENTRAL EXPY
28	UNKNOWN	10X20	NEC OF US 75 & LEGACY DR
29	PLANO OUTDOOR	10X30	NEC OF US 75 & LEGACY DR
30	UNKNOWN	12X12	SEC OF US 75 & SPRING CREEK PKY
31	CBS	10X30	5200 BLK OF CENTRAL EXPY
32	CARLISLE	10X30	5000 BLK OF CENTRAL EXPY
33	CBS	10X30	4000 BLK OF CENTRAL EXPY
34	CARLISLE	10X30	3800 BLK OF CENTRAL EXPY
35	CLEAR CHANNEL	10X30	3600 BLK OF CENTRAL EXPY
36	UNKNOWN	12X24	3521 CENTRAL EXPY
37	UNKNOWN	12X24	3405 CENTRAL EXPY
38	LAMAR	10X30	2900 CENTRAL EXPY
39	UNKNOWN	12X15	W. GEORGE BUSH HWY
40	UNKNOWN	12X15	W. GEORGE BUSH HWY
41	CLEAR CHANNEL	10X30	NEC PRESTON & W. GEORGE BUSH HWY
42	CLEAR CHANNEL	10X30	NWC PRESTON & W. GEORGE BUSH HWY
43	CBS	10X30	1000 BLK OF PRESTON
44	UNKNOWN	10X8	NEC OF PRESTON RD & TULANE
45	UNKNOWN	10X30	1100 BLK OF DALLAS PKY
46	UNKNOWN	10X30	8300 PRESTON RD
47	UNKNOWN	10X10	SEC OF PRESTON RD & W. PARKER RD
48	UNKNOWN	10X10	SEC OF PRESTON RD & W. PARKER RD
49	UNKNOWN	10X10	SEC OF PRESTON & W. PARKER RD
50	UNKNOWN	10X10	SEC OF PRESTON & W. PARKER RD
51	UNKNOWN	10X10	SEC OF PRESTON & W. PARKER RD

52	UNKNOWN	10X10	SEC OF & PRESTON RD & W. PARKER RD
53	UNKNOWN	10X10	SEC OF & PRESTON RD & W.PARKER RD
54	UNKNOWN	10X10	SEC OF PRESTON & W. PARKER RD
55	UNKNOWN	10X8	NEC OF PRESTON RD & TULANE
56	UNKNOWN	10X10	SEC OF PRESTON & W.PARKER RD
57	UNKNOWN	10X10	SEC OF PRESTON & W.PARKER RD
58	DAVID McCALL	12X24	SWC OF 14TH ST & RIGSBEE
59	RALSTON	10X30	3300 BLK OF 14TH ST
60	CLEAR CHANNEL	12X7	NWC OF K AVE & PLANO PKY
61	CLEAR CHANNEL	12X7	NWC OF K AVE & PLANO PKY
62	PLANO OUTDOOR	12X12	NWC OF K AVE & PLANO PKY
63	PLANO OUTDOOR	10x10	SEC OF PRESTON RD & W.PARKER RD
64	PLANO OUTDOOR	12X24	1200 BLK OF JUPITER RD
65	PLANO OUTDOOR	12X24	1000 BLK OF OHIO DR
69	CLEAR CHANNEL	10X30	3600 BLK OF CENTRAL EXPY
67	PLANO OUTDOOR	12X24	600 BLK OF COIT RD
66	PLANO OUTDOOR	12X24	600 BLK OF COIT RD
68	CLEAR CHANNEL	10X10	14TH ST & P AVE

Billboards Map



Departmental Briefing – Public Works/Engineering Upchurch

Discussion/Action Items for Future Council Agendas

October 13 – National Night Out - 7-9 pm

October 21-23, TML Conference, Ft. Worth

October 26

Multicultural Outreach Roundtable (MCOR) Report
Mobility Report
DART Report
Comprehensive Monthly Financial Report
Board and Commission Certificates of Appreciation

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

November 9

Departmental Briefing – Property Standards

November 10 – 14, NLC, San Antonio

November 23

Mobility Report
DART Report
Comprehensive Monthly Financial Report

November 26-27 – Thanksgiving Holidays

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

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

December 14

Departmental Briefing – Building Inspections

December 22

ACC Report (Quarterly)

Mobility Report

DART Report

Comprehensive Monthly Financial Report

December 24 & 25 – Winter Holidays



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: 10/12/09		Purchasing		
Department: City Manager's Department		Budget		
Department Head: Tom Muehlenbeck		Legal		
Dept Signature:		Assistant City Manager		
		Deputy City Manager		
		City Manager	<i>SMW</i> 10/5/09	
Agenda Coordinator (include phone #): Sharon Wright X 7107 / 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 PROCLAMATION				
CAPTION				
Proclamation: HopeLine Domestic Violence Awareness Month				
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		Purchasing		
Council Meeting Date:	10-12-09	Budget		
Department:	City Manager's Office	Legal		
Department Head	Tom Muehlenbeck	Assistant City Manager		
Dept Signature:		Deputy City Manager		
		City Manager	<i>[Signature]</i>	10/6/09
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 SPECIAL RECOGNITION				
CAPTION				
Special Recognition: Michael Carroll, Good Samaritan				
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
September 28, 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 5:06 p.m., Monday, September 28, 2009, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Council Member Callison arrived at 5:12 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/Litigation, Section 551.071; discuss Security, Section 551.076; Personnel, Section 551.074; 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 6:08 p.m. in the Council Chambers where the following matters were discussed:

Consideration and Action Resulting From Executive Session: Appointments

Board of Adjustment

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Miner, the Council voted 8-0 to appoint Steven D. Patten for a two-year term and reappoint Randy Hart as Chair.

Building Standards Commission

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Harris, the Council voted 8-0 to move Gary Johnston and Mo Khoshkar to regular positions, appoint Kevan I. Benkowitz, Mark Greer and Cindy Nye as alternates for two-year terms and to appoint Richard W. Prusha as Chair.

Heritage Commission

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Jackson, the Council voted 8-0 to appoint Edward L. Coyle and Brian E. Mosby to two-year terms and to reappoint Brian Chaput as Chair.

Planning and Zoning Commission

The Council deferred appointments.

Arts of Collin County Quarterly Report

Executive Director Mike Simpson advised that the City of Allen is constructing access from Ridgeview Drive to the site and that Sinicola will be constructing a round-about off of S.H. 121. He spoke to donation of a piece for the Sculpture Garden, expansion of the donor's program, media coverage and upcoming events. Mr. Simpson advised regarding creation of a "pocket" brochure, virtual tour in October, recent donations and the current level of more than 80%, and an on-site concert in Spring 2010. He spoke to fund-raising efforts and the current window of opportunity which could result in lower construction costs especially for steel and concrete. Mr. Simpson stated his goals to formally bid the project by year's end, establish the guaranteed maximum price and award the contract by January/February 2010.

DART Report

DART Board of Directors Member Loretta Ellerbe spoke to platform modifications and the possible service impact. She stated concern regarding a reduction in rail cars (from three per train to two) on the Red Line once inserts are installed on cars and DART's response that frequency will be provided to meet load standards. Ms. Ellerbe spoke to congestion at the Pearl Station with the addition of the Green Line, requesting DART move up construction of the Northwest Park and Ride, and proposals for parking fees. She spoke to 59% of vehicles at the Parker Station coming from outside of the system.

Mobility Report

Transportation Engineering Manager Neal spoke to enforcement of parking restrictions at the Parker Road Station, the increase in speed limits posted on tollways immediately surrounding Plano, plans to open S.H. 121 from Hillcrest Road to Hardin Boulevard on October 1, 2009 and east to U.S. 75 in January 2011.

Comprehensive Monthly Financial Report

Director of Finance Tacke spoke regarding the August 2009 Report indicating lower General Fund, Water/Sewer, Civic Center and Sustainability revenue percentages as compared to last year with actual figures for the General Fund slightly higher based on an increase in ad valorem taxes. She spoke to the percentage of General Fund expenses being lower than last year and to the impact of personnel costs.

City Manager Muehlenbeck spoke regarding funds set aside for retiree benefits. Ms. Tacke spoke to the increase in unemployment rates and participation in the economic development incentive program which brings jobs to the City, decline in hotel/motel taxes and diversification of the City's portfolio. Mr. Muehlenbeck responded to Council Member Jackson, advising that an adjustment in anticipated sales tax revenue will be reviewed in several months.

VI. Personnel Appointments

Community Relations Commission

Upon a motion made by Council Member Jackson and seconded by Council Member Harris, the Council voted 8-0 to appoint Philip F. Pollacia and Alfonso Valente to two-year terms and to appoint Richard Grady as Chair.

Cultural Affairs Commission

Upon a motion made by Council Member Smith and seconded by Deputy Mayor Pro Tem Dunlap, the Council voted 8-0 to appoint James Banks to a two-year term and appoint Andrea Stroh as Chair.

Library Advisory Board

Upon a motion made by Council Member Harris and seconded by Mayor Pro Tem LaRosiliere, the Council voted 8-0 to appoint Gary Graham to a two-year term and reappoint Debra Conway Benton as Chair.

Parks and Recreation Planning Board

Upon a motion made by Council Member Miner and seconded by Deputy Mayor Pro Tem Dunlap, the Council voted 8-0 to appoint Beth S. Webb to a two-year term and to reappoint Bill Neukranz as Chair.

Plano Housing Authority

The Council deferred appointments.

Public Arts Committee

Upon a motion made by Council Member Smith and seconded by Council Member Callison, the Council voted 8-0 to appoint Maury Hal Marcus and Denver Joseph Tracy to two-year terms and to reappoint Robert B. Drotman as Chair.

Self Sufficiency Committee

Upon a motion made by Council Member Jackson and seconded by Council Member Smith, the Council voted 8-0 to appoint Peter J. Calabrese and Pat Hartman to two-year terms and to appoint Cathie Stanford Alexander as Chair.

Senior Citizens Advisory Board

Upon a motion made by Council Member Harris and seconded by Council Member Callison, the Council voted 8-0 to appoint Barbara Jane Sackett, Kandi Sigona and Ronald L. Sunshine to two-year terms and further to defer appointment of Chair.

Tax Increment Financing Reinvestment Zone No. 2 Board

Upon a motion made by Council Member Miner and seconded by Deputy Mayor Pro Tem Dunlap, the Council voted 8-0 to appoint Brett Little, Nathan Phillip Nash, and Alan Michael Then to two-year terms.

Council items for discussion/action on future agendas

No items were recommended.

Consent and Regular Agenda

Deputy Mayor Pro Tem Dunlap requested Consent Agenda Item "B," Bid No. 2009-177-B for Intersection Improvements and drainage improvements to Jim Bowman Construction Co., LP in the amount of \$490,016 be removed for individual consideration due to a possible conflict of interest.

Council Member Smith requested Consent Agenda Item "I," a resolution to approve the terms and conditions of Agreements with various community organizations for the expenditure of Buffington Community Services funds in the amount of \$527,604 be removed for individual consideration due to a possible conflict of interest.

Staff requested that Consent Agenda Item "C," Bid No. 2009-193-P for the 2009-2010 Residential and Arterial Pavement Under-sealing and Raising Contract to Nortex Concrete Lift & Stabilization, Inc. in the amount of \$1,470,000 be pulled and held for further review.

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

Phil Dyer, Mayor

ATTEST

Diane Zucco, City Secretary

PLANO CITY COUNCIL
September 28, 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, September 28, 2009, at 7:03 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Reverend Susan Freeman of Christ Church Plano and the Pledge of Allegiance was led by Mayor Pro Tem LaRosiliere.

Mayor Dyer presented a proclamation for National Disability Employment Awareness Month and recognized a Certificate of Achievement for Planning Excellence presented to the City of Plano.

COMMENTS OF PUBLIC INTEREST

No one appeared to speak.

CONSENT AGENDA

Upon the request of Deputy Mayor Pro Tem Dunlap, Consent Agenda Item "B" was removed for individual consideration due to a possible conflict of interest.

Upon the request of Council Member Smith, Consent Agenda Item "I" was removed for individual consideration due to a possible conflict of interest.

Upon the request of Staff, Consent Agenda Item "C" was pulled and held for further review.

Upon a motion made by Council Member Miner and seconded by Council Member Callison, the Council voted 8-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows:

Approval of Minutes (Consent Agenda Item "A")

September 9, 2009

September 10, 2009

September 14, 2009

Approval of Expenditures

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

Bid No. 2009-193-P for the 2009-2010 Residential and Arterial Pavement Under-sealing and Raising Contract to Nortex Concrete Lift & Stabilization, Inc. in the amount of \$1,470,000. This contract will involve the injection of high density polyurethane foam to under-seal and raise street and alley pavement on residential and arterial thoroughfare locations identified by the City. This will allow repairs to be made without having to replace concrete paving, reducing traffic lane closures and the disruptions associated with concrete replacement. This will establish a fixed price requirements contract with two optional renewals. (Consent Agenda Item "C") (Pulled and held)

CSP No. 2009-154-B for Coit and Dallas North Tank Repaint Project to Classic Protective Coating, Inc., in the amount of \$870,100 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item "D")

Approval of Change Order

To Wiginton Hooker Jeffry, P.C., increasing the Professional Services Contract by \$32,525 for the Fire Station No. 13 design. Contract Modification No. 3 is for additional engineering and design services necessary to complete the construction documents and repackage the project for rebid.

To Crescent Constructors, Inc., increasing the contract by \$32,643 for Mapleshade Lift Station, Change Order No. 1. (Original Bid No. 2009-26-B) (Consent Agenda Item "E")

To Crescent Constructors, Inc., increasing the contract by \$32,643 for Mapleshade Lift Station, Change Order No. 1. (Original Bid No. 2009-26-B) (Consent Agenda Item "F")

Agreement

To approve a contract by and between the City of Plano and Plano Economic Development Board, Inc. in the amount of \$870,101 to initiate, promote, monitor and perform activities related to economic development; and authorizing the City Manager to execute any and all documents in connection therewith. (Consent Agenda Item "G")

Adoption of Resolutions

Resolution No. 2009-9-17(R): To approve the terms and conditions of Agreements between the City of Plano and various community organizations for the expenditure of Homelessness Prevention and Rapid Re-Housing funds in the amount of \$468,597 for the provision of various community services; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "H")

Resolution No. 2009-9-18(R): To approve the terms and conditions of Agreements between the City of Plano, Texas, and various heritage preservation organizations which render services that are beneficial to the public and serve a valid public purpose in the total amount of \$661,173; authorizing the City Manager to execute such agreements with these organizations for the provision of support of heritage preservation; and providing an effective date. (Consent Agenda Item "J")

Resolution No. 2009-9-19(R): To approve the purchase of a 6.65 Side Transposing Conveyor from N40, Inc., a distributor of Backhus North America, as a sole source vendor; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "K")

Resolution No. 2009-9-20(R): To approve the Award of Bid for the sale of approximately 3.0 acres of land located south of Summit Avenue approximately 500 feet east of the intersection of Summit Avenue and Matrix Drive, Plano, Texas pursuant to the terms and conditions of the invitation to receive sealed bids; authorizing the City Manager to execute all documents necessary to effectuate the sale; and providing an effective date. (Consent Agenda Item "L")

Resolution No. 2009-9-21(R): To adopt the Tax Abatement Policy of the City of Plano thereby establishing criteria for evaluating incentive applications; establishing procedural guidelines and criteria governing tax abatement agreements; and providing an effective date. (Consent Agenda Item "M")

Resolution No. 2009-9-22(R): To approve the terms and conditions of a Local Project Advance Funding Agreement by and between the City of Plano and Texas Department of Transportation for Intersection Improvements along Preston Road at Headquarters Drive, Hedgcoxe Road, Spring Creek Parkway and Parker Road; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "N")

Resolution No. 2009-9-23(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and the North Central Texas Council of Governments (NCTCOG), concerning the implementation of the Park Boulevard Bicycle/Pedestrian Regional Connection Project as part of the Local Air Quality Program approved by the Regional Transportation Council (RTC) on April 14, 2005 to encourage the implementation of projects to reduce vehicle emissions that create ozone; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "O")

Resolution No. 2009-9-24(R): To nominate Roy L. Wilshire for election to the Collin County Central Appraisal District Board of Directors; and providing an effective date. (Consent Agenda Item "P")

Adoption of Ordinances

Ordinance No. 2009-9-25: To amend Article V, Board of Adjustment, Chapter 16, Planning and Development, of the Code of Ordinances of the City of Plano, Texas, to delete the special provisions for employment for appointment to the Board of Adjustment; providing a repealer clause, a severability clause, a savings clause, a publication clause and an effective date. (Consent Agenda Item "Q")

Ordinance No. 2009-9-26: To repeal Ordinance No. 2009-3-11; establishing the number of certain classifications within the Police and Fire Departments for Fiscal Year 2009-10; establishing the authorized number and effective dates of such positions for each classification effective October 1, 2009 and December 1, 2009 respectively; establishing a salary plan for the Police and Fire Departments effective September 28, 2009; and providing a repealer clause, a severability clause and an effective date. (Consent Agenda Item "R")

Ordinance No. 2009-9-27: To adopt and enact Supplement Number 87 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 "S")

END OF CONSENT

Due to a possible conflict of interest Deputy Mayor Pro Tem Dunlap stepped down on the following item due to a possible conflict of interest.

Bid No. 2009-177-B for Intersection Improvements – Spring Creek Parkway at Jupiter Road, Park Boulevard at Custer Road, Parkhaven Drive at Independence Parkway, Ohio Drive at SH 121 and drainage improvements on Rambling Way from Parker Road to 300 feet north to Jim Bowman Construction Co., LP in the amount of \$490,016. (Consent Agenda Item "B")

Upon a motion made by Council Member Miner and seconded by Council Member Callison, the Council voted 7-0 to approve Bid No. 2009-177-B for Intersection Improvements in the amount of \$490,016 to Jim Bowman Construction Co., LP.

Deputy Mayor Pro Tem Dunlap resumed his place on the bench.

Due to a possible conflict of interest Council Member Smith stepped down on the following item due to a possible conflict of interest.

Resolution No. 2009-9-28(R): To approve the terms and conditions of Agreements between the City of Plano and various community organizations for the expenditure of Buffington Community Services funds in the amount of \$527,604 for the provision of various community services; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "T")

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Callison, the Council voted 7-0 to approve agreements between the City and various community organizations for expenditure of Buffington Community Services funds in the amount of \$527,604 and further to adopt Resolution No. 2009-9-28(R).

Council Member Smith resumed her place on the bench.

Approval of a Purchase from an Existing Contract two (2) Spartan/Rosenbauer Pumps and one (1) Spartan/Rosenbauer Aerial Ladder in the amount of \$1,742,896 from Emergency Vehicles of Texas through an existing contract/agreement with H-GAC Cooperative Purchase Program and authorizing the City Manager to execute any and all necessary documents. (H-GAC Contract No. FS12-07) (Regular Agenda Item "1")

City Manager Muehlenbeck spoke to bringing items forward to the Council that contain budget impact and looking for ways to address deficits. Chief Esparza spoke to the equipment for use at Fire Station #13, timing related to the construction of the station, retaining the City's ISO rating, and savings that might be realized by purchasing at this time.

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Mayor Pro Tem LaRosiliere, the Council voted 8-0 to approve the purchase of two Spartan/Rosenbauer Pumps and one Spartan/Rosenbauer Aerial Ladder in the amount of \$1,742,896.

Discussion and Direction regarding the purchase of Printing Services from price agreements in an estimated annual amount of \$539,000 from various vendors; and authorizing the City Manager to execute all necessary documents. (Regular Agenda Item "2")

Assistant City Manager Israelson spoke to the budget of the Print Shop and Publishing and advised that a consultant's report provided two alternatives: retaining the print shop, hiring a manager to oversee its operations, and charging for publishing services or; outsourcing the management of the print shop and charging for publishing. Mr. Israelson advised that the only interest from outside vendors was to provide services at their facilities and Staff's consideration of outsourcing with absorption of some graphics design by Public Information Administration. He spoke to possible savings, transition of operations, and risks. Purchasing Manager Palmer spoke to the vendors being included on cooperative purchasing agreements.

Mr. Israelson responded to the Council, advising that if the Print Shop were retained, a management position would need to be filled and spoke to departments selecting from providers to find the best service for their needs with evaluation after one year. He spoke to current use of outside printing vendors for some products, the ability to use Plano-based storefronts and advised of the personnel impact. Mr. Israelson spoke to the responsibility of departments to ensure processing and accuracy and to the importance of contract administration.

Upon a motion made by Council Member Miner and seconded by Deputy Mayor Pro Tem Dunlap, the Council voted 8-0 directing Staff to move forward in purchasing Printing Services from price agreements.

Public Hearing and Comment: Review of the Consolidated Annual Performance Evaluation Report for the use of Federal Funds in 2008-2009. (Consent Agenda Item "3")

Community Services Manager Day advised that the report to Housing and Urban Development includes information on federal and local monies utilized to meet goals and to the commitment of more than \$2 million in federal funds resulting in assistance for more than 1,500 low-to-moderate income families and \$524,000 in City funds assisting 20,000 others.

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

Public Hearing and consideration of an Ordinance as requested in Zoning Case 2009-14 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-189-Retail/General Office on 114.0± acres located at the southeast corner of Preston Road and Park Boulevard, in the City of Plano, Collin County, Texas, to allow for an increase to the maximum lot coverage; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. Applicant: Regency Centers, L.P. and other PD Property Owners (Consent Agenda Item "4")

Director of Planning Jarrell advised that the applicant has requested the item be tabled in order to be considered with an appealed zoning case on October 12, 2009.

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 Callison and seconded by Council Member Jackson, the Council voted 8-0 to table Zoning Case 2009-14 until the October 12, 2009 Council meeting.

Resolution No. 2009-9-29(R): to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Pepsico, Inc., a North Carolina corporation; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "5")

Director of Finance Tacke advised that Pepsico, Inc. would occupy no less than 98,000 square feet of office space and retain, transfer or create 428 full-time jobs by September 31, 2009 and an additional 172 full-time jobs by December 31, 2010. She advised that the terms of the agreement run from October 1, 2009 – August 15, 2014 for a grant in the amount of \$428,000.

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Miner, the Council voted 8-0 to approve an Economic Development Incentive Agreement between the City and Pepsico, Inc. and further to adopt Resolution No. 2009-9-29(R).

Resolution No. 2009-9-30(R): to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Retalix USA, Inc., a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "6")

Director of Finance Tacke advised that Retalix USA, Inc. would occupy no less than 45,000 square feet of office space and retain, transfer or create 185 full-time jobs by October 1, 2009. She advised that the terms of the agreement run from October 1, 2009 – September 30, 2015 for a grant in the amount of \$166,500.

Upon a motion made by Council Member Jackson and seconded by Council Member Harris, the Council voted 8-0 to approve an Economic Development Incentive Agreement between the City and Retalix, USA, Inc. and further to adopt Resolution No. 2009-9-30(R).

There being no further discussion, Mayor Dyer adjourned the meeting at 9:03 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary

**PLANO CITY COUNCIL
SPECIAL CALLED SESSION
September 28, 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 8:00 p.m., Monday, September 28, 2009, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Mayor Pro Tem LaRosiliere. 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 discuss Personnel, Section 551.074 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 Special Called Session at 8:32 p.m. in the Council Chambers where the following matters were discussed:

Council action regarding ethics complaint filed against Mayor Pro Tem LaRosiliere to either reject the complaint or initiate a complete investigation.

Deputy Mayor Pro Tem Dunlap advised that based on the information and report received Council had no reason to take further action and made a motion to reject the complaint. The motion was seconded by Council Member Jackson and the Council voted 8-0.

Nothing further was discussed. Mayor Dyer adjourned the Special Called Session at 8:33 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		PSH	10-2-09	
Council Meeting Date: 10/12/2009		Budget	10-2-09	
Department:	Public Works / David Falls <i>SA</i>	Legal	DW 10/15/09	
Department Head	Alan Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan Upchurch</i>	Deputy City Manager	10-5-09	
		City Manager	10/05/09	
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 of Bid No. 2009- 193 - P, for the 2009-2010 Residential and Arterial Pavement Under-sealing and Raising Contract to Nortex Concrete Lift & Stabilization, Inc. in the amount of \$1,470,000.00.</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	1,459,927	1,876,000	2,000,000	5,335,927
Encumbered/Expended Amount	-1,459,927	-1,868,208	0	-3,328,135
This Item	0	-1,470,000	0	-1,470,000
BALANCE	0	-1,462,208	2,000,000	537,792
FUND(S): CAPITAL RESERVE				
COMMENTS: Funds are included in the 2009-10 Capital Reserve Fund. This item, in the amount of \$1,470,000.00, will be encumbered in the current fiscal year and carry forward into the cash allocations of 2009-10. STRATEGIC PLAN GOAL: The undersealing program relates to the City's Goal of Safe, Efficient Travel.				
SUMMARY OF ITEM				
<p>Staff recommends the bid for the 2009-10 Residential and Arterial Pavement Under-sealing and Raising Contract to Nortex Concrete Lift & Stabilization, Inc., in the amount of \$1,470,000.00, be accepted as the lowest responsible bid for the project conditioned upon timely execution of all necessary documents. This will establish a fixed price requirements contract with two optional renewals.</p> <p>This contract will involve the injection of high density polyurethane foam to under-seal and raise street and alley pavement on residential and arterial thoroughfare locations identified by the City. The use of this material allows repairs to be made without having to replace concrete paving, reducing traffic lane closures and the disruptions associated with concrete replacement.</p> <p>The secondary vendor being recommended is URETEK USA in the amount of \$1,575,000.00.</p> <p>Engineer's estimate for this project is \$1,686,000.00.</p>				
List of Supporting Documents: Bid Tabulation		Other Departments, Boards, Commissions or Agencies		

CITY OF PLANO

**BID NO. 2009-193-P
2009-10 RESIDENTIAL AND ARTERIAL PAVEMENT UNDER-SEALING AND RAISING REQUIREMENTS
CONTRACT - PROJECT NO. 6014
BID TABULATION**

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

Number of Bids Submitted: 3

COMPANY NAME	Total Base Bid	Bid Bond Present
Nortex Concrete Lift	\$1,470,000.00	Yes
Uretex USA	\$1,575,000.00	Yes
Universal Coatings Inc.	\$2,081,000.00	Yes

Nancy Corwin

September 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.

PURCHASING DIVISION CITY OF PLANO 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	JSP	9-22-09
Council Meeting Date:	October 12, 2009	Budget	C.S.	9-22-09
Department:	Library Administration	Legal	D.J.	9/22/09
Department Head	Joyce Baumbach	Assistant City Manager	[Signature]	9/24/09
Dept Signature:	[Signature: Joyce Baumbach]	Deputy City Manager	[Signature]	9/24/09
		City Manager	[Signature]	9/25/09
Agenda Coordinator (include phone #): Mary Ann Dunnivant (Ext. 4208)				
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 Purchase from State Contract				
CAPTION				
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$175,000 from Brodart through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager or his authorized designee to execute all necessary documents.				
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	1,000,000	0	1,000,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-175,000	0	-175,000
BALANCE	0	825,000	0	825,000
FUND(S): GENERAL FUND				
COMMENTS: Funds are included in the FY 2009-10 adopted budget for Books, Multimedia, and Library materials. Approval of this item authorizes the City to purchase \$175,000 in Books, Multimedia, and Library materials. The remaining balance of funds will be used for other multimedia and library materials.				
STRATEGIC PLAN GOAL: Providing multimedia and library materials purchases relates to the City's Goal of "Service Excellence."				
SUMMARY OF ITEM				
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things. Because of the City of Plano's participation, the purchase from Brodart in the amount of \$175,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Brodart through the Texas State Contract 715-N1 Print Materials and Multimedia. 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 governments to seek competitive bids for items.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
1. Memo from Julie Torstad dated 09.09.09.				



City of Plano
Technical Services
2501 Coit Road
Plano, TX 75075
Phone: 972.769.4327
Fax: 972.769.4121

Memorandum

Date: September 9, 2009
To: Mary Ann Dunnivant
From: Julie Torstad 
Subject: City Council Approval for Brodart

Please request City Council approval to spend approximately \$175,000 with Brodart for the purchase of various library materials including books, compact disks, and books-on-CD. The funds should be taken from 01-682-8441. Some of the funds will be transferred into 01-682-8442.

These purchases will be made through the State of Texas CO-OP Purchasing Program under Texas State Contract 715-N1 Print Materials and Multimedia with Brodart. 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 governments to seek competitive bids for items.

Thanks.



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	Jef 9-22-09	
Council Meeting Date: October 12, 2009		Budget	C.S. 9-22-09	
Department: Library Administration		Legal	Jef 9/22/09	
Department Head Joyce Baumbach		Assistant City Manager	Jef 9/24/09	
Dept Signature: <i>Joyce Baumbach</i>		Deputy City Manager	Jef 9.24.09	
		City Manager	Jef 9/25/09	
Agenda Coordinator (include phone #): Mary Ann Dunnavant (Ext. 4208)				
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 Purchase from State Contract				
CAPTION				
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$225,000 from Ingram Library Services through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager or his authorized designee to execute all necessary documents.				
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	1,000,000	0	1,000,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-225,000	0	-225,000
BALANCE	0	775,000	0	775,000
FUND(S): GENERAL FUND				
COMMENTS: Funds are included in the FY 2009-10 adopted budget for Books, Multimedia, and Library materials. Approval of this item authorizes the City to purchase \$225,000 in Books, Multimedia, and Library materials. The remaining balance of funds will be used for other multimedia and library materials.				
STRATEGIC PLAN GOAL: Providing multimedia and library materials purchases relates to the City's Goal of "Service Excellence."				
SUMMARY OF ITEM				
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things. Because of the City of Plano's participation, the purchase from Ingram Library Services in the amount of \$225,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Ingram Library Services through the Texas State Contract 715-N1 Print Materials and Multimedia. 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 governments to seek competitive bids for items.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
1. Memo from Julie Torstad dated 09.09.09.				



City of Plano
Technical Services
2251 Coit Road
Plano, TX 75075
Phone: 972.769.4327
Fax: 972.769.4121

Memorandum

Date: September 9, 2009
To: Mary Ann Dunnivant
From: Julie Torstad 
Subject: City Council Approval for Ingram Library Services

Please request City Council approval to spend approximately \$225,000 with Ingram Library Services for the purchase of various library materials including books, books-on-CD, and DVDs. Funds should be taken from 01-682-8441. Some of the funds will be transferred into 01-682-8442 as necessary.

These purchases will be made through the State of Texas CO-OP Purchasing Program under Texas State Contract 715-N1 Print Materials and Multimedia with Ingram Library Services. 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 governments to seek competitive bids for items.

Thanks.



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	JAF 9-22-09	
Council Meeting Date: October 12, 2009		Budget	C.S. 9-22-09	
Department: Library Administration		Legal	DCL 9/22/09	
Department Head: Joyce Baumbach		Assistant City Manager	MOB 9/24/09	
Dept Signature: <i>Joyce Baumbach</i>		Deputy City Manager	BSB 9/24/09	
		City Manager	JAM 1/25/09	
Agenda Coordinator (include phone #): Mary Ann Dunnivant (Ext. 4208)				
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 Purchase from State Contract				
CAPTION				
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$250,000 from Midwest Tapes through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager or his authorized designee to execute all necessary documents.				
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	1,000,000	0	1,000,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-250,000	0	-250,000
BALANCE	0	750,000	0	750,000
FUND(S): GENERAL FUND				
COMMENTS: Funds are included in the FY 2009-10 adopted budget for the purchase of Books, Multimedia, and Library materials. Approval of this item authorizes the City to purchase \$250,000 in Books, Multimedia, and Library materials. The remaining balance of funds will be used for other multimedia and library materials.				
STRATEGIC PLAN GOAL: Providing multimedia and library materials purchases relates to the City's Goal of "Service Excellence."				
SUMMARY OF ITEM				
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things. Because of the City of Plano's participation, the purchase from Midwest Tapes in the amount of \$250,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Midwest Tapes through the Texas State Contract 715-N1 Print Materials and Multimedia. 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 governments to seek competitive bids for items.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
1. Memo from Julie Torstad dated 09.09.09.				



City of Plano
Technical Services
2501 Coit Road
Plano, TX 75075
Phone: 972.769.4327
Fax: 972.769.4121

Memorandum

Date: September 9, 2009
To: Mary Ann Dunnivant
From: Julie Torstad *JT*
Subject: City Council Approval for Midwest Tapes

Please request City Council approval to spend approximately \$250,000 with Midwest Tapes for the purchase of various library materials including music CDs, books-on-CD, and DVDs. The funds should be taken from 01-682-8441. Some of the funds will be transferred into 01-682-8442.

These purchases will be made through the State of Texas CO-OP Purchasing Program under Texas State Contract 715-N1 Print Materials and Multimedia with Midwest Tapes. 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 governments to seek competitive bids for items.

Thanks.



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>Jef</i>	9-22-09
Council Meeting Date:	October 12, 2009	Budget	C.S.	9-22-09
Department:	Library Administration	Legal	<i>[Signature]</i>	9/22/09
Department Head	Joyce Baumbach	Assistant City Manager	<i>[Signature]</i>	9/24/09
Dept Signature:	<i>Joyce Baumbach</i>	Deputy City Manager	<i>[Signature]</i>	9/24/09
		City Manager	<i>[Signature]</i>	9/25/09
Agenda Coordinator (include phone #): Mary Ann Dunnivant (Ext. 4208)				
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 Purchase from State Contract				
CAPTION				
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$350,000 from Baker & Taylor through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager or his authorized designee to execute all necessary documents.				
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	1,000,000	0	1,000,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-350,000	0	-350,000
BALANCE	0	650,000	0	650,000
FUND(S): GENERAL FUND				
COMMENTS: Funds are included in the FY 2009-10 adopted budget for Books, Multimedia, and Library materials. Approval of this item authorizes the City to purchase \$350,000 in Books, Multimedia, and Library materials. The remaining balance of funds will be used for other multimedia and library materials.				
STRATEGIC PLAN GOAL: Providing multimedia and library materials purchases relates to the City's Goal of "Service Excellence."				
SUMMARY OF ITEM				
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things. Because of the City of Plano's participation, the purchase from Baker & Taylor in the amount of \$350,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Baker & Taylor through the Texas State Contract 715-N1 Print Materials and Multimedia. 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 governments to seek competitive bids for items.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
1. Memo from Julie Torstad dated 09.09.09.				



City of Plano
Technical Services
2501 Coit Road
Plano, TX 75075
Phone: 972.769.4327
Fax: 972.769.4121

Memorandum

Date: September 9, 2009
To: Mary Ann Dunnivant
From: Julie Torstad 
Subject: City Council Approval for Baker & Taylor

Please request City Council approval to spend approximately \$350,000 with Baker & Taylor for the purchase of various library materials including books, compact disks, books-on-CD, and DVDs. The funds should be taken from 01-682-8441. Some of the funds will be transferred into 01-682-8442.

These purchases will be made through the State of Texas CO-OP Purchasing Program under Texas State Contract 715-N1 Print Materials and Multimedia with Baker & Taylor. 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 governments to seek competitive bids for items.

Thanks.



**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>	10-2-09
Council Meeting Date:	October 12, 2009	Budget	<i>ED</i>	10/5/09
Department:	Public Works – David Falls <i>DA</i>	Legal	<i>DW</i>	10/5/09
Department Head	Alan Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan Upchurch</i>	Deputy City Manager	<i>DS</i>	10-5-09
		City Manager	<i>DS</i>	10/5/09
Agenda Coordinator (include phone #): Margie Stephens (x4104)				
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				
<i>To Control Specialist, Inc. increasing Purchase Order No. 103697 by \$75,000 for emergency repairs to Ridgeview Pump No. 13 and Ridgeview Pump No. 16.</i>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	450,000	450,000	900,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-75,000	0	-75,000
BALANCE	0	375,000	450,000	825,000
FUND(S): CAPITAL RESERVE				
COMMENTS: Funds are included in the 2009-10 Capital Reserve. This item, in the amount of \$75,000, will leave a current year balance of \$375,000 for the Pump Station Rehabilitation project. STRATEGIC PLAN GOAL: Pump station repairs relate to the City's Goal of "Service Excellence".				
SUMMARY OF ITEM				
This change order in the amount of \$75,000 is for emergency repairs of Ridgeview Pump No. 13 and Ridgeview Pump No. 16. These emergency repairs were needed to keep the Ridgeview Pump Station operational. Upon conditional assessment of pumps 13 and 16, severe corrosion was observed on the pump shafts. Failure to repair shafts would have caused further damage to pumps and motors. Staff recommends approval of Change Order No. 1, which will make Purchase Order No. 103697 for \$236, 695.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Change Order No. 1				

CHANGE ORDER NO. 1

EMERGENCY REPAIRS TO THE PUMP SHAFTS AND LEAKING CHECK VALVES
AT THE RIDGEVIEW PUMP STATION EXPANSION
PURCHASE ORDER NO. 103697
CIP NO. 35-P03
RESOLUTION NO. 2009-4-1 (R)

A. INTENT OF CHANGE ORDER

The intent of this change order is to modify Purchase Order 103697 issued to CONTROL SPECIALIST, INC. for **EMERGENCY REPAIRS TO RIDGEVIEW PUMP NO. 13 AND RIDGEVIEW PUMP NO. 16 AT THE RIDGEVIEW PUMP STATION EXPANSION**, dated April 20, 2009.

B. DESCRIPTION OF CHANGE

The change order is to increase Purchase Order 103697 by \$75,000 for the emergency repairs to Ridgeview Pump No. 13 and Ridgeview Pump No. 16 to keep the Ridgeview Pump Station Expansion operational. Upon condition assessment of pumps 13 and 16, severe corrosion was observed on the pump shafts. Failure to repair shafts would have caused further damages to pumps and motors.

C. EFFECT OF CHANGE

This change order will have the following effect on Purchase Order No. 103697.

Original Purchase Order Amount	<u>\$161,695.00</u>
Amount, Change Order No. 1	<u>\$75,000.00</u>
Revised Purchase Order Amount	<u>\$236,695.00</u>

D. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **CONTROL SPECIALIST, INC.**, do hereby agree to append this Change Order No. 1 to the original Purchase Order No. 103697 between themselves, dated April 20, 2009.

OWNER: CITY OF PLANO

CONTRACTOR: CONTROL SPECIALIST, INC.

By: _____

By: _____

Print Name: Thomas H. Muehlenbeck

Print Name: _____

Print Title: City Manager

Print Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

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

ACKNOWLEDGMENTS

STATE OF TEXAS

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2009, by _____, _____, of **CONTROL SPECIALIST, 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



**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>	10-2-09
Council Meeting Date:	10/12/09	Budget	<i>M</i>	10-2-09
Department:	Public Works & Engineering	Legal	<i>DW</i>	10/5/09
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>RL</i>	10-5-09
		City Manager	<i>[Signature]</i>	10/5/09
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>[Signature]</i>	Project No. 5971	
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 HPA, LLP, dba hatch & ulland owen architects, decreasing the professional services contract by \$161,995 for the Oak Point Park Visitor Center design. Contract Modification No. 1 is for additional engineering and design services necessary to complete the construction documents and deletion of post design services.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	6,182,462	590,538	5,000,000	11,773,000
Encumbered/Expended Amount	-6,182,462	-475,675	0	-6,658,137
This Item	0	161,995	0	161,995
BALANCE	0	276,858	5,000,000	5,276,858
FUND(S): PARK IMPROVEMENT				
COMMENTS: If this contract modification is approved, it will reduce the contract with HPA, LLP, in the amount of (\$161,995), and will leave a current year balance of \$276,858 for the Oak Point Park Development project. STRATEGIC PLAN GOAL: Contract modification for park development relates to the City's Goal of Premier City in which to live.				
SUMMARY OF ITEM				
Additional services are required for the design of the Oak Point Park Visitor Center to incorporate rainwater collection cisterns and rough-in designs for the café and catering kitchens. With an expected delay in bidding and construction of the Center of more than one year, staff recommends completing the design and terminating the remainder of the architect's services as in the best interest of the City. The original contract amount was \$243,655.00. The Public Works & Engineering Department is seeking City Council approval of this first modification because of the significant decrease in the contract amount. The revised contract amount is \$81,660.00.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Contract Modification		N/A		

CONTRACT MODIFICATION

**OAK POINT PARK VISITOR CENTER
PROJECT NO. 5971**

**PURCHASE ORDER NO. 103693
CIP NO. 22340**

This shall serve as a first Modification to the Contract between the City of Plano, Texas (hereinafter "City"), and HPA, LLP, dba hatch & ulland owen architects (hereinafter "Consultant"), dated March 11, 2009, for Professional Services for the referenced project (hereinafter "Project").

Services:

This Modification amends the scope of services as originally set forth in the contract as follows:

Additional services are required for the design of the Oak Point Park Visitor Center to incorporate rainwater collection cisterns and rough-in designs for the café and catering kitchens. Bidding, negotiations, construction observation and post construction commissioning services are deleted.

Additions to the Scope of Work:

Additional Services:

Café kitchen and catering kitchen rough-in:	\$ 10,140
Cistern change from one to multiple tanks:	\$ 12,820

Deductions from original scope of work:

Bidding, negotiation, permitting	-\$ 19,450
Construction observation	-\$ 134,505
Post construction LEED and commissioning	-\$ 28,900
Post occupancy commissioning	-\$ 2,100

TOTAL	-\$ 161,995
-------	-------------

h-2

MODIFICATION NO. 1
Oak Point Park Visitor Center – Project No. 5971
Page 2 of 3

Compensation:

The additional services and deletion of post design services in this modification result in a net deductive change of \$161,995, reducing the original contract amount to \$81,660.

In the event of any conflict or inconsistency between the provisions set forth in this Modification and the Contract, this Modification shall govern and control. For and in consideration of the covenants, duties and obligations herein contained, the parties do mutually agree that except as provided above, all other terms and conditions of the Contract shall remain unchanged and in full force and effect.

Original Contract Amount	\$	<u>243,655.00</u>
Contract Amount (Including Previous Modifications)	\$	<u>243,655.00</u>
Amount, Modification No. 1	\$	<u>-161,995.00</u>
Revised Contract Amount	\$	<u>81,660.00</u>
Total Percent Increase Including Previous Modifications		<u>-66.49%</u>

CITY OF PLANO

**HPA, LLP, DBA HATCH & ULLAND
OWEN ARCHITECTS**

OWNER

CONSULTANT

By: _____

(signature)

By: _____

(signature)

Print Name: Thomas H. Muehlenbeck

Print Name: _____

Print Title: City Manager

Print Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By: 
Diane C. Wetherbee, City Attorney

MODIFICATION NO. 1
Oak Point Park Visitor Center – Project No. 5971
Page 3 of 3

ACKNOWLEDGMENTS

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the _____ day of _____, 2009, by _____, _____, of **HPA, LLP, DBA HATCH & ULLAND OWEN ARCHITECTS**, a Texas limited liability partnership, for and on behalf of said partnership.

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	Dof	9-17-09	
Council Meeting Date:	October 12, 2009	Budget	C.S.	9-17-09	
Department:	Library Administration	Legal	Dof	9/17/09	
Department Head	Joyce Baumbach	Assistant City Manager	(md)	9/17/09	
Dept Signature:	<i>Joyce Baumbach</i>	Deputy City Manager	(md)	9/17/09	
		City Manager	(md)	9/18/09	
Agenda Coordinator (include phone #): Mary Ann Dunnavant (Ext. 4208)					
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					
Approving the terms and conditions of an Interlocal Cooperation Agreement for Library Services by and between the City of Plano and Denton County, Texas; providing the terms and conditions for receipt of funding in the amount of \$10,300 from Denton County; authorizing the City Manager or his authorized designee to execute all necessary documents; 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:	2009-2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
	Budget	0	0	0	0
	Encumbered/Expended Amount	0	0	0	0
	This Item	0	10,300	0	10,300
	BALANCE	0	10,300	0	10,300
FUND(S): GENERAL FUND					
COMMENTS: Approval of this item will result in \$10,300 in revenue from the Denton County Interlocal Cooperative Library Agreement. Funds received from this agreement will be used by the City of Plano – Plano Public Library System - to provide full library services for the residents of Denton County.					
STRATEGIC PLAN GOAL: Interlocal library service agreements relate to the City's Goals of "Service Excellence."					
SUMMARY OF ITEM					
Approval of this Interlocal Cooperation Agreement for Library Services between the City of Plano and Denton County is requested for receipt of funding in the amount of \$10,300 from Denton County.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
1. Interlocal Cooperation Agreement for Library Services is attached as Exhibit "A" to the Resolution.					

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT FOR LIBRARY SERVICES BY AND BETWEEN THE CITY OF PLANO AND DENTON COUNTY, TEXAS; PROVIDING THE TERMS AND CONDITIONS FOR RECEIPT OF FUNDING IN THE AMOUNT OF \$10,300 FROM DENTON COUNTY; AUTHORIZING THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE TO EXECUTE ALL NECESSARY DOCUMENTS; 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 For Library Services by and between the City of Plano, Texas, and Denton County, Texas, (see Exhibit "A") providing terms and conditions for receipt of funding from Denton County, Texas in the amount of \$10,300; 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.

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. The City Manager or his authorized designee shall execute all necessary documents for receipt of this funding.

Section II. 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 DENTON

§
§
§

PLANO PUBLIC LIBRARY SYSTEM

**INTERLOCAL COOPERATION AGREEMENT
FOR LIBRARY SERVICES**

THIS AGREEMENT is made and entered into by and between Denton County a political subdivision of Texas, hereinafter referred to as "**COUNTY**," and the City of Plano, a Municipality of Denton County, Texas, hereinafter referred to as "**MUNICIPALITY**," and has an effective date of October 1, 2009.

WHEREAS, COUNTY is a duly organized political subdivision of the State of Texas engaged in the administration of county government and related services for the benefit of the citizens of Denton County; and

WHEREAS, the City of Plano is a duly organized **MUNICIPALITY** of Denton County, Texas engaged in the provision of library service and related services for the benefit of the citizens of **MUNICIPALITY**; and

WHEREAS, COUNTY has requested, and **MUNICIPALITY** has agreed, to provide library services for all residents of **COUNTY**; and

WHEREAS, COUNTY and **MUNICIPALITY** mutually desire to be subject to the provisions of V.T.C.A., Government Code Chapter 791, the Interlocal Cooperation Act; and V.T.C.A., Local Government Code Chapter 323, County Libraries.

NOW, THEREFORE, COUNTY and **MUNICIPALITY**, for the mutual consideration hereinafter stated, agree and understand as follows:

I.

The term of this Agreement shall be for the period from October 1, 2009, through September 30, 2010.

II.

For the purposes and consideration herein stated and contemplated, **MUNICIPALITY** shall provide library services for the residents of **COUNTY** without regard to race, religion, color, age, disability and/or national origin. Upon proper proof by individual(s) of residence in **COUNTY**, Texas, such individual(s) shall be entitled issuance, at no cost, a library card to be used in connection with said library services.

MUNICIPALITY shall develop and maintain through the Library one or more of the following programs of service:

1. Educational and reading incentive programs and materials for youth.

2. Functional literacy materials and/or tutoring programs for adults.
3. Job training/career development programs and/or materials for all ages.
4. Outreach services to eliminate barriers to library services.
5. Educational programs designed to enhance quality of life for adults.

III.

COUNTY designates the County Judge to act on behalf of **COUNTY** and serve as liaison officer for **COUNTY** with and between **COUNTY** and **MUNICIPALITY**. The County Judge or his designated substitute shall insure the performance of all duties and obligations of **COUNTY** herein stated and shall devote sufficient time and attention to the execution of said duties on behalf of **COUNTY** in full compliance with the terms and conditions of this Agreement. The County Judge shall provide immediate and direct supervision of **COUNTY'S** employees, agents, contractors, sub-contractors, and/or laborers, if any, in the furtherance of the purposes, terms and conditions of this Agreement for the mutual benefit of **COUNTY** and **MUNICIPALITY**.

IV.

MUNICIPALITY shall designate the Director of Libraries to act on behalf of **MUNICIPALITY** and to serve as liaison officer of **MUNICIPALITY** with and between **MUNICIPALITY** and **COUNTY** to insure the performance of all duties and obligations of **MUNICIPALITY** as herein stated and shall devote sufficient time and attention to the execution of said duties on behalf of **MUNICIPALITY** in full compliance with the terms and conditions of this Agreement. The Director of Libraries shall provide management of **MUNICIPALITY'S** employees, agents, contractors, sub-contractors, and/or laborers, if any, in the furtherance of the purposes, terms and conditions of this Agreement for the mutual benefit of **MUNICIPALITY** and **COUNTY**.

MUNICIPALITY shall provide to **COUNTY** a copy of the annual report submitted to the Texas State Library and shall respond to **COUNTY'S** annual questionnaire as documentation of **MUNICIPALITY'S** expenditures and provision of service.

V.

The **MUNICIPALITY** shall be solely responsible for all techniques, sequences, procedures, and for the coordination of all work performed under the terms and conditions of this Agreement; shall insure, dedicate and devote the full time and attention of those employees necessary for the proper execution and completion of the duties and obligations of the

MUNICIPALITY stated in this Agreement; and shall give all attention necessary for such proper supervision and direction.

VI.

The **MUNICIPALITY** agrees that its library department shall assume the functions of a **COUNTY** library and to provide a librarian who meets the requirements of the **MUNICIPALITY'S** job description.

VII.

The **COUNTY** and **MUNICIPALITY** agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees. This Agreement does not and shall not be construed to entitle either party or any of their respective employees, if applicable, to any benefit, privilege or other amenities of employment applicable to the other party. The **MUNICIPALITY** understands and agrees that the **MUNICIPALITY**, its employees, servants, agents and representatives shall not represent themselves to be employees, servants, agents and/or representatives of the **COUNTY**.

The **COUNTY** and **MUNICIPALITY** acknowledge and agree that **COUNTY** and **MUNICIPALITY** do not waive any sovereign or governmental immunity available to **COUNTY** and **MUNICIPALITY** under Texas law and does not waive any available defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

VIII.

This Agreement is not intended to extend the liability of the parties beyond that provided by law. Neither **MUNICIPALITY** nor **COUNTY** waives any immunity or defense that would otherwise be available to it against claims by third parties.

IX.

Any notice required by this Agreement shall be delivered, in writing, by either **COUNTY** or **MUNICIPALITY** to the following addresses:

The address of **COUNTY** is:

County Judge, Denton County
110 West Hickory
Denton, Texas 76201
Telephone: 940-349-2820

The address of the **MUNICIPALITY** is: The City of Plano through
Plano Public Library System
2501 Coit Road
Plano, Texas 75075
Attention: Director of Libraries
Telephone: 972-769-4208

X.

For the full performance of the services above stated, **COUNTY** agrees to pay **MUNICIPALITY** fees as described herein, from current revenues available for such payment. **COUNTY** shall pay **MUNICIPALITY** fees in the amount of **FIVE THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$5,300.00)**, based upon North Central Texas Council of Governments service population allocation figures provided to **COUNTY** by the Library Advisory Board, payable in equal quarterly installments to **MUNICIPALITY** commencing October 1, 2009. The Allocation chart setting forth said figures is attached hereto and incorporated herein for all intents and purposes as Exhibit "A." In addition, **COUNTY** agrees to pay **MUNICIPALITY** an amount not to exceed **FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00)** in matching funds upon the following conditions:

1. **MUNICIPALITY** shall attempt to secure funding from sources other than **COUNTY**.
2. Upon receipt of additional funding, **MUNICIPALITY** shall provide proof of the receipt of such funds to the Denton County Auditor on a quarterly basis.
3. **COUNTY** shall match **MUNICIPALITY'S** additional funding in an amount not to exceed \$5,000.00.
4. Payment by **COUNTY** to **MUNICIPALITY** shall be made in accordance with the normal and customary processes and business procedures of **COUNTY**, and payment shall be satisfied from current revenues of the **COUNTY**.

The **COUNTY** has reviewed the **MUNICIPALITY'S** Library Internet usage operating procedures and finds them in compliance. The **MUNICIPALITY** agrees to keep their Internet policy (See Attachment B attached hereto and incorporated herein for all intents and purposes) in effect for the duration of this Agreement.

XI.

This Agreement may be terminated, at any time, by either party by giving sixty (60) days advance written notice to the other party. In the event of such termination by either party, **MUNICIPALITY** shall be compensated pro rata for all services performed to the termination date, together with reimbursable expenses then due and as authorized by this Agreement. In the

event of such termination, should **MUNICIPALITY** be overcompensated on a pro rata basis for all services performed to the termination date or be overcompensated for reimbursable expenses as authorized by this Agreement, **COUNTY** shall be reimbursed pro rata for all such overcompensation. Acceptance of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

XII.

This Agreement represents the entire and integrated Agreement between **MUNICIPALITY** and **COUNTY** and supersedes all prior negotiations, representations and/or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both **MUNICIPALITY** and **COUNTY**.

XIII.

The validity of 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. Further, this Agreement shall be performable and all compensation payable in Denton County, Texas.

XIV.

In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the parties hereto that the remaining portions shall remain valid and in full force and effect to the extent possible.

XV.

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

EXECUTED in triplicate originals on the dates set forth below.

COUNTY

By _____
Mary Horn, County Judge
Denton County, Texas

Acting on behalf of and by the
authority of the Commissioners
Court of Denton County, Texas

DATED: _____

MUNICIPALITY

By _____
Name: Thomas H. Muehlenbeck
Title: City Manager, City of Plano

Acting on behalf of and by the authority of
the Plano City Council, Plano, Texas

DATED: _____

ATTEST:

By _____
Denton County Clerk

ATTEST:

By _____
City Secretary

APPROVED AS TO FORM:

BY _____
Assistant District Attorney

APPROVED AS TO FORM:

BY _____
City Attorney

APPROVED AS TO CONTENT:

BY _____
Director of Libraries

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Denton County under this contract.

James Wells, Denton County Auditor

Exhibit "A"

ADOPTED BUDGET
CALCULATION WORKSHEET FOR COUNTY FUNDING (2009-2010)

PER CAPITA: \$ 0.6310101
MATCHING: \$ 10,000.00

DENTON COUNTY POPULATION: 626,300
POPULATION OF CITIES WITH LIBRARIES: 398,178
REMAINING POPULATION: 228,122

County Pop ratio: 0.586903508

CITY	POP	PER CAPITA	MATCHING	TOTAL	REMAINING
ARGYLE	5,313	3,250	1,903	\$ 3,247	\$ 13,347
AUBREY	6,085	5,100	2,988	\$ 5,096	\$ 19,096
CARROLLTON	111,497	70,305	41,159	\$ 70,243	\$ 70,243
FLOWER MOUND	89,595	82,800	36,785	\$ 82,745	\$ 82,745
FRISCO	57,123	36,018	21,104	\$ 35,987	\$ 41,000
JUSTIN	4,998	3,150	1,848	\$ 3,147	\$ 13,147
KRUM	6,185	3,900	2,245	\$ 3,897	\$ 13,897
LAKE CITIES	52,414	35,050	19,354	\$ 33,021	\$ 43,021
LEWISVILLE	150,594	94,958	55,836	\$ 94,874	\$ 94,874
LITTLE ELM	41,154	25,950	15,204	\$ 25,827	\$ 35,827
PILOT POINT	6,423	4,050	2,373	\$ 4,046	\$ 14,046
PLANO	8,478	5,346	3,132	\$ 5,341	\$ 10,342
PONDER	1,824	1,150	674	\$ 1,149	\$ 11,148
SANGER	11,022	6,950	4,072	\$ 6,944	\$ 18,844
THE COLONY	83,595	40,100	23,496	\$ 40,085	\$ 50,085
TOTAL	626,300		398,178		228,122

205 Internet Policy

(Approved by the Library Advisory Board October 6, 1999)

205.1 Mission Statement

The Plano Public Library System ("Library") is to provide and promote open access to cultural, intellectual and informational resources that will enrich and enlighten all segments of our community.

205.2 Internet Policy

The Internet is a resource that enables the Library to provide the public access to information beyond the confines of its own collection. Currently, it is an unregulated medium and, while it makes available material that is personally, professionally, culturally and educationally enriching, it also enables the user to access material that may be inaccurate, misleading, offensive, disturbing, and/or illegal.

The Library is not a full service Internet provider. Services which will not be available include, but are not limited to, newsgroups, chatlines, and personal electronic mail accounts. Patrons will not be permitted to load their own software.

The City of Plano disclaims any responsibility to monitor for, or prevent viruses that may be transmitted electronically. Patrons are advised to take precautions for eliminating viruses or other software corruption.

The City of Plano does not promote or condone the use of its computer system for illegal purposes and expressly prohibits the same as well as accessing illegal sites. Further, the City finds there is material on the Internet, while not obscene, is not appropriate for minors due to explicit sexual descriptions or graphics. The City recognizes that minors utilize all Library resources, including Internet, outside of their parents' presence. The City of Plano, through the Library, has a compelling interest to assist parents in protecting the welfare of minors* who are vulnerable and unable to make critical decisions in an informed and mature manner, particularly when viewing illegal material on the Internet. To address these concerns, all but one computer in each library has filtering devices for the purpose of blocking illegal materials for all users including materials that are harmful to minors in accordance with state law.**

Anyone wishing to utilize the Internet must possess a Plano library card. Minors must have a parent make an election for filtering, if any, the child may use. Minors whose parents allowed them to have unrestricted Internet use and adults may access the unfiltered computer if the site(s) desired is not available on the filtered computer.

Even filters cannot insure that obscene and other illegal materials are not available. Due to the Internet capability to constantly change and establish new sites, user expertise, and other technology, it is still possible to access illegal, obscene or offensive sites. The City of Plano makes no guarantee that such access will not occur even with the use of filters. The selection of a filtering program is solely within the discretion and judgment of the City. Users must accept responsibility for information displayed or printed during their Internet session.

The City of Plano cannot guarantee that access to sites containing adult entertainment, pornography or illegal activities will be blocked. The City of Plano expressly disclaims any liability or responsibility resulting from the use of its computer system or selection of a filtering program.

*Minors – Persons who are under 18 years of age

**Illegal materials are those that meet the definition of obscenity and harmful materials to minors as defined by the Texas Penal Code Sections 43.21 and 43.24 as follows

The Texas Penal Code defines obscenity as:

“Material the average person applying contemporary community standards would find that taken as a whole, it appeals to prurient interest in sex; and depicts or describes patently offensive representation or descriptions of:

Ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or,

Patently offensive representations or description of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernible turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and,

Taken as a whole, lacks serious literary, artistic, political or [note] and scientific value.”

T.P.C. 43.21.

The Texas Penal Code defines material harmful to minors as material whose dominant theme taken as a whole:

- Appeals to the prurient interest of a minor in sex, nudity, or excretion;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and,
- Is utterly without redeeming social value for minors. T.P.C. 43.24



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]	10-2-09
Council Meeting Date: 10/12/2009		Budget	[Signature]	10-2-09
Department: Police		Legal	[Signature]	10-2-09
Department Head: Ed Drain, Assistant Chief of Police		Assistant City Manager		
Dept Signature: [Signature]		Deputy City Manager	[Signature]	10-5-09
		City Manager	[Signature]	10/5/09
Agenda Coordinator (include phone #): Pam Haines, ext 2538				
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 and Action Target Inc., the sole source provider of a Dust Collection Unit for the Total Containment Trap; 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	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	59,600	0	59,600
Encumbered/Expended Amount	0	0	0	0
This Item	0	-59,600	0	-59,600
BALANCE	0	0	0	0
FUND(S): 2009 RECOVERY ACT JAG PROGRAM (24.989)				
COMMENTS: Funds are available from the 2009 Recovery Act JAG Program Grant for the purchase of a Dust Collection Unit for the Plano-Richardson Police Training Center Firing Range.				
STRATEGIC PLAN GOAL: Purchasing Dust Collection Unit for the firing range relates to the City's Goal of "Service Excellence".				
SUMMARY OF ITEM				
The addition of a dust collection system at the Police Academy gun range is necessary to protect officers from potentially harmful lead dust. Action Target Inc., is the sole source provider for the Dust Collection Unit for the Total Containment Unit and, thus, the purchase of this Dust Collection Unit is exempt from competitive bid as provided for in Texas Local Government Code, Section 252.022(a)(7).				
List of Supporting Documents: Resolution, Agreement, Memo		Other Departments, Boards, Commissions or Agencies		



P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
Fax. No. 972-941-0099

MEMORANDUM

DATE: October 5, 2009

TO: Gregory W. Rushin, Chief of Police

FROM: Edward G. Brashear, Administrative Manager

SUBJECT: Dust Collector Unit for Gun Range

The environmental consultant who completed a study of the air quality at the pistol range during shooting exercises recommended the installation of some mechanical means to produce air movement that moved airborne particulate away from the persons shooting on the range. Further, he also concurred that for added assurance the installation of a Dust Collector Unit (DCU) would be beneficial for maintaining air quality on the Gun Range.

The DCU is attached to the existing bullet trap system. The DCU is also manufactured by Action Targets who is the same manufacturer of the existing bullet trap system. The DCU creates a negative pressure within the opening of the bullet trap itself and will insure that dust and particulate that is pushed toward the trap by the ventilation system is drawn into the trap and collected in the Unit for later proper disposal.

Action Target has quoted a price of \$59,600.00 for the Dust Collector Unit including installation. The DCU is a proprietary product of Action Targets for their "Total Containment Trap System" and will be installed by their trained technicians. Funding for the purchase and installation of the DCU will come from the 2009 Recovery JAG.

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 AND ACTION TARGET INC., THE SOLE SOURCE PROVIDER OF A DUST COLLECTION UNIT FOR THE TOTAL CONTAINMENT TRAP; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Police Department of the City of Plano utilizes a Total Containment Trap developed by Action Target Inc. and

WHEREAS, Action Target Inc. is the sole source provider of the Dust Collection Unit for the Total Containment Trap utilized by the Police Department; and

WHEREAS, the City Council has been presented a proposed Agreement between the City of Plano and Action Target Inc., for a Dust Collection Unit for the Total Containment Trap, 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 Action Target Inc., is the sole source provider for the Dust Collection Unit for the Total Containment Trap and, thus, the purchase of such Dust Collection Unit 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 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 12th day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**CONTRACT BY AND BETWEEN
CITY OF PLANO, TEXAS AND
ACTION TARGET INC.
QUOTATION NO. 38059**

THIS CONTRACT is made and entered into by and between **ACTION TARGET INC.**, a Utah corporation, whose address is P.O. Box 636, Provo, Utah, 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 approval of the Plano City Council and subsequent 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 shall provide all labor, supervision, materials, and equipment necessary for installation of a Dust Collection Unit. These products and services shall be provided in accordance with the Contractor's Quotation, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "A."** The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Contractor's Quotation (**Exhibit "A"**);
- (b) Insurance Requirements (**Exhibit "B"**); and
- (c) Affidavit of No Prohibited Interest (**Exhibit "C"**).

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

**II.
TIME OF COMPLETION**

Contractor agrees and covenants that all work hereunder shall be complete within one hundred twenty (120) days following notice to proceed from City.

**III.
WARRANTY**

Contractor warrants and covenants to City that all goods and services provided by Contractor, Contractor's subcontractors, and agents under the Agreement shall be free of defects and produced and performed in a skillful and workmanlike manner and shall comply with the specifications for said goods and services as set forth in this Agreement and the

Contractor's Quotation attached hereto and incorporated herein as **Exhibit "A"**. Contractor warrants that the goods and services provided to City under this Agreement shall be free from defects in material and workmanship, for a period of one (1) year commencing on the date that City issues final written acceptance of the project.

IV. 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 **FIFTY-NINE THOUSAND SIX HUNDRED AND 00/100 DOLLARS (\$59,600.00)**.

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.

V. 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. The safety precautions actually taken and the adequacy thereof shall be the sole responsibility of the Contractor. Contractor shall indemnify City for any and all losses arising out of or related to a breach of this duty by Contractor pursuant to paragraph **VII. INDEMNIFICATION** and paragraph **VIII. COMPLIANCE WITH APPLICABLE LAWS** set forth herein.

VI. LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to Contractor arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at its own cost and expense.

VII.
INDEMNIFICATION

CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD THE CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING ATTORNEY'S FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM THE SERVICES PROVIDED BY CONTRACTOR UNDER THIS AGREEMENT OR CAUSED BY THE NEGLIGENT ACT OR OMISSION OR THE INTENTIONAL ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONTRACTOR IS LEGALLY RESPONSIBLE (HEREINAFTER "CLAIMS"). CONTRACTOR IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO SELECT OR TO APPROVE DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR 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 CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS CONTRACT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS CONTRACT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

VIII.
COMPLIANCE WITH APPLICABLE LAWS

Contractor shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Contractor or the work, and shall indemnify and save harmless City against any claim related to or arising from the violation of any such laws, ordinances and regulations whether by Contractor, its employees, officers, agents, subcontractors, or representatives. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**IX.
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.

**X.
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 or sublet without the prior written consent of City, and that no part or feature of the work will be sublet to anyone objectionable to City. 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.

**XI.
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.

**XII.
INSURANCE AND CERTIFICATES OF INSURANCE**

Contractor shall procure and maintain for the duration of the contract insurance coverage as set forth in the Insurance Requirements marked **Exhibit "B"** attached hereto and incorporated herein by reference. Contractor shall provide a signed insurance certificate verifying that they have obtained the required insurance coverage prior to the effective date of this Contract.

**XIII.
HINDRANCES AND DELAYS**

No claims shall be made by Contractor for damages resulting from hindrances or delays from any cause during the progress of any portion of the work embraced in this Contract.

**XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

Contractor acknowledges and represents it 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."**

**XV.
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.

**XVI.
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 thirty (30) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the date such notice is received.

**XVII.
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.

**XVIII.
CONTRACT INTERPRETATION**

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

**XIX.
SUCCESSORS AND ASSIGNS**

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

**XX.
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.

ACTION TARGET INC.

By: 
Name: Aaron Ludwig
Title: Territory Manager

Date: 9/29/09

CITY OF PLANO, TEXAS

Date: _____

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY



Action Target Inc. • PO Box 636 • Provo, UT 84603 • (801) 377-8033 • (801) 377-8096 FAX

Plano Police Department

Plano,

Quotation: 38059 By: Aaron Ludwig Printed: 2009-Aug-31

Included Items:

1	Dust Collection Unit (DCU)	59,600.00
	-Outdoor rated Dust Collection Unit for existing TCT	
	-Factory Installation	

Total 59,600.00

Payment Terms:

Net 30

Shipping Terms:

Delivered

Installation Terms:

Factory Installation

Terms and Conditions:

You must reference the Order Number above on your purchase order to secure best price. Price will be honored for 60 days from the quotation date if no other date is specified herein. Action Target reserves the right to adjust installation costs based upon the actual site conditions encountered. Unless explicitly itemized, price does not include taxes, bonds, fees, assessments, licences, mandatory wage requirements or other regulatory costs which may be applicable to the job site.

Comments:

EXCLUSIONS:

- Off-loading of product upon arrival
- Electrical runs
- Site preparation (concrete pad, hole in wall for ducting)

EXHIBIT A
PAGE 1 OF 3

j-12



Paul Glenn
Plano Police Department
4912 East 14th Street
Plano, TX 75074 USA

August 24, 2009

Dear Mr. Glenn

Thank you for your continued interest in Action Target products, specifically the Dust Collection Unit for your Total Containment Trap. The application of the Dust Collection Unit for your specific bullet trap was invented by Action Target. Action Target is the sole manufacturer / provider of all products necessary for this upgrade, and currently holds patents 5400692, 5535662, & 5811718 and other various patents on the system.

The Action Target Dust Collection Unit includes factory warranty, and access to the toll-free customer service phone-line. The installation of the unit is of a very specific nature, and should not be performed by anyone other than certified Action Target installers. Action Target products must be installed by certified company installers in order to receive the warranty and customer service assistance.

The Dust Collection Unit from Action Target is the only one available from any source that is designed to fit the Action Target Total Containment Trap. The use of any other dust collection unit will void the warranty.

At this time, Action Target products are only offered from the factory as there are no Action Target distributors. We look forward to working with you.

Sincerely,



Quin Seamons
Action Target Sales Manager

EXHIBIT A
PAGE 2 OF 3



SOLE SOURCE DETERMINATION FORM

To qualify for "sole source" exemption, the product/service being purchased must meet one of the following categories as provided under Chapter 252.022, *Local Government Code*. A contract made in violation of the competitive bid statutes is void and a municipal officer/employee who intentionally or knowingly violates the competitive bid statutes commits a Class B misdemeanor.

Please specify the applicable qualification by marking the applicable box.

Item available from only one source based on:

- Patent (Property right for an invention issued by the US Patent and Trademark Office. Term of a patent is generally 20 years from the date the patent application is filed.) Documentation from vendor signed by officer of company required.
- Copyright (Legal protection issued for "original works of authorship" such as literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished.) Documentation from vendor signed by officer of company required.
- Secret Process (Secret Process is a secret recipe or formula of manufacturing or developing an article or service.) Documentation from vendor signed by officer of company required.
- Natural Monopoly (Natural monopoly is one producer supplying services to the market at lower costs than many producers. Natural monopolies occur in industries which exhibit decreasing average long-run costs due to size, e.g. telecommunications, water services, electricity, gas, and computer software). Documentation from vendor signed by officer of company required.

Films, manuscripts, or books:

- Films
- Manuscripts
- Books

Captive replacement parts or components for equipment

- Parts, type of equipment Rust Collector Unit
- Components, type of equipment _____

Books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials

- Books
- Papers
- Other library materials. Please specify: _____

Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization as provided significant financial or other benefits

Name of nonprofit organization _____

Name of municipal facility _____

ACKNOWLEDGMENT

I certify that the above declaration is true and correct.

Signature: [Signature]
Department Director

Date: 05-25-09

* Section 252.061 et seq., Local Gov't Code.

EXHIBIT A
PAGE 3 OF 3

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 #: _____
 Company: _____
 Printed Name: _____ Vendor # (if applicable) _____
 Signature: _____ Date: _____
 Return Signed Form to: _____

ACORD™ CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)
9/23/2009

PRODUCER
Wells Fargo Insurance Services of NY
330 Madison Avenue, 7 Floor
New York NY 10017
(212) 682-7500

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Action Target

P.O. Box 636
Provo UT 84603

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: <u>Graat American E&S Insurance</u>	37532
INSURER B: <u>Travelers Casualty And Surety</u>	19038
INSURER C: <u>Travelers Property Casualty Co</u>	04461
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRC	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	PL1235378	3/18/2009	3/18/2010	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
C		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Business Automobile	Y6106557N571	6/1/2009	6/1/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$	UM 1235379	3/18/2009	3/18/2010	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	UB1845N506	1/31/2009	1/31/2010	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Evidence of insurance

CERTIFICATE HOLDER

City of Plano
 P.O. Box 860358
 Plano TX 75086

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE 

j-16

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of Action Target (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.

Action Target
Name of Contractor

By: [Signature]
Signature

Aaron Ludwig
Print Name

Territory Manager
Title

9/29/09
Date

STATE OF Utah §

COUNTY OF Utah §

SUBSCRIBED AND SWORN TO before me this 29 day of September, 2009.



ANDREA PENNI
NOTARY PUBLIC - STATE of UTAH
1281 WEST 220 NORTH
PROVO, UTAH 84601
COMM. EXPIRES 5-11-2010

[Signature]
Notary

EXHIBIT C
PAGE 1 OF 1

Please fax completed form back to the Purchasing Division at 972-461-6839



**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>JAF</i> 10-1-09
Council Meeting Date:	10/12/09	Budget	<i>KM</i> 10-1-09
Department:	Parks and Recreation	Legal	<i>JAF</i> 10-1-09
Department Head	Amy Fortenberry	Assistant City Manager	
Dept Signature:	<i>Amy Fortenberry</i>	Deputy City Manager	<i>RLH</i> 10-1-09
		City Manager	<i>[Signature]</i> 10/2/09
Agenda Coordinator (include phone #):		Susan Berger (7255)	

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

CAPTION

Approving the terms and conditions of an agreement by and between the City of Plano and Maurice Barnett Geriatric Wellness Center, Inc., for administration of the Senior Transportation Program; and authorizing its execution by the City Manager or his designee; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	100,000	0	100,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-50,000	0	-50,000
BALANCE	0	50,000	0	50,000

FUND(S): **GENERAL FUND**

COMMENTS: Funds are included in the FY 2009-10 adopted budget to provide funding for the administration of the Senior Transportation Program between the City of Plano and Maurice Barnett Geriatric Wellness Center Inc. The remaining balance will be used for contractual expenditures related to the program.

STRATEGIC PLAN GOAL: Administration of the Senior Transportation Program relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Approval is recommended for the terms and conditions set forth in the agreement between the City of Plano, Texas, and Maurice Barnett Geriatric Wellness Center for administration of the Senior Transportation Program. The agreement is for a one (1) year period beginning as of the effective date of this agreement with the City. This program will service those Plano seniors 65 and older who are unable to access transportation through personal means or public/private services. This service will allow trips to businesses, grocery stores and medical services in Plano. The program will consist of mileage reimbursement and cab voucher options. This will be the second year for the Maurice Barnett Geriatric Wellness center to administer this service.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Agreement	Other Departments, Boards, Commissions or Agencies

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND MAURICE BARNETT GERIATRIC WELLNESS CENTER, INC., FOR ADMINISTRATION OF THE SENIOR TRANSPORTATION PROGRAM; 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 Agreement by and between City of Plano and Maurice Barnett Geriatric Wellness Center, Inc., a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (herein called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendance 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 12th day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**FUNDING AGREEMENT BETWEEN CITY OF PLANO
AND
MAURICE BARNETT GERIATRIC WELLNESS CENTER, INC.**

The **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as "City"), and **MAURICE BARNETT GERIATRIC WELLNESS CENTER, INC.**, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as "Contractor"), enter into this funding agreement for Administration of the Senior Transportation Program entitled Senior Rides Program.

WHEREAS, the City Council finds that the expenditure of public funds to Contractor is in the best interest of the residents and the City of Plano; and

WHEREAS, the City Council finds that expending public funds for the purpose stated above is a valid public purpose; and

WHEREAS, the City Council finds that the City should expend the sum of \$50,000 for the purposes outlined in the attachment entitled "Plano Senior Rides Grant Proposal" (hereinafter referred to as "Proposal", attached hereto as **Exhibit B**); and

WHEREAS, Contractor has established itself as having the ability to perform such activities.

NOW, THEREFORE, for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

**SECTION I
PURPOSES/CONSIDERATION; PRIORITY OF DOCUMENTS**

1.01 Purpose/Consideration.

This Agreement provides the terms and conditions under which City will make available the sum of \$50,000, for use to support the activities outlined in attached **Exhibit A**, Specification for Plano Senior Rides Program (hereinafter referred to as "Specifications"). The City's source

EXHIBIT "A" TO RESOLUTION NO. _____
of these funds is general revenues derived from collection of property, sales and other taxes, as well as other sources. Contractor agrees to accept responsibility for guaranteeing City grant funds are used for the items in **Exhibit A**. In consideration of the City of Plano providing the funding specified for the 2009-10 fiscal year, Contractor shall abide by the terms and conditions of this Agreement.

1.02 Priority of Documents.

This Agreement consists of: Agreement between City of Plano and Contractor; Proposal; Specifications; Affidavit of No Prohibited Interest; Insurance, and Employee Dishonesty Bond when required. The documents are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the order in which they are listed above.

**SECTION II
PERMITTED USES OF FUNDS; CONDITIONS OF USE**

2.01 Contractor shall use any and all funds furnished by City under this Agreement for the purposes outlined in the Specifications, which is made a part hereof by reference and incorporated as **Exhibit A**.

1. Subsequent to the initial contract submittal, should the Contractor wish to utilize funds for a purpose other than those stated in **Exhibit A**, the Contractor must submit an additional amended Line Item Budget of Approved Expenditures and request approval from the Contractor's Board, and City Manager. No change may occur unless:

- a. Approved by Contractor's Board, as evidenced by the official minutes of the Board authorizing the change; and
- b. Approved by the City Manager

Contractor cannot expend any funds for a purpose not listed in the funding application until receipt of written approval from the City Manager or his designee.

2.02 All expenditures of City funds must comply with the Agreement and attachments hereto. Agreement compliance is defined as:

1. At least 90% of expenses budgeted in each category of the Proposal and funded by City monies must be spent in that category;
2. Contractor must meet all other conditions of this Agreement.

2.03 Contractor agrees to the general conditions of the grant as set forth in the attachment entitled "General Conditions of Contract" (hereinafter referred to as the "General Conditions"), which is attached hereto and incorporated herein for all purposes as **Exhibit C**.

2.04 Unexpended and unencumbered City funds that remain with the Contractor after September 30, 2010, will revert to the City.

SECTION III NON-ASSIGNMENT

3.01 Contractor may not assign any interest in this Agreement, whether in whole or part, without prior approval of the City Council, as reflected by a duly authorized resolution.

SECTION IV INDEPENDENT CONTRACTOR

4.01 The City enters into this Agreement with Contractor for the purposes enumerated in Section I. Contractor asserts and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of the City. Contractor has exclusive control over the details of the activity, and is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. The doctrine of respondeat superior does not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants. Further, this agreement does not create a partnership or joint enterprise between City and Contractor.

**SECTION V
DISBURSEMENT OF FUNDS**

5.01 The City will disburse all funds provided under this Agreement by or near October 15, 2009.

5.02 Expenses incurred after the termination date will not be reimbursed under this Agreement and the City shall assume no liability for same.

5.03 Failure to comply with the monthly reporting requirements as outlined in Section 5.07 of this agreement below, including submittal of an executed certificate of compliance, shall result in funds being withheld from disbursement to the Contractor until a properly prepared report is submitted to the City as required.

5.04 Failure to submit a revised Line Item Budget as required in Section II of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City.

5.05 Failure to submit an Employee Dishonesty Bond as required in Section VII of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City as required.

5.06 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.

5.07 Reporting Requirements.

Within ten (10) days of the close of each preceding month of the contract term, Contractor agrees to provide financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the line item budget as submitted in the Proposal, as well as a description of program goals achieved and/or progress of same for the preceding quarter. These reports shall contain a Certificate of Compliance with notarized signatures of two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. Reports submitted without required notarized signatures will be rejected and considered incomplete.

At the end of the Contract Term or in the event of earlier termination, Contractor shall provide a final written report of its activities and expenditures to the Contract Administrator.

**SECTION VI
AFFIDAVIT OF NO PROHIBITED INTEREST**

6.01 Contractor acknowledges and represents it is aware of all applicable laws, the City Charter, and the City Code of Conduct regarding prohibited interests, and that the existence of a prohibited interest at any time will render the Contract voidable. At the time of signing this Agreement, a representative of Contractor shall execute the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit D.**

**SECTION VII
INSURANCE REQUIREMENTS/INDEMNIFICATION****7.01 Insurance.**

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in **Exhibit E.** Additionally, this insurance must specifically cover any and all activities occurring on City property, including

those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed certificate of insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract.

7.02 Employee Dishonesty Bond Requirement Applicable to Contractors Receiving Funds of \$75,000.00 or greater

At its own expense, a Contractor receiving funds in the amount of \$75,000.00 or more agrees to maintain during the term of this Agreement, or any extension thereof, an Employee Dishonesty Bond (EDB) in an amount equal to the total dollar amount awarded to Contractor by the City as defined in the grant agreement. A copy of proof of EDB, if applicable, shall be attached to the funding agreement as an additional attachment to **Exhibit F**. Bonds shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

Bonds shall be made payable to the City of Plano and shall be maintained by Contractor throughout the contract period. Contractor must provide proof of this EDB to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed bond certificate issued by Contractor's insurance agency is sufficient proof of EDB. Contractor must maintain a current copy of the certificate(s) and provide proof of its current EDB to City throughout the entire term of this Contract. Failure to provide proof of the EDB shall result in the City withholding disbursement of funds to the Contractor until proof is provided as required under this Agreement.

7.03 Indemnification.

Contractor shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including

EXHIBIT "A" TO RESOLUTION NO. _____

attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible (hereinafter "Claims"). Contractor must defend City against all such Claims.

City shall have the right to select or to approve defense counsel retained by Contractor to fulfill its obligation to defend and indemnify the 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 a waiver of Contractor's obligation to defend or indemnify the City pursuant to this Agreement. Contractor 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 Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor is liable for all costs incurred by City.

SECTION VIII TERM

8.01 The term of this Agreement is October 1, 2009, through September 30, 2010. At the expiration of this Agreement, the Contractor shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including the submission of a final written report to the City and any other requested written documentation verifying Contractor's compliance with the terms of this Agreement.

SECTION IX TERMINATION

9.01 Each party shall have the right to an early termination of this Agreement by giving the other party written notice thirty (30) days before the desired early termination date. After a

notice of early termination, Contractor may use City funds only for costs incurred before the notice of termination date. Contractor, however, must return to the City the unused balance of any funds disbursed to the Contractor pursuant to this Agreement within ten (10) days of either an early termination or at the end of the Agreement term.

9.02 In the event Contractor breaches any of the terms or conditions of this Agreement, whether in whole or part, the City may immediately terminate this Agreement by providing written notice to the Contractor, notwithstanding any other provision. Contractor is solely responsible for funds expended contrary to the terms and conditions of this Agreement, and must return the City funds within ten (10) days of the termination.

SECTION X MISCELLANEOUS

10.01 Entire Agreement.

This Agreement and its attachments constitute the entire agreement between the parties. The parties may only modify, amend, or supplement this Agreement through a written instrument executed by both parties.

10.02 Authority

The undersigned represents and warrants that he or she is the duly authorized representative of the Contractor, and that the Board of Trustees (or equivalent) of the Contractor has approved and accepted this Agreement by Board resolution. Contractor at all times shall maintain a copy of the Board resolution for submission to City upon request.

This Agreement does not become binding on the City of Plano until both the Contractor and the City Manager or his designee have executed it.

10.03 Successors and Assigns

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

10.04 Notice.

Any Notice, Reports or Documents required to be provided by this Agreement shall be in writing and delivered to the parties as follows:

City – Contract Administrator
Parks and Recreation Department
Attention: Jim Mergen
1409 Avenue K
Plano, Texas

Contractor
Maurice Barnett Geriatric Wellness Center, Inc.,
Attention: Carolyn Rice
401 West 16th Street, Suite 600
Plano, Texas 75075

10.05 Paragraph Headings.

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

10.06 Interpretation of Contract.

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.

10.07 Venue.

The parties agree that the laws of the State of Texas govern this Agreement, and which is performable in Collin County, Texas. In the event of breach of this Agreement, venue for all causes of action shall exclusively lie in Collin County, Texas.

**IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR SIGNATURES
ON THIS THE 25th DAY OF SEPTEMBER, 2008.**

**MAURICE BARNETT GERIATRIC WELLNESS
CENTER, INC.**

BY: Carolyn Rice
Carolyn Rice
EXECUTIVE DIRECTOR

CITY OF PLANO, TEXAS

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 25 day of September, 2008 by **CAROLYN RICE**, Executive Director of **Maurice Barnett Geriatric Wellness Center, Inc.**, a non-profit corporation, on behalf of said corporation.

Brenda Richardson
Notary Public in and for the
State of Texas

STATE OF TEXAS)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ___ day of _____, 20___ by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

EXHIBIT A**SPECIFICATIONS FOR PLANO SENIOR RIDES PROGRAM**

Plano Senior Rides Program is a transportation program for Plano senior citizens 65 and older to be run as a mileage reimbursement and taxi cab voucher program.

Administer Plano Senior Rides including but not limited to the following:

- along with the City of Plano staff, set the parameters and rules of the program
- become the point of contact for the program
- all advertising and marketing
- determine with the City of Plano the eligibility requirements of participants
- develop, maintain and distribute trip logs to mileage reimbursement participants
- check trip logs for accuracy
- submit a check request with a participant list to City of Plano for participant reimbursement
- receive invoice, used vouchers and taxi destination logs to check for accuracy
- submit a check request to the City of Plano to pay the taxi
- sell taxi coupon booklets and deposit money daily with the Senior Center
- submit an approved formatted monthly report no later than ten (10) business days from the first of the month.
- do not match a senior participant with a potential driver
- use only the taxi company approved by the city
- any changes must be discussed with the City of Plano staff

EXHIBIT "A" TO RESOLUTION NO. _____

Exhibit B

Plano Senior Rides Grant Proposal

**Maurice Barnett Geriatric Wellness Center, Inc.
dba Geriatric Wellness Center of Collin County**

Address: 401 West 16th Street, Suite 600, Plano, Texas 75075

Phone: (972) 941-7335

Fax: (972) 516-4870

Director's Name/Title:

Name: Carolyn Rice, RN, MSN, MPA

Title: Executive Director

Director's Contact Information:

Phone: (972) 941-7335

E-mail: carolyn.rice@gwccc.org

Contact Person Name/Title:

Name: Lee Stark, Jr., MA, LBSW

Title: Transportation Coordinator

Contact Person's Information:

Phone: (972) 941-7335

E-mail: lee.stark@gwccc.org

Introduction

EXHIBIT "A" TO RESOLUTION NO. _____

Like other areas of the United States, Texas is feeling the effects of a burgeoning older adult population. Plano is no exception to this trend. According to the North Central Texas Area Agency on Aging 2008-2010 Area Plan, the number of North Central Texans age 60 and over is projected to increase by 90.7%, exceeding growth rates in all other parts of the State during the next 10 years. The senior population of Plano is expected to more than double during this same time period. So, where would a suburban Plano senior citizen who can (or should) no longer drive a car, go to obtain needed direction in managing their everyday needs such as transportation? Our organization is frequently referred to older adults who are unfamiliar with how to get their needs met. The Geriatric Wellness Center of Collin County is a 501(c)3 organization whose mission is to help older adults achieve the highest level of physical and mental well-being. To that end, the Wellness Center was established 30 years ago to provide health and wellness services for older adults (55 years of age and older) and their caregivers. The Wellness Center provides maintenance and preventive health care, therapeutic counseling, information and referral, medical equipment lending, and post hospital volunteer support/transportation. Because of the professionalism of our staff, Plano-specific knowledge of the transportation needs/requests of the target clientele, and this long term presence in the community, we feel confident that we have the tools necessary to implement an innovative transportation program that will enhance services to our senior citizens, as well as serve as a model to be replicated in other suburban communities in the United States.

Administration

The Geriatric Wellness Center of Collin County supports the development of a two-tiered program called Plano Senior Rides. The program offers City of Plano seniors options to address the need for flexible, time-sensitive, and accessible transportation needs. Plano Senior Rides

strives to provide transportation options that are proportionate to level of need. The Wellness Center will be the main contact for those Plano seniors that are unable to access transportation through other personal avenues or public/private services and will thus complement the existing transportation providers. The Plano Senior Rides program consists of two options: (1) mileage reimbursement and (2) taxi voucher. The Wellness Center will administer the program by providing administrative staff, marketing the program, and all administrative duties as specified by the City of Plano.

Staff

The staff involved in the project will include volunteers and staff administrative support and two social workers. The program is administered by Lee Stark, Jr. Mr. Stark has a Master's Degree in Psychology and is licensed by the Texas State Board of Social Worker Examiners as a Licensed Baccalaureate Social Worker. Mr. Stark has a wide range of experience working with seniors, including clinical neuropsychological testing, community marketing/education, and rehabilitation/long-term care management. Seniors who lack transportation support often have additional resource needs. Our existing nursing and front desk staff can assist with any medical concerns/referrals needed based on the type of physical impairment experienced, while our current clinical social worker can provide counseling support to the inquiring senior and/or their caregivers as needed. The agency is overseen by Carolyn Rice RN, MSN, MPA. Ms. Rice is a former Program Coordinator for Agency Operations for the Utah State Unit on Aging and also served as a Texas delegate to the White House Conference on Aging in 2005. A senior herself, Ms. Rice's experience and passion in serving seniors is evident in her service to the older adults of our community.

Marketing and Outreach

EXHIBIT "A" TO RESOLUTION NO. _____

As an established senior citizen entity, the Geriatric Wellness Center of Collin County has strong relationships with, and a presence in, nearly every senior center in the County. Our co-location inside the Plano Senior Center not only allows for accessibility, but also makes our center a natural conduit for any senior-related community resource inquiry---a senior "one stop shop". The Wellness Center also provides services in low-to middle-income senior housing complexes in Collin County and the City of Plano. Further, the extensive hospital, nursing home, and home health care referrals will serve as effective mediums to advise senior citizens of this important transportation service. The Wellness Center will collaborate with the City of Plano to ensure that information about the transportation program is disseminated through various avenues. In addition, the Wellness Center routinely works with local media to educate seniors about available services, including the Plano Senior Center newsletter. The Wellness Center will also work in conjunction with other non-profits and faith-based organizations to inform those seniors that may not be reached through the aforementioned means.

Outcomes and Evaluation

We anticipate serving at least 60 senior citizens within the City of Plano with transportation that they find accessible, but also effective in meeting their critical medical and sustenance needs. We will strive for the outcome of 80% of eligible seniors being provided with transportation that meets their independent living needs. This data will be collected by survey response of participants. The surveys will be collected by telephone as well as by mail. The 24 month outcome will be based on the results of the 12 month outcome, but may include such things as: increased number of participants; increased number of referral partners; and increased funds/infrastructure/staffing to support such a project.

Timeline

EXHIBIT "A" TO RESOLUTION NO. _____

Conduct outreach with various referral partners/
community stakeholders/existing volunteers:Ongoing

First Quarterly Report:January 2010

Second Quarterly Report:April 2010

Third Quarterly Report:July 2010

Evaluate program effectiveness/determine
future programming direction and funding:July 2010

Fourth Quarterly & Final Report:October 2010

EXHIBIT C**GENERAL CONDITIONS OF AGREEMENT**

The Contractor agrees to the following general conditions:

- (1) The Contractor must provide reports of its activities as described in Section V, *Disbursement of Funds*, Paragraph 5.07, *Reporting Requirement*, of the Funding Agreement and as otherwise required by the Special Conditions of the Agreement on a format acceptable to the City. Disbursements may cease if reports are not submitted.
- (2) All of Contractor's procedures, records, and reports of programs and accounts shall be available for inspection by a duly authorized representative of the City. The materials shall be made available during regular business hours and not later than three (3) business days after request to do so. An independent audit of Contractor's financial records, paid for by Contractor, shall be furnished to the City upon request.
- (3) The Contractor agrees to on-site inspection of its facilities and/or programs by the City.
- (4) Improper use of funds provided by City may result in the termination of the Agreement, forfeiture of any outstanding monies to be provided by City, recovery of previous payments, recovery of bond payments, requirement for Contractor to provide an Employee Dishonesty Bond for future participation and/or disqualification of Contractor from future participation in grant programs offered or sponsored by or through City.
- (5) Programs, activities, employment opportunities, and other participatory events funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religion, sex, age, national origin, disability, familial status, or political affiliation.
- (6) The Contractor and any person or organization it contracts with shall comply with all applicable laws, regulations, ordinances, and codes of the United States of America, the State of Texas, and the City of Plano.
- (7) The Contractor shall comply with all Federal, State and Local conflict of interest laws, statutes, and regulations; these laws shall apply to all parties and beneficiaries under this Agreement as well as to all officers, employees, and agents of City.
- (8) None of the funds, materials, property, or services provided directly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or for publicity, lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, the City Council of the City of Plano, or any other political body.
- (9) The City shall have the right to review any and all of Contractor's agreements and contracts prior to execution by the Contractor. City further has the right to require the modification, addition, or deletion of such terms and conditions in Contractor's agreements or contracts as it deems necessary to protect the City's interests.

- (10) For a non-profit corporation in existence for more than one (1) year at the time of the execution of this Agreement, Contractor agrees to provide a sworn statement attesting to the fact that the status of the Contractor is currently valid as a non-profit corporation. All corporations must be in good standing with the Texas Secretary of State.

EXHIBIT D

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of Maurice Barnett Geriatric Wellness Center, 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.

Maurice Barnett Geriatric Wellness Center, Inc.
Name of Contractor

By: Carolyn Rice
Signature

Carolyn Rice
Print Name

Executive Director
Title

September 25, 2009
Date

STATE OF Texas
COUNTY OF Collin

§
§
§

2009 SUBSCRIBED AND SWORN TO before me this 25 day of September

Brenda Richardson
Notary Public, State of Texas

EXHIBIT E

INSURANCE

Contractor shall procure and maintain for the duration of the grant agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Contractor, its agents, representatives, employees, volunteers, officers, directors or sub-contractors.

The Contractor shall maintain insurance with limits not less than \$500,000 per occurrence, \$1,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence" form CG 0001). Coverage will include: A) Premises - Operations, B) Broad Form Contractual Liability, C) Broad Form Property Damage and D) Personal Injury.

The policy will be endorsed to contain the following provisions: The City, its officials, employees, volunteers, Boards and Commissions are to be added as "Additional Insureds" in respect to liability arising out of any activities performed by or on behalf of the Contractor. The policy shall contain no special limitations to the scope of coverage afforded to the City. The Contractor's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Contractor's insurance and shall not contribute with it. Certificate must include a waiver of subrogation as regards the workers compensation policy.

Insurance shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

The Contractor shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.



**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>AP</i>	9/24/09
Council Meeting Date:	10/12/09	Budget	<i>KIM</i>	9/24/09
Department:	Parks and Recreation	Legal	<i>JP</i>	9/24/09
Department Head	Amy Fortenberry	Assistant City Manager		
Dept Signature:	<i>Amy Fortenberry</i>	Deputy City Manager	<i>JP</i>	9/24/09
		City Manager	<i>JP</i>	9/24/09
Agenda Coordinator (include phone #):		Susan Berger (7255)		

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

CAPTION

Approving the terms and conditions of funding agreements between the City of Plano, Texas, and various special event organizers. The City Manager, or his authorized designee, is hereby authorized to execute such agreements with these organizations and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	221,183	0	221,183
Encumbered/Expended Amount	0	0	0	0
This Item	0	-221,183	0	-221,183
BALANCE	0	0	0	0

FUND(S): **GENERAL FUND; CONVENTION & TOURISM FUND**

COMMENTS: Funding for this item is included in the approved 2009-10 Budget. The total amount of \$221,183 includes \$157,190 from the Convention & Tourism Fund for the Plano Balloon Festival and \$63,993 from the General Fund for various special events held throughout the City.

STRATEGIC PLAN GOAL: Funding for various community Special Events relates to the City's Goal of Premier City in Which to Live.

SUMMARY OF ITEM

This resolution establishes funding agreements for seven special events totaling \$221,183 which were approved in the FY 2009-10 budget. Funds will be distributed to each event separately and no earlier than 120 days prior to the event. The special events are:

- Asia Fest - \$13,220
- Plano Balloon Festival - \$157,190
- Plano International Festival - \$10,677
- North Texas Soap Box Derby - \$6,672
- July 4th Parade - \$10,712
- Plano Christmas Parade - \$10,712



**CITY OF PLANO
COUNCIL AGENDA ITEM**

Komen Race for the Cure - \$12,000
Total - \$221,183

List of Supporting Documents:
Sample funding agreement

Other Departments, Boards, Commissions or Agencies

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF FUNDING AGREEMENTS BETWEEN THE CITY OF PLANO, TEXAS, AND VARIOUS SPECIAL EVENT ORGANIZERS. THE CITY MANAGER, OR HIS AUTHORIZED DESIGNEE, IS HEREBY AUTHORIZED TO EXECUTE SUCH AGREEMENTS WITH THESE ORGANIZATIONS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council established the Cultural Affairs Commission for the purpose of considering funding requests from community special events; and

WHEREAS, this Commission considered funding requests, conducted extensive review, and made recommendation for funding to the City Council based on established criteria; and

WHEREAS, the City Council received such recommendations during budget deliberations, conducted a public hearing on the proposed budget and approved and adopted the 2009-2010 budget; and

WHEREAS, the City Council has appropriated \$221,183 for such purposes and finds that the services provided by the seven special events are beneficial to the public and serve a valid public purpose; and

WHEREAS, the City Council desires to enter into Funding Agreements with seven special events, a sample copy is attached hereto by reference as Exhibit "A", which establishes the terms and conditions for funding.

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

Section I. The City Council, after reviewing the terms and conditions of the Funding Agreement and the recommended funding amounts for the below named special events, hereby approves the Agreement and funding amounts, which are proper and in the best interests of the City of Plano.

Special Event Grants:

AsiaFest	\$ 13,220
Plano Balloon Festival	\$157,190
Plano International Festival	\$ 10,677
North Texas Soap Box Derby	\$ 6,672
July 4 th Parade	\$ 10,712
Plano Christmas Parade	\$ 10,712
Susan G. KomenRace for the Cure	\$ 12,000
TOTAL:	\$221,183

Section II. The City Manager, or his authorized designee, is hereby authorized to execute such Agreements on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreements, and to act in behalf of the City with regard to its terms and conditions.

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

DULY PASSED AND APPROVED this the 12th day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**FUNDING AGREEMENT BETWEEN CITY OF PLANO
AND
_____ (contractor)**

The **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as "City"), and _____, (contractor) a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as "Contractor"), enter into this funding agreement for performance of the _____ (event).

WHEREAS, the City Council finds that the expenditure of public funds to _____, (contractor) is in the best interest of the residents and the City of Plano; and

WHEREAS, the City Council finds that expending public funds for the purpose stated above is a valid public purpose; and

WHEREAS, the City Council determined that the City should expend the sum of _____ (\$_____.__) for the purposes outlined in the attachment entitled Special Event _____ (Sustaining/Start-Up) Sponsorship Grant Application (hereinafter referred to as "Application"); and

WHEREAS, Contractor has established itself as having the ability to perform such activities.

NOW, THEREFORE, for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

**SECTION I
PURPOSES/CONSIDERATION; PRIORITY OF DOCUMENTS**

1.01 Purpose/Consideration.

This Agreement provides the terms and conditions under which City will make available the sum of _____ (\$_____.__), to support the (event) (date). The

1-5

City's source of these funds is _____ revenues. Contractor agrees to accept responsibility for guaranteeing City grant funds are used for the items in Exhibit "A".

City further agrees to make available City Services as provided in Exhibit "C" in an amount not to exceed _____ (\$_____.) to assist with the event from _____ (date) to _____ (date). The City will notify Contractor if Contractor's request for City Services exceeds amount indicated in Exhibit "C". Any City Services requested by Contractor that exceed the Exhibit "C" amount will be billed back to Contractor by City. Payments for those additional City Services are to be paid in full within 30 days of the invoice date.

In consideration of the City of Plano providing the funding specified for the **2009-10** fiscal year, Contractor shall abide by the terms and conditions of this Agreement.

1.02 Priority of Documents.

This Agreement consists of: Agreement between City of Plano and Contractor; Contractor's Application; Special Conditions; General Conditions; Affidavit of No Prohibited Interest; Insurance, and Employee Dishonesty Bond when required. The documents are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the order in which they are listed above.

**SECTION II
PERMITTED USES OF FUNDS; CONDITIONS OF USE**

2.01 Contractor shall use any and all funds furnished by City under this Agreement for the purposes outlined in the Application, which is made a part hereof by reference and incorporated as Exhibit "A". In the event that the amount of funds requested and outlined for expenditure in the Application differs from the amount of funds actually awarded by the City,

then Contractor shall submit a Revised Line Item Budget on a form provided by the City (Exhibit "F") which shall be substituted for the original budget submitted with the Application.

The Revised Line Item Budget must be submitted no less than 150 days prior to the event date and no funds shall be disbursed by the City to Contractor unless and until the Revised Line Item Budget is submitted. The Revised Line Item Budget of Approved Expenditures shall be signed by two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. The Revised Line Item Budget shall be attached hereto and incorporated herein as part of Exhibit "A".

1. Subsequent to the initial contract submittal, should the Contractor wish to utilize funds for a purpose other than those stated in Exhibit "A", the Contractor must submit an additional Revised Line Item Budget of Approved Expenditures and request approval from the Contractor's Board, and City Manager. No change may occur unless:

- a. Approved by Contractor's Board, as evidenced by the official minutes of the Board authorizing the change;
- b. Approved by the City Manager, or his designee, after submission of the requested change.

Contractor cannot expend any funds for a purpose not listed in the funding application until receipt of written approval from the City Manager or his designee.

2.02 All expenditures of City funds must comply with the Agreement and attachments hereto. Agreement compliance is defined as:

1. At least 90% of expenses budgeted in each category of the Application and funded by City monies must be spent in that category;
2. Contractor must meet all other conditions of this Agreement.

2.03 Contractor agrees to the general conditions of the grant as set forth in the attachment entitled "General Conditions of Agreement" (hereinafter referred to as the "General Conditions"), which is attached hereto and incorporated herein for all purposes as Exhibit "B".

2.04 Unexpended and unencumbered City funds that remain with the Contractor sixty (60) days after the last day of the event will revert to the City. Encumbered City funds are those funds in which the Contractor has provided a written agreement or contract for services relating to approved purposes as stated in Exhibit "A". Operations and Maintenance or non-capital expenses cannot be encumbered.

SECTION III NON-ASSIGNMENT

3.01 Contractor may not assign any interest in this Agreement, whether in whole or part, without prior approval of the City Council, as reflected by a duly authorized resolution.

SECTION IV INDEPENDENT CONTRACTOR

4.01 The City enters into this Agreement with Contractor for the purposes enumerated in Section I. Contractor asserts and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of the City. Contractor has exclusive control over the details of the activity, and is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. The doctrine of respondeat superior does not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants. Further, this agreement does not create a partnership or joint enterprise between City and Contractor.

SECTION V DISBURSEMENT OF FUNDS

5.01 The City will disburse funds provided under this Agreement as follows:
_____ (\$_____.) shall be disbursed, lump sum, to
_____ (contractor) upon execution of the Agreement, approval of any Revised Line Item Budget of Approved Expenditures, and proof of insurance acceptable to the City Risk

Manager as required by this Agreement. This disbursement will occur no more than one hundred twenty (120) days prior to the event start date.

5.02 Expenses incurred after the termination date will not be reimbursed under this Agreement and the City shall assume no liability for same.

5.03 Failure to submit a Revised Line Item Budget as required in Section II of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City.

5.04 [APPLICABLE ONLY TO CASH GRANTS OF \$75,000 OR MORE] Failure to submit an Employee Dishonesty Bond as required in Section VII of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City as required.

5.05 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.

5.06 Reporting Requirements.

Within sixty (60) days following the event, Contractor agrees to provide a final written report of its activities and expenditures along with associated financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the Application attached in Exhibit "A" and any Revised Line Item Budget documents, as well as a description of program goals achieved and/or progress toward those goals. These reports shall contain a Certificate of Compliance with notarized signatures of two members of Contractor's executive board or, in the alternative, one member of Contractor's

executive board and the executive director. Reports submitted without required notarized signatures will be rejected and considered incomplete.

SECTION VI AFFIDAVIT OF NO PROHIBITED INTEREST

6.01 Contractor acknowledges and represents it is aware of all applicable laws, the City Charter, and the City Code of Conduct regarding prohibited interests, and that the existence of a prohibited interest at any time will render the Contract voidable. At the time of signing this Agreement, a representative of Contractor shall execute the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "D".

SECTION VII INSURANCE REQUIREMENTS/INDEMNIFICATION

7.01 Insurance.

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit "E". Additionally, this insurance must specifically cover any and all activities occurring on City property, including those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator no less than 120 days prior to the event. A properly executed Certificate of Insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract.

7.02 Employee Dishonesty Bond Requirement Applicable to Contractors Receiving Cash Funds of \$75,000.00 or greater

At its own expense, a Contractor receiving cash funds in the amount of \$75,000.00 or more agrees to maintain during the term of this Agreement, or any extension thereof, an

Employee Dishonesty Bond (EDB) in an amount equal to the total dollar amount awarded to Contractor by the City as defined in the grant agreement. A copy of proof of EDB shall be attached to the funding agreement as an additional attachment to Exhibit "E". Bonds shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

Bonds shall be made payable to the City of Plano and shall be maintained by Contractor throughout the contract period. Contractor must provide proof of this EDB to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed bond certificate issued by Contractor's insurance agency is sufficient proof of EDB. Contractor must maintain a current copy of the certificate(s) and provide proof of its current EDB to City throughout the entire term of this Contract. Failure to provide proof of the EDB shall result in the City withholding disbursement of funds to the Contractor until proof is provided as required under this Agreement.

7.03 Indemnification.

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

City shall have the right to select or to approve defense counsel retained by Contractor to fulfill its obligation to defend and indemnify the 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 a waiver of Contractor's obligation to defend or indemnify the City pursuant to this Agreement. Contractor 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 Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor is liable for all costs incurred by City.

SECTION VIII TERM

8.01 The term of this Agreement is _____, 2009, through _____, 2010. At the expiration of this Agreement, the Contractor shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including the submission of a final written report to the City and any other requested written documentation verifying Contractor's compliance with the terms of this Agreement.

SECTION IX TERMINATION

9.01 Each party shall have the right to an early termination of this Agreement by giving the other party written notice thirty (30) days before the desired early termination date. After a notice of early termination, Contractor may use City funds only for costs incurred before the notice of termination date. Contractor, however, must return to the City the unused balance of any funds disbursed to the Contractor pursuant to this Agreement within ten (10) days of either an early termination or at the end of the Agreement term.

9.02 In the event Contractor breaches any of the terms or conditions of this Agreement, whether in whole or part, the City may immediately terminate this Agreement by providing written notice to the Contractor, notwithstanding any other provision. Contractor is solely responsible for funds expended contrary to the terms and conditions of this Agreement, and must return to the City all funds provided pursuant to this agreement within ten (10) days of the termination.

**SECTION X
MISCELLANEOUS**

10.01 Entire Agreement.

This Agreement and its attachments constitute the entire agreement between the parties. The parties may only modify, amend, or supplement this Agreement through a written instrument executed by both parties.

10.02 Authority

The undersigned represents and warrants that he or she is the duly authorized representative of the Contractor, and that the Board of Trustees (or equivalent) of the Contractor has approved and accepted this Agreement by Board resolution. Contractor at all times shall maintain a copy of the Board resolution for submission to City upon request.

This Agreement does not become or binding on the City of Plano until both the Contractor and the City Manager or his designee have executed it.

10.03 Successors and Assigns

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

10.04 Notice.

Any Notice, Reports or Documents required to be provided by this Agreement shall be in writing and delivered to the parties as follows:

City – Contract Administrator
Dana Conklin
Community Resources Manager
City of Plano
P O Box 860358
Plano, TX 75086-0358
972-941-7250
972-941-7118 (fax)

Contractor

10.05 Paragraph Headings.

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

10.06 Interpretation of Contract.

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.

10.07 Venue.

The parties agree that the laws of the State of Texas govern this Agreement, and which is performable in Collin County, Texas. In the event of breach of this Agreement, venue for all causes of action shall exclusively lie in Collin County, Texas.

IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR SIGNATURES ON THIS THE _____ DAY OF _____, 20____.

BY: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

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 _____,
20___ by _____, _____ of
_____, a non-profit corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ___ day of _____,
20___ by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO,**
TEXAS, a home-rule municipal corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

EXHIBIT "A"

CONTRACTOR'S APPLICATION

This exhibit represents only the Budget portion of the application.

The remainder of the application is attached hereto by reference and is on file in the Parks and Recreation Department and may be viewed by contacting that office during normal business hours.

EXHIBIT "B"**GENERAL CONDITIONS OF AGREEMENT**

The Contractor agrees to the following general conditions:

- (1) The Contractor must provide reports of its activities as described in Section V, *Disbursement of Funds*, Paragraph 5.06, *Reporting Requirement*, of the Funding Agreement and as otherwise required by the Special Conditions of the Agreement on a format acceptable to the City. Disbursements may cease if reports are not submitted.
- (2) All of Contractor's procedures, records, and reports of programs and accounts shall be available for inspection by a duly authorized representative of the City. The materials shall be made available during regular business hours and not later than three (3) business days after request to do so. An independent audit of Contractor's financial records, paid for by Contractor, shall be furnished to the City upon request.
- (3) The Contractor agrees to on-site inspection of its facilities and/or programs by the City.
- (4) Improper use of funds provided by City may result in the termination of the Agreement, forfeiture of any outstanding monies to be provided by City, recovery of previous payments, recovery of bond payments, requirement for Contractor to provide an Employee Dishonesty Bond for future participation and/or disqualification of Contractor from future participation in grant programs offered or sponsored by or through City.
- (5) Programs, activities, employment opportunities, and other participatory events funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religion, sex, age, national origin, disability, familial status, or political affiliation.
- (6) The Contractor and any person or organization it contracts with shall comply with all applicable laws, regulations, ordinances, and codes of the United States of America, the State of Texas, and the City of Plano.
- (7) The Contractor shall comply with all Federal, State and Local conflict of interest laws, statutes, and regulations; these laws shall apply to all parties and beneficiaries under this Agreement as well as to all officers, employees, and agents of City.
- (8) None of the funds, materials, property, or services provided directly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or for publicity, lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, the City Council of the City of Plano, or any other political body.

- (9) The City shall have the right to review any and all of Contractor's agreements and contracts prior to execution by the Contractor. City further has the right to require the modification, addition, or deletion of such terms and conditions in Contractor's agreements or contracts as it deems necessary to protect the City's interests.

EXHIBIT "C"**SPECIAL CONDITIONS**

The Contractor agrees to the following special conditions:

Public safety for the event will be provided by the Plano Police personnel under the direction of the Plano Police Chief or the Police Chief's designee.

Expenses for City services, i.e., Police, Parks and Recreation, Fire, and Public Works Departments, will be appropriated by the City in the amounts listed on the chart below. These expenses shall be considered a part of the grant as in-kind services by the City.

Police	\$
Parks and Recreation	\$
Fire / EMS	\$
Environmental Waste	\$
Public Safety Communications	\$
Facility Rental (name of facility)	\$
Telecommunications	\$
Traffic/Signals	\$
Golf Carts	\$
Other (name specifically)	\$
TOTAL	\$

The event shall not be charged by City departments for planning or administrative time performed during regular business hours.

The Contractor must show evidence of all incurred expenses for funds received under this Agreement.

Any surplus of City contributed funds following payment of all qualified expenses shall be remitted to the City of Plano.

Settlement of all qualified expenses and return of surplus funds to the City of Plano shall occur no later than sixty (60) days after the event end date.

The event shall be considered an officially sponsored event of the City of Plano, and as such follow and be subject to all regulations and guidelines of other City of Plano events.

The event shall reserve one (1) voting seat on its Board of Directors or planning committee for an official representative of the City of Plano designated by the City Manager.

Public Service booth space will be provided by the event to the City of Plano and its departments at no charge subject to space availability.

The event shall require all vendors to comply with applicable laws and regulations and publicly display all appropriate health, fire, sales tax, or other permits.

The event shall provide adequate handicapped parking or transportation.

The event will be responsible for application and completion of the Special Event Permit as proscribed by ordinance.

EXHIBIT "D"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of _____ (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.

Name of Contractor

By: _____
Signature

Print Name

Title

Date

STATE OF _____ §

COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200_.

Notary Public, State of _____

EXHIBIT "E"

INSURANCE

Contractor shall procure and maintain for the duration of the grant agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Contractor, its agents, representatives, employees, volunteers, officers, directors or sub-contractors.

The Contractor shall maintain insurance with limits not less than \$500,000 per occurrence, \$1,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence" form CG 0001). Coverage will include: A) Premises - Operations, B) Broad Form Contractual Liability, C) Broad Form Property Damage and D) Personal Injury.

The policy will be endorsed to contain the following provisions: They City, its officials, employees, volunteers, Boards and Commissions are to be added as "Additional Insureds" in respect to liability arising out of any activities performed by or on behalf of the Contractor. The policy shall contain no special limitations to the scope of coverage afforded to the City. The Contractor's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Contractor's insurance and shall not contribute with it. Certificate must include a waiver of subrogation as regards the workers compensation policy.

Insurance shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

The Contractor shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

EXHIBIT "F"



Special Event Grant

REVISED LINE ITEM BUDGET for 2009-10 Grant

Please complete the following by providing information based on your FY 2009-10 request and attach a new copy of your complete budget for the year of your request.

DATE: _____

Expenses:

	Total Event Budget	City Cash Requested	REVISED Cash Requested	City In-Kind Requested	REVISED In-Kind Requested
Contracted City Services*					
Contracted Services other than City		x		x	
Rental Expenses					
In-Kind Services other than City		x		x	
Advertising & Promotion					
Insurance				x	
Other					
Grand Total					

CERTIFICATE OF COMPLIANCE

CERTIFICATION: _____ and _____,

members of the Board of Directors of _____ agency.

By signatures below, we attest to the accuracy of the information contained in this document.

Attest: _____
signature

signature

name printed

name printed

date

date

*Typically provided as in-kind services only. These will be calculated in accordance with Fair Labor Standards Act.



**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:	10/12/09	Purchasing	<i>[Signature]</i> 9-30-09
Department:	Parks and Recreation	Budget	<i>[Signature]</i> 9-30-09
Department Head	Amy Fortenberry	Legal	<i>[Signature]</i> 10-01-09
Dept Signature:	<i>Amy Fortenberry</i>	Assistant City Manager	
		Deputy City Manager	<i>[Signature]</i> 10-1-09
		City Manager	<i>[Signature]</i> 10/1/09
Agenda Coordinator (include phone #): Susan Berger (7255)			
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			
Approving the terms and conditions of funding agreements between the City of Plano, Texas, and various arts organizations, which all render services that are beneficial to the public and serve a valid public purpose. The City Manager or his authorized designee, is hereby authorized to execute such agreements with these organizations for provision of support of the arts 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
Budget	0	661,173	0
Encumbered/Expended Amount	0	0	0
This Item	0	-661,173	0
BALANCE	0	0	0
FUND(S): CONVENTION AND TOURISM			
COMMENTS: Funding for this item is included in the approved 2009-10 Budget. The total amount of \$661,173 is funded from hotel/motel tax revenue in the Convention and Tourism Fund.			
STRATEGIC PLAN GOALS: Providing various cultural arts programs to the City of Plano relate to the City's Goal of Premier City in Which to Live.			
SUMMARY OF ITEM			
This resolution establishes funding agreements with various arts organizations for a total of an amount not to exceed \$661,173 approved in the FY 2009-10 budget. Funds will be distributed to the organizations on the following schedule: an amount not to exceed 50% of the funds by November 30, 2009; an amount not to exceed 25% of the funds by February 28, 2010; an amount not to exceed the remaining 25% of the funds by July 1, 2010. Small Grants (\$1,000 or less) will be distributed in a single payment to the recipient organization by November 30, 2009.			



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Sample Funding Agreement	Other Departments, Boards, Commissions or Agencies

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF FUNDING AGREEMENTS BETWEEN THE CITY OF PLANO, TEXAS, AND VARIOUS ARTS ORGANIZATIONS, WHICH ALL RENDER SERVICES THAT ARE BENEFICIAL TO THE PUBLIC AND SERVE A VALID PUBLIC PURPOSE. THE CITY MANAGER , OR HIS AUTHORIZED DESIGNEE, IS HEREBY AUTHORIZED TO EXECUTE SUCH AGREEMENTS WITH THESE ORGANIZATIONS FOR PROVISION OF SUPPORT OF THE ARTS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council established the Cultural Arts Commission for the purpose of considering funding requests from outside organizations; and

WHEREAS, this Commission considered funding requests, conducted extensive review, and made recommendation for funding to the City Council based on established criteria; and

WHEREAS, the City Council received such recommendations during budget deliberations, conducted a public hearing on the proposed budget and approved and adopted the 2009-10 budget; and

WHEREAS, pursuant to Ordinance No. 2009-9-13, the City Council has appropriated \$661,173.00 for such purposes and finds that the services provided by the nineteen organizations are beneficial to the public and serve a valid public purpose; and

WHEREAS, the City Council desires to enter into Funding Agreements with twenty arts organizations, sample copies are attached hereto by reference as Exhibit "A", and Exhibit "B" which establish the terms and conditions for funding.

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

Section I. The City Council, after reviewing the terms and conditions of the Funding Agreements and the maximum recommended funding amounts for the below named organizations, hereby approves the Agreements and funding amounts, which are proper and in the best interests of the City of Plano.

Support of the Arts:

Argentine Cultural Foundation	\$	1,000.00
ArtCentre of Plano, Inc.	\$	62,263.00
Chamberlain Performing Arts	\$	45,211.00
Children's Chorus of Collin County	\$	1,000.00
Dallas Asian American Youth Orchestra (DAAYO)	\$	11,654.00
Dallas Chinese Choral Society, Inc.	\$	1,000.00
Men of Note	\$	17,056.00
Orchestra of New Spain	\$	4,819.00
The Plano Art Association	\$	12,391.00
Plano Children's Theatre	\$	172,767.00

Plano Civic Chorus	\$	9,660.00
Plano Community Band	\$	27,266.00
Plano Metropolitan Ballet, Inc.	\$	6,634.00
Plano Symphony Orchestra	\$	213,416.00
Plano Teen Harmony	\$	1,000.00
Quilters Guild of Plano	\$	6,121.00
Rhythm Junkies, Inc.	\$	1,000.00
Rover Dramawerks	\$	57,703.00
Younger Generation Chorus of Plano	\$	9,212.00
TOTAL:	\$	661,173.00

Section II. The City Manager, or his authorized designee, is hereby authorized to execute such Agreements on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreements, and to act in behalf of the City with regard to its terms and conditions.

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

DULY PASSED AND APPROVED this 12th day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

SAMPLE CONTRACT

**FUNDING AGREEMENT BETWEEN CITY OF PLANO
AND**

The **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as "City"), and _____, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as "Contractor"), enter into this funding agreement for the purposes set out herein.

WHEREAS, the City Council finds that the expenditure of public funds to Contractor is in the best interest of the residents and the City of Plano; and

WHEREAS, the City Council finds that expending public funds for the purpose stated above is a valid public purpose; and

WHEREAS, pursuant to Ordinance No. 2009-9-13, the City Council determined that the City should award grant funding in a sum not to exceed \$ _____ for the purposes outlined in the attachment entitled "Cultural Affairs Commission FY 2009-10 Major Grant Application" (hereinafter referred to as "Application"); and

WHEREAS, Contractor has established itself as having the ability to perform such activities.

NOW, THEREFORE, for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

**SECTION I
PURPOSES/CONSIDERATION; PRIORITY OF DOCUMENTS**

1.01 Purpose/Consideration.

This Agreement provides the terms and conditions under which City will make available grant funding in a sum not to exceed \$ _____, for use to support the activities outlined in attached Exhibit "A", Contractor's funding application. The City's source of these funds is derived from the Hotel/Motel Tax revenues and total grant funding awarded to Contractor is

SAMPLE CONTRACT

subject to change pursuant to Section 5.07 of the agreement herein. Contractor agrees to accept responsibility for guaranteeing City grant funds are used for the items in Exhibit "A".

In consideration of the City of Plano providing the funding specified for the 2009-10 fiscal year, Contractor shall abide by the terms and conditions of this Agreement.

1.02 Priority of Documents.

This Agreement consists of: Agreement between City of Plano and Contractor; Application; Revised Budget Category Itemization for Approved Expenditures; General Conditions; Affidavit of No Prohibited Interest; Insurance, and Employee Dishonesty Bond when required. The documents are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the order in which they are listed above.

**SECTION II
PERMITTED USES OF FUNDS; CONDITIONS OF USE**

2.01 Contractor shall use any and all funds furnished by City under this Agreement for the purposes outlined in the Application, which is made a part hereof by reference and incorporated as Exhibit "A". In the event that the amount of funds requested and outlined for expenditure in the Application differs from the amount of funds actually awarded by the City, then Contractor shall submit a revised line item budget on a form provided by the City which shall be substituted for the original budget submitted with the Application. The revised line item budget must be submitted within 10 days of the execution of this Agreement and no funds shall be disbursed by the City to Contractor unless and until the revised line item budget is submitted. The revised Line Item Budget of Approved Expenditures shall be signed by two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. The revised line item budget shall be attached hereto and incorporated herein as part of Exhibit "A".

1. Subsequent to the initial contract submittal, should the Contractor wish to utilize funds for a purpose other than those stated in Exhibit "A", the Contractor must

SAMPLE CONTRACT

submit an additional amended Line Item Budget of Approved Expenditures and request approval from the Contractor's Board, Cultural Affairs Commission, and City Manager. No change may occur unless:

- a. Approved by Contractor's Board, as evidenced by the official minutes of the Board authorizing the change;
- b. Approved by the Cultural Affairs Commission, as evidenced by the official minutes of the Commission authorizing the change presented by the Contractor's Board;
- c. Approved by the City Manager, or his designee, after submission of the requested change by the Cultural Affairs Commission.

Contractor cannot expend any funds for a purpose not listed in the funding application until receipt of written approval from the City Manager or his designee.

2.02 All expenditures of City funds must comply with the Agreement and attachments hereto. Agreement compliance is defined as:

1. At least 90% of expenses budgeted in each category of the Application and funded by City monies must be spent in that category;
2. All requests to reallocate funds from one line item to another must first be approved by the Contractor's Board, as evidenced by the official minutes of the Board authorizing the change and submitted to the Creative Arts Supervisor. If the Creative Arts Supervisor finds that the request conforms to Item 1 of 2.02 above, the amended line item budget shall be approved. If the Creative Arts Supervisor finds that the amendments do not conform to 2.02.1 above, the request must be approved in accordance with the conditions set forth in b and c of Item 1 of 2.01;
3. Contractor must meet all other conditions of this Agreement.

2.03 Contractor agrees to the general conditions of the grant as set forth in the attachment entitled "General Conditions of Contract" (hereinafter referred to as the "General Conditions"), which is attached hereto and incorporated herein for all purposes as Exhibit "B".

SAMPLE CONTRACT

2.04 Unexpended and unencumbered City funds that remain with the Contractor after September 30, 2010, will revert to the City and the Contractor must return said funds to the City on or before October 31, 2010. Encumbered City funds are those funds which the Contractor has received and obligated for payment by written agreement or contract to expend on approved projects listed in Exhibit "A".

**SECTION III
NON-ASSIGNMENT**

3.01 Contractor may not assign any interest in this Agreement, whether in whole or part, without prior approval of the City Council, as reflected by a duly authorized resolution.

**SECTION IV
INDEPENDENT CONTRACTOR**

4.01 The City enters into this Agreement with Contractor for the purposes enumerated in Section I. Contractor asserts and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of the City. Contractor has exclusive control over the details of the activity, and is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. The doctrine of respondeat superior does not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants. Further, this agreement does not create a partnership or joint enterprise between City and Contractor.

**SECTION V
DISBURSEMENT OF FUNDS**

- 5.01** The City will disburse funds provided under this Agreement as follows:
1. for grants of \$1,000 or less, 100 % of the funds by November 30, 2009.
For all grants greater than \$1,000:
 2. an amount not to exceed 50% of the funds by November 30, 2009.
 3. an amount not to exceed 25% of the funds by February 28, 2010.
 4. an amount not to exceed the remaining 25% of the funds by July 1, 2010.

SAMPLE CONTRACT

5.02 Expenses incurred after the termination date will not be reimbursed under this Agreement and the City shall assume no liability for same.

5.03 Failure to comply with the quarterly reporting requirements as outlined in Section 5.07 of this agreement below, including submittal of an executed certificate of compliance, shall result in funds being withheld from disbursement to the Contractor until a properly prepared report is submitted to the City as required.

5.04 Failure to submit a revised Line Item Budget as required in Section II of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City.

5.05 Failure to submit an Employee Dishonesty Bond as required in Section VII of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City as required.

5.06 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.

5.07 Contractor recognizes that grant funding is derived from Hotel/Motel tax revenue collected by the City. In the event that the Hotel/Motel Tax revenue generated for fiscal year 2009-10 is lower than initially anticipated, Contractor agrees that the total sum of grant funding awarded by the City to the Contractor may be adjusted accordingly at the City's sole discretion.

SAMPLE CONTRACT

5.08 Reporting Requirements.

Within thirty (30) days of the close of each preceding quarter of the contract term, Contractor agrees to provide financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the Line Item Budget of Approved Expenditures attached in Exhibit "A", a list of all bank checks dispatched per quarter relating to the Approved Expenditures attached in Exhibit "A", as well as a description of program goals achieved and/or progress of same for the preceding quarter. These reports shall contain a Certificate of Compliance with notarized signatures of two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. In the case of grants of \$1,000 or less, the report is due within 30 days of the close of the quarter in which the funds were expended. Reports submitted without required notarized signatures will be rejected and considered incomplete.

At the end of the Contract Term or in the event of earlier termination, Contractor shall provide a final written report of its activities and expenditures to the Contract Administrator.

**SECTION VI
AFFIDAVIT OF NO PROHIBITED INTEREST**

6.01 Contractor acknowledges and represents it is aware of all applicable laws, the City Charter, and the City Code of Conduct regarding prohibited interests, and that the existence of a prohibited interest at any time will render the Contract voidable. At the time of signing this Agreement, a representative of Contractor shall execute the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "C".

**SECTION VII
INSURANCE REQUIREMENTS/INDEMNIFICATION**

7.01 Insurance.

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit "D". Additionally, this insurance must specifically cover any and all activities occurring on City property, including

SAMPLE CONTRACT

those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed certificate of insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract. These insurance requirements shall apply only to grants of more than \$1,000.

7.02 Employee Dishonesty Bond Requirement Applicable to Contractors Receiving Funds of \$75,000.00 or greater

At its own expense, a Contractor receiving funds in the amount of \$75,000.00 or more agrees to maintain during the term of this Agreement, or any extension thereof, an Employee Dishonesty Bond (EDB) in an amount equal to the total dollar amount awarded to Contractor by the City as defined in the grant agreement. A copy of proof of EDB shall be attached to the funding agreement as an additional attachment to Exhibit "D". Bonds shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

Bonds shall be made payable to the City of Plano and shall be maintained by Contractor throughout the contract period. Contractor must provide proof of this EDB to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed bond certificate issued by Contractor's insurance agency is sufficient proof of EDB. Contractor must maintain a current copy of the certificate(s) and provide proof of its current EDB to City throughout the entire term of this Contract. Failure to provide proof of the EDB shall result in the City withholding disbursement of funds to the Contractor until proof is provided as required under this Agreement.

7.03 Indemnification.

Contractor shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including attorney's fees and expenses, in any way arising out of, related to, or resulting from the

SAMPLE CONTRACT

performance of the work or caused by the negligent act or omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible (hereinafter "Claims"). Contractor must defend City against all such Claims.

City shall have the right to select or to approve defense counsel retained by Contractor to fulfill its obligation to defend and indemnify the 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 a waiver of Contractor's obligation to defend or indemnify the City pursuant to this Agreement. Contractor 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 Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor is liable for all costs incurred by City.

SECTION VIII TERM

8.01 The term of this Agreement is October 1, 2009 through September 30, 2010. At the expiration of this Agreement, the Contractor shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including the submission of a final written report to the City and any other requested written documentation verifying Contractor's compliance with the terms of this Agreement.

SECTION IX TERMINATION

9.01 Each party shall have the right to an early termination of this Agreement by giving the other party written notice thirty (30) days before the desired early termination date. After a notice of early termination, Contractor may use City funds only for costs incurred before the notice of termination date. Contractor, however, must return to the City the unused balance

SAMPLE CONTRACT

of any funds disbursed to the Contractor pursuant to this Agreement within ten (10) days of either an early termination or at the end of the Agreement term.

9.02 In the event Contractor breaches any of the terms or conditions of this Agreement, whether in whole or part, the City may immediately terminate this Agreement by providing written notice to the Contractor, notwithstanding any other provision. Contractor is solely responsible for funds expended contrary to the terms and conditions of this Agreement, and must return the City funds within ten (10) days of the termination.

**SECTION X
MISCELLANEOUS**

10.01 Entire Agreement.

This Agreement and its attachments constitute the entire agreement between the parties. The parties may only modify, amend, or supplement this Agreement through a written instrument executed by both parties.

10.02 Authority

The undersigned represents and warrants that he or she is the duly authorized representative of the Contractor, and that the Board of Trustees (or equivalent) of the Contractor has approved and accepted this Agreement by Board resolution. Contractor at all times shall maintain a copy of the Board resolution for submission to City upon request.

This Agreement does not become or binding on the City of Plano until both the Contractor and the City Manager or his designee have executed it.

10.03 Successors and Assigns

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

SAMPLE CONTRACT

10.04 Notice.

Any Notice, Reports or Documents required to be provided by this Agreement shall be in writing and delivered to the parties as follows:

City – Contract Administrator
James Wear, Creative Arts Supervisor
City of Plano
P.O. Box 860358
Plano, TX 75086-0358
Telephone: (972) 941-5202
Facsimile: (972) 941-7221

Contractor

10.05 Paragraph Headings.

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

10.06 Interpretation of Contract.

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.

10.07 Venue.

The parties agree that the laws of the State of Texas govern this Agreement, and which is performable in Collin County, Texas. In the event of breach of this Agreement, venue for all causes of action shall exclusively lie in Collin County, Texas.

SAMPLE CONTRACT

IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR SIGNATURES ON THIS THE _____ DAY OF _____, 2009.

BY: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

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 _____, 2009 by _____, _____ of _____, a non-profit corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

SAMPLE CONTRACT

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 corporation.

Notary Public in and for the
State of Texas

m-16

SAMPLE CONTRACT

EXHIBIT A

**Revised Budget Category Itemization for Approved Expenditures
City of Plano Cultural Arts Grants FY 2009-10**

Organization Name: _____

Address: _____

Contact Person: _____

Phone: _____ Email: _____

Total Approved City of Plano Funding for FY 2009-10: _____

Budget Category: _____ **Amount:** _____

Personnel (Artistic, Cultural, Technical & Administrative Staff	
Contracted Services	
Travel	
Rental Expense	
Advertising and Promotion	
Insurance	
Other Expenses	
TOTAL PROJECTED AUTHORIZED EXPENDITURE OF CITY OF PLANO CULTURAL ARTS FUNDING:	

SAMPLE CONTRACT
EXHIBIT B**GENERAL CONDITIONS OF AGREEMENT**

The Contractor agrees to the following general conditions:

- (1) The Contractor must provide reports of its activities as described in Section V, *Disbursement of Funds*, Paragraph 5.07, *Reporting Requirement*, of the Funding Agreement and as otherwise required by the Special Conditions of the Agreement on a format acceptable to the City. Disbursements may cease if reports are not submitted.
- (2) All of Contractor's procedures, records, and reports of programs and accounts shall be available for inspection by a duly authorized representative of the City. The materials shall be made available during regular business hours and not later than three (3) business days after request to do so. An independent audit of Contractor's financial records, paid for by Contractor, shall be furnished to the City upon request.
- (3) The Contractor agrees to on-site inspection of its facilities and/or programs by the City.
- (4) Improper use of funds provided by City may result in the termination of the Agreement, forfeiture of any outstanding monies to be provided by City, recovery of previous payments, recovery of bond payments, requirement for Contractor to provide an Employee Dishonesty Bond for future participation and/or disqualification of Contractor from future participation in grant programs offered or sponsored by or through City.
- (5) Programs, activities, employment opportunities, and other participatory events funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religion, sex, age, national origin, disability, familial status, or political affiliation.
- (6) The Contractor and any person or organization it contracts with shall comply with all applicable laws, regulations, ordinances, and codes of the United States of America, the State of Texas, and the City of Plano.
- (7) The Contractor shall comply with all Federal, State and Local conflict of interest laws, statutes, and regulations; these laws shall apply to all parties and beneficiaries under this Agreement as well as to all officers, employees, and agents of City.
- (8) None of the funds, materials, property, or services provided directly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or for publicity, lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, the City Council of the City of Plano, or any other political body.
- (9) The City shall have the right to review any and all of Contractor's agreements and contracts prior to execution by the Contractor. City further has the right to require the modification, addition, or deletion of such terms and conditions in Contractor's agreements or contracts as it deems necessary to protect the City's interests.

SAMPLE CONTRACT

EXHIBIT C

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of _____ (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.

Name of Contractor

By: _____
Signature

Print Name

Title

Date

STATE OF _____ §

COUNTY OF _____ §
§

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

Notary Public, State of _____

SAMPLE CONTRACT

EXHIBIT D

Contractor shall procure and maintain for the duration of the grant agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Contractor, its agents, representatives, employees, volunteers, officers, directors or sub-contractors.

The Contractor shall maintain insurance with limits not less than \$500,000 per occurrence, \$1,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence" form CG 0001). Coverage will include: A) Premises - Operations, B) Broad Form Contractual Liability, C) Broad Form Property Damage and D) Personal Injury.

The policy will be endorsed to contain the following provisions: The City, its officials, employees, volunteers, Boards and Commissions are to be added as "Additional Insureds" in respect to liability arising out of any activities performed by or on behalf of the Contractor. The policy shall contain no special limitations to the scope of coverage afforded to the City. The Contractor's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Contractor's insurance and shall not contribute with it. Certificate must include a waiver of subrogation as regards the workers compensation policy.

Insurance shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

The Contractor shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.



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>CR</i>	10-2-09	
Council Meeting Date: 10/12/09		Budget	<i>CR</i> 10-2-09	
Department: Finance Department		Legal	<i>CR</i> 10-02-09	
Department Head: Denise Tacke		Assistant City Manager	<i>CR</i> 10-5-09	
Dept Signature: <i>Denise Tacke</i>		Deputy City Manager	<i>CR</i> 10-9-09	
		City Manager	<i>CR</i> 10/5/09	
Agenda Coordinator (include phone #): Katherine Crumbley - 7479 <i>CR</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, REVIEWING AND APPROVING THE CITY'S WRITTEN PUBLIC FUNDS INVESTMENT POLICY; 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: 2010	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: No fiscal impact				
SUMMARY OF ITEM				
Annual Approval of Public Funds Investment Policy in Accordance with Section 5, Chapter 2256 of the Texas Government Code.				
List of Supporting Documents: Resolution, Public Funds Investment Policy		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, REVIEWING AND APPROVING THE CITY'S WRITTEN PUBLIC FUNDS INVESTMENT POLICY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 2256.005(e) of the Texas Government Code requires the governing body of an investing entity to adopt a written investment policy regarding the investment of its funds and funds under its control and to review said written investment policy on an annual basis; and,

WHEREAS, on January 26, 2009, by Resolution No. 2009-1-17(R), the City Council approved and adopted a written Investment Policy for the City of Plano regarding investment of public funds; and,

WHEREAS, the City Council has been presented the existing and duly approved Public Funds Investment Policy which contains investment strategies, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and,

WHEREAS, the City Council has reviewed the Public Funds Investment Policy attached hereto as Exhibit "A" and the investment strategies contained therein and finds that it is consistent with prudent fiscal policy.

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

Section I. The City Council of the City of Plano, Texas, has reviewed the Public Funds Investment Policy attached hereto as Exhibit "A" and the investment strategies contained therein.

Section II. The Public Funds Investment Policy as contained in Exhibit "A" attached hereto shall remain the official policy of the City of Plano regarding investment of public funds.

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

DULY PASSED AND APPROVED this the 12th day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

City of Plano Investment Policy

The City of Plano (the "City") is required under the Public Funds Investment Act (the "PFIA") Chapter 2256, Texas Government Code, to adopt a written investment policy. The City is required to comply with the Investment Policy as approved by the City Council.

Statement of Intent

It is the Policy of the City to invest funds in a manner, which will insure maximum security and provide for the daily cash flow demands of the City, and conform to all State and local statutes governing the investment of public funds.

Scope

This Investment Policy applies to all financial assets of the City, except certain trust and pension funds contractually invested by outside managers, e.g. Retirement/Pension, and Employee Deferred Compensation.

All funds are accounted for in the City's Comprehensive Annual Financial Report.

Prudence

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

The standard of prudence to be used by Investment Officers shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. The Investment Officers, acting in accordance with written procedures and the Investment Policy, and exercising due diligence, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported immediately upon knowledge of the deviation and appropriate action is taken to control adverse developments.

Investment Officers shall seek to act responsibly as custodians of the public trust. Investment Officers shall avoid any transaction that might impair public confidence in the City's ability to govern effectively.

Objectives

The primary objectives of the City's investment activities shall be as follows:

1. Safety of principal is the foremost objective of the City's investment program. Investment transactions of the City shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To attain this objective, diversification is required in order that actual losses on individual securities do not exceed the income generated from the remainder of the portfolio.
2. The City's investment portfolio will remain sufficiently liquid to enable the City to meet all operating requirements that can be reasonably anticipated.
3. The City's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the City's investment risk constraints and the cash flow characteristics of the portfolio.

Delegation Of Authority

City employees authorized to engage in investment transactions and authorized as Investment Officers are the City Manager, the Director of Finance, and the Treasurer. Management responsibility for the investment program is delegated from the City Manager to the Director of Finance who shall establish written procedures for the operation of the investment program consistent with this Investment Policy. Investment procedures should include reference to the following: safekeeping agreements, repurchase agreements, wire transfer agreements, collateral agreements, depository service contracts and agreements, broker/dealer selection criteria, and security bidding and purchase processes. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this Policy and the procedures established by the Director of Finance. The Director of Finance shall be responsible for routine authorization of investments and the Controller shall be responsible for proper accounting of investments in order to maintain appropriate internal controls. The Director of Finance shall establish a system of controls to regulate the activities of subordinates.

Ethics And Conflict Of Interest

Investment Officers involved in the investment process who have a personal business relationship with a business organization offering to engage in an investment transaction with the City shall submit a statement disclosing that personal business interest to the City Council and the Texas Ethics Commission. An Investment Officer who is related within the second degree of affinity or consanguinity to an individual seeking to sell an investment to the City shall submit a statement disclosing that relationship to the City Council and the Texas Ethics Commission. A personal business relationship with a business organization is defined as 1) owning 10 percent or more of the voting stock or shares of the business organization or owning \$5,000 or more of the fair market value of the business organization; 2) receiving funds from the business organization exceeding 10 percent of gross income for the previous year; or 3) acquiring from the business organization during the previous year investments with a book value of \$2,500 or more for a personal account.

Compliance Audit

As part of the annual audit, the independent auditor must formally review internal controls, compliance with the Policy, and the quarterly investment reports prepared to comply with the PFIA, and report the results of that review to the City Council as part of its regular audit report.

Depository Selection

A qualified depository shall be selected through the City's professional services contract process in compliance with state bidding requirements, and shall include a formal Request For Proposal. The centralization of depository services is designed to maximize investment capabilities while minimizing service costs as well as staff time spent on activities such as reconciliation.

The selection of a depository shall be based on the financial institution offering the most favorable terms and conditions at the best value, while adhering to the guidelines and provisions within the request for proposal. In selecting a depository, the City shall give consideration to the financial institution's credit characteristics, financial history, service capabilities, and costs for required services.

The City's depository contract shall be in compliance with State law. Specialized services may be contracted for by the City with another financial institution or company if the depository cannot provide such service or charges more for the same service with little or no appreciable benefit.

Authorized Securities Dealers

The Investment Committee will review and adopt annually a list of qualified securities dealers authorized to engage in investment transactions with the City. The City will provide any person offering to engage in an investment transaction with the City, including investment pools, with a copy of the City's Investment Policy.

A qualified representative of the business organization offering to engage in an investment transaction must execute a written statement acknowledging receipt and review of the Policy and a statement acknowledging that reasonable procedures and controls have been implemented to preclude investment transactions that are unauthorized by this Investment Policy except, to the extent that this authorization is dependent on an analysis of the makeup of the City's entire portfolio or requires an interpretation of subjective investment standards. All approved broker/dealer firms must submit a completed City Broker/Dealer Questionnaire, a written acknowledgment per above guidelines, an executed master repurchase agreement, if applicable, and a copy of current audited financial statements.

Investment Advisers

Investment Advisers shall adhere to the spirit, philosophy and specific term of the Investment Policy and shall invest within the same objectives. The Investment Officer shall establish criteria to evaluate Investment Advisers, including:

1. Adherence to the City's policies and strategies;
2. Investment strategy recommendations within accepted risk constraints;
3. Responsiveness to the City's request for services and information;
4. Understanding of the inherent fiduciary responsibility of investing public funds; and
5. Similarity in philosophy and strategy with the City's objectives.

Selected Investment Advisors must be registered under the Investment Advisers Act of 1940 or with the State Securities Board. A contract with an Investment Adviser may not be for a term longer than two years and any contract, renewal or extension must be approved by the City Council.

Authorized Investments

The City is authorized to invest in the following types of securities, as specified in the PFIA Eligible investments include the following:

1. obligations, including letters of credit, of the United States or its agencies and instrumentalities;
2. direct obligations of the State of Texas or its agencies and instrumentalities;
3. other obligations, the principal of and interest on which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the State of Texas or the United States or their respective agencies and instrumentalities;
4. obligations of states, agencies, counties, cities, and other political subdivisions of any state having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than A or its equivalent;
5. certificates of deposit, issued by a depository institution that has its main office or a branch office in this state, that are:
 - a) guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor; or the National Credit Union Share Insurance Fund, or its successor;
 - b) secured by obligations that are described by the PFIA, which are intended to include all direct federal agency or instrumentality issued mortgage backed securities that have a market value of not less than 102% of the principal amount of the certificates or in

- any other manner and amount provided by law for deposits of the investing entities;
- c) issued by a depository institution that arranges for the deposit of funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the City, with the full amount of principal and accrued interest of each of the certificates of deposit insured by the Federal Deposit Insurance Corporation, or its successor; the depository institution selected by the City for the purchase of the certificates of deposit acts as custodian for the City with respect to the certificates of deposit issued for the City; and, at the same time that the funds are deposited and the certificates of deposit are issued for the account of the City, the issuing depository institution receives, from other federally insured depository institutions, wherever located, an amount equal to or greater than the amount of funds invested by the City through the depository institution issuing the certificates of deposit to the City;
7. fully collateralized repurchase agreements having a defined termination date, secured by obligations described by the PFIA, pledged to the City, held in the City's name, and deposited at the time the investment is made with the City or with a third party selected and approved by the City, and is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state;
 8. mutual funds
 - a) a no-load money market mutual fund that is registered with and regulated by the Securities and Exchange Commission; has a dollar-weighted average stated maturity of 90 days or fewer; provides the investing entity with a prospectus and other information required by the Securities Exchange Act of 1934 or the Investment Company Act of 1940; and states in its investment objectives the maintenance of a stable net asset value of \$1.00 for each share; and the City owns 10% or less of the fund's total assets; or
 - b) a no-load mutual fund that it is registered with the Securities and Exchange Commission; has an average weighted maturity of less than two years; is invested exclusively in obligations approved by Chapter 2256, sections 9 through 16; is continuously rated as to investment quality by at least one nationally recognized investment rating firm of not less than AAA or its equivalent; and conforms to the requirements set forth in Sections 2256.016 (b) and (c) relating to the eligibility of mutual funds to receive and invest funds of investing entities; with the following restrictions:
 - i) amount is limited to 15% of the City's monthly average fund

- balance, excluding bond proceeds, reserves, and debt service funds;
 - ii) is ineligible for investment of bond proceeds, reserves, and debt service funds; and
 - iii) the City may not own more than 10% of the fund's total assets.
9. eligible investment pools that invest in instruments and follow practices allowed by current law as defined in the PFIA provided that:
- a) investment in the particular pool has been authorized by the City Council;
 - b) the pool shall have furnished the Investment Officer an offering circular containing the information required by the PFIA;
 - c) the pool shall furnish to the Investment Officer investment transaction confirmations with respect to all investments made with it;
 - d) The pool shall furnish to the Investment Officer monthly reports that contain the information required by the PFIA;
 - e) the pool's investment objectives shall be to maintain a stable net asset value of one dollar (\$1) and may have a weighted average maturity no greater than 90 days;
 - f) whose investment philosophy and strategy are consistent with this Policy and the City's ongoing strategy; and
 - g) the pool provides evidence of credit rating no lower than "AAA" or "AAA-m" by at least one nationally recognized credit rating service.

Unauthorized Investments

The City's authorized investment alternatives are more restrictive than those allowed by State law. Not all investments authorized by State Law are authorized by this Policy. The City prohibits investments in all collateralized mortgage obligations. State law specifically prohibits investment in the following investment securities:

1. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pay no principal;
2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
3. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years.

The City is not required to liquidate investments that were authorized investments at

the time of purchase. The City will take prudent measures to liquidate any investment that loses its required minimum rating.

Investment Strategy

The City intends to maintain a consolidated portfolio in which all funds under the City's control, as specified in this Policy, are pooled for investment purposes. One of the fund's primary objectives is to insure that anticipated cash flows are matched with investment maturities. Both short and longer-term maturities are laddered to meet general operating, capital project and debt service expenditures, based on known and projected cash flows.

Another primary objective of the fund is the preservation and safety of principal by insuring that all securities are of a sufficiently high quality and duration so as to limit exposure to credit and market risks. The portfolio should therefore experience minimal volatility during varying economic cycles. Securities of all types are purchased with the intention of holding until maturity.

Other objectives include maintaining liquidity, including the ability to reasonably meet unanticipated needs by purchasing securities with an active secondary/resale market. Diversification is maintained in order to minimize possible credit risk in a specific security type.

The final objective of obtaining a market rate of return while considering risk constraints and cash flow needs, is much less important than safety of principal and liquidity. The majority of investments are limited to low risk securities earning an equitable rate of return relative to the amount of risk.

Competitive Selection of Investment Instruments

Before an Investment Officer invests any surplus funds, a competitive "quote" process shall be conducted. If a specific maturity date is required either for cash flow purposes or for conformance to maturity guidelines, offerings will be requested for instruments that meet the maturity requirement. If no specific maturity is required, the best value available within the time constraints of the Investment Policy will be selected. Offers will be requested from financial institutions and Authorized Securities Dealers for various investment alternatives with regard to term and instrument. The current interest rates of other approved investment alternatives will be considered. Documentation of the competitive process will be retained in the investment file.

Collateralization

In order to anticipate market changes and provide a level of security for all funds, collateralization is required for all City funds held in the depository as available

funds, in certificates of deposit, and for repurchase agreements. With the exception of deposits secured with irrevocable letters of credit at 100% of amount, the collateralization level will be 102% of market value of principal and accrued interest. Evidence of the pledged collateral shall be maintained by the Director of Finance, or a third party financial institution. Collateral shall be reviewed at least monthly to assure that the market value of the pledged securities is adequate. If upon review, the collateral is found to be of inadequate value, the City will notify the pledging financial institution to immediately provide additional collateral.

The City shall accept only the following as collateral:

1. FDIC insurance coverage;
2. A Bond, Bill, Certificate of Indebtedness, or Treasury Note of the United States, or other evidence of indebtedness of the United States that is guaranteed as to principal and interest by the United States;
3. Obligations, the principal and interest on which, are unconditionally guaranteed or insured by the State of Texas;
4. A Bond of the State of Texas or a county, city or other political subdivision of the State of Texas having been rated at no less than "A" or its equivalent by a nationally recognized rating agency with a remaining maturity of ten years or less;
5. Obligations of the United States' agencies and instrumentalities, limited to the FHLB, FNMA, FFCB and FHLMC; or
6. A letter of credit issued to the City by the Federal Home Loan Bank.

Collateral will be held by an independent third party with whom the entity will sign a custodial agreement. Safekeeping receipts must be supplied to the City and must be retained. All collateral shall be subject to inspection and audit by the Director of Finance or the City's independent auditors.

Additional collateral may be pledged as required, released when it is not needed, and substituted, if necessary, with the written consent of the Director of Finance, or an authorized Investment Officer. Any financial institution requesting substitution must contact the Director of Finance for approval and settlement. The substituted security's value will be calculated and substitution approved if its value is equal to or greater than the required security level. The Director of Finance or designated Investment Officer must provide a written notification of the decision to the bank or the safekeeping agent holding the security prior to any security release. Substitution is allowable for all transactions, but should be limited, if possible, to minimize potential administrative problems and transfer expense.

Safekeeping And Custody

All security transactions entered into by the City, with the exception of certificates of deposit, investment pools, and mutual funds, shall be conducted on a delivery-versus-payment (DVP) basis. Securities will be held by a third party safekeeping agent designated by the Investment Officer and Director of Finance. Safekeeping receipts

and clearance documents will be required for all securities purchased by the City and held in safekeeping by an authorized third party.

Diversification

The City will diversify the portfolio at all times to ensure the reduction of risk while still maintaining reasonable rates of return, and to ensure a certain degree of liquidity. The City will diversify its investments by security type in the following manner:

With the exception of United States Treasury securities and authorized pools, no more than 50% of the total investment portfolio will be invested in a single security type. (Such as FNMA, FHLB, FHLMC, CD's at one institution, etc.)

Risk of market price changes shall be controlled by avoiding over-concentration of assets in a specific maturity sector, limitation of average and final maturity, and avoidance of over-concentration of specific instruments.

Risk to liquidity due to cash flow complications shall be controlled by maintaining minimum bank, investment pool, and money market mutual fund balances.

Maximum Maturities

To the extent possible, the City will attempt to match its anticipated cash flow requirements with maturing investments. The City will not directly invest in securities maturing more than five years from the date of purchase. The portfolio's maximum average dollar-weighted maturity will be one year based on the stated maturity date of the investment.

Performance Standards

The investment portfolio will be designed to obtain a market average rate of return during unpredictable budgetary and economic cycles at the local and federal levels, taking into account the City's investment risk constraints and cash flow needs.

The City's investment strategy is primarily passive. Given this strategy, the basis, or benchmark, used by the Investment Officer to determine whether market yields are being achieved shall be the 3 month or 6 month Treasury Bill or 1 or 2 year Treasury Note, whichever is closest to the weighted average maturity of the portfolio.

Reporting

Monthly Reporting. The Director of Finance is responsible for providing monthly information on investment activity in the Comprehensive Monthly Finance Report, to include the size of the portfolio, the distribution by maturity, the distribution by market sector, interest income earned during the current month and fiscal year to date, and the current portfolio yield.

Quarterly Reporting. The Director of Finance shall submit a signed quarterly investment report, jointly prepared and signed by all Investment Officers, that summarizes current market conditions, economic developments and anticipated investment conditions. The report shall summarize investment strategies employed in the most recent quarter, and describe the portfolio in terms of investment securities, maturities, risk characteristics, and shall explain the total investment return for the quarter.

The quarterly investment report shall provide a status of the current investment portfolio and transactions made over the last quarter. The report will be provided to the City Manager and City Council and include the following:

1. A listing of individual securities held at the end of the reporting period;
2. Unrealized gains or losses resulting from appreciation or depreciation by listing the beginning and ending book and market value of securities for the period. Market price is the net selling price of securities as quoted by a recognized market pricing source quoted on the valuation date;
3. Additions and changes to the market value during the period and fully accrued interest for the reporting period;
4. Average weighted yield to maturity of the portfolio of City investments as compared to applicable benchmark;
5. Listing of investments by maturity date and by type of asset;
6. The percentage of the total portfolio that each type of investment represents;
7. A statement of compliance of the City's investment portfolio with State law and the investment strategy and Policy approved by the City Council.

Market Pricing

Market Value of the investment portfolio will be calculated monthly. Pricing information will come from Bloomberg, IDC, or any other source deemed reliable by the Director of Finance. If the price of a particular security is not available from any of these sources, the price may be estimated by analyzing similar securities' market values.

Training

The Director of Finance, the Treasurer and any other authorized Investment Officer must attend at least one training session relative to their responsibilities under the PFIA within twelve months after taking office or assuming duties from an independent source approved by the Investment Committee. In addition, each must receive not less than 10 hours of instruction every two years relating to investment responsibilities from an independent source approved by the Investment Committee

Internal Controls

The Director of Finance is responsible for establishing appropriate internal controls.

The Investment Officers are responsible for executing investment transactions and the Accounting division is responsible for preparation of general ledger journal entries based on documentation prepared by the Investment Officers.

Investment Policy Review And Adoption

The City's Investment Policy shall be reviewed periodically by the Investment Committee and revised and recommended for Council approval, when necessary. In addition, the Policy must be reviewed not less than annually by the City Council. This review will include adoption of a written resolution stating that the Council has reviewed the Investment Policy and investment strategies and include any changes made to the Policy or strategies.

Investment Committee

An Investment Committee comprised of the City Manager, Director of Finance, and the Investment Officer(s) will meet on a quarterly basis. In addition to monthly and quarterly reporting to City Council, the Director of Finance will present a brief report of pertinent investment activities to the Investment Committee.

The primary objective of the Committee will be to review general strategies and policies, monitor investment program results, select independent training sources, and authorize securities dealers.



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>	10-2-09
Council Meeting Date: 10/12/09		Budget	<i>W</i>	10-2-09
Department:	Public Works & Engineering	Legal	<i>RL</i>	10/5/09
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>RL</i>	10-5-09
		City Manager	<i>RL</i>	10/5/09
Agenda Coordinator (include phone #): Irene Pegues (7198)			Project No. 5629	
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, authorizing the purchase of street light standards and associated equipment for Parkwood Boulevard from Windhaven Parkway to Spring Creek Parkway from Coserv Electric Company, who is the selected provider of electric service and the selected provider of such equipment; 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 checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	1,564,867	443,133	0	2,008,000
Encumbered/Expended Amount	-1,564,867	0	0	-1,564,867
This Item	0	-78,607	0	-78,607
BALANCE	0	364,526	0	364,526
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: Funds are included in the 2009-10 Street Improvement CIP. This item, in the amount of \$78,607, will leave a current year balance of \$364,526 for the Parkwood – Park to Spring Creek project.				
STRATEGIC PLAN GOAL: Purchase of street light standards and equipment relates to the City's goals of Safe, Efficient Travel.				
SUMMARY OF ITEM				
CoServ Electric has submitted a price of \$78,606.75 for the installation of street lighting in Parkwood Boulevard from Windhaven Parkway to Spring Creek Parkway. Oncor has submitted a price of \$62,835.00 for the street lighting, and the City would have to pay for the extension of electrical service crossing Spring Creek Parkway at an estimated cost of \$60,000.00, totaling \$122,835.00. Therefore, staff is recommending approval of an agreement with CoServ to install street lighting in Parkwood Boulevard at a cost of \$78,606.75.				
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, AUTHORIZING THE PURCHASE OF STREET LIGHT STANDARDS AND ASSOCIATED EQUIPMENT FOR PARKWOOD BOULEVARD FROM WINDHAVEN PARKWAY TO SPRING CREEK PARKWAY FROM COSERV ELECTRIC COMPANY, WHO IS THE SELECTED PROVIDER OF ELECTRIC SERVICE AND THE SELECTED PROVIDER OF SUCH EQUIPMENT; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano ("City") needs to purchase twenty-five (25) thirty foot (30') street light standards and associated equipment for Parkwood Boulevard from Windhaven Parkway to Spring Creek Parkway ("Project"); and

WHEREAS, under Section 252.022 of the Local Government Code, expenditures for gas, water and other utility services are exempt from the bid requirement; and

WHEREAS, CoServ Electric ("CoServ") has presented the City of Plano with an agreement for street lighting services, that is less expensive than the other electrical provider, in Parkwood Boulevard from Windhaven Parkway to Spring Creek Parkway, a substantial copy of which is attached as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, the City relies on CoServ to install and maintain the thirty foot (30') street light standards and associated equipment for the City of Plano; and

WHEREAS, CoServ will not install or maintain street light standards that are not ordered from them; and

WHEREAS, the City Council is of the opinion that the equipment needed for lighting this section of the Project is available most economically from CoServ; 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

1. City agrees to pay Company \$ 78,606.75 upon completion of the work required to install the street light poles and luminaries listed in this agreement and as shown in the attached print. The City will provide all civil work.

2. Company agrees to install, own, operate and maintain said street lights in accordance with its street lighting agreement with customer. However, if City or Developer fails to pay, on demand, the amount indicated above, this supplemental agreement is automatically terminated.

3. All parties agree that Company will retain for its use and benefit the payment received hereunder in consideration of its obligation to install said street lights and that Company at all times, has title to, and complete ownership and control of, said street lights.

4. Company is not liable for loss or injury caused by delay or failure to install the electric facilities necessary to serve customer because of delay in receiving shipment of required material, orders or formal request of governmental agencies, acts of God or the public enemy, inevitable accidents, tire, explosions, strikes, riots, war, or any other causes reasonably beyond control of the Company. If Company is prevented from installing such electric facilities by any of the above causes, Company agrees to return to City or Developer, without interest, the entire amount of City or Developer's payment, thereby terminating this supplement and Company's obligation to provide the electric facilities described herein.

5. This agreement is entered into subject to the terms of the Agreement for Street Lighting Service between City and Company dated _____.

ACCEPTED BY COMPANY CoServ Electric	ACCEPTED BY CITY	ACCEPTED BY DEVELOPER (if applicable)
SIGNATURE	SIGNATURE	SIGNATURE
TITLE Project Engineer Supervisor	TITLE	TITLE
DATE SIGNED	DATE SIGNED	DATE SIGNED

PREPARED BY Jody Padron	COMPLETED BY	APPROVED FOR BILLING BY
DATE September 30, 2009	DATE	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>[Signature]</i>	10-2-09
Council Meeting Date: 10/12/09		Budget	<i>[Signature]</i>	10/2/09
Department:	Public Works & Engineering	Legal	<i>[Signature]</i>	10/5/09
Department Head	Alan Upchurch	Assistant City Manager		
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	<i>[Signature]</i>	10-5-09
		City Manager	<i>[Signature]</i>	10/5/09
Agenda Coordinator (include phone #): I. Pegues - 7152 <i>[Signature]</i>				
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 Ordinance No. 96-9-29, codified in subsection entitled "State Highway 121" under Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the City of Plano Code of Ordinances, Motor Vehicles and Traffic, to lower the prima facie maximum speed limit from 60 miles per hour (60 MPH) to 55 miles per hour (55 MPH) on the section of State Highway 121 from the west city limits to the east city limits, providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a penalty clause, a severability clause, a savings clause, a publication clause and 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: Any revenue received via fines as a result of this Ordinance is undeterminable at this time.				
SUMMARY OF ITEM				
The Texas Department of Transportation (TxDOT) and the Transportation Engineering Division have agreed that lowering the speed limit for State Highway 121 from 60 MPH to 55 MPH from the west city limits to the east city limits would provide a transition between speed zones. As a result of the studies conducted by TxDOT and based on this agreement, the Transportation Engineering Division recommends establishing a 55 MPH speed limit on State Highway 121.				
List of Supporting Documents: Map		Other Departments, Boards, Commissions or Agencies		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING ORDINANCE NO. 96-9-29, CODIFIED IN SUBSECTION ENTITLED "STATE HIGHWAY 121" UNDER SECTION 12-74(B) OF CHAPTER 12, MOTOR VEHICLES AND TRAFFIC, OF THE CITY OF PLANO CODE OF ORDINANCES, MOTOR VEHICLES AND TRAFFIC, TO LOWER THE PRIMA FACIE MAXIMUM SPEED LIMIT FROM 60 MILES PER HOUR (60 MPH) TO 55 MILES PER HOUR (55 MPH) ON THE SECTION OF STATE HIGHWAY 121 FROM THE WEST CITY LIMITS TO THE EAST CITY LIMITS, PROVIDING A FINE FOR CRIMINAL PENALTIES NOT TO EXCEED \$200.00 FOR EACH OFFENSE; AND PROVIDING A REPEALER CLAUSE, A PENALTY CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, A PUBLICATION CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, on September 23, 1996 by Ordinance No. 96-9-29, the City Council of the City of Plano established a prima facie maximum speed limit of 60 miles per hour (60 MPH) on State Highway 121 within the corporate city limits of the City of Plano, and such Ordinance was codified as subsection "State Highway 121" of Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano; and

WHEREAS, Section 545.356 of the Texas Transportation Code, as amended, grants to cities operating under a Home Rule Charter the authority to control the operation of motor vehicles using its streets and to prescribe reasonable and safe prima facie maximum speed limits for the same; and

WHEREAS, the Texas Department of Transportation, based upon a traffic engineering study conducted on February 10, 2009 and a determination that a decrease is warranted, requested that the City of Plano adopt an ordinance to decrease the maximum prima facie speed limit on State Highway 121 from the west city limits to the east city limits; and

WHEREAS, the Transportation Engineering Division has reached an agreement with the Texas Department of Transportation to lower the speed limit from 60 miles per hour (60 MPH) to 55 miles per hour (55 MPH) on State Highway 121 from the west city limits to the east city limits; and

WHEREAS, the City Council hereby finds and determines that it is necessary, based on the speed studies conducted by the Texas Department of Transportation (TxDOT), to change the maximum prima facie speed limits for State Highway 121 from the west city limits to the east city limits in order to provide a transition between speed zones.

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

Section I. The following prima facie maximum speed limits hereafter indicated for motor vehicles are hereby determined and declared to be reasonable and safe, and such maximum speed limits are hereby fixed at the rate of speed indicated for motor vehicles traveling upon the named streets or highways or parts thereof. No motor vehicle shall be operated along or upon said portions of said named streets or highways within the incorporated limits of the City of Plano in excess of the speeds now set forth.

Section II. Ordinance 96-9-29, duly passed and approved by the City Council of the City of Plano, Texas on September 23, 1996, and codified as subsection entitled "State Highway 121" of Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, is hereby amended to read as follows:

"State Highway 121:

- (1) Fifty-five (55) miles per hour along and upon State Highway 121 from the west city limits to the east city limits."

Section III. The Traffic Engineer of the City of Plano is hereby authorized to cause to be erected appropriate signs indicating such speed zones.

Section IV. All provisions of the Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, except that an ordinance of the City establishing a school zone and speed limit therefore within the zones changed herein, shall not be repealed but shall prevail over this Ordinance. 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 full effect.

Section V. It is the intention of the City Council that this ordinance, and every provision hereof, shall be considered severable, and the invalidity of any section, clause or provision or part or portion of any section, clause, or provision of this Ordinances shall not affect the validity of any other portion of this Ordinance.

Section VI. 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 VII. The repeal of any ordinance or part of any 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 immediately from and after its passage and publication as required by law.

DULY PASSED AND APPROVED this 12th day of October, 2009.

Phil Dyer, MAYOR

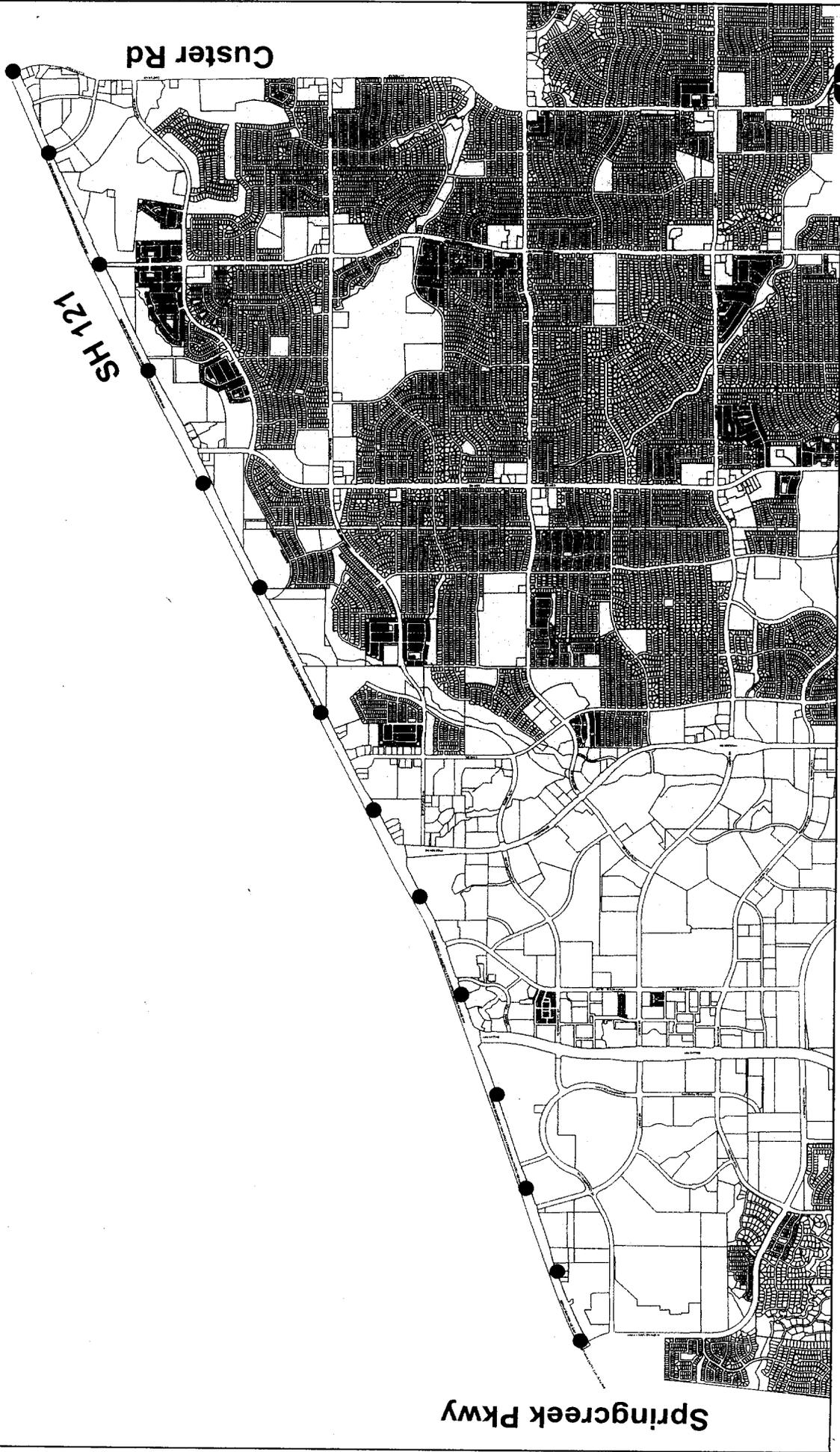
ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**CONSIDERATION OF A SPEED LIMIT
REDUCTION ON SH 121 SERVICE ROADS**



Springcreek Pkwy

1 inch = 3,885.981065 feet



Transportation Engineering Division



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: 10-12-09		Purchasing	<i>Deo</i> 10-2-09		
Department: Public Works – David Falls <i>[Signature]</i>		Budget	<i>IK</i> 10-2-09		
Department Head: Alan Upchurch		Legal	<i>DW</i> 10/5/09		
Dept Signature: <i>[Signature]</i>		Assistant City Manager			
		Deputy City Manager	<i>[Signature]</i> 10-5-09		
		City Manager	<i>[Signature]</i> 10/6/09		
Agenda Coordinator (include phone #): Margie Stephens (x4104)					
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, REPEALING ORDINANCE NO. 2003-5-20 CODIFIED AS DIVISION 1.5, CROSS CONNECTION CONTROL PROGRAM, OF ARTICLE II, WATER, OF CHAPTER 21, UTILITIES, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO, TEXAS; ADOPTING A NEW DIVISION 1.5 OF ARTICLE II, CHAPTER 21 OF THE CODE OF ORDINANCES OF THE CITY OF PLANO, TEXAS; TO REVISE DEFINITIONS, PROCESSES, REGULATIONS AND ENFORCEMENT PROVISIONS; PROVIDING A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, A PENALTY 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:	FY 2009-10 and Forward	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	288,425	0	288,425
Encumbered/Expended Amount		0	0	0	0
This Item		0	119,560	0	119,560
BALANCE		0	407,985	0	407,985
FUND(S): WATER & SEWER FUND (41-769)					
COMMENTS: Approval of this item adds a new fee for Re-testing Backflow Devices once the water is turned off for not having the annual backflow test performed, and also increases the annual Backflow Assembly Test Fee from \$25 to \$35. These combined fee changes produce an estimated annual revenue increase of \$119,650 for the Backflow Operations program.					
STRATEGIC PLAN GOAL: The increase of Backflow Testing Fees relates to the City's Goal of "Service Excellence".					
SUMMARY OF ITEM					
<p>The proposed revisions are shown on the Council's review copy as italicized and underlined. The City's Cross Connection Control Program is in its eleventh year. The Public Works Department is proposing revisions to some definitions, rewording and clarification within sections to better comply with State Law. Several of the revisions are being made to the prior ordinance at the recommendation of the City's Legal Department. Additionally, staff recommends increasing the yearly Testing Fee, and adding a new fee associated with re-testing of the backflow assembly.</p> <p>The increase involves the Testing Fee for each backflow assembly tested yearly. The Testing Fee for each backflow assembly tested is \$25 per year, which will increase to \$35 per assembly.</p> <p>A new fee being added is a Re-testing Fee. The Re-testing fee will be \$25. Re-tests for FY 2008-09 is projected to be 260. These re-tests are due to errors that a backflow tester has made. Re-tests must be witnessed by City Inspectors to ensure the device is actually safe for use.</p>					



**CITY OF PLANO
COUNCIL AGENDA ITEM**

SUMMARY OF ITEM (Cont'd)

All of the time spent to witness a re-test takes time away from performing other inspections to ensure that the water system is protected from possible contamination or pollution. By adding the Re-testing fee, it will help offset the City's costs associated with making sure these re-tests are being performed and performed properly.

In 2008-09, there were 11,306 assemblies tested at \$25 each for a total of \$282,650. The number of active registered testers average 150 at \$100 each to register for a total of \$15,000. In FY 09-10 Backflow Operations council budget is \$288,425. The projected revenue increase for FY 09-10 is \$119,560.

By increasing the Testing Fee to \$35 and adding the new Re-test Fee of \$25, the total estimated revenue in FY 2009-2010 for Backflow Operations will be approximately \$407,985. This is an estimated increase in revenue of \$119,560 over FY 2008-09.

List of Supporting Documents:
Backflow Ordinance

Other Departments, Boards, Commissions or Agencies

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING ORDINANCE NO. 2003-5-20 CODIFIED AS DIVISION 1.5, CROSS CONNECTION CONTROL PROGRAM, OF ARTICLE II, WATER, OF CHAPTER 21, UTILITIES, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO, TEXAS; ADOPTING A NEW DIVISION 1.5 OF ARTICLE II, CHAPTER 21 OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; TO REVISE DEFINITIONS, PROCESSES, REGULATIONS AND ENFORCEMENT PROVISIONS; PROVIDING A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, A PENALTY CLAUSE, A PUBLICATION CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 341 of the Texas Health & Safety Code, the Texas Commission On Environmental Quality (TCEQ) has developed rules and regulations which govern drinking water quality and reporting requirements for public water systems; and

WHEREAS, TCEQ's rules and regulations require the protection of the public water system from contaminants caused by backflow of contaminants through water service connections; and

WHEREAS, the City Council finds that the most effective way of protecting the public water system from contaminants caused by backflow is to establish a cross connection control program of uniform regulations governing the installation, testing, maintenance, and inspection of backflow prevention assemblies and registration of backflow prevention assembly testers that will apply to all properties; and

WHEREAS, the City Council hereby finds and determines that such cross connection control and backflow prevention regulations are necessary and will protect the health, safety, and welfare of the citizens of the City of Plano.

WHEREAS, *on May 27, 2003, the City Council of the City of Plano enacted Ordinance No. 2003-5-20 revising certain definitions and processes contained in Division 1.5, Article II, Chapter 21 of the Code of Ordinances to allow the City to implement its cross connection control program more efficiently and effectively; and*

WHEREAS, *certain definitions and processes which were set out in Ordinance No. 2003-5-20 need to be revised to conform with changes in state law so that the city may operate its cross connection control program more efficiently and effectively; and*

WHEREAS, *certain quality control measures which were set out in Ordinance No. 2003-5-20 need to be revised regarding licensed/registered backflow assembly*

provisions for quality assurance of the backflow test(s) that are performed in order to protect the health, safety and welfare of the citizens of the City of Plano; and

WHEREAS, the City Council hereby finds that Ordinance No. 2003-5-20 should be repealed and that Article II of Chapter 21 of the Code of Ordinances should be amended by adopting a new Division 1.5 Cross Connection Control Program with appendices.

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

Section I. Ordinance No. 2003-5-20, duly passed and approved by the City Council of the City of Plano on May 27, 2003, codified as Division 1.5, Article II, Chapter 21, of the Code of Ordinances of the City of Plano, Texas, is hereby repealed in its entirety.

Section II. Article II Water of Chapter 21 Utilities of the Code of Ordinances of the City of Plano is hereby amended by the addition of a new Division 1.5 to be entitled Cross Connection Control Program with appendices and to be read in its entirety as follows:

"DIVISION 1.5. CROSS CONNECTION CONTROL PROGRAM

Sec. 21-22. Purpose; scope.

There is hereby established a Cross Connection Control Program the purpose of which is to promote the public health, safety, and welfare by regulations designed to:

- (a) Protect the public potable water supply of the City of Plano from the possibility of contamination or pollution by isolating within a customer's internal distribution systems or a customer's private water systems contaminants or pollutants that could backflow into the public water system;
- (b) Promote the elimination or control of existing cross connections, whether actual or potential, between a customer's in-plant potable water systems and nonpotable water system(s), plumbing fixtures, and industrial piping system(s);
- (c) Provide for the maintenance of a continuing program of cross connection control which will systematically and effectively prevent the contamination or pollution of the City's potable water system; and

- (d) Comply with Chapter 290, Water Hygiene, of the Texas Commission On Environmental Quality Rules and Regulations for Public Water Systems.

Sec. 21-23. Definitions.

For the purpose of this Division, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Other technical terms used shall have the meanings or definitions listed in the 1993 Edition of the *Manual of Cross Connection Control* published by the Foundation for Cross Connection Control and Hydraulic Research, University of Southern California, a copy of which is on file in the office of the City Secretary, or in the *Third* Edition of the Recommended Practice for Backflow Prevention and Cross-Connection Control Manual M14 published by the American Water Works Association.

Air gap separation (AG) means a physical separation between the free flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel.

Approved water supply source means the City of Plano water system.

Atmospheric Vacuum Breaker (AVB) means an assembly containing a float check, a check seat, and an air inlet port.

Auxiliary water supply means any water supply other than the City of Plano's approved public water supply, including water from another public water supply or from a natural source including, but not limited to, wells, cisterns, springs, rivers, streams, used waters, or industrial fluids.

Backflow means the reversal of flow of water or mixtures of water and other liquids, gases or other substances into the distribution pipes of a potable water supply from any sources other than an approved water supply source.

Backflow prevention assembly means an assembly which, when properly installed between the City water supply system and the terminus or point of ultimate use will prevent backflow. Examples of such assemblies include, but are not limited to, reduced pressure backflow assemblies, double check valve assemblies, pressure vacuum breakers, and air gap separation.

Backflow prevention assembly tester (Plano BPAT) means an individual licensed in accordance with Texas Commission on Environmental Quality rules and registered with the City of Plano Utility Operations Department for the purpose of testing backflow prevention assemblies.

Back pressure means any elevation of pressure in the downstream piping system (by pump, elevation of piping, or steam and/or air pressure) above the supply pressure at the point of consideration which would cause, or tend to cause, a reversal of the normal direction of flow.

Back siphonage means a form of backflow caused by a reduction in system pressure resulting in the existence of a negative or sub-atmospheric pressure at a site in the water system.

Building official means the Building Official of the City of Plano or his designee.

Chemical injection system means a system which automatically injects fertilizer, pesticide, weed killer, etc., into an irrigation system, while the irrigation system is operating.

City means the City of Plano, Texas and its duly authorized representatives.

Closed System means a piping system that has no space for water to expand.

Commission means the Texas Commission on Environmental Quality.

Contamination means an impairment of the quality of the public potable water supply or a private potable water supply by the introduction or admission of any foreign substance that degrades the quality and which creates an actual hazard to the public health through poisoning or through the spread of disease by sewage, industrial fluids, or waste.

Cross connection means a physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree than an approved or auxiliary water supply source in the treatment process.

Customer means a person, company, or entity contracting with the City of Plano to receive potable water service.

Customer's potable water system means that portion of the privately owned potable water system lying between the service connection and the point of use by customer. This system includes, but is not limited to, all pipes, conduits, tanks, receptacles, fixtures, equipment and appurtenances used to produce, convey, store, or utilize the potable water.

Degree of hazard means either a non-health or health hazard and is determined by the evaluation of the conditions within a system by the Superintendent, the City of Plano Health Department, or the Building Official.

Double check valve assembly (DC) means an assembly composed of two independently acting, approved check valves, including tightly closing resilient-seated shutoff valves attached at each end of the assembly and fitted with properly located resilient-seated test cocks.

Health hazard means a cross connection, potential cross connection, or other situation involving any substance that could cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

Industrial fluids means any fluid or solution which may be chemically, biologically, or otherwise contaminated or polluted in a form or concentration which would constitute a health, system, pollutional, or plumbing hazard if introduced into an approved water supply. Examples of industrial fluids include, but are not limited to: polluted or contaminated used water; all types of process waters and used waters originating from the public potable water system which may deteriorate in sanitary quality; chemicals in fluid form; plating acids and alkalis; circulated cooling waters connected to an open cooling tower and/or cooling waters that are chemically or biologically treated or stabilized with toxic substances; contaminated natural waters such as from wells, springs, streams, rivers, bays, harbors, seas, irrigation canals or systems, etc.; and oils, gases, glycerin, paraffins, caustic and acid solutions and other liquid and gaseous fluids used industrially, for other processes, or for fire fighting purposes.

Material Reporting Deficiencies shall mean inaccurate or incomplete reporting of information required in the Backflow Prevention Assembly Test Report form as noted in "Appendix A". Required information reported in section "B" is noted with an "x". Sections "C" and "D" are required in their entirety.

Non-health hazard means a cross connection or potential cross connection involving any substance that generally would not be a health hazard but would constitute a nuisance, or be aesthetically objectionable, if introduced into the potable water supply.

Nonpotable water means a water supply, which has not been approved, for human consumption by the Commission.

Notice, notification means delivery of the information via hand-delivery to the person named in the notice or by certified mail to the last known address of the person named in the notice.

Person means any individual or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not for profit.

Plumbing hazard means an internal or plumbing type cross connection in a customer's potable water system that may be either a polluttional or a contamination type hazard, including, but not limited to, cross connections to toilets, sinks, lavatories, wash trays, and lawn sprinkling systems.

Pollution means an impairment of the quality of the public potable water supply to a degree, which does not create a hazard to the public health but does adversely and unreasonably affect the aesthetic qualities of such water for domestic use.

Potable water means any public water supply, which has been investigated and approved by the Commission as satisfactory for drinking, culinary and domestic purposes.

Premises or Property means any property real, improved or personal that is connected to the City of Plano water system.

Pressure Vacuum Breaker (PVB) means an assembly which contains an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve, with properly located resilient-seated test cocks and tightly closing resilient-seated shutoff valves attached at each end of the assembly.

Process waters means water used to cool any operation or manufacturing process.

Public potable water supply means any publicly or privately owned water system operated as a public utility under a health permit to supply water for domestic purposes. Such a system includes all sources, facilities and appurtenances between the source and the point of delivery such as valves, pumps, pipes, conduits, tanks, receptacles, fixtures, equipment and appurtenances used to produce, convey, treat, or store potable water for public consumption or use.

Pressure loss means any reduction in the water pressure supplied by the City.

Reduced pressure backflow prevention assembly (RP) means an assembly containing two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and at the same time below the first check valve.

The unit includes properly located resilient-seated test cocks and two tightly-closing resilient-seated shutoff valves at each end of the assembly.

Service connection means the terminal end of a service connection from the public potable water system (i.e., where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer's water system). If a meter is installed at the end of the service connection, then the service connection shall mean the downstream end of the meter.

Spill-Resistant Pressure Vacuum Breaker (SVB) means an assembly which contains an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve, with properly located resilient seated test cock, a properly located bleed/vent valve and tightly closing resilient seated shutoff valves attached at each end of the assembly.

Superintendent means the Utility Operations Superintendent for the City of Plano or his designee.

Supply pressure means the existing pressure in the City of Plano water system.

System hazard means an actual or potential threat of severe danger to the physical properties of the public or the customer's potable water system or of a pollution or contamination, which has or would have a protracted effect on the quality of the potable water in the system.

Thermal Expansion means heated water that does not have any space to expand.

Used water means any water supplied by a water purveyor from a public water system to a customer's water system after passing through the service connection and which is no longer controlled by the water purveyor.

Utility means the City of Plano Utility Operations Department.

Utility water service area means all locations within the City of Plano water system as defined by the City's State Certificate of Convenience.

Valid Backflow Prevention Assembly Test shall mean test results reported by a Plano BPAT who performed the test and reported within ten (10) calendar days of the test that meet the performance criteria located within the 1993 Edition of the Manual of Cross Connection Control published by the University of Southern California Foundation for Cross Connection Control and Hydraulic Research for the type of backflow prevention assembly tested, unless otherwise noted within this Division.

Water purveyor means the operator of a potable water system supplying at least 15 service connections or servicing at least 25 individuals at least 60 days out of the year.

Sec. 21-24. Applicability.

This Division applies to all properties that are connected to the City's potable water system.

Sec. 21-25. Registration of backflow prevention assembly tester.

(a) Registration. Prior to performing any testing of backflow prevention assemblies within the City of Plano, a licensed backflow prevention assembly tester must be registered with the City of Plano Utility Operations Department.

- (1) Eligibility for registration shall be conditioned upon applicant providing proof that they are currently licensed as a backflow prevention assembly tester by the Texas Commission on Environmental Quality.
- (2) Each applicant licensed as a backflow prevention assembly tester with the State shall furnish evidence to the Superintendent to show that he/she has available the necessary tools and equipment to properly test and certify such assemblies. Serial numbers of all test gauges shall be registered with the Superintendent. Registered serial numbers of test gauges shall be listed on tests and maintenance reports prior to being submitted to the Superintendent. Each recorded test kit shall be tested annually for accuracy and calibrated to maintain a \pm two percent (\pm 2%) accuracy factor. Failure to register the serial number or calibrate gauges annually shall be grounds for temporary suspension of a tester's registration until compliance with this requirement is attained.
- (3) Registration shall remain in force provided that the tester maintains his/her eligibility for registration by complying with all requirements of this Division and applicable State law. Evidence of renewal of the tester's TCEQ backflow prevention assembly testing license shall be furnished to the Superintendent upon request. A tester shall advise the Superintendent if the tester's State license is ever suspended or terminated within five (5) business days of notice to the tester of such suspension or termination.

(a) **Registration Fee.** An annual registration fee in the amount of \$100.00 shall be paid at the time an application for annual registration is submitted to the Superintendent. This annual registration fee includes the City's testing of the tester's equipment and tools.

(c) **Responsibilities.** *Plano BPAT's* shall be responsible for performing competent tests, issuing accurate reports of backflow prevention assemblies tested, filing timely backflow prevention assembly test reports and test fees to the City. Plano BPAT's shall not change the design or operational characteristics of a backflow prevention assembly during repair or maintenance without prior written approval of the Superintendent.

Sec. 21-26. Offenses.

(a) A person is responsible for a violation of this Division if the person is the owner, occupant, manager, other person in control of the property or premises or the person responsible for the maintenance of the property determined to be the source of a violation of this Division or the tester who performed the test or procedure.

(b) A person commits an offense if a person installs, allows to remain installed, or maintains a potable water supply, piping, or part thereof in such a manner that allows used, unclean, polluted, or contaminated water, mixtures, gasses, or other substances to enter any portion of the public potable water supply by reason of backsiphonage, back pressure or any other cause.

(c) A person commits an offense if a person maintains any water-operated equipment or mechanism or uses any water-treating chemical or substance if it is determined that such equipment, mechanism, chemical or substance may cause pollution or contamination of the public potable water supply. Provided, however, that such equipment or mechanism may be permitted when equipped with a backflow prevention assembly approved by the City.

(d) A person commits an offense if a person connects, allows to be connected, or allows to remain connected to the public potable water system any mechanisms or systems designed to return used water to the public potable water system.

(e) A person commits an offense if a person connects, allows to be connected, or allows to remain connected to the public potable water system an auxiliary water system without the prior written approval of the Superintendent.

(f) A person commits an offense if a person incorrectly installs a backflow prevention assembly or allows an incorrectly installed backflow prevention assembly to remain installed.

(g) A person commits an offense if a person restores the water supply to a backflow prevention assembly that failed a test under this Division.

(h) A person commits an offense if a person falsifies any information in a backflow prevention assembly testing report submitted to the City.

(i) A person commits an offense if a person conducts a backflow assembly test without being registered with the City.

(j) A person commits an offense if a person conducts a backflow assembly test while the person's registration is suspended or revoked

(k) A person commits an offense if the person submits an incomplete backflow prevention assembly testing report to the City.

(l) A person commits an offense if the person discontinues use of, disconnects or removes a backflow prevention assembly without the written permission of the Superintendent.

Sec. 21-27. Culpability and punishment.

(a) The requisite culpable mental state for offenses listed in this Division is criminal negligence.

(b) Punishment for an offense committed under Sec. 21-26 (k) of this Division shall be a fine not to exceed \$500.00. For enforcement under 21-26(k) the requirement of a culpable mental state is expressly waived.

(c) Punishment for any other violation of this Division shall be a fine not to exceed \$2000.00.

(d) Each and every day or portion thereof that such violation shall continue shall be deemed to constitute a separate offense.

Sec. 21-28. Backflow prevention assemblies required.

(a) Each service connection from the public water system to premises having an auxiliary water supply shall be protected against backflow of water from the premises into the public water system with a Reduced Pressure Backflow Prevention Assembly (RP).

(b) For all newly constructed premises on which a substance is handled so that it may enter the public water system, each service connection from the public water system to such premises shall be protected against the backflow of water from the

premises into the public water system. This requirement shall apply to each premise on which persons handle process water and water originating from the public water system which has been subjected to deterioration in sanitary quality.

(c) For all existing premises on which a substance is handled so that it may enter the public water system, each service connection from the public water system to such premises may be required to be protected against the backflow of water from the premises into the public water system upon the determination of the Superintendent. This requirement shall apply to each premise on which persons handle process waters and waters originating from the public water system which have been subjected to deterioration in sanitary quality.

(d) Backflow prevention assemblies shall be installed on a service connection to a premises: (1) having internal cross connections that cannot be permanently corrected and controlled in compliance with this Division, (2) upon the Superintendent, Building Official, or their respective designee's determination that an intricate plumbing and piping arrangement exists which makes it impractical to ascertain whether cross connections exist therein, or (3) where a portion of the Premises cannot be readily accessed for inspection purposes making it impractical or impossible to ascertain whether cross connections exist. Determinations made by the Superintendent, Building Official, or their respective designee pursuant to this Section may be appealed in accordance with Section 21-38 of this Division. The customer connected to the public potable water system shall make all necessary arrangements, at its sole expense, to remove without delay security barriers or other obstacles to access by the Superintendent.

(e) If an interstreet main flow may result from two or more services supplying water to the same building, structure, or premises, then a standard check valve shall be installed adjacent to the respective meters and on the owner's property. If a check valve is not adequate to protect the public water system's mains from pollution or contamination, the installation of an approved backflow prevention assembly may be required by the Superintendent. Approval will be given if a backflow prevention assembly is functioning. A determination by the Superintendent, Building Official, or their respective designee that a check valve is inadequate or that an approved backflow prevention assembly is required may be appealed in accordance with Section 21-38 of this Division.

(f) If a health hazard exists, a testable backflow prevention assembly or an air gap shall be required. The backflow prevention assemblies shall include a reduced pressure backflow prevention assembly (RP), pressure vacuum breaker (PVB) or a spill-resistant vacuum breaker (SVB). The PVB and SVB shall not be subjected to backpressure.

Sec. 21-29. Backflow prevention assembly installation requirements.

All new, replacement, or reconditioned backflow prevention assemblies shall be installed in accordance with the International Plumbing Code, as adopted and amended by the City of Plano and with the following standards, unless otherwise directed or approved by the Superintendent.

(a) Plumbing permit required. Prior to installation, a plumbing permit must be obtained from the Building Inspection Department of the City.

(b) Installation. The assembly shall not be located in the same vault or meter box with the City's water meter. Backflow assemblies shall not be installed within three (3) feet of a water meter box or vault. All backflow assembly installation shall be done in accordance to the approval set forth in the list of Approved Backflow Prevention Assemblies issued by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research, a copy of which is on file in the City Public Works Department. **If installed in a structure all backflow assemblies must be easily accessible for testing, repair or replacement.**

(c) Location. The owner or occupant must prove to the City that no connections or tees are located between the meter and the backflow prevention assembly. The relief valve discharge on a reduced pressure backflow assembly (RP) shall not be solidly piped into a sump, sewer, drainage ditch, etc. Test cocks shall not be used as supply connections.

(d) Air gap separation (AG). All piping from the service connection to the receiving tank shall be above grade and be entirely visible. No water use shall be provided from any point between the service connection and the air gap separation. The water inlet piping shall terminate at a distance of at least two (2) pipe diameters of the supply inlet, but in no case less than one (1) inch, above the overflow rim of the receiving tank. An 'approved air gap separation' shall be at least twice the diameter of the supply pipe measured vertically above the overflow rim of the vessel and shall in no case be less than one (1) inch (2.54cm).

(e) Reduced pressure backflow assemblies (RP). Reduced pressure backflow assemblies shall be installed above ground level and shall be placed a minimum of twelve (12) inches above the finished grade to allow clearance for repair work. A freeze-proof enclosure with a concrete slab at finished grade is recommended. Where it is impractical to install the assembly outside, the installation may be made inside the building in an area not susceptible to flooding. Proper free flowing/gravity drainage must be provided for the relief valve. If the drain line is to drain outside, then the termination point must be a minimum of twelve (12) inches above finished grade.

(f) Double check valve assemblies (DC). Double check valve assemblies can be installed above finished grade in a freeze-proof enclosure or below grade in a vault. If assembly is installed below grade the test cocks must be plugged with corrosion resistant watertight plugs. Assembly shall be a minimum of twelve (12) inches above the floor.

(g) Bypass. If a bypass is installed around any approved backflow prevention assembly, the bypass must be protected from backflow/back pressure with the same type of backflow prevention assembly that it has bypassed. The backflow prevention assembly on the bypass must be installed according to the same requirements as the service line assembly.

(h) Thermal Expansion. The installation of a backflow assembly may create a closed system which may result in thermal expansion.

(i) Lost Pressure. The City is not responsible for any pressure loss created by the installation of a backflow assembly.

Sec. 21-30. Inspection, Testing and Registration of backflow prevention assemblies.

(a) Testing of backflow prevention assemblies. The owner, occupant, manager, other person in control of any premises or the person responsible for the maintenance of the property on which, or on account of which, backflow prevention assemblies are installed, shall have the assemblies tested by a Plano BPAT. Backflow prevention assemblies shall be tested annually and shall also be tested immediately after installation, relocation, repair or work performed upstream of the assembly. However, the City may require more frequent testing upon ten (10) days prior written notice to the owner, occupant, manager, other person in control of the premises or the person responsible for the maintenance of the property. In order to properly register a backflow prevention assembly with the City of Plano, a City of Plano Backflow Prevention Assembly Test Report form shall be completed by a Plano BPAT on each backflow prevention assembly tested. Each completed original form, together with the records of such tests, repairs, or replacement, shall be received by the Utility Operations Department of the City of Plano within ten (10) calendar days after the testing, repair, replacement or work performed upstream of the assembly.

Backflow Prevention Assembly Test Report forms will not be accepted by mail.

Test results for a reduced pressure backflow prevention assembly shall provide a reading for both checks and have at least a three (3) PSI differential between the first check and the relief valve opening point. Only backflow prevention assembly field test procedures approved by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research will be accepted. **IF AN ASSEMBLY FAILS, THE WATER SUPPLY SHALL NOT BE RESTORED UNTIL THE**

ASSEMBLY IS REPAIRED OR REPLACED AND RETESTED. *Restoring the water to a failed assembly may result in immediate suspension or revocation of the Plano BPAT's testing privileges.*

- (b) Registration and maintenance of backflow prevention assemblies.
- (1) Each backflow prevention assembly located on property subject to this Division shall be registered with the Utility Operations Department of the City of Plano.
 - (2) The owner, occupant, manager, other person in control of the property or the person responsible for the maintenance of the property is responsible for general maintenance and upkeep of all approved backflow prevention assemblies located thereon.
 - (3) Backflow prevention assemblies shall be tested, repaired, and/or replaced at the expense of the owner, occupant, manager, other person in control of the property or the person responsible for the maintenance of the property whenever such assemblies are determined to be defective by the Superintendent, Building Official or their respective designee. An assembly is defective if it is not a properly installed backflow prevention assembly as required by this Division.
 - (4) Determinations made by the Superintendent, Building Official, or their respective designee, pursuant to this Subsection may be appealed in accordance with the provisions of Section 21-38 of this Division.

(c) New Plumbing or Plumbing Modifications. The Building Official, Superintendent or their designee, shall inspect all new backflow prevention assembly installations, which are subject to this Division and are required by application for a plumbing permit. A Service Inspection Certification form shall be completed by the building official on each new plumbing installation or on plumbing modifications. Each completed form shall be received by the Utility Operations Department within ten (10) days after the inspection.

(d) Existing properties. The Superintendent or his designee shall inspect all existing properties connected to the potable water system for the purpose of determining whether a cross-connection exists and what type of backflow prevention assembly should be installed pursuant to this Division.

(e) Existing backflow prevention assemblies. Customers with existing backflow prevention assemblies installed in their system, which have not been registered with the Superintendent, as of the effective date of this Division shall come into compliance with the provisions of this Division within sixty (60) days of notification unless the Superintendent finds a health hazard exists in which case the Superintendent shall determine the appropriate time of compliance.

Customers with existing assemblies, which comply with the provisions of this Division, shall provide written proof that each such assembly has been properly maintained and serviced by a Plano BPAT. If maintenance and service records are not available, the customer shall have the assembly tested in accordance with the requirements of this Division.

If the assembly is not capable of being tested, *identified* or cannot be repaired, it must be replaced with an approved assembly in accordance with the requirements of this Division. **Atmospheric Vacuum Breakers Are Exempt From This Section.**

(f) Testing Fee. A \$35.00 fee shall be submitted to the Utility Operations Department for each backflow prevention assembly tested and shall be paid at the time that the Plano BPAT files the Backflow Prevention Assembly Test Report form with the City.

(g) **Retesting Fee.** A \$25.00 fee shall be submitted to the Utility Operations Department for each backflow prevention assembly that is required to be retested due to a deficiency or a violation of this Division including, an invalid test report, or one of the following:

- Falsification of Backflow Prevention Assembly Test Report form
- Incorrect serial number
- Blank or incomplete information fields on Backflow Prevention Assembly Test Report forms,
- Plano BPAT's test gauges are not registered with the City
- Duplicate serial number on multiple Backflow Prevention Assembly Test Report forms
- Performing a Backflow Prevention Assembly Test using unapproved testing procedures
- Inappropriate registration with the City

The retest(s) shall be performed in the presence of the Superintendent or his designee. The fee shall be paid prior to the retest(s) being performed and the retest(s)

shall be completed within five (5) business days from first notification. Any retest(s) required shall be performed by the Plano BPAT who is responsible for the deficiency or violation unless the Plano BPAT has resigned or lost their testing privileges. All retest(s) should be performed during normal City business hours.

Refusal to perform retest(s) or pay appropriate fee may result in revocation of Plano BPAT's testing privileges.

Sec. 21-31. Type of backflow prevention assembly required.

(a) The type of backflow prevention assembly required shall be commensurate with the type of hazard that exists on the customer's premises. The minimum types of backflow prevention assemblies required to protect the City's potable water supply are set forth in Table 1 below. However, the water user may choose a higher level of protection than required by the City. All backflow prevention assemblies shall be from an approved list from the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research.

TABLE 1

<u>Type of Hazard</u>	<u>Minimum Type of Backflow Prevention Assembly</u>
Fire protection systems utilizing chemicals or additives (New Installations or remodels of existing system)	RP – UL or FM & USC Approved Assemblies Only
Commercial and Residential Fire Sprinklers systems without chemicals or additives (New installations or remodels of existing system)	DC – UL or FM & USC Approved Assemblies Only
Commercial and residential landscape irrigation systems utilizing chemical additives <u>or hose connections and/or quick couplers</u>	RP or AG Only
Stationary Construction Fire Hydrant Meters	RP or AG immediately adjacent to meter and one-way check valve on discharge lines on trucks
Temporary Construction Fire Hydrant Meters	RP or AG in fill line on the water hauling equipment and one-way check valve on discharge lines on trucks
Premises where any customer purchasing water for the purpose of resale or distribution	RP or AG at each service connection
Premises owned by any state, federal, or foreign government or agency	RP or AG at each service connection
Premises where there is a history of cross-connections being established or re-established	RP or AG
Animal Watering Sites	AG or RP or PVB or <u>SVB</u>. PVB or SVB not

Non-Health Hazard	approved where back pressure situations exist. DC, PVB, <u>SVB</u> or RP at point of connection to hazard or at service connection prior to first branch line off customer's service line. PVB or SVB not approved where back pressure situations exist.
Health Hazard	AG, PVB, <u>SVB</u> or RP at point of connection to hazard and/or at service connection prior to first branch line off customer's service line. PVB or <u>SVB</u> not approved where back pressure situations exist.
Carbonated Drink Machines	RP – Assembly and all down stream piping shall be non-corrosive when in contact with CO2 gas.

Situations which are not covered in Table 1 shall be evaluated on a case-by-case basis by the City, and the required backflow prevention assembly shall be determined by the Superintendent. Such determinations made by the Superintendent may be appealed in accordance with the provisions of Section 21-38 of this Division.

(b) Containment and/or secondary protection may be required on certain health hazard installations in accordance with the following Table 2, in addition to any other protection, identified herein, which is required to isolate equipment within a facility. The Superintendent or Building Official or their respective designee may require backflow prevention assembly to be installed on other facilities with a similar degree of hazard in accordance with the Plumbing Code of the City of Plano, as amended, or other applicable law. These backflow prevention assemblies shall be installed in the main service line on the building side of the meter or the principle branch serving a single tenant space. The location of the backflow prevention assembly shall be approved by the Superintendent, Building Official or their designee in accordance with the provisions contained in Section 21-29.

TABLE
2
HEALTH HAZARD INSTALLATIONS

	W	N	TYPE OF BACKFLOW PREVENTION ASSEMBLY REQUIRED
<i>Breweries</i>			<i>RP</i>
Car wash			RP
<i>Dairies</i>			<i>RP</i>

Multi-story building 3 floors or more _____	RP
Animal hospital _____	RP
Auxiliary Water Supply _____	RP
Building containing a Reclaimed Water System _____	RP
Chillers _____	RP
Commercial laundry _____	RP
Cooling Towers _____	RP
Dental office _____	RP
Doctor's office _____	RP
Food and Beverage processing plants _____	RP
Funeral home and mortuary _____	RP
Green house or nursery (with toxic chemicals) _____	RP
Hospitals (parallel system required) _____	RP
Laboratories (including medical, dental & research labs, and labs at educational facilities) _____	RP
Manufacturing plant _____	RP
Meat processing plant _____	RP
<i>Metal manufacturing, cleaning, processing and fabrication plants</i> _____	<i>RP</i>
<i>Micro chip fabrication facilities</i> _____	<i>RP</i>
Petroleum processing or storage facilities _____	RP
<i>Photo and film processing</i> _____	<i>RP</i>
Plants using radioactive materials _____	RP
Plating or chemical plants _____	RP
Premises where inspection is restricted or exempted _____	RP
Rendering plant _____	RP
Sewage lift stations _____	RP
Sewage treatment plants _____	RP
Steam plants _____	RP
Space Heating Boilers _____	RP

(c) Determinations made by the Superintendent, Building Official, or their respective designee pursuant to this Section may be appealed in accordance with the provisions of Section 21-38 of this Division.

Sec. 21-32. Removal of backflow prevention assembly.

(a) Removal. Prior written approval must be obtained from the Superintendent before a backflow prevention assembly may be removed or relocated.

(b) Discontinued. The use of a backflow prevention assembly may be discontinued, and the assembly removed from service, upon written approval from the Superintendent after presentation to the Superintendent of sufficient written evidence to verify that a hazard no longer exists and is not likely to be created in the future.

(c) Relocation. A backflow prevention assembly may be relocated following written approval from the Superintendent after presentation to the Superintendent of sufficient written evidence to verify that the relocation will continue to provide the required protection and satisfy installation requirements. An assembly may not be removed for relocation unless water use is discontinued, until the relocation is complete, or until the service connection is equipped with other backflow protection approved by the Superintendent and sufficient to prevent backflow during relocation. A retest will be required following the relocation of the assembly.

(d) Repair. A backflow prevention assembly may be removed for repair, provided that water use is discontinued until repair is completed and the assembly is returned to service. A retest will be required following the repair of the assembly.

(e) Replacement. An assembly may be removed and replaced provided that water use is discontinued until the replacement assembly is installed. All replacement assemblies must be approved by the Superintendent and must be commensurate with the degree of hazard involved. A retest will be required following the replacement of the assembly.

(f) Appeals. Determinations made by the Superintendent, Building Official, or their respective designee may be appealed in accordance with the provisions of Section 21-38 of this Division.

Sec. 21-33 Quality assurance program

(a) Quality assurance program. To assure the quality of the backflow prevention tests being performed, each month five (5) Plano BPAT's will be randomly selected to be observed by the Superintendent or his designee. The tester will be notified by certified mail to the address on file with the City. When a tester has been chosen for random observation he/she shall have thirty (30) calendar days from the

date of the letter to schedule and complete an approved observation with the City Utility Operations Department. Failure to do so shall result in the Plano BPAT's testing privileges being suspended. Testing privileges shall not be reinstated until the observation has been completed and approved.

Sec. 21-34 Suspension and revocation of registration.

(a) Upon notification or discovery of testing deficiencies, material reporting deficiencies, or violations of this Division by a Plano BPAT, the Superintendent may, in addition to any other actions taken by the City, take one or more of the following actions::

- (1) Require a re-test on any backflow prevention assembly reported as operational;
- (2) Suspend the tester's registration with the City for a period not to exceed six (6) months if the tester accrues five (5) or more testing deficiencies, material reporting deficiencies, or violations of this Division within a one (1) calendar year period; the five errors may be any combination of testing deficiencies, material reporting deficiencies, or violations of this Division;
- (3) Revoke the tester's registration with the City for filing a falsified test report;
- (4) Revoke the tester's registration with the City for refusing any reasonable request by the Superintendent or his designee to re-test a backflow prevention assembly;
- (5) Revoke the tester's registration with the City upon the establishment of grounds for a second suspension of the tester's registration which occurs within five (5) years from the conclusion of the first suspension.

(b) The Superintendent shall send written notice to the Plano BPAT at the last known address on file for the Plano BPAT informing the Plano BPAT of a suspension or revocation. The Plano BPAT shall have ten (10) calendar days from the date on the notice to request a hearing on the suspension or revocation. The hearing request shall be in writing and directed to the Public Works Operations Manager. Failure to request a hearing or receive the notice shall be deemed a waiver of a hearing and the suspension or revocation shall apply on the date specified in the notice.

(d) Appeals. Determinations made by the Public Works Operation Manager or his designee under this Section may be appealed in accordance with the provisions of Section 21-38 of this Division.

Sec. 21-35 Interpretation.

In cases where the requirements of this Division differ from the City of Plano Plumbing Code, the more stringent requirements shall apply.

Sec. 21-36. Enforcement.

(a) Authority. The Superintendent, Building Official, or their respective designee is hereby authorized to enforce the provisions of this Division by any one or more of the enforcement mechanisms set forth in this Section.

(b) Right of entry. Whenever necessary to enforce any of the provisions of this Division, or whenever the Superintendent, Building Official, or their respective designee has reasonable cause to believe that there exists in any building or upon any premises any cross-connection or violation of this Division, the Superintendent, Building Official, or their respective designee shall first seek consent of the owner, occupant, manager, person in control of the premises or *the person responsible for the maintenance of the property* to enter and inspect the premises. If consent is refused or if the building or premises is unoccupied, the Superintendent, the Building Official or their respective designee, may use all means legally available to gain entry, including but not limited to, obtaining a proper inspection warrant.

(c) Notice of violation. In the event that any person violates the provisions of this Division, the Superintendent, Building Official, or their respective designee shall issue a notice of violation directed to the owner, occupant, manager, other person in control of the property, *or the person responsible for maintaining the property* on which the violation has occurred.

- (1) Contents of notice of violation. The notice of violation shall include:
 - (a) Identity of the owner, occupant, manager, other person in control of the property or the person responsible for maintaining the property;
 - (b) A street address sufficient for the identification of the property upon which the alleged violation has occurred;

- (c) A description of the violation including reference to the Section or Subsection of this Division that has been violated;
 - (d) A statement of the action required to be taken to correct the alleged violation and the deadline for completion of the corrective action.
 - (e) Statement advising the person that failure to take the required action within the time specified may result in (1) a criminal penalty of up to \$2,000.00 per day for each violation upon conviction in Municipal Court, (2) a lawsuit to enforce this Division being filed against the owner in State court and possible recovery of a civil penalty of up to \$1,000.00 per day for each violation, and (3) discontinuation of water service.
- (2) Service of notice of violation. Service of the notice of violation, and any amendments thereto, shall be made upon the owner, occupant, manager, person in control of the property or the person responsible for maintenance of the property either personally or by mailing a copy of such notice of violation by certified mail, return receipt requested, to the owner, occupant, manager, person in control of the property or the person responsible for maintenance of the property at their address as it appears on the Utility's most current water service account listing. If the Utility does not have a current address for the owner, occupant, manager, person in control of the property or the person responsible for the maintenance of the property, and after a diligent search the Superintendent is unable to find a current address, then a copy of the notice of violation shall be mailed to the owner, occupant, manager, person in control of the property or the person responsible for the maintenance of the property at the address of the property involved in the proceedings. The neglect or refusal of the owner, occupant, manager, person in control or the person responsible for the maintenance of the property to accept such notice shall not affect the validity of any enforcement proceedings taken under this Section. Service by licensed mail in the manner provided in this Section shall be effective two (2) days after the date of mailing.
- (d) Issue a citation for the violation.

Sec. 21-37. Enforcement Remedies.

(a) Criminal Penalties. Any person violating any of the provisions or terms of this Division, shall be deemed guilty of a Class C misdemeanor.

(b) Civil Penalties. The City may file a civil lawsuit to enforce this Division and may seek civil penalties up to \$1,000.00 per day for each offense of this Division as authorized by law.

(c) Discontinuance of Water Service. Water service to the property or premises where the alleged violation exists may be discontinued or refused by the Utility if violations are not corrected within the time period indicated in the notice of violation provided by the Superintendent, Building Official, or their respective designee. Decisions by the Superintendent, Building Official or their respective designee to discontinue or refuse water service made under this Section may be appealed in accordance with the provisions of Section 21-37 of this Division.

(d) Damage to City. Through civil action, the City may collect all costs associated with damages to the City's potable water system, infrastructure, and any private property or improvements connected there to as a result of a violation of this Division.

(e) Remedies Cumulative. All remedies authorized under this Division are cumulative of all others unless otherwise expressly provided. Accordingly, the filing of a criminal action shall not preclude the pursuit of a civil or administrative action for violation of this Division nor shall the filing of a civil action preclude the pursuit of any other action or remedy, administrative, or criminal.

Sec. 21-38. Appeals.

(a) Appeal to Director of Public Works/Engineering Any person aggrieved by a decision of the Public Works Operation Manager, Superintendent, Building Official or their designee made pursuant to this Division, may appeal that decision by filing their appeal in writing to the Director of Public Works/Engineering of the City of Plano, P.O. Box 860358, Plano, Texas 75086-0358 within seven (7) calendar days of receiving notice of that decision. An appeal filed pursuant to this Section shall clearly state the decision being appealed and the factual or legal basis for the appeal and shall clearly state if a hearing is being requested on the matter. The Director shall hold a hearing within ten (10) business days of the receipt of the written notice of appeal, if a hearing is requested.

(b) Issuance of Decision by Director. A decision from the Director of Public Works/Engineering shall be issued within ten (10) calendar days of the conclusion of the hearing or of the City's receipt of the written appeal if no hearing is requested. Decisions of the Director of Public Works/Engineering shall be final.”

Section III. All provisions of the Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed upon the effective date of this Ordinance, 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 IV. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or illegality of any section, clause, provision or portion of this Ordinance shall not affect the validity or legality of any other portion of this Ordinance.

Section V. The repeal of any Ordinance or part of Ordinance 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 Ordinances at the time of passage of this Ordinance.

Section VI. This Ordinance shall become effective immediately upon its passage and publication as required by law.

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



City of Plano
 PWS ID# C430007
 ATTN: Backflow
 P O Box 860358
 Plano, TX 75086-0358

APPENDIX "A"

Backflow Prevention Assembly Test Report

3

Permit Number X		Assembly Address X			
Manufacturer X	Size X	Model Number X	Serial Number X		
Facility/Owner X		Phone Number	Containment X	Isolation X	
Address		City, State, Zip			
Contact			Contact Phone Number		
Address		City, State, Zip	New X	Existing X	Replacement Old Serial X
On Site Location X			Domestic X	Irrigation X	Fire X

The backflow prevention assembly detailed below has been tested and maintained as required by Texas Commission on Environmental Quality (TECQ) regulations and is certified to be operating within acceptable parameters.

Type of Assembly

- Reduced Pressure Principle
- Reduced Pressure Principle Detector
- Double Check Valve
- Pressure Vacuum Breaker
- Spill-Resistant Pressure Vacuum Breaker
- Double Check Detector

Is the assembly installed in accordance with manufacturer recommendations and/or local codes? _____

	Reduced Pressure Principle Assembly			Pressure Vacuum Breaker	
	Double Check Valve Assembly		Relief Valve	Air Inlet	Check Valve
	1 st Check	2 nd Check		Opened at ___ psid	Held at ___ psid
Initial Test	Held at ___ psid Closed Tight <input type="checkbox"/> Leaked <input type="checkbox"/>	Held at ___ psid Closed Tight <input type="checkbox"/> Leaked <input type="checkbox"/>	Opened at ___ psid <input type="checkbox"/> Did not Open <input type="checkbox"/>	Did not Open <input type="checkbox"/>	Leaked <input type="checkbox"/>
Repairs and Materials Used*					
Test After Repair	Held at ___ psid Closed Tight <input type="checkbox"/>	Held at ___ psid Closed Tight <input type="checkbox"/>	Opened at ___ psid	Opened at ___ psid	Held at ___ psid

*Use Only Manufacturer's Replacement Parts

Test Gauge Used: Make/Model _____ SN _____ Calibration Date _____

Tester Information	
Firm Name _____	
Firm Address _____	
City/State/Zip _____	
Firm Phone No. _____	

<i>The above is certified to be true at the time of testing.</i>	
_____ Certified Tester Signature	
_____ Certified Tester Printed Name	
Certified Tester No. _____	Test Date _____

Comments _____



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>JJ</i> 10-2-09	
Council Meeting Date:	10/12/09	Budget	<i>JJ</i> 10-2-09	
Department:	Planning	Legal	<i>PJ</i> 10-5-09	
Department Head	P. Jarrell	Assistant City Manager		
Dept Signature:	<i>P. Jarrell</i>	Deputy City Manager	<i>JJ</i> 10-5-09	
		City Manager	<i>JJ</i> 10/5/09	
Agenda Coordinator (include phone #): T. Stuckey -- 7156				
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				
Public Hearing and consideration of an Ordinance as requested in Zoning Case 2009-14 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-189-Retail/General Office on 114.0± acres located at the southeast corner of Preston Road and Park Boulevard, in the City of Plano, Collin County, Texas, to allow for an increase to the maximum lot coverage; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. Applicant: Regency Centers, L.P. and other PD Property Owners. TABLED 9/28/09.				
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				
This item must be removed from the table.				
This item was tabled at the applicants' request at the September 28, 2009 Council meeting. This zoning petition is a companion case to Zoning Case 2009-15, which has been appealed, and the applicants wish to have both cases considered at the same meeting.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Follow-up memo		Planning & Zoning Commission		
P&Z Staff Report				
Maps				

DATE: September 9, 2009
TO: Honorable Mayor & City Council
FROM: James Duggan, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of September 8, 2009

**AGENDA ITEM NO. 6 - PUBLIC HEARING
ZONING CASE 2009-14
APPLICANT: REGENCY CENTERS, L.P. AND OTHER PD PROPERTY OWNERS**

Request to amend Planned Development-189-Retail/General Office on 114.0± acres located at the southeast corner of Preston Road and Park Boulevard to allow for an increase to the maximum lot coverage. Zoned Planned Development-189-Retail/General Office/Preston Road Overlay District.

APPROVED: 5-0 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: SUPPORT: 1 OPPOSE: 4

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: SUPPORT: 0 OPPOSE: 1

PETITION(s) RECEIVED: N/A # OF SIGNATURES: N/A

STIPULATIONS:

Recommended for approval as submitted.

FOR CITY COUNCIL MEETING OF: September 28, 2009 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

BM/dc

xc: Regency Centers, L.P.
Jerry Brantley, J.L. Brantley, Inc.

CITY OF PLANO
PLANNING & ZONING COMMISSION

September 8, 2009

Agenda Item No. 6

Public Hearing: Zoning Case 2009-14

Applicant: Regency Centers, L.P. and other PD Property Owners

DESCRIPTION:

Request to amend Planned Development-189-Retail/General Office on 114.0± acres located at the southeast corner of Preston Road and Park Boulevard to allow for an increase to the maximum lot coverage. Zoned Planned Development-189-Retail/General Office/Preston Road Overlay District.

REMARKS:

The subject property is 144.0± acres with existing retail, office, and multifamily residential uses located at the southeast corner of Preston Road and Park Boulevard.

The applicant is proposing to amend Planned Development-189-Retail/General Office (PD-189-R/O-2). The R district is primarily intended to provide areas for neighborhood, local, and regional shopping facilities for the retail sales of goods and services including convenience stores, shopping centers, and regional malls, but not including wholesaling or warehousing. The O-2 district is intended to allow for a variety of low-, mid-, and high-rise office developments providing for professional, financial, medical, and similar services to local residents; corporate offices for regional and national operations; and major centers of employment for Plano and surrounding communities. A PD district provides the ability to amend use, height, setback, and other development standards at the time of zoning to promote innovative design and better development controls appropriate to both off and onsite conditions.

The applicant is proposing to amend PD-189-R/O-2 to allow for an increase in lot coverage from 30% to 50%. The R base zoning district for this PD allows a 30% maximum lot coverage (50% lot coverage for mini-warehouse/public storage) and O-2 allows for 50% maximum lot coverage for all the uses allowed with the O-2 zoning district; however, this PD restricts the lot coverage to 30% regardless of which base zoning district is used to develop or redevelop properties within the district.

The applicant is requesting the amendment to allow conversion of the vacant former theatre building located behind the shopping center to a mini-warehouse/public storage development. The applicant plans to add a second level inside the existing building, and add a new two-story building on the property. The addition of a second building on the site requires an increased lot coverage over what the current PD permits. As such, the applicant is requesting that the PD be amended to allow for increased lot coverage, with all other restrictions within PD-189-R/O-2 zoning district remaining unchanged.

Staff believes that this requested increase in lot coverage is reasonable to consider because it is consistent with lot coverage allowed in R and O-2 base districts. The current 30% lot coverage is limiting compared to other sites that benefit from this combination of R and O-2 zoning.

Surrounding Properties

The property is surrounded by retail and residential zoning districts with existing retail and residential uses. The north, northwest, and west properties are zoned R and have developed as retail uses. The property to the east is zoned Single-Family Residence-7 with existing single-family residential uses. To the south, the property is zoned Single-Family Residence-6 and Multifamily Residence-2 with existing single family residential uses and multifamily residential uses respectively.

Conformance to the Comprehensive Plan

Future Land Use Plan - The future land use plan designates this property as Major Commercial (MC) and Light Intensity Office (LIO). MC land uses may include malls and large shopping centers anchored by department stores, along with specialty shops, restaurants, theaters, offices, and other uses. LIO development serves local needs with uses that include office towers, medical centers, corporate campuses, and small neighborhood offices. The proposed mini-warehouse/public storage use does not prevent further implementation of the future Land Use Plan recommendations for the area. The requested use provides for a business service (i.e. storage) that supports the surrounding businesses and residential areas.

Adequacy of Public Facilities - Water and sanitary sewer services are available for existing developed sites.

Traffic Impact Analysis (TIA) - A TIA is not required for this zoning request since the applicant is not proposing to amend densities currently allowed by the existing zoning.

Summary

The applicant is requesting to amend PD-189-R/O-2 to allow for an increase in lot coverage from 30% to 50%, which is consistent with lot coverage allowed in R and O-2 base districts. The 30% lot coverage allowed within the current PD is limiting compared to other sites that benefit from R and O-2 zoning. The increased lot coverage could potentially allow for additional development sites within PD-189-R/O-2 zoning district as well as reuse of vacant buildings.

RECOMMENDATION:

Recommended for approval as submitted.

ORDINANCE NO. _____
(Zoning Case 2009-14)

AN ORDINANCE OF THE CITY OF PLANO AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, SO AS TO AMEND PLANNED DEVELOPMENT-189-RETAIL/GENERAL OFFICE ON 114.0± ACRES OUT OF THE DENTON DARBY SURVEY, ABSTRACT NO. 260, LOCATED AT THE SOUTHEAST CORNER OF PRESTON ROAD AND PARK BOULEVARD, IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, TO ALLOW FOR AN INCREASE TO THE MAXIMUM LOT COVERAGE; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, A PUBLICATION CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 12th day of October, 2009, for the purpose of considering amending Planned Development-189-Retail/General Office on 114.0± acres out of the Denton Darby Survey, Abstract No. 260, located at the southeast corner of Preston Road and Park Boulevard in the City of Plano, Collin County, Texas, to increase the maximum lot coverage from 30 percent to 50 percent; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 12th day of October, 2009; and

WHEREAS, the City Council is of the opinion and finds that such amendment would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended so as to amend Planned Development-189-Retail/General Office on 114.0± acres out of the Denton Darby Survey, Abstract No. 260, located at the southeast corner of Preston Road and Park Boulevard in the City of Plano, Collin County, Texas, to increase the maximum lot coverage from 30 percent to 50 percent, said property being described in the legal description on Exhibit "A" attached hereto.

Section II. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

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 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 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 hereof, 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 12TH DAY OF OCTOBER, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION

SITUATED in Collin County, Texas, out of the Denton Darby Survey, Abstract No. 260, and being a part of a 150.142 acre tract of land as described in a deed from Slater Ben Wyatt to Peggy Jane Payne, et al, dated March 5, 1959, and recorded in Volume 550, Page 382, of the Collin County Deed Records, and being described more particularly as follows:

BEGINNING at the intersection of the east right-of-way line of State Highway No. 289 with the south right-of-way line of Farm Market Road No. 544;

THENCE North 89° 0' 49" East, along the south right-of-way line of said Farm Market Road No. 544, a distance of 2,536.35 feet to an iron pipe for corner;

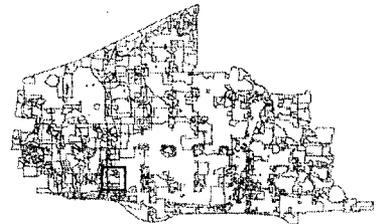
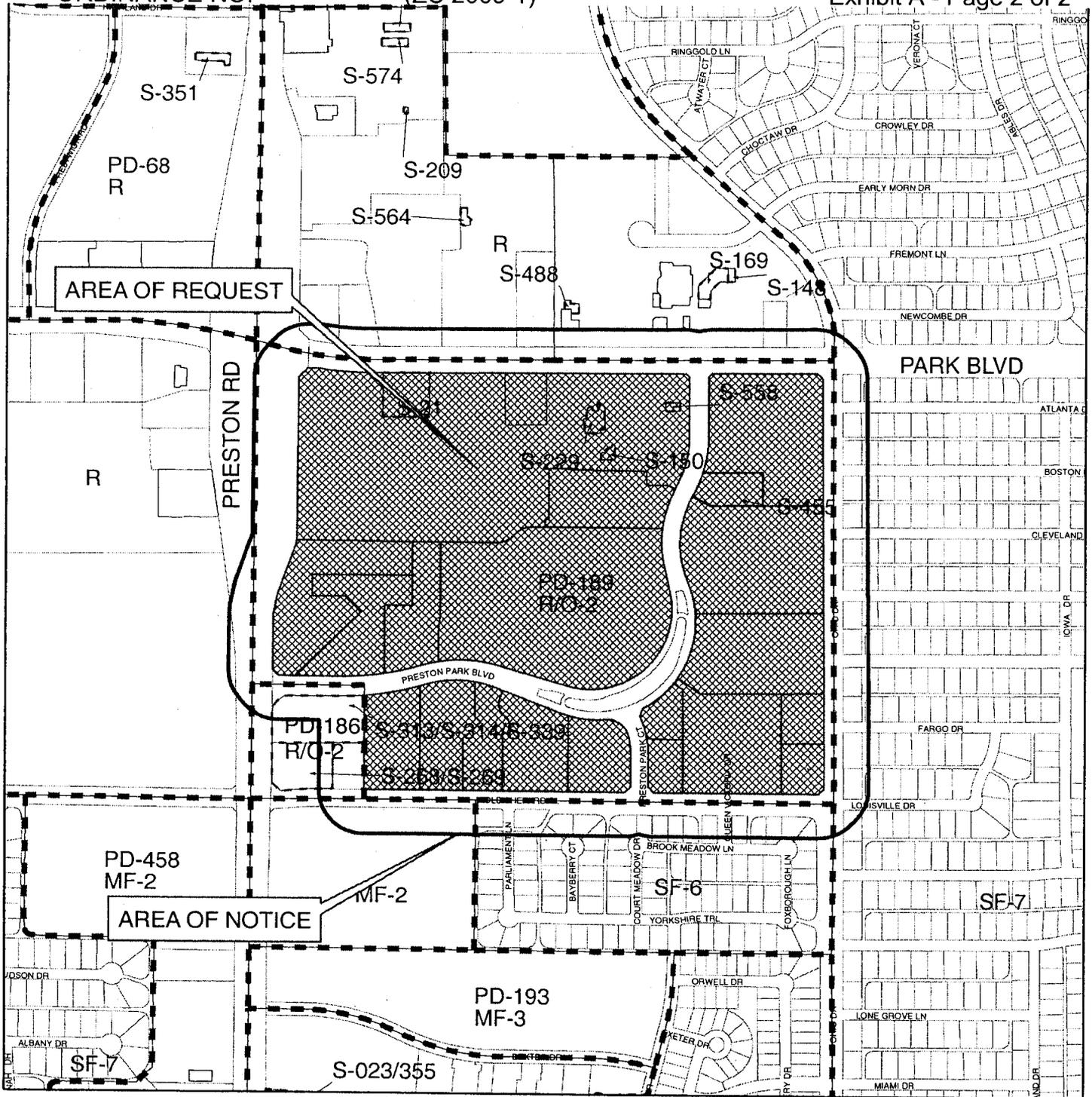
THENCE South 0° 18' 13" East, along the east line of said 150.142 acre tract of land, 1,970.78 feet to an iron pin for corner therein, said corner being the north line of a 40.0 acre tract as surveyed on the ground November 13, 1965 by John Cantrell, a Registered Public Surveyor, and conveyed to Jackson R. Wyatt from Dorothy W. Stephenson, et al, by deed recorded in Volume 665, page 441, of the Collin County Deed Records;

THENCE North 89° 43' 20" West along the north line of said 40.0 acre tract, a distance of 2,535.35 feet to an iron pin for corner in the east right-of-way line and 90.0 feet east of the center line of said State Highway No. 289, said corner being the northwest corner of said 40.0 acre tract;

THENCE North 0° 32' 40" East, along the east right-of-way line, parallel and 90.0 feet east of the center line of said Highway, a distance of 1,604.23 feet to an iron pin for corner;

THENCE South 89° 49" West, 30.0 feet to an iron pin for corner in the east right-of-way line and 60.0 feet east of the center line of said State Highway No. 289;

THENCE North 0° 32' 40" East, along the east right-of-way line, parallel and 60.0 feet east of the center line of said Highway, a distance of 346.30 feet to the POINT OF BEGINNING and CONTAINING 4,952,724.22 square feet of land, which is 113.698 acres.



Zoning Case #: 2009-14

Existing Zoning: PLANNED DEVELOPMENT-189-RETAIL/GENERAL OFFICE/
PRESTON ROAD OVERLAY DISTRICT



○ 200' Notification Buffer



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> 10-2-09	
Council Meeting Date:	10/12/09	Budget	<i>WJ</i> 10-2-09	
Department:	Planning	Legal	<i>WJ</i> 10-5-09	
Department Head	P. Jarrell	Assistant City Manager	<i>WJ</i> 10-5-09	
Dept Signature:	<i>P. Jarrell</i>	Deputy City Manager	<i>WJ</i> 10-5-09	
		City Manager	<i>WJ</i> 10/5/09	
Agenda Coordinator (include phone #): T. Stuckey -- 7156				
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 PUBLIC HEARING				
CAPTION				
Public Hearing and Consideration of an Appeal of the Planning & Zoning Commission's Denial of Zoning Case 2009-15 -- Request for a Specific Use Permit for Public Storage/Mini-Warehouse on 3.1± acres located on the west side of Preston Park Boulevard, 550± feet south of Park Boulevard. Zoned Planned Development-189-Retail/Office-2. Neighborhood #55. Applicant: Regency Centers L.P.				
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				
At its September 8, 2009 meeting, the Planning & Zoning Commission denied this request by a vote of 3-2. The applicant has appealed the Commission's denial. A 3/4 vote, or 6 of the 8 City Council members, is required for approval of the request.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Letter of Appeal		Planning & Zoning Commission		
P&Z Follow-up Memo				
Staff Report				
Maps				
Letters				

J. L. BRANTLEY, INC.

ARCHITECT
P. O. BOX 860417
PLANO, TEXAS 75086-0417
RECEIVED 972-2700
FAX: 972-758-0130

SEP 11 2009

PLANNING DEPT.

10 September 2009

Ms. Bester Munyaradzi
Planner
CITY OF PLANO
1520 Avenue K, #250
Plano, Texas 75074

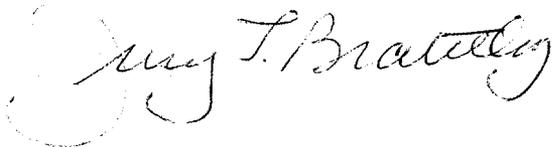
RE: CITY OF PLANO ZONING CASE
ZONING CASE NO. 2009-15
PLANO, TEXAS

Dear Ms. Munyaradzi:

As representative of Regency Centers, L. P., I request to appeal the Planning and Zoning Commission denial of Zoning Case 2009-15, as well as the companion Preliminary Site Plan, to the City Council. I request that the appeal be scheduled for consideration by the City Council as soon as practicable.

Very truly yours,

J. L. BRANTLEY, INC.



Jerry L. Brantley

JLB:cab

Recommendation of the Planning & Zoning Commission
Zoning Case 2009 - 15
September 8th, 2009 Meeting
Chairman's Report

Agenda Item No. 7A- Public Hearing

Zoning Case 2009-15 - Request for Specific Use Permit for a Public Storage/Mini-Warehouse on 3.1 acres located on the west side of Preston Park Boulevard, 550 +/- feet south of Park Boulevard. Zoned Planned Development -189-Retail/General Office.

Applicant: Regency Centers, L.P.

Staff Recommendation: Approval subject to interior access only.

Commission Action: DENIED 3-2.

The motion to deny was supported by Commissioners Caso, Dry and Coleman. Commissioners Duggan and Norton voted against the motion and supported staff's recommendation to approve the use. Commissioner Perry stepped down. Comments made in support of the motion to deny included:

- Concern from several of the residential neighbors.
- The feeling that there might be a better use at some point in the future.
- Size of the proposed development.

Additional Comments: Commissioners in support cited the following comments:

- The use and location are a good use and fit for this development.
- No single family residential is located within 1/3 to 1/2 mile of the location and therefore not directly impacted in any way.
- The property has been vacant for over 13 years.
- All surrounding land owners approve the use.
- It is located on the back side of the shopping center in the loading dock area with no other uses directly visible.

Respectfully submitted,

James F. Duggan, Planning & Zoning Chairman

DATE: September 9, 2009
TO: Honorable Mayor & City Council
FROM: James Duggan, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of September 8, 2009

**AGENDA ITEM NO. 7A - PUBLIC HEARING
ZONING CASE 2009-15
APPLICANT: REGENCY CENTERS, L.P.**

Request for a Specific Use Permit for Public Storage/Mini-Warehouse on 3.1± acres located on the west side of Preston Park Boulevard, 550± feet south of Park Boulevard. Zoned Planned Development-189-Retail/General Office. Neighborhood #55.

APPROVED: _____ **DENIED:** 3-2 **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 0

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 9

PETITION(s) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

Denied. The Commissioners voting in opposition felt that mini-warehouse/public storage was not the best reuse of the site. They were also concerned that the square footage being proposed was too much. Additionally, since the Commission recommended approval of the companion Zoning Case 2009-14, the Commission believed that the increase in lot coverage might provide opportunities for other redevelopment proposals..

BM/dc

xc: Regency Centers, L.P.
Jerry Brantley, J.L. Brantley, Inc.

CITY OF PLANO
PLANNING & ZONING COMMISSION

September 8, 2009

Agenda Item No. 7A

Public Hearing: Zoning Case 2009-15

Applicant: Regency Centers, L.P.

DESCRIPTION:

Request for a Specific Use Permit for Public Storage/Mini-Warehouse on 3.1± acres located on the west side of Preston Park Boulevard, 550± feet south of Park Boulevard. Zoned Planned Development-189-Retail/General Office. Neighborhood #55.

REMARKS:

The request is for a Specific Use Permit (SUP) for public storage/mini-warehouse.

Public storage/mini-warehouse is a building(s) containing separate, individual, self-storage units of 500 square feet or less for rent. The conduct of sales, business, or any activity other than storage shall be prohibited within any individual storage unit. The purpose and intent of an SUP is to authorize and regulate a use not normally permitted in a district which could be of benefit in a particular case to the general welfare, provided adequate development standards and safeguards are established for such use during the review of an SUP application.

The applicant is proposing to convert the existing vacant single-story former theater into a two-story mini-warehouse building and add a new two-story mini-warehouse building on the property. All individual storage units will be accessible only from the interior. A preliminary site plan, Preston Park Village Addition, Block A, Lot 2, accompanies this request.

An SUP for public storage/mini-warehouse will allow the applicant to reuse the former theater building. The new additional two-story building will be built on a portion of the large parking area in front of the existing building, since parking requirements for the proposed mini-warehouse/public storage are much less than for theaters.

As has been evident over time, given the long vacancy for this building and elsewhere throughout the city, there are limited uses that can occupy a former theater. The sloping floors, lack of windows, and high ceilings make retrofitting difficult. The reuse of a large vacant building and the opportunity to remove unused parking for additional

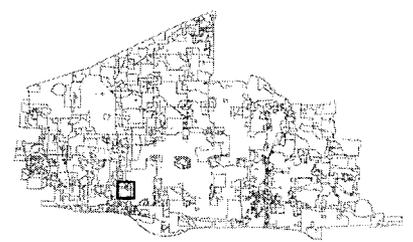
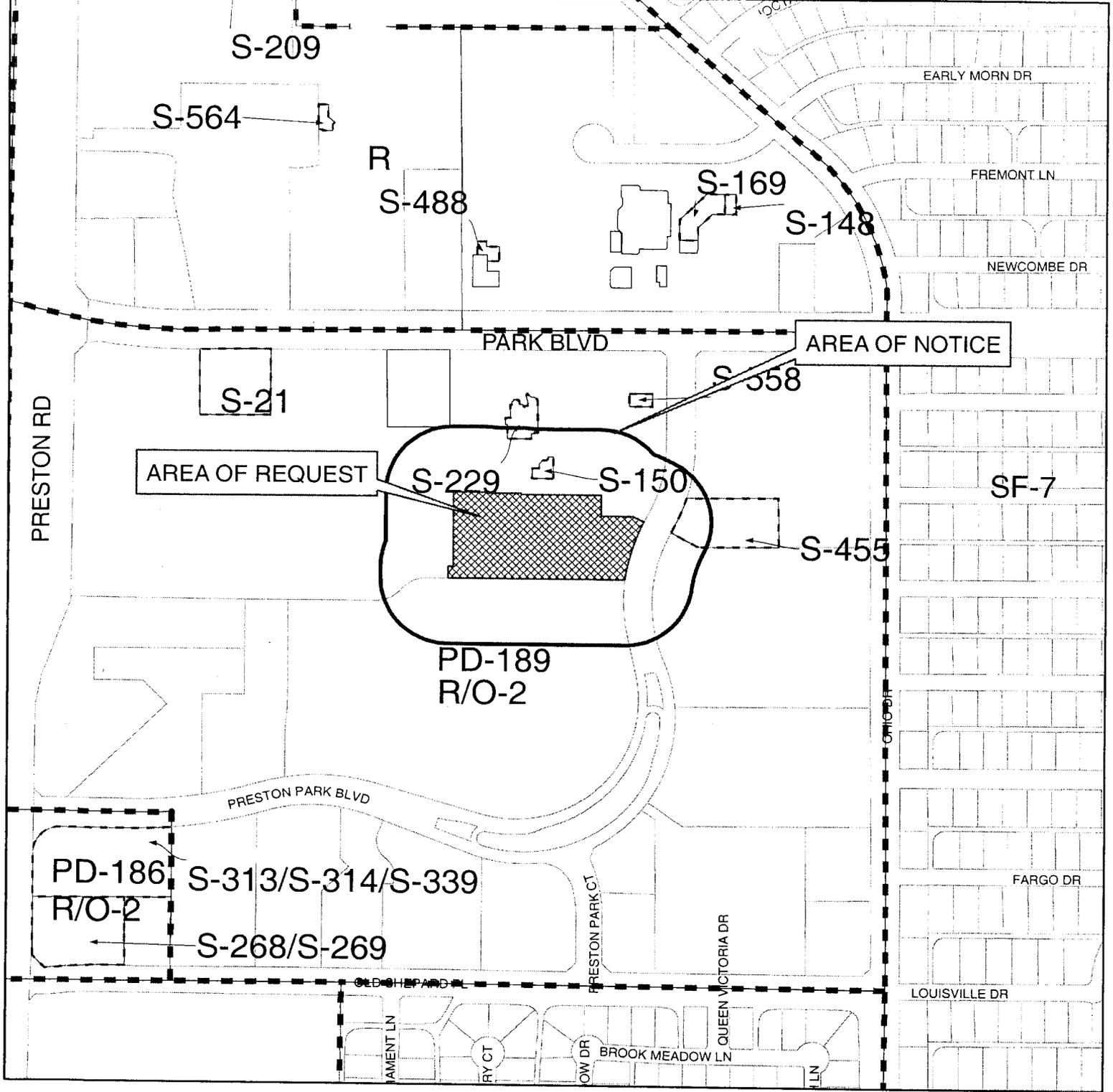
development along, with the property being located at the rear of shopping center, makes it appropriate for the proposed reuse. The existing building is not well integrated with the remainder of the shopping center given the current configuration. The surrounding uses, which include the fitness center, a day care, and medical offices to the east, and multifamily residential use to the south, are all existing land uses that will not be negatively impacted by the proposed mini-warehouse/public storage.

The City of Plano 2006 Urban Centers Study refers to the four corners of the intersection Preston Road and Park Boulevard as areas well suited for future urban redevelopment. The proposed mini-warehouse/public storage use does not prohibit further implementation of the study, in that it makes efficient use of the existing public infrastructure and it facilitates infill and redevelopment opportunities with the reuse of an existing large vacant building. The mini-warehouse/public storage use also provides a supporting business service (i.e. storage) for the surrounding businesses and residences.

More importantly, the study recommends redevelopment of the southeast quadrant as a pedestrian-oriented mixed-use development. Being that this site is positioned at the rear portion of the retail shopping center and its access is independent of the shopping center, the use of this site is not anticipated to prevent long-term redevelopment opportunities of this quadrant as a mixed-use development compared to if the site were located more central to the interior of the shopping overall center. As redevelopment opportunities present themselves in the future, the need for an overall redevelopment plan and property ownership consideration and support will become more important.

RECOMMENDATION:

Recommended for approval subject to all storage units shall be accessible only from the interior of the buildings.



Zoning Case #: 2009-15

Existing Zoning: PLANNED DEVELOPMENT-189-RETAIL/GENERAL OFFICE

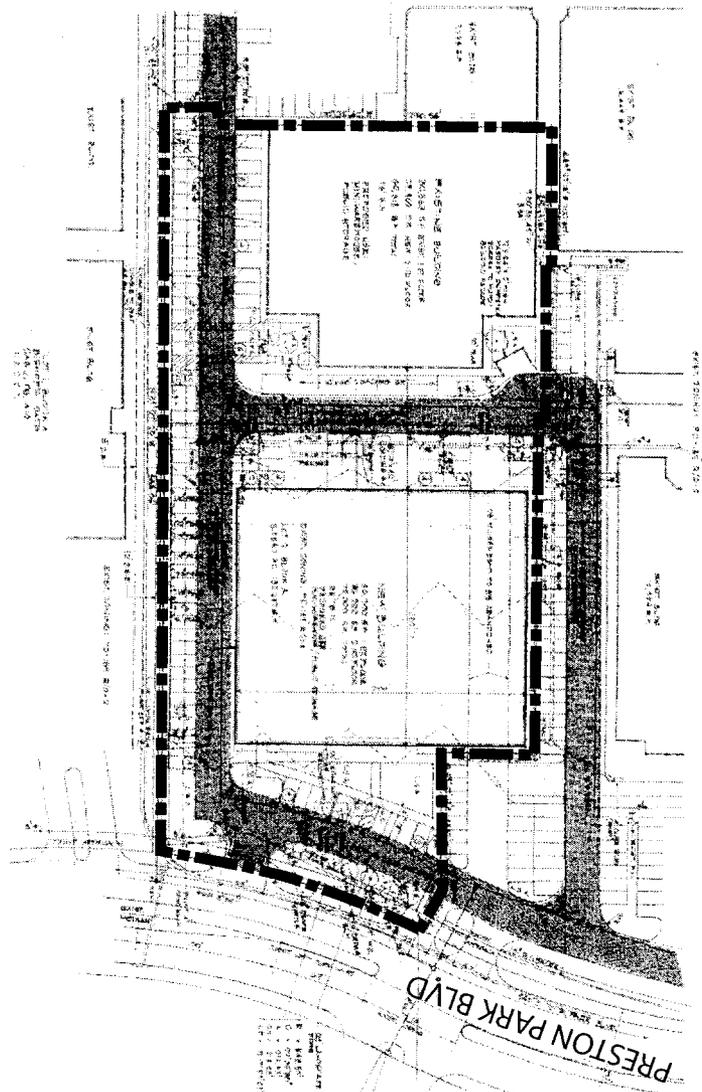


○ 200' Notification Buffer



- GENERAL NOTES**
1. All work shall be in accordance with the City of Dallas Building Code and all applicable codes and regulations.
 2. The contractor shall be responsible for obtaining all necessary permits and approvals from the City of Dallas.
 3. The contractor shall be responsible for maintaining access to all existing utilities and structures on the site.
 4. The contractor shall be responsible for protecting all existing structures and utilities on the site.
 5. The contractor shall be responsible for maintaining the site in a safe and sanitary condition at all times.
 6. The contractor shall be responsible for maintaining the site in accordance with all applicable environmental regulations.
 7. The contractor shall be responsible for maintaining the site in accordance with all applicable fire and safety regulations.
 8. The contractor shall be responsible for maintaining the site in accordance with all applicable health and safety regulations.
 9. The contractor shall be responsible for maintaining the site in accordance with all applicable accessibility regulations.
 10. The contractor shall be responsible for maintaining the site in accordance with all applicable record keeping regulations.

NO.	DESCRIPTION	AMOUNT	TOTAL
1	CONCRETE	100.00	100.00
2	STEEL	200.00	300.00
3	WOOD	50.00	350.00
4	GLASS	150.00	500.00
5	MECHANICAL	300.00	800.00
6	ELECTRICAL	200.00	1000.00
7	PLUMBING	100.00	1100.00
8	PAINT	50.00	1150.00
9	LABOR	100.00	1250.00
10	OVERHEAD & PROFIT	100.00	1350.00
11	TOTAL		1350.00



- LEGEND**
1. All work shall be in accordance with the City of Dallas Building Code and all applicable codes and regulations.
 2. The contractor shall be responsible for obtaining all necessary permits and approvals from the City of Dallas.
 3. The contractor shall be responsible for maintaining access to all existing utilities and structures on the site.

NOTES

NO.	DESCRIPTION	DATE
1	REVISION	10/1/2010
2	REVISION	10/1/2010
3	REVISION	10/1/2010

CONTRACT NO. 1000000000000000
 PROJECT NO. 1000000000000000
 DRAWING NO. 1000000000000000

J.L. BRANTLEY, INC.
 ARCHITECTS
 2205 FOUNTAINHEAD DR
 PLANO, TEXAS 75023

DATE: 10/1/2010
 TIME: 10:00 AM



J.L. BRANTLEY, INC.
 ARCHITECTS
 2205 FOUNTAINHEAD DR
 PLANO, TEXAS 75023