

PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON OCTOBER 26, 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. | Cole, Haynes, and West v. Mammel, et al. | 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 | | |
| | - Building Standards Commission | | |
| B. | Evaluation of Council Appointees | | |

PRELIMINARY OPEN MEETING

- | | | | |
|----|--|---------|---------|
| I. | Consideration and action resulting from Executive Session discussion: Personnel Appointments Building Standards Commission | Council | 10 min. |
|----|--|---------|---------|

II.	Personnel Appointments Parks and Recreation Planning Board Plano Housing Authority	Council	5 min.
III.	Multicultural Outreach Roundtable (MCOR) Report	Chris Parr	15 min
IV.	Mobility Report	Neal	10 min.
V.	Comprehensive Monthly Financial Report	Tacke	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 26, 2009
 CALL TO ORDER: 7:00 p.m.
 INVOCATION: Imam Yaseen Shaikh
 Islamic Association of Collin County
 PLEDGE OF ALLEGIANCE: Jr. Girl Scout Troop 1904
 Davis, Dooley & Mendenhall Elementary
 and Armstrong & Bowman Middle Schools

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>Special Recognition: Bradley Robertson – Winner of the SWANA National Truck Road-E-O, First Place in Automated</p> <p>Proclamation: Animal Shelter Appreciation Week</p> <p><u>OATHS OF OFFICE</u></p> <p><u>Planning and Zoning Commission</u> David L. Downs Doug Hazelbaker</p> <p><u>CERTIFICATES OF APPRECIATION</u></p> <p><u>Board of Adjustment</u> Salvator J. La Mastra IV</p> <p><u>Building Standards Commission</u> Doug A. Bender James M. Degnan</p> <p><u>Community Relation Commission</u> Richard Shlakman Pamela S. Harvey</p> <p><u>Cultural Affairs Commission</u> Christopher Griffith</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Heritage Commission</u> Douglas B. Cargo Janice Cline</p> <p><u>Library Advisory Board</u> Ellen J. Peralta</p> <p><u>Parks and Recreation Planning Board</u> M. Nathan Barbera David L. Downs</p> <p><u>Planning and Zoning Commission</u> Maggie Armstrong Jeff D. Bulla III</p> <p><u>Plano Housing Authority</u> Myrtle Hightower</p> <p><u>Public Arts Committee</u> Vincent Bush</p> <p><u>Retirement Security Plan Committee</u> Ron Timmons</p> <p><u>Self Sufficiency Committee</u> Melissa Pittana</p> <p><u>Senior Citizens Advisory Board</u> Rose Baker Sonja Hammar Dee Taylor Kevin A.J. Yarrow</p> <p><u>Tax Increment Financing Reinvestment Zone No. 2 Board</u> Lana G. Douglas Chuck O'Reilly Stefani Overton</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>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	<p><u>Approval of Minutes</u></p> <p>October 12, 2009</p> <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p>	
(b)	<p>CSP No. 2009-84-C for IP Video Security for Communication Towers, in the amount of \$61,652 to 911 Security Cameras Inc., and authorizing the City Manager to execute all necessary documents.</p> <p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p>	
(c)	<p>To approve an Engineering Contract by and between the City of Plano and Freese and Nichols, Incorporated, in the amount of \$153,570 for Erosion Control-London Creekside, Shady Creek & 2 Sanitary Sewer Creek Crossings, and authorizing the City Manager to execute all necessary documents.</p> <p>Agreement</p>	
(d)	<p>To approve a Landscape Architecture Professional Services Agreement by and between the City of Plano and La Terra Studio, Inc. in the amount of \$54,750 for Athletic Facility Improvements – 2009 Hoblitzelle Park and Enfield Park and authorizing the City Manager to execute all necessary documents.</p> <p>Approval of Change Order</p>	
(e)	<p>To Weir Bros., Inc., increasing the contract by \$54,795 for Rasor Road from Ohio Drive to SH 121, Change Order No. 1. Original Bid No. 2009-81-B.</p> <p><u>Adoption of Resolutions</u></p>	
(f)	<p>To approve the terms and conditions of an Interlocal Agreement for Library Services by and between the City of Plano and Collin County, Texas providing the terms and conditions for receipt of funding in the amount of \$79,675 from Collin County; authorizing the City Manager to execute all necessary documents; and providing an effective date.</p>	
(g)	<p>To approve the terms and conditions of a Funding Agreement between the City of Plano, Texas, and The Shops at Legacy (North), L.L.C. whereby the City will provide funding in part for the 2009 Lights of Legacy Tree Lighting Festival event; authorizing the City Manager to execute such agreement; and providing an effective date.</p>	
(h)	<p>To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the North Central Texas Council of Governments providing terms and conditions for the funding of a Second Chance Swap and Reuse Event; authorizing its execution by the City Manager and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(i)	To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the North Central Texas Council of Governments providing terms and conditions for the funding of a Disaster Debris Management Plan; authorizing its execution by the City Manager and providing an effective date.	
(j)	To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the North Central Texas Council of Governments providing terms and conditions for the funding of Biomass Pelletizer Feasibility Study; authorizing its execution by the City Manager and providing an effective date.	
(k)	To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the North Central Texas Council of Governments providing terms and conditions for the funding of a Plastic Bag Reduction Campaign; authorizing its execution by the City Manager and providing an effective date.	
<u>Adoption of Ordinances</u>		
(l)	To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 601 so as to allow the additional use of Public Storage/Mini-Warehouse on 3.1± acres of land located on the west side of Preston Park Boulevard, 550± feet south of Park Boulevard, in the City of Plano, Collin County, Texas, presently zoned Planned Development-189-Retail/General Office; 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, and an effective date. (Zoning Case 2009-15) Public Hearing held and approved by City Council on 10/12/09. Applicant: Regency Centers L.P.	
(m)	To repeal Ordinance No. 2006-11-18 in its entirety, which was codified as Chapter 21, Article II, Division 4, Drought Contingency Plan, of the Code of Ordinances of the City of Plano; adopting a new Drought Contingency Plan to be codified as Chapter 21, Article II, Division 4 of the Code of Ordinances of the City of Plano; establishing procedures and criteria for declaring a water emergency and implementing and terminating drought response stages; establishing restrictions on certain water uses during drought response stages; establishing administrative remedies and criminal penalties for violating the restrictions and provisions for enforcement of these restrictions; and providing a repealer clause, a severability clause, a savings clause; an effective date; and providing for publication of the caption hereof.	
(n)	To repeal Division 5, Graffiti, Sections 11-95 through 11-100, of Article II, Signs, of Chapter 11, Licenses and Business Regulations, of the City of Plano, Code of Ordinances and replacing with Sections 11-95 through 11-100.3 to update definitions, clarify procedures, and notice for graffiti removal that conform to State law; and providing a penalty clause, a severability clause, a repealer clause, a savings clause, a publication clause, and an effective date.	
(o)	To approve the carrying forward of Fiscal Year 2008-2009 funds to Fiscal Year 2009-10; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(p)	<p>To amend Section 12-74(b) of Chapter 12 (Traffic Code) of the Code of Ordinances to establish prima facie maximum speed limits for motor vehicles operating upon Windhaven Parkway between Spring Creek Parkway and Dallas Parkway, and amend the prima facie maximum speed limits for motor vehicles operating upon Premier Drive between Parker Road and Spring Creek Parkway within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200 for each offense; and providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.</p>	
(q)	<p>To abandon all right, title and interest of the City, in and to a portion of that certain 15' Sanitary Sewer Easement recorded in Volume 578, Page 437 of the Deed Records of Collin County, Texas, being situated in the James G. Vance Survey, Abstract No. 938, which is located within the city limits of Richardson, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, W. W. Caruth Jr. Foundation, to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date.</p>	
(r)	<p>To abandon all right, title and interest of the City, in and to that certain 20' Sanitary Sewer Easement recorded in Judgement No. 71-134-199 in the 199th Judicial District Court of Collin County, Texas, being situated in the James G. Vance Survey, Abstract No. 938, which is located within the city limits of Richardson, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, W. W. Caruth Jr. Foundation, to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date.</p> <p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	<p>A Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Crumb Corps, LLC., a Delaware limited liability company; authorizing its execution by the City Manager; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(2)	<p>A Public Hearing by the City Council of the City of Plano, Texas, pursuant to Chapter 26 of the Texas Parks and Wildlife Code pertaining to the use or taking of a portion of a City of Plano park and known as the Bluebonnet site for a Communications Facilities License Agreement for cellular equipment attached to and at the base of the existing Oncor Electric transmission tower.</p>	
(3)	<p>A Public Hearing by the City Council of the City of Plano, Texas, pursuant to Chapter 26 of the Texas Parks and Wildlife Code pertaining to the use or taking of a portion of a City of Plano park and known as the Jack Carter site for a Communications Facilities License Agreement for cellular equipment attached to and at the base of the existing Oncor Electric transmission tower.</p>	
(4)	<p>An Ordinance to approve the use and taking by Dallas MTA, L.P., d/b/a Verizon Wireless, a Delaware limited partnership, of a portion of City of Plano park land known as Jack Carter Park (Pleasant Valley Drive and Roundrock Trail); finding and determining that there is no feasible and prudent alternative to the proposed use or taking of the park land and that the proposed project includes all reasonable planning to minimize harm to the land, the park and the recreation area; and providing an effective date.</p>	
(5)	<p>A Resolution to amend a Communication Facilities License Agreement by and between the City of Plano, Texas, and Dallas MTA, L.P., d/b/a Verizon Wireless, a Delaware limited partnership, to install, and operate telecommunications ground equipment in certain specific portions of City of Plano public parkland, known as the Jack Carter site; authorizing its execution by the City Manager, and providing an effective date.</p>	
(6)	<p>A Public Hearing by the City Council of the City of Plano, Texas, pursuant to Chapter 26 of the Texas Parks and Wildlife Code pertaining to the use or taking of a portion of a City of Plano park and known as the Preston Ridge site for a Communications Facilities License Agreement for cellular equipment attached to and at the base of the existing Oncor Electric transmission tower.</p>	
(7)	<p>An Ordinance to approve the use and taking by T-Mobile West Corporation, a Delaware corporation, of a portion of City of Plano public park land known as Preston Ridge Trail Park (Tuland and Downington Drive); finding and determining that there is no feasible and prudent alternative to the proposed use or taking of the park land and that the proposed project includes all reasonable planning to minimize harm to the land, the park and the recreation area; and providing an effective date.</p>	
(8)	<p>A Resolution to approve the terms and conditions of a Communications Facilities License Agreement by and between the City of Plano, Texas, and T-Mobile West Corporation, a Delaware corporation, to locate, place, attach, install, and operate telecommunications ground equipment in certain specific portions of City of Plan public park land known as the Preston Ridge site; authorizing its execution by the City Manager; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<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 22, 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, Item IV will include Consideration of Personnel Appointments and Evaluation of Council Appointees.

Mabrie Jackson
Place 3

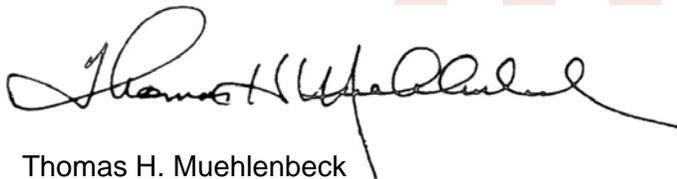
Lissa Smith
Place 4

Jean Callison
Place 7

The Preliminary Open Meeting will begin with results from the Executive Session followed by Personnel Appointments and a report from the Multicultural Outreach Roundtable. The meeting will continue with Item IV. Mobility Report and Item V. Comprehensive Monthly Financial Report.

I look forward to seeing you on Monday.

Sincerely yours,



Thomas H. Muehlenbeck

Thomas H. Muehlenbeck

Thomas H. Muehlenbeck
City Manager

MEMO

DATE: October 22, 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 26, 2009 Council Meeting.

<p><u>Executive Session</u></p> <p><u>Appointments:</u></p> <ul style="list-style-type: none">-Building Standards Commission	<p><u>Worksession Meeting</u></p> <p><u>Appointments:</u></p> <ul style="list-style-type: none">-Parks and Recreation Planning Board-Plano Housing Authority
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Multicultural Outreach Roundtable (MCOR)

Presented to the Plano City Council
October 26, 2009

1



Structure



- MCOR is a City of Plano Advisory group.
- It consists of 5 CoChairs, appointed by the City Council.
- These CoChairs create a grassroots, citizen participatory organization open to all.
- This organization meets monthly on the **second Tuesday**, usually at City Hall.
- MCOR divides its efforts up between committees which recruit their own constituencies, plan, and execute programs with City and MCOR consent.

26 October 2009

MCOR presentation to
Plano City Council

2



CoChairs and Staff



- **Mary Alice Garza** (Hispanic community)
- **Jian Li** (Asian community)
- **Shaheen Salam** (Islamic community)
- **Alex Williams** (Black community)
- **Chris Parr** (Old, Bald, Fat White Guy)
- **Bruce Glasscock** (City Liaison)
- **Dee Dee Falls** (Administrative Assistant)

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Plano City Council

3



Committee Chairs



- Cultural: **Graciela Katzer**
- Government Participation: **Mary Alice Garza**
- Membership: **Nuray Fuller & Jian Li**
- National Day of Prayer: **Mary Alice Garza & Jian Li**
- Recreation: **Jon Liu & Ganesh Gopalakrishnan**
- Micromanagement: **Chris Parr**

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Plano City Council

4



Mission



- MCOR's mission is to
 - partner with the City of Plano and the diverse citizens of Plano,
 - encouraging understanding and participation in the government process,
 - and fulfilling the needs and desires of its diverse citizens.

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Plano City Council

5



Goals



- Provide **recommendations** to the City Council on multiculturalism.
- Maintain good **communication** between the City and the cultural communities of Plano.
- Instill a sense of unity and **collaboration** among citizens of Plano.
- Provide **information** about the City of Plano government to cultural groups.

26 October 2009

MCOR presentation to
Plano City Council

6



Goals (continued)



- Establish multicultural **activities** that promote diversity.
- Act as a **clearinghouse** for cultural education and communication.
- Promote the **inclusion** of minority groups in City government.
- **Increase** our participants to include all cultural communities in the City.

26 October 2008

MCOR presentation to
Plano City Council

7



History



- Established November 2002 by Mayor Evans.
- 1st Reception 2003 introduced MCOR to the cultural communities.
- Failed attempt to establish Plano International Festival (PIF) in 2004 followed by successful creation of the PIF nonprofit corporation 2005.
 - Now celebrating its 5th year!

26 October 2008

MCOR presentation to
Plano City Council

8



History (continued)



- 1st World Peace Table Tennis Tournament participation 2006
- 1st Web Site 2006
- 1st Community Forum 2007
- 1st National Day of Prayer 2008
- 1st Diversity Panel Discussion 2008
- 1st Citizenship Information session 2008
- 1st Citizenship Workshop 2009
- 5th CoChair added 2009
- 1st Report to City Council 2009!

26 October 2009

MCOR presentation to
Plano City Council

9



Accomplishments



• PLANO INTERNATIONAL FESTIVAL

- Underwritten by City of Plano for 5 years
- Attracts over 10,000 to Haggard Park every October
- Showcases Plano's cultural communities
- Educates all, especially our children
- Helps establish Plano as a cosmopolitan city mindful of its diversity



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Plano City Council

10



Accomplishments



• WORLD PEACE TABLE TENNIS TOURNAMENT

- Partnered with World Peace Table Tennis (WorldPeaceTableTennis.org)
- Helped secure Carpenter, Liberty, and Muehlenbeck Centers for Tournament venues
- City cooperates with purchase and storage of tables
- Tournament produces national champions!



26 October 2009

MCOR presentation to
Plano City Council

11

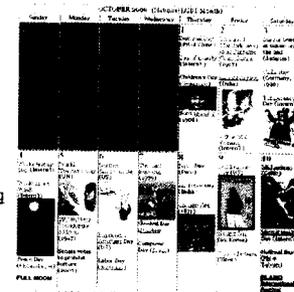


Accomplishments



• WEB SITE

- Funded privately
- Cultural calendar
- Outreach
- www.PlanoMCOR.org



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Plano City Council

12



Accomplishments



• COMMUNITY FORA

- Council meets with cultural groups
- Airs concerns
- Generates interest in Leadership Plano
 - Islamic community 2007
 - Hispanic community 2008



28 October 2008

MCOR presentation to Plano City Council

13



Accomplishments



• NATIONAL DAY OF PRAYER

- Initiative of MCOR
- Consent of the City
- INTERFAITH event
- 1st Thursday in May



28 October 2008

MCOR presentation to Plano City Council

14



Accomplishments



• DIVERSITY PANEL

- Part of annual reception
- Hosted by Chief Esparza
- Value of diversity in business
- Implications of changing demographics



28 October 2008

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15



Accomplishments



• CITIZENSHIP WORKSHOP

- Seminar on application
 - Citizenship & Immigration Service
 - Working with immigration attorneys
 - Citizenship & ESL class referrals
 - Info on FBI background check
- Workshop to complete application
 - Immigration attorneys present
- Postal Service to mail application
- About 75 attendees



28 October 2008

MCOR presentation to Plano City Council

16



WHY ARE WE HERE?



- Inform the Council of past actions and motives
- Establish precedence for reportage
- Seek **guidance** from new Council and Mayor

28 October 2008

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17



QUESTIONS?



28 October 2008

MCOR presentation to Plano City Council

18



Transportation Engineering Division

Transportation Mobility / Safety Report

September 2009

- Traffic Signals
 - Coordinating with the TxDot to revise the speed limit on the State Highway 121 service roads.
Ordinance prepared for City Council consideration.
 - McKamy Trail @ Midway Rd – Design New Traffic Signal design (**90%** completed).
 - Razor Rd @ McDermott Rd – Design New Traffic Signal (85% completed).
 - Razor Rd @ Ohio Dr - Design New Traffic Signal (**75%** completed).
 - ✓ **Received 7 alley speed bump and 4 alley speed limit sign requests.**
 - ✓ **Adjusted signal timing**
 - ✓ **At Custer Rd and Independence Pkwy.**
 - ✓ **At Legacy Dr and SH-121.**
 - ✓ **At K Avenue and Legacy Dr.**

- Traffic Safety
 - ✓ **H Avenue between 15th Street and 16th Street – Request for pedestrian crossing signs – Review in progress.**
 - ✓ **K Avenue at Legacy Drive – Implemented new double left-turn operation.**
 - ✓ **Russell Creek Drive at Bent Tree Springs – Request for All-way Stop control – All-way stop not warranted at this time.**
 - ✓ **Timberbrook Drive at Emerald Coast Drive – Request for warning signs and a road centerline – Installation completed.**
 - ✓ HAL/HARS 2009-2010 projects list – **10% complete.**
 - Reviewed **35** temporary traffic control plans for CIP projects and utility work in city rights-of-way.
 - Speed trailer deployment –
 - **Cumberland Trail between Osage Trail and Catalpa Trail.**
 - **Cross Bend Road between Coit Road and Mission Ridge Road.**

- PISD/FISD
 - Anderson Elementary
 - Independence Parkway near Oakland Hills Drive - request to remove the existing school speed zone on the school attendance boundary – removal completed.
 - Andrews Elementary
 - Request for All-Way Stop control at the Sutherland Lane/Scenic Drive intersection - Review in progress.
 - Clark High
 - Request to lengthen the school zone on Spring Creek Parkway – Review in progress.
 - Forman Elementary
 - Request for review of pick-up/drop-off operation impacts on Hendrick Drive – Review in progress.
 - Request for All-Way Stop control at the Hendrick Drive/Timberline Drive intersection – Review in progress.
 - Isaacs Early Childhood Learning Center
 - **Met with PISD, and Plano Police Department regarding traffic conflict/circulation issues. PISD to resolve.**
 - Jackson Elementary
 - Request for new No Parking signs, crosswalks, and removal of existing No Parking signs on streets abutting the school (Jackson Drive, Colchester Drive, Jomar Drive) – Review in progress.

- Jasper High
 - Alcove Lane west of Archgate Drive - Request for No Parking zone due to student drop off and pick-up – Ordinance for City Council consideration under development.
 - McCall Elementary
 - Request for modifying the times on No Left Turn signs on Cloverhaven Way at the school driveway – Review in progress.
 - Rice Middle
 - Request to change the times on the No Parking signs adjacent to the drive – Ordinance for City Council consideration under development.
 - Sigler Elementary
 - Request to review the school zones on Alma Drive and 15th Street and Alma Drive and Plano Parkway – Review in progress.
 - ✓ Taylor Elementary
 - Independence Parkway at Ridge Creek Lane - Request to evaluate the use of the existing school crossing - **Removal completed.**
 - ✓ **Vines High**
 - **Request for No Left Turn signage on northbound Highedge Drive at 15th Street – Review in progress.**
 - ✓ **Wells Elementary**
 - **Request for No Parking signs on the east side of Mission Ridge Road – Review in progress.**
 - Identify school zones located on attendance boundaries. Six zones identified – 4 zones approved for modification by Ordinance on August 24. **Modifications completed.**
 - Install/modify parking restrictions around 8 campuses – Ordinance being prepared for City Council consideration.
 - ✓ **Two “Safe Route to School” funding proposals submitted to TxDOT for consideration.**
- Safe Streets Program (SSP)
 - Participating Neighborhoods Active in the Program
 - Royal Oaks Drive - **Permanent plan public meeting set for 10/27/2009.**
 - Denham Way - Comment forms received
 - Oklahoma Avenue – **Follow-up study shows reduced speeds; meeting with HOA on 10/20/09.**
 - Harrisburg Lane/Sutherland Lane – **Temporary plan public meeting set for 11/5/09.**
 - Woodburn Corners – **Temporary plan public meeting set for 10/29/09.**
 - Teakwood Lane from Custer Road to Roundrock Trail – Petition process pending.
 - Wesson Drive – Petition process pending.
 - Merriman Drive neighborhood streets – Petition process pending.
 - TransCAD Model Development
 - ✓ **Software received and installed.**
 - ✓ **Determining data needs and collection schedule.**



finance report

COMPREHENSIVE MONTHLY

SEPTEMBER 2009



CITY OF PLANO

ABOUT THIS REPORT

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

This report is comprised of five sections:

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

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

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



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

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SECTION 1

FINANCIAL ANALYSIS

City of Plano

Comprehensive Monthly Finance Report

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

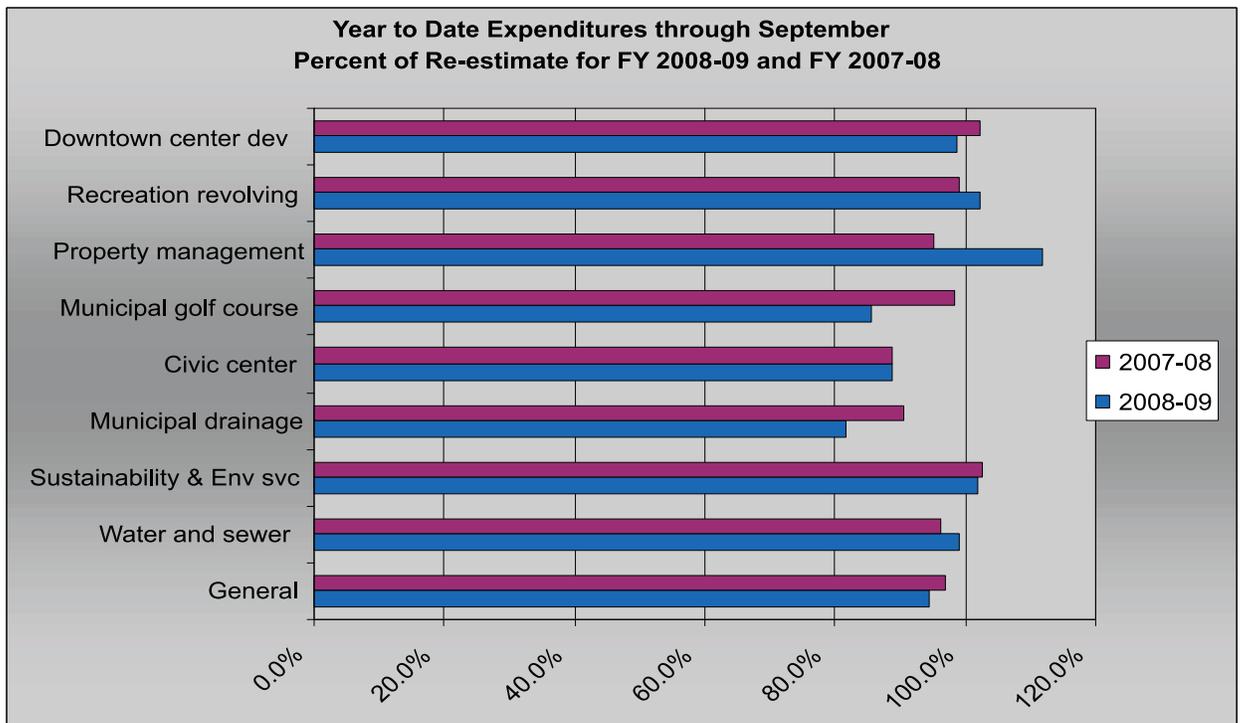
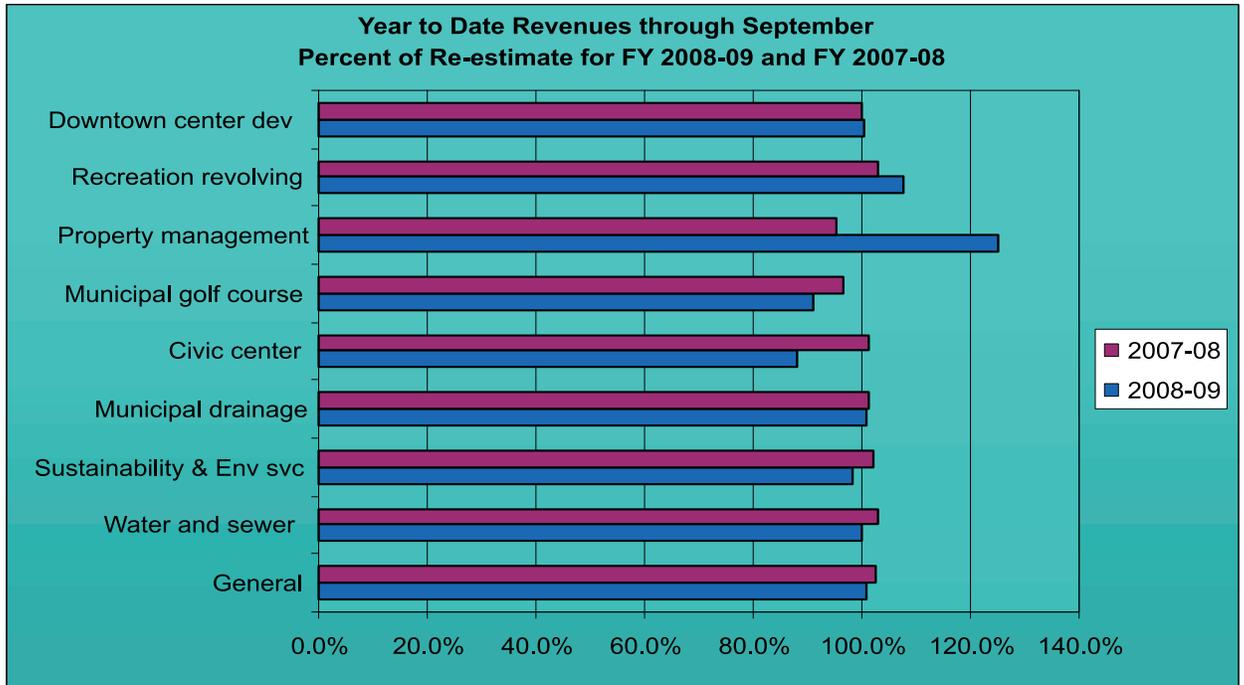
REPORT NOTES SEPTEMBER, 2009

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

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

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

HIGHLIGHTS OF GENERAL FUND VARIANCES



REPORT NOTES CONTINUED

SEPTEMBER, 2009

FINANCIAL HIGHLIGHTS

GENERAL FUND VARIANCES

Revenues

- Ad valorem tax revenue increases over prior year of \$4,986,793 are primarily attributable to an increase in existing property values and new property coming on-line.
- Sales tax revenues decreased from the prior year by \$5,575,097 as a result of the declining economy. There was a \$11,661 favorable audit adjustment in the current period compared to a \$128,470 favorable adjustment in the same period of the prior year. Net unfavorable audit adjustments through September of the current year are recorded at \$828,566. Unfavorable audit adjustments through September 2008 were recorded at \$341,750. Excluding audit adjustments, September collections and accruals decreased \$687,701 from the prior year.
- Gas franchise revenues increased over the prior year by \$619,425, as the result of a 1% increase in gross revenues by Atmos Energy.
- Intergovernmental revenues include \$2,113,806 from TIF East Side as reimbursement for initial costs contributed by the City for the Courtyard Theater Project in FY 2001.
- Payment in lieu of taxes increased over prior year by \$463,376 primarily due to increases in water and sewer revenues.
- Telephone franchise fee revenues decreased \$633,463 in the current year due to a decrease in traditional land line phone service. The City does not collect franchise fees from digital and cellular users.
- Electric franchise revenues are lower by \$174,098 primarily due to differences received for rate settlements. In fiscal year 2008, TXU settled an amount totaling \$463,376. The City received a settlement of \$241,443 from CoServ in fiscal year 2009.
- CATV franchise revenues reflect a decrease of \$66,865. However, fiscal year 2008 revenues include an accrual of \$300,360. Fiscal year 2009 accrual amounts will not be available until November. Actual revenues received during fiscal year 2009 increased by \$350,902.
- Court fines and forfeitures increased \$974,841 as a result of efforts by the collections unit, increased case fillings, and a successful state-wide warrant round up.
- Alarm permit revenues increased \$487,315 due to an increase in the number of new permits and renewals and a yearly fee increase for both residential and business permits effective October 1, 2008.
- Ambulance service revenues increased \$289,655 over the prior year primarily due to increased volume in transportation and increased collection efforts.
- Reimbursements received from Collin County Community College and the City of Allen for shared maintenance costs have increased \$85,819.
- Swimming fees increased \$169,520 over the prior year due to increases in daily admission fees. Additionally, the age requirement for free admission has been modified from 6 years to 3 years.
- Revenues generated from issuance of building permits decreased \$944,561 due to an overall decrease in new residential and commercial construction, alterations, remodels and interior finish outs.
- Emergency 911 revenues decreased \$172,529 from the prior year. Fiscal year 2008 includes an accrual of \$106,598 while fiscal year 2009 accruals will not be complete until November. Also contributing to the decrease is the gradual migration of telephone subscribers from wirelines to wireless and non-traditional providers.
- Parks and Recreation athletic field user fees decreases of \$140,346 are partly due to the timing of collection of association fees. Accruals for fiscal year 2009 are not complete. Also, participation in youth baseball and softball has declined. Both sports have become more club than recreationally oriented. In addition, these sports are declining nationwide.
- Engineering inspection revenues decreased \$362,061. Several large private development projects are being withheld at this time due to the declining economy. Also, fewer and smaller projects are being released in the current year.

REPORT NOTES CONTINUED

SEPTEMBER, 2009

- Although membership to recreation centers has declined, membership rate increases have resulted in additional membership revenues of \$306,028.
- In the current fiscal year, General Fund departments received reimbursements of \$246,675 for insurance and damages related to accidents involving City fleet and equipment. This represents a decrease of \$444,097 as compared to the prior year.
- Interest income decreased \$923,581 due to a decline in the market.

Expenditures

- Personal services increased \$5,886,515 over the prior year primarily due to increases in salary and benefits costs. Of this increase, General Fund funding for the City's Section 115 Trust began in December 2008 and totals \$4,339,305. The Trust is required by Governmental Accounting Standards Board Statement (GASB) No. 45, "Accounting and Financial Reporting by Employers for Postemployment Benefits other than Pensions". Also, there was a carryforward of \$1,015,963 from prior year including \$750,000 for special retiree medicare payments, \$86,000 for retiree payouts and \$175,963 for compensation compression.
- Electric payments increased \$520,356 over the prior year. This increase is primarily attributable to a shift in billing statements causing a month lag.
- Gas payments decreased from the prior year by \$181,671 as a result of new energy policy that went into effect in 2008. Also contributing to the decrease is lower than budgeted natural gas prices and a warmer than usual winter in the current year.
- Expenditures for interdepartmental water billings increased \$405,678 due to water rate increases implemented March 1st 2009.
- Transfers to Technology Services increased over the prior year by \$832,707 due to higher costs budgeted in the current year.
- Replacement charges for city rolling stock and equipment increased \$176,102 due to timing differences between when vehicles are received and placed into service.
- The Safe Streets Program experienced a decrease of \$343,123 primarily due to a carryforward of \$245,530 from the prior year. The carryforward amount was to complete the remaining 8 neighborhood projects on the program. Also contributing to this decrease is the rebidding of contract, a reduction in staff in the current year and fewer speed cushion installations being done this fiscal year.
- Municipal garage charges to maintain city fleet decreased by \$1,040,226. The decrease is attributable to lower fuel rates and implementation of new fuel conservation measures. Also contributing to this decrease is the reduction in several take home vehicles aiding the reduction of fleet usage.
- Expenses and encumbrances for minor apparatus in the Police department decreased \$157,889. Prior year expenses included purchases of emergency vehicle equipment, such as data talker, dual radar, and fiber installation.
- Rollback taxes decreased from the prior year by \$870,910. The decline is due to the City being near build-out and fewer commercial building projects as a result of the economy.
- Emergency Support expense decreased \$300,049 from the prior year primarily due to costs of a storm that took place in April 2008.
- Net transfers to contractual services decreased \$341,271.
- Contractual costs for professional services in the Human Resources department decreased from the prior year by \$150,738. The department spent and encumbered a total of \$95,000 for a compensation study and \$99,411 for kitchen and office remodeling in the prior year.
- Medical examination expense, which includes pre-employment drug testing and pre-employment physicals, decreased \$54,924 from the prior year. Costs for police new-hire physicals are currently being paid by the Police department instead of the Human Resources department. The additional decrease is due to fewer new hires in the City in fiscal year 2009.
- Expenditures and encumbrances for police training decreased \$91,106. Costs are incurred on an "as needed" basis.
- Costs associated with wearing apparel in the Police department decreased \$97,459 over prior year due to a "wearing apparel" cost containment plan that was instituted in the current year.
- Costs of maintenance and supplies for library administration decreased \$49,485. Badge readers at

REPORT NOTES CONTINUED

SEPTEMBER, 2009

- 4 libraries were installed in fiscal year 2008.
- In the current year, the city reimbursed the Department of Urban Development \$183,610 for sub-recipient grants to Plano International Preschool which did not meet national objective requirements. The City collected \$109,940 from the preschool.
- Capital Outlay purchases decreased \$1,078,609. Of this amount, \$1,038,436 was spent on new vehicles and various make ready changes. New additions to the fleet and make ready costs for the current year are \$229,782. The Police department spent and encumbered \$349,196 on vehicle cameras and accessories in the prior year. Storage cabinets to house microfilm at the libraries were purchased in the current year at a cost of \$84,604. However, costs for site and building improvements at the Day Labor Center were spent and encumbered in the current year totaling \$190,000.
- Costs associated with tuition reimbursement decreased \$110,662 due to a decrease in reimbursement requests.

BUSINESS-TYPE VARIANCES

Water and Sewer

- Water and sewer revenues increased over the prior year by \$2,778,030 and \$4,868,756, respectively. Rate increases implemented March 1st, 2009, contributed to the increase. Expenses and encumbrances for fixed meter reading network increased \$2,578,554 over the prior year. Fiscal year 2008 expenses and encumbrances were made primarily for equipment set-up, testing and software implementation while actual installation began in fiscal year 2009. Water meter purchases increased by \$244,781. Purchases will continue over the next several years to replace water meters and AMR devices. Contractual payments to North Texas Municipal Water District (NTMWD) for wastewater and pre-treatment services increased by \$4,287,126 and \$2,518,039 respectively. This increase is associated with increased water usage in the current year. Personal services costs increased \$845,442 primarily due to benefit related costs and funding of the City's 115 Trust of \$397,710. Transfers to Technology Services increased over the prior year by \$208,177 due to higher costs budgeted in the current year. Payment in lieu of taxes made to the General Fund increased over prior year \$394,319 due to an increase in water and sewer revenues. Internet processing fees increased over prior year \$152,799 due to increase in volume of transactions in utility billings and a month-month contract with Link2gov Corp. Expenses and Encumbrances include costs of \$1,185,314 associated with the construction of a new environmental education complex, which is expected to be completed by February 2010. The Water and Sewer Fund will be reimbursed \$737,000 of building construction costs by Environmental Services Fund.

Sustainability & Environmental Services

- Commercial franchise fee revenues, which are based on commercial tonnage disposed, decreased \$522,492 due to the downturn in the economy. Residential solid waste revenues are \$1,005,400 higher than the prior year primarily due to a \$1.25 rate increase for use of 95-gallon carts. Recycling revenues are down \$1,234,053 as a result of a decline in the recycling market. Compost revenues are higher by \$275,858 primarily due to an increase in the volume of products sold. The Sustainability and Environmental Services Department received reimbursements of \$125,704 in insurance and damage receipts for City fleet involved in accidents. This represents an increase of \$72,643 compared to the prior year. Tipping fees decreased \$106,611 due to the discontinuation of using treated fencing as a feedstock for compost. Expenses and encumbrances increased over the prior year by \$56,292. Personal services costs increased \$264,512 due to increased salary and benefit related costs as well as funding of the City's 115 Trust of \$242,055. Contractual payments to NTMWD increased \$788,764 over the prior year. The contract with Otto Container Management increased over the prior year by \$175,501 as a result of increase in maintenance fees in addition to increased number of carts. A new front end loader and a truck mounted forklift were added to the Compost Operations department in the prior year costing \$290,242 and \$42,950 respectively. Municipal garage charges to maintain city fleet decreased from the prior year by \$447,065 due to lower fuel rates and new procedures

REPORT NOTES CONTINUED

SEPTEMBER, 2009

being implemented to address fuel conservation measures. Costs for equipment rentals in the Compost Operations department decreased from the prior year \$161,325 primarily due to a total of \$111,173 spent to manage a fire that occurred in October 2007 at the Melissa compost site. Contractual professional services in the Solid Waste Collections department decreased \$38,523 due to a decrease in services in addition to using a more economical temporary staff agency. Reimbursement to Environmental Education and Community Outreach for Water Education Supervisor shared with Utility Maintenance Administration and Municipal Drainage Operations decreased \$185,640.

Municipal Drainage

- Interest income decreased \$102,635 due to a decline in the market. Personal services increased \$94,615 over the prior year due to increased salary and benefit related costs including the addition of a position. Of the benefit cost increase, year to date funding for the City's Section 115 Trust is \$52,380. Costs for maintenance parts and supplies in the Municipal Drainage Operations department increased \$53,082 due to increase in volume of concrete drainage structures repairs in the current year. Contractual professional services decreased by \$42,035 primarily due to carryforward of \$40,000 from the prior year. Municipal garage charges decreased \$17,018. Replacement charges to maintain municipal drainage fleet increased over the prior year by \$25,483. Reimbursements to the Public Works Administrative department decreased \$19,961 due to a change in personnel. The position of a senior programmer analyst has been replaced by a programmer analyst II. The capital outlay for municipal drainage decreased \$17,259 as a result of \$54,000 carried forward from the prior year.

Civic Center

- Hotel/motel tax revenues decreased \$1,199,958 primarily due to an increase in hotel/motel tax exemptions and decline in travel due to the economy. Lease fees are higher by \$105,417 over the prior year due to increased corporate business events. However, catering and equipment rental revenues are down \$241,237 and \$37,115 respectively, due to decreased corporate spending for ancillary services. Service charge revenues also decreased \$41,229 as service charges are a function of inside catering. Interest income decreased \$96,235 as compared to the prior year due to a decline in the market. Expenses and encumbrances decreased \$294,296 when compared to last year. Decreases include \$61,540 in concession food and \$77,185 in temporary staff services. Costs totaling \$197,764 were incurred in the prior year for work on expanding the parking lot at Plano Centre. Funds spent in the prior year for a replacement phone system cost \$71,582. The Civic Center also added a vehicle costing \$19,410 in the prior year. Personal services increased \$96,453 due to increased salary and benefit related costs. Of this amount, costs associated with funding of the city's 115 Trust was \$90,450. The Plano Convention & Tourism department has contracted services to assist in promotional efforts of area events and activities in the current year for \$48,000. Costs of replacement of an outdoor marquee in the current year are \$43,871.

Golf Course

- Golf revenues decreased from the prior year by \$52,225, primarily due to increased rainfall. Personal services decreased \$62,076 compared to prior year due to a reduction in staff in the current year. Capital Outlay decreased \$22,162 due to the prior year purchase of a greens mower by the Pecan Hollow Golf Course which cost \$22,104.

Recreation Revolving

- Revenues for recreational classes increased over the prior year by \$215,220. Due to the Tom Muehlenbeck Center opening in November 2007, an additional month of revenue has been collected from that facility in the current year. Class participation increased at the Center resulting in higher costs of contractual services for instructors in the amount of \$96,913. Costs for temporary

REPORT NOTES CONTINUED

SEPTEMBER, 2009

employees increased \$121,446 primarily as a result of increased swim programs at the Tom Muehlenbeck Center. Closing of the Williams Recreation Center in December 2008 resulted in contractual services decreases of \$78,698.

Property Management

- The City demolished Downtown Center South in fiscal year 2009. As a result, rental revenues decreased \$30,260. Expenses and encumbrances increased over prior year by \$3,701. Expenses and encumbrances in the current year include \$12,508 to demolish Downtown South and \$10,990 for asbestos abatement. Appraisal services were rendered in the prior year costing \$3,800. Other prior year expenses also included \$6,624 to a management company for lease extensions and \$6,000 to an architectural firm for a review of improvements at a facility owned by the City.



SECTION 1A

FINANCIAL SUMMARY

City of Plano

Comprehensive Monthly Finance Report

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

	Fiscal Year	Annual Budget	Re-estimated Budget	12 Months Actual	Actual/ Re-estimate	Performance Index
REVENUES:						
Ad valorem tax	2009	\$ 83,068,770	82,840,550	82,580,537	99.7%	99.69
	2008	77,466,721	77,641,257	77,593,744	99.9%	99.94
	2007	69,461,175	69,461,175	69,646,933	100.3%	100.27
Sales tax	2009	57,417,708	55,795,630	56,538,739	101.3%	101.33
	2008	61,181,328	59,193,513	62,113,836	104.9%	104.93
	2007	57,606,179	61,181,328	62,308,961	101.8%	101.84
Other revenue	2009	62,552,130	58,821,692	59,715,512	101.5%	101.52
	2008	57,398,252	56,790,970	58,819,221	103.6%	103.57
	2007	55,711,155	54,821,858	56,087,368	102.3%	102.31
TOTAL REVENUE	2009	203,038,608	197,457,872	198,834,788	100.7%	100.70
	2008	196,046,301	193,625,740	198,526,801	102.5%	102.53
	2007	182,778,509	185,464,361	188,043,262	101.4%	101.39
EXPENDITURES & ENCUMBRANCES:						
Current operating	2009	\$ 210,004,657	213,103,252	202,049,441	94.8%	94.81
	2008	210,265,059	205,829,737	198,999,052	96.7%	96.68
	2007	199,279,038	194,755,089	190,126,515	97.6%	97.62
Capital outlay	2009	2,505,307	3,361,732	2,070,436	61.6%	61.59
	2008	2,254,500	3,059,097	3,149,045	102.9%	102.94
	2007	1,465,905	2,077,408	2,695,808	129.8%	129.77
Total expenditures and encumbrances	2009	212,509,964	216,464,984	204,119,877	94.3%	94.30
	2008	212,519,559	208,888,834	202,148,097	96.8%	96.77
	2007	200,744,943	196,832,497	192,822,323	98.0%	97.96
Excess (deficiency) of revenues over (under) expenditures	2009	(9,471,356)	(19,007,112)	(5,285,089)	-	-
	2008	(16,473,258)	(15,263,094)	(3,621,296)	-	-
	2007	(17,966,434)	(11,368,136)	(4,779,061)	-	-
OTHER FINANCING SOURCES (USES)						
Transfers in	2009	7,804,331	10,774,010	10,774,010	100.0%	100.00
	2008	7,279,831	9,669,342	9,669,342	100.0%	100.00
	2007	6,944,358	9,462,696	9,462,695	100.0%	100.00
Transfers out	2009	(10,809,587)	(10,633,769)	(10,633,768)	100.0%	100.00
	2008	(10,844,568)	(10,809,587)	(10,809,587)	100.0%	100.00
	2007	(10,560,111)	(10,560,111)	(10,560,111)	100.0%	100.00
NET CHANGE IN FUND BALANCES	2009	(12,476,612)	(18,866,871)	(5,144,847)		
	2008	(20,037,995)	(16,403,339)	(4,761,541)		
	2007	(21,582,187)	(12,465,551)	(5,876,477)		
FUND BALANCES-BEGINNING	2009			44,741,546		
	2008			45,683,660		
	2007			48,804,662		
FUND BALANCES-ENDING SEPTEMBER 30	2009			39,596,699		
	2008			40,922,119		
	2007			42,928,185		

Note: FY 2007 and 2008 re-estimated budget and actuals include carryforward amounts, FY 2009 carryforward amounts are not available at time of print.

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

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>Re-estimated Budget</u>	<u>12 Months Actual</u>	<u>Actual/ Re-estimate</u>	<u>Performance Index</u>
REVENUES:						
Water and sewer revenue	2009	\$ 110,225,529	105,076,022	105,107,716	100.0%	100.03
	2008	96,339,563	94,628,518	97,492,272	103.0%	103.03
	2007	93,433,871	81,485,007	81,446,752	100.0%	99.95
Other fees and service charges	2009	2,572,861	2,604,594	2,587,854	99.4%	99.36
	2008	2,693,389	2,489,957	2,578,540	103.6%	103.56
	2007	<u>2,556,353</u>	<u>2,697,507</u>	<u>2,201,366</u>	81.6%	81.61
TOTAL REVENUE	2009	112,798,390	107,680,616	107,695,570	100.0%	100.01
	2008	99,032,952	97,118,475	100,070,812	103.0%	103.04
	2007	<u>95,990,224</u>	<u>84,182,514</u>	<u>83,648,118</u>	99.4%	99.37
EXPENSES & ENCUMBRANCES:						
Capital outlay	2009	-	1,470,584	1,283,116	87.3%	87.25
	2008	1,245,000	1,323,720	218,035	16.5%	16.47
	2007	80,000	397,000	183,804	46.3%	46.30
Other expenses & encumbrances	2009	87,155,021	85,359,216	84,583,062	99.1%	99.09
	2008	77,515,769	75,090,134	73,261,326	97.6%	97.56
	2007	<u>75,312,664</u>	<u>71,521,732</u>	<u>68,620,648</u>	95.9%	95.94
Total expenses and encumbrances	2009	87,155,021	86,829,800	85,866,178	98.9%	98.89
	2008	78,760,769	76,413,854	73,479,361	96.2%	96.16
	2007	<u>75,392,664</u>	<u>71,918,732</u>	<u>68,804,452</u>	95.7%	95.67
Excess (deficiency) of revenues over (under) expenses	2009	25,643,369	20,850,816	21,829,392	-	-
	2008	20,272,183	20,704,621	26,591,451	-	-
	2007	20,597,560	12,263,782	14,843,666	-	-
TRANSFERS IN (OUT)						
Transfers in	2009	-	-	-	-	-
	2008	254,530	254,530	254,530	100.0%	100.00
	2007	267,877	291,986	291,986	100.0%	100.00
Transfers out	2009	(22,203,624)	(25,205,761)	(25,205,761)	100.0%	100.00
	2008	(19,546,676)	(21,910,286)	(21,910,286)	100.0%	100.00
	2007	<u>(18,704,640)</u>	<u>(26,532,666)</u>	<u>(26,532,666)</u>	100.0%	100.00
CHANGE IN NET ASSETS	2009	\$ 3,439,745	(4,354,945)	(3,376,369)		
	2008	980,037	(951,135)	4,935,695		
	2007	2,160,797	(13,976,898)	(11,397,014)		
TOTAL NET ASSETS-BEGINNING	2009			321,538,734		
	2008			315,705,835		
	2007			<u>324,870,706</u>		
TOTAL NET ASSETS-ENDING SEPTEMBER 30	2009			318,162,365		
	2008			320,641,530		
	2007			<u>313,473,692</u>		

Note: FY 2007 and 2008 re-estimated budget and actuals include carryforward amounts, FY 2009 carryforward amounts are not available at time of print.

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

	<u>Fiscal</u> <u>Year</u>	<u>Annual</u> <u>Budget</u>	<u>Re-estimated</u> <u>Budget</u>	<u>12 Months</u> <u>Actual</u>	<u>Actual/</u> <u>Re-estimate</u>	<u>Performance</u> <u>Index</u>
REVENUES:						
Commerical solid waste franchise	2009	\$ 6,496,731	6,481,522	6,198,972	95.6%	95.64
	2008	6,351,573	6,421,781	6,721,464	104.7%	104.67
	2007	5,900,620	6,266,842	6,259,512	99.9%	99.88
Refuse collection revenue	2009	13,316,939	12,700,268	12,721,390	100.2%	100.17
	2008	12,272,746	12,733,933	12,938,763	101.6%	101.61
	2007	12,077,759	12,189,134	12,472,213	102.3%	102.32
Other fees and service charges	2009	2,502,911	2,416,866	2,310,721	95.6%	95.61
	2008	2,100,592	1,920,660	1,820,533	94.8%	94.79
	2007	1,545,269	1,627,446	1,656,929	101.8%	101.81
TOTAL REVENUE	2009	22,316,581	21,598,656	21,231,083	98.3%	98.30
	2008	20,724,911	21,076,374	21,480,760	101.9%	101.92
	2007	19,523,648	20,083,422	20,388,654	101.5%	101.52
EXPENSES & ENCUMBRANCES:						
Capital outlay	2009	256,170	203,311	192,101	94.5%	94.49
	2008	141,500	480,367	472,967	98.5%	98.46
	2007	312,000	459,693	132,439	28.8%	28.81
Other expenses & encumbrances	2009	22,663,834	21,711,566	22,141,105	102.0%	101.98
	2008	21,144,170	21,268,308	21,803,947	102.5%	102.52
	2007	19,736,278	19,464,652	19,500,968	100.2%	100.19
Total expenses and encumbrances	2009	22,920,004	21,914,877	22,333,206	101.9%	101.91
	2008	21,285,670	21,748,675	22,276,914	102.4%	102.43
	2007	20,048,278	19,924,345	19,633,407	98.5%	98.54
Excess (deficiency) of revenues over (under) expenses	2009	(603,423)	(316,221)	(1,102,123)	-	-
	2008	(560,759)	(672,301)	(796,154)	-	-
	2007	(524,630)	159,077	755,247	-	-
TRANSFERS IN (OUT)						
Transfers in	2009	100,000	100,000	100,000	100.0%	100.00
	2008	100,000	100,000	100,000	100.0%	100.00
	2007	84,758	84,758	84,758	100.0%	100.00
Transfers out	2009	-	-	-	0.0%	-
	2008	-	-	-	0.0%	-
	2007	-	-	-	0.0%	-
CHANGE IN NET ASSETS	2009	\$ (503,423)	(216,221)	(1,002,123)		
	2008	(460,759)	(572,301)	(696,154)		
	2007	(439,872)	243,835	840,005		
TOTAL NET ASSETS-BEGINNING	2009			1,690,291		
	2008			2,308,223		
	2007			1,759,463		
TOTAL NET ASSETS-ENDING	2009			688,168		
SEPTEMBER 30	2008			1,612,069		
	2007			2,599,468		

Note: FY 2007 and 2008 re-estimated budget and actuals include carryforward amounts, FY 2009 carryforward amounts are not available at time of print.

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

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>Re-estimated Budget</u>	<u>12 Months Actual</u>	<u>Actual/ Re-estimate</u>	<u>Performance Index</u>
REVENUES:						
Fees and service charges	2009	\$ 4,928,110	5,000,113	5,048,196	101.0%	100.96
	2008	4,723,698	4,908,476	4,976,304	101.4%	101.38
	2007	4,700,197	4,700,197	4,908,476	104.4%	104.43
Miscellaneous revenue	2009	150,000	80,000	69,807	87.3%	87.26
	2008	125,000	175,000	175,789	100.5%	100.45
	2007	108,500	145,000	228,441	157.5%	157.55
TOTAL REVENUE	2009	5,078,110	5,080,113	5,118,003	100.7%	100.75
	2008	4,848,698	5,083,476	5,152,093	101.3%	101.35
	2007	4,808,697	4,845,197	5,136,917	106.0%	106.02
EXPENSES & ENCUMBRANCES:						
Capital outlay	2009	-	54,000	38,505	71.3%	-
	2008	-	54,000	54,741	1.01	-
	2007	28,000	28,200	25,147	89.2%	89.17
Other expenses & encumbrances	2009	2,823,503	2,942,639	2,410,720	81.9%	81.92
	2008	2,599,209	2,638,950	2,386,495	90.4%	90.43
	2007	2,701,621	2,473,294	2,121,166	85.8%	85.76
Total expenses and encumbrances	2009	2,823,503	2,996,639	2,449,225	81.7%	81.73
	2008	2,599,209	2,692,950	2,441,236	90.7%	90.65
	2007	2,729,621	2,501,494	2,146,313	85.8%	85.80
Excess (deficiency) of revenues over (under) expenses	2009	2,254,607	2,083,474	2,668,778	-	-
	2008	2,249,489	2,390,526	2,710,857	-	-
	2007	2,079,076	2,343,703	2,990,604	-	-
TRANSFERS OUT						
Operating transfers out	2009	(2,847,538)	(2,872,152)	(2,872,152)	100.0%	100.00
	2008	(2,690,706)	(2,765,741)	(2,765,741)	100.0%	100.00
	2007	(2,538,951)	(2,603,293)	(2,603,293)	100.0%	100.00
CHANGE IN NET ASSETS	2009	(592,931)	(788,678)	(203,374)		
	2008	(441,217)	(375,215)	(54,884)		
	2007	(459,875)	(259,590)	387,311		
TOTAL NET ASSETS-BEGINNING	2009			21,003,753		
	2008			21,105,863		
	2007			20,753,610		
TOTAL NET ASSETS-ENDING SEPTEMBER 30	2009			20,800,379		
	2008			21,050,979		
	2007			21,140,921		

Note: FY 2007 and 2008 re-estimated budget and actuals include carryforward amounts, FY 2009 carryforward amounts are not available at time of print.

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

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>Re-estimated Budget</u>	<u>12 Months Actual</u>	<u>Actual/ Re-estimate</u>	<u>Performance Index</u>
REVENUES:						
Hotel/motel tax	2009	\$ 4,964,601	4,428,065	3,709,103	83.8%	83.76
	2008	4,518,066	4,773,655	4,909,061	102.8%	102.84
	2007	4,008,677	4,407,869	4,741,492	107.6%	107.57
Other revenue	2009	6,974,294	6,709,879	6,742,411	100.5%	100.48
	2008	6,695,120	6,958,820	6,974,672	100.2%	100.23
	2007	6,325,693	6,314,613	6,595,304	104.4%	104.45
TOTAL REVENUE	2009	11,938,895	11,137,944	10,451,514	93.8%	93.84
	2008	11,213,186	11,732,475	11,883,733	101.3%	101.29
	2007	10,334,370	10,722,482	11,336,796	105.7%	105.73
EXPENSES & ENCUMBRANCES:						
Capital outlay	2009	-	75,236	143,308	190.5%	190.48
	2008	80,500	111,925	418,185	373.6%	373.63
	2007	51,500	78,000	174,903	224.2%	224.23
Other expenses & encumbrances	2009	12,570,538	11,787,333	10,784,749	91.5%	91.49
	2008	11,679,342	11,940,700	10,668,170	89.3%	89.34
	2007	10,489,418	10,720,491	9,478,839	88.4%	88.42
Total expenses and encumbrances	2009	12,570,538	11,862,569	10,928,057	92.1%	92.12
	2008	11,759,842	12,052,625	11,086,355	92.0%	91.98
	2007	10,540,918	10,798,491	9,653,742	89.4%	89.40
Excess (deficiency) of Revenues over (under) expenses	2009	(631,643)	(724,625)	(476,543)	-	-
	2008	(546,656)	(320,150)	797,378	-	-
	2007	(206,548)	(76,009)	1,683,054	-	=
TRANSFERS OUT:						
Operating transfers out	2009	(1,424,860)	(1,387,362)	(1,387,362)	100.0%	100.00
	2008	(1,100,300)	(1,126,201)	(1,126,201)	100.0%	100.00
	2007	(650,346)	(668,910)	(668,910)	100.0%	100.00
CHANGE IN NET ASSETS	2009	(2,056,503)	(2,111,987)	(1,863,905)		
	2008	(1,646,956)	(1,446,351)	(328,823)		
	2007	(856,894)	(744,919)	1,014,144		
TOTAL NET ASSETS-BEGINNING	2009			13,062,762		
	2008			13,467,830		
	2007			12,925,456		
TOTAL NET ASSETS-ENDING SEPTEMBER 30	2009			11,198,857		
	2008			13,139,007		
	2007			13,939,600		

Note: FY 2007 and 2008 re-estimated budget and actuals include carryforward amounts, FY 2009 carryforward amounts are not available at time of print.

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

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>Re-estimated Budget</u>	<u>12 Months Actual</u>	<u>Actual/ Re-estimate</u>	<u>Performance Index</u>
REVENUES:						
Charges for services	2009	\$ 6,068,614	6,144,218	6,144,218	100.0%	100.00
	2008	6,849,652	6,985,489	6,985,489	100.0%	100.00
	2007	6,830,639	6,917,663	6,917,663	100.0%	100.00
Miscellaneous revenue	2009	\$ 310,000	200,000	199,400	99.7%	99.70
	2008	185,000	361,420	372,079	102.9%	102.95
	2007	-	210,000	323,667	154.1%	154.13
		<u>6,378,614</u>	<u>6,344,218</u>	<u>6,343,618</u>		
		<u>7,034,652</u>	<u>7,346,909</u>	<u>7,357,568</u>		
		<u>6,830,639</u>	<u>7,127,663</u>	<u>7,241,330</u>		
EXPENSES & ENCUMBRANCES						
Personal services	2009	559,469	585,390	591,186	101.0%	100.99
	2008	550,728	534,882	557,761	104.3%	104.28
	2007	528,912	526,928	524,552	99.5%	99.55
Materials and supplies	2009	23,452	25,835	21,891	84.7%	84.73
	2008	23,500	25,883	23,795	91.9%	91.93
	2007	26,000	49,809	45,647	91.6%	91.64
Contractual / professional and other	2009	5,485,693	5,532,993	3,933,028	71.1%	71.08
	2008	6,275,424	12,015,451	1,507,860	12.5%	12.55
	2007	6,275,727	6,334,327	6,499,892	102.6%	102.61
Capital outlay	2009	-	-	-	-	-
	2008	-	-	-	-	-
	2007	-	6,599	6,599	100.0%	100.00
Total Expenses and Encumbrances	2009	6,068,614	6,144,218	4,546,105	74.0%	73.99
	2008	6,849,652	12,576,216	2,089,416	16.6%	16.61
	2007	6,830,639	6,917,663	7,076,690	102.3%	102.30
CHANGE IN NET ASSETS	2009	310,000	200,000	1,797,513		
	2008	185,000	(5,229,307)	5,268,152		
	2007	-	210,000	164,640		
TOTAL NET ASSETS-BEGINNING	2009			12,255,577		
	2008			6,940,876		
	2007			<u>1,029,866</u>		
TOTAL NET ASSETS-ENDING SEPTEMBER 30	2009			14,053,090		
	2008			12,209,028		
	2007			<u>1,194,506</u>		

Note: FY 2007 and 2008 re-estimated budget and actuals include carryforward amounts, FY 2009 carryforward amounts are not available at time of print.

EQUITY IN TREASURY POOL

SEPTEMBER 2009

FUND NO.	FUND NAME	CASH	EQUITY IN TREASURY POOL	TOTAL 9/30/09	TOTAL 10/1/08	TOTAL 9/30/08
GENERAL FUND:						
01	General	\$ 28,014	38,744,277	38,772,291	41,392,079	41,392,079
77	Payroll	-	2,009,542	2,009,542	1,949,394	1,949,394
24	City Store	-	-	-	9,800	9,800
		28,014	40,753,819	40,781,833	43,351,273	43,351,273
DEBT SERVICE FUND:						
03	G.O. Debt Service	-	3,285,956	3,285,956	5,484,247	5,484,247
		-	3,285,956	3,285,956	5,484,247	5,484,247
CAPITAL PROJECTS:						
22	Recreation Center Facilities	-	588,263	588,263	579,235	579,235
23	Street Enhancement	-	1,654,571	1,654,571	1,629,181	1,629,181
25	1991 Police & Courts Facility	-	1,063,019	1,063,019	1,260,384	1,260,384
27	1991 Library Facility	-	877,929	877,929	864,457	864,457
28	1991 Fire Facility	-	3,517,373	3,517,373	2,276,248	2,276,248
29	Technology Improvements	-	935,746	935,746	745,789	745,789
31	Municipal Facilities	-	450,346	450,346	440,760	440,760
32	Park Improvements	-	6,869,243	6,869,243	5,734,853	5,734,853
33	Street & Drainage Improvement	-	9,314,248	9,314,248	4,778,540	4,778,540
35	Capital Reserve	-	39,856,318	39,856,318	39,462,781	39,462,781
38	DART L.A.P.	-	772,562	772,562	760,707	760,707
39	Spring Creekwalk	-	23,781	23,781	23,416	23,416
52	Park Service Areas	-	5,627,066	5,627,066	5,803,569	5,803,569
53	Creative & Performing Arts	-	2,218,827	2,218,827	2,184,778	2,184,778
54	Animal Control Facilities	-	341,272	341,272	336,035	336,035
59	Service Center	-	132,674	132,674	130,638	130,638
60	Joint Use Facilities	-	638,119	638,119	628,326	628,326
85	Public Arts	-	118,272	118,272	116,457	116,457
160	TXDOT-SH121	-	10,193,301	10,193,301	-	-
110	G.O. Bond Clearing - 1999	-	326,826	326,826	342,544	342,544
190	G.O. Bond Clearing - 2000	-	3,664,239	3,664,239	3,640,760	3,640,760
230	Tax Notes Clearing - 2001	-	1,118,796	1,118,796	1,342,586	1,342,586
240	G.O. Bond Clearing - 2001-A	-	185,026	185,026	182,187	182,187
250	Tax Notes Clearing - 2001-A	-	60,257	60,257	158,395	158,395
270	G.O. Bond Refund/Clearing - 2003	-	124,727	124,727	136,843	136,843
310	G.O. Bond Refund/Clearing - 2005	-	-	-	-	-
093	G.O. Bond Clearing - 2006	-	-	-	-	-
089	C.O. Bond Clearing - 2006	-	149,036	149,036	268,914	268,914
102	G.O. Bond Clearing - 2007	-	1,283,823	1,283,823	9,664,026	9,664,026
105	Tax Notes Clearing - 2007	-	526	526	555,411	555,411
082	G.O. Bond Clearing - 2008	-	12,129,150	12,129,150	34,778,209	34,778,209
083	Tax Notes Clearing - 2008	-	11,512,938	11,512,938	17,207,111	17,207,111
106	G.O. Bond Clearing - 2009	-	20,973,654	20,973,654	-	-
150	Tax Notes Clearing - 2009	-	6,427,306	6,427,306	-	-
		-	143,149,234	143,149,234	136,033,140	136,033,140
ENTERPRISE FUNDS:						
26	Municipal Drainage CIP	-	296,030	296,030	281,022	281,022
34	Sewer CIP	-	10,880,651	10,880,651	8,134,307	8,134,307
36	Water CIP	-	10,379,629	10,379,629	5,531,294	5,531,294
37	Downtown Center Development	-	141,340	141,340	119,257	119,257
41	Water & Sewer - Operating	370,130	1,726,329	2,096,459	3,227,451	3,227,451
42	Water & Sewer - Debt Service	-	328,790	328,790	207,060	207,060
43	Municipal Drainage - Debt Service	-	3,356,177	3,356,177	3,288,284	3,288,284
44	W & S Impact Fees Clearing	-	-	-	3,292,773	3,292,773
45	Sustainability & Environmental Services	34,937	(562,529)	(527,592)	770,016	770,016
46	Convention & Tourism	4,310	2,810,096	2,814,406	4,248,434	4,248,434
81	Friends of Plano Centre	-	3,953	3,953	3,892	3,892
47	Municipal Drainage	10,334	4,176,143	4,186,477	4,346,876	4,346,876
48	Municipal Golf Course	-	111,999	111,999	138,945	138,945
49	Property Management	-	470,333	470,333	439,513	439,513
51	Recreation Revolving	350	1,404,229	1,404,579	1,411,929	1,411,929
104	Municipal Drain Bond Clearing-1996	-	-	-	179,811	179,811
320	Municipal Drain Rev Bond Clearing - 2005	-	-	-	152,416	152,416
094	Municipal Drain Rev Bond Clearing - 2006	-	-	-	163,758	163,758
330	Municipal Drain Rev Bond Clearing - 2007	-	1,600,634	1,600,634	2,604,212	2,604,212
340	Municipal Drain Rev Bond Clearing - 2008	-	2,123,293	2,123,293	2,090,710	2,090,710
107	Municipal Drain Rev Bond Clearing - 2009	-	1,780,378	1,780,378	-	-
		420,061	41,027,475	41,447,536	40,631,960	40,631,960

EQUITY IN TREASURY POOL

SEPTEMBER 2009

FUND NO.	FUND NAME	CASH	EQUITY IN TREASURY POOL	TOTAL 9/30/09	TOTAL 10/1/08	TOTAL 9/30/08
SPECIAL REVENUE FUNDS:						
2	Sproles Library	-	186,351	186,351	184,786	184,786
4	TIF-Mall	-	-	-	-	-
5	TIF-East Side	-	5,774,599	5,774,599	6,002,395	6,002,395
11	LLEBG-Police Grant	-	40,868	40,868	25,970	25,970
12	Criminal Investigation	-	1,341,054	1,341,054	988,895	988,895
13	Grant	95	(445,244)	(445,149)	(68,916)	(68,916)
14	Wireline Fees	-	9,738,632	9,738,632	398,768	398,768
15	Judicial Efficiency	-	126,134	126,134	118,125	118,125
16	Industrial	-	18,273	18,273	17,993	17,993
17	Intergovernmental	-	371,968	371,968	370,126	370,126
18	Government Access/CATV	-	292,278	292,278	430,794	430,794
19	Teen Court Program	-	49,271	49,271	45,649	45,649
20	Municipal Courts Technology	-	1,702,126	1,702,126	1,537,733	1,537,733
24	American Recovery/Reinv Act Grant	-	226,793	226,793	-	-
55	Municipal Court-Building Security Fees	-	1,179,255	1,179,255	1,327,658	1,327,658
56	911 Reserve Fund	-	-	-	8,461,787	8,461,787
57	State Library Grants	-	(35,972)	(35,972)	(53,409)	(53,409)
67	Disaster Relief	-	1,203,465	1,203,465	1,088,243	1,088,243
68	Animal Shelter Donations	-	248,282	248,282	179,916	179,916
73	Memorial Library	-	348,039	348,039	377,874	377,874
86	Juvenile Case Manager	-	275,874	275,874	167,328	167,328
87	Traffic Safety	-	2,322,902	2,322,902	1,212,502	1,212,502
88	Child Safety	-	1,216,911	1,216,911	826,922	826,922
		95	26,181,859	26,181,954	23,641,139	23,641,139
INTERNAL SERVICE FUNDS:						
6	Public Safety Technology	-	1,989,001	1,989,001	1,717,520	1,717,520
9	Technology Infrastructure	-	(8,980)	(8,980)	(107,905)	(107,905)
58	PC Replacement	-	946,678	946,678	2,024,127	2,024,127
61	Equipment Maintenance	200	985,658	985,858	(4,200,912)	(4,200,912)
62	Information Technology	-	4,692,594	4,692,594	3,260,847	3,260,847
63	Office Services	125	(114,604)	(114,479)	(276,904)	(276,904)
64	Warehouse	100	134,351	134,451	237,638	237,638
65	Property/Liability Loss	-	4,505,899	4,505,899	5,624,465	5,624,465
66	Technology Services	-	6,844,001	6,844,001	12,786,423	12,786,423
71	Equipment Replacement	-	15,744,201	15,744,201	10,279,459	10,279,459
78	Health Claims	-	11,149,912	11,149,912	7,943,436	7,943,436
79	Parkway Service Ctr. Expansion	-	(28,626)	(28,626)	(28,187)	(28,187)
		425	46,840,085	46,840,510	39,260,007	39,260,007
FIDUCIARY FUNDS:						
7	Unclaimed Property	-	58,343	58,343	56,701	56,701
8	Library Training Lab	-	2,739	2,739	5,516	5,516
69	Collin County Seized Assets	-	146,232	146,232	262,791	262,791
74	Developers' Escrow	-	2,463,818	2,463,818	4,184,550	4,184,550
75	Plano Economic Development Trust	-	376,134	376,134	683,273	683,273
76	Economic Development	200	13,842,292	13,842,492	11,727,330	11,727,330
84	Rebate	-	1,492,232	1,492,232	1,016,829	1,016,829
		200	18,381,790	18,381,990	17,936,990	17,936,990
TOTAL		\$ 448,795	319,620,218	320,069,013	306,338,756	306,338,756
TRUST FUNDS						
		CASH	TRUST INVESTMENTS	TOTAL 9/30/09	TOTAL 10/1/08	TOTAL 9/30/08
72	Retirement Security Plan	-	61,611,854	61,611,854	61,611,854	61,611,854
91	115 Trust	-	25,832,716	25,832,716	21,299,133	21,299,133
TOTAL TRUST FUNDS		\$ -	87,444,570	87,444,570	82,910,987	82,910,987

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

Cash	20,943,242
Local Government Investment Pool	3,143,519
Texas Daily	18,332,255
Federal Securities	195,033,684
Certificates of Deposit	80,199,000
Fair Value Adjustment	526,112
Interest Receivable	1,442,406
	<u>319,620,218</u>

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

	6 Month			5 month			1 month			Year to Date		
	FY 08-09	FY 07-08	Variance Favorable (Unfavorable)	FY 08-09	FY 07-08	Variance Favorable (Unfavorable)	FY 08-09	FY 07-08	Variance Favorable (Unfavorable)	FY 08-09	FY 07-08	Variance Favorable (Unfavorable)
	October-March	October-March		April-August	April-August		September	September		Total	Total	
Health Claims Fund												
Revenues												
Employees Health Ins. Contributions	\$ 1,562,494	\$ 1,399,631	162,863	\$ 1,328,733	\$ 1,262,631	66,102	\$ 265,783	\$ 250,977	14,806	\$ 3,157,010	\$ 2,913,239	243,771
Employers Health Ins. Contributions	9,478,853	9,659,771	(180,918)	8,858,722	7,753,419	1,105,304	1,776,037	1,549,329	226,708	20,113,612	18,962,519	1,151,094
Contributions for Retirees	372,005	353,871	18,134	313,364	314,777	(1,414)	43,998	41,070	2,928	729,367	709,718	19,648
Cobra Insurance Receipts	23,945	32,532	(8,587)	21,634	19,415	2,219	2,345	9,686	(7,341)	47,924	61,633	(13,709)
Retiree Insurance Receipts	273,428	233,380	40,048	267,720	186,770	80,949	78,310	50,820	27,490	619,458	470,970	148,487
Retiree Contributions	-	-	-	(367,891)	-	(367,891)	(52,332)	-	(52,332)	(420,223)	-	(420,223)
Employer Contribution-OPEB	2,211,975	-	2,211,975	2,729,565	-	2,729,565	545,400	-	545,400	5,486,940	-	5,486,940
Interest	66,712	719,492	(652,780)	70,554	153,137	(82,583)	(1,371)	6,791	(8,162)	135,895	879,420	(743,525)
Total Revenues	13,989,412	12,398,677	1,590,735	13,222,401	9,690,149	3,532,252	2,658,170	1,908,673	749,497	29,869,983	23,997,499	5,872,484
Transfers Out												
Transfers Out	2,010,628	15,500,000	13,489,372	3,361,739	7,500,006	4,138,267	659,516	-	(659,516)	6,031,883	23,000,006	16,968,123
Expenses												
Insurance	583,646	702,263	118,617	389,508	581,265	191,757	78,125	115,937	37,812	1,051,279	1,399,465	348,186
Contracts- Professional Svc.	147,115	108,169	(38,946)	77,579	55,131	(22,448)	5,471	41,198	35,727	230,165	204,498	(25,667)
Contractual Repair	-	120	120	-	-	-	-	-	-	-	120	120
Contracts- Other	598,428	503,016	(95,412)	553,730	490,033	(63,697)	96,735	141,064	44,329	1,248,893	1,134,113	(114,780)
Health Claims Paid Reinsurance	(674,424)	(507,228)	167,196	(462,351)	(71,756)	390,595	(513)	740,521	741,034	(1,137,288)	161,537	1,298,825
Retiree Claims	(685,801)	-	685,801	(987,520)	-	987,520	(228,702)	-	228,702	(1,902,023)	-	1,902,023
Health Claims - Prescription	1,761,414	1,534,767	(226,647)	1,624,953	1,269,442	(355,511)	435,785	272,166	(163,619)	3,822,152	3,076,375	(745,777)
Health Claims Paid -UHC	9,357,619	6,551,997	(2,805,622)	6,450,277	6,838,205	387,928	1,247,587	1,430,648	183,061	17,055,483	14,820,850	(2,234,633)
Cobra Insurance Paid	1,818	2,384	566	746	2,042	1,295	234	226	(8)	2,798	4,652	1,853
Retiree Insurance Paid	39,386	59,489	20,103	33,693	34,394	701	6,991	8,163	1,172	80,070	102,046	21,976
Retiree Insurance Paid- Medicare	150,436	57,320	(93,116)	111,004	110,127	(877)	150	435	285	261,590	167,882	(93,708)
Total Expenses	11,279,637	9,012,297	(2,267,340)	7,791,621	9,308,883	1,517,263	1,641,863	2,750,358	1,108,495	20,713,121	21,071,538	358,418
Net increase (decrease)	\$ 699,147	\$ (12,113,620)	12,812,767	2,069,041	(7,118,740)	9,187,781	356,791	(841,685)	1,198,476	\$ 3,124,979	\$(20,074,045)	23,199,024
Health Claims Fund Balance - Cumulative	\$ 4,678,986	\$ 11,940,264	(7,261,278)	\$ 6,748,028	\$ 4,821,525	1,926,503	\$ 7,104,819	\$ 3,979,840	3,124,979			

Note: FY 2009 expense does not include the IBNR accrual as the data is not available at time of print.

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

PROPERTY LIABILITY LOSS FUND	Fiscal Year 2009	Fiscal Year 2008	Fiscal Year 2007
Claims Paid per General Ledger	\$ 1,703,884	1,013,341	1,167,342
Net Judgments/Damages/Attorney Fees	875,247	1,259,297	953,058
Total Expenses	\$ 2,579,131	2,272,638	2,120,400

Note: FY 2009 expense does not include the IBNR accrual as the data is not available at time of print.

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SECTION 2

ECONOMIC ANALYSIS

City of Plano

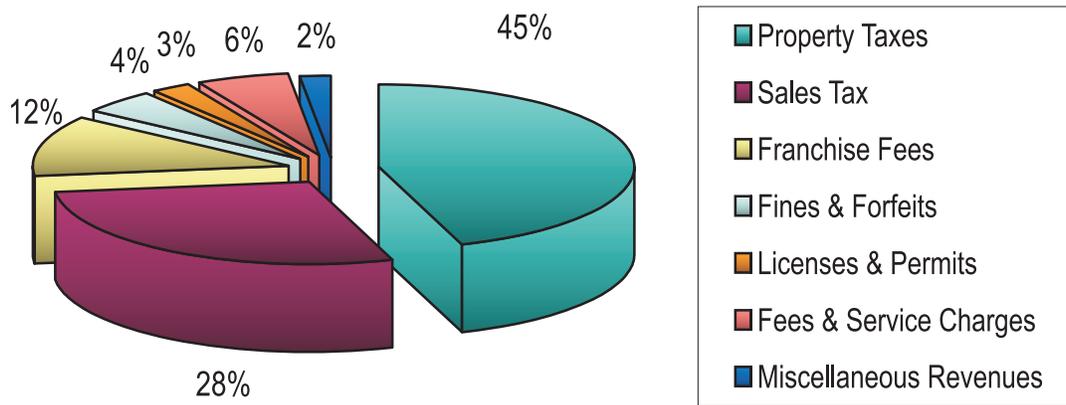
Comprehensive Monthly Finance Report

ECONOMIC ANALYSIS

Figure I shows a breakdown of the various sources of revenues for the City's General Fund Year to Date through September 30, 2009. The largest category is Ad Valorem Property Taxes in the amount of \$82.6 million. Closest

behind is Sales Tax with a total of \$52.4 million, and Franchise Fees with a total of \$22.4 million.

**General Fund Revenue
September YTD
Figure I**



**Expenditures and Encumbrances
September YTD
Figure II**

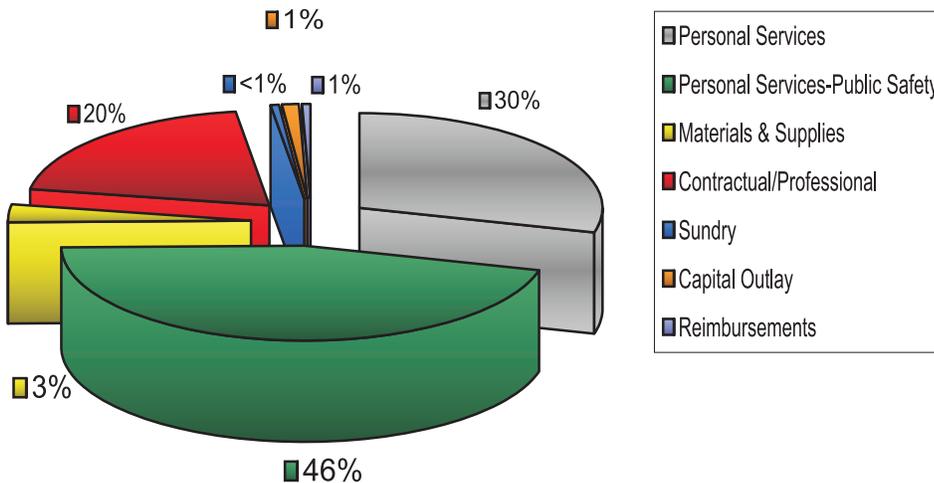


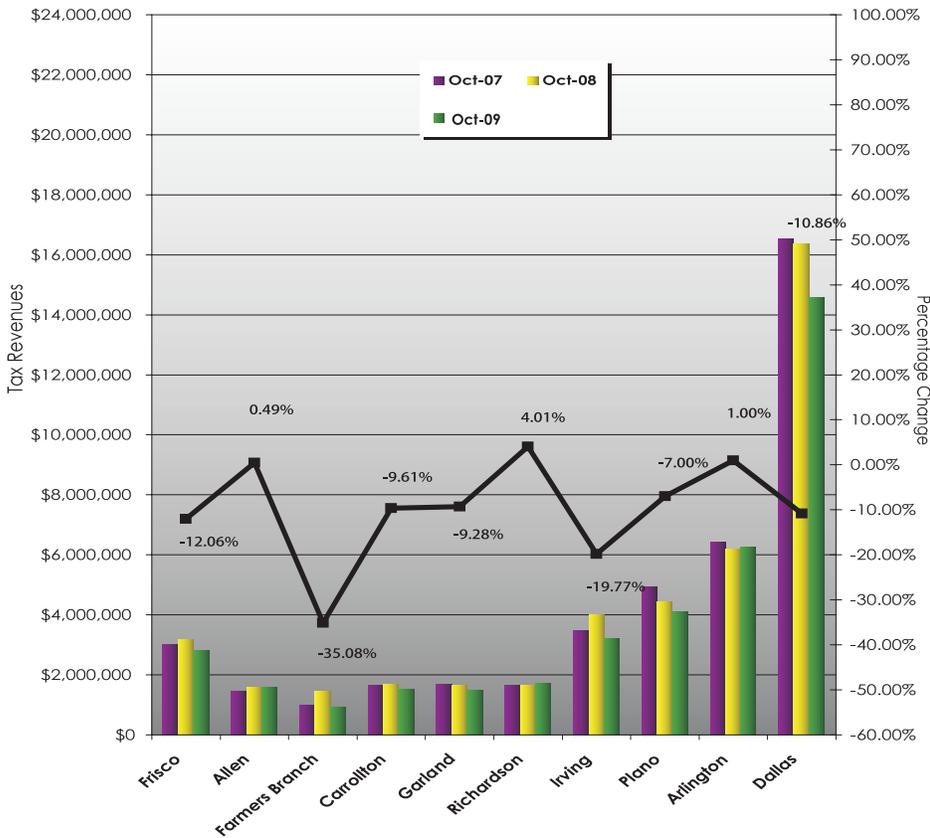
Figure II shows a breakdown of the various expenditures and encumbrances for the City's General Fund Year to Date through September 30, 2009. The largest category is Personal Services-Public Safety in the amount of \$89.4 million which includes the Police, Fire, Fire-Civilian and Public Safety Communications departments. Closest behind is Personal Services (for all other departments) with a total of \$57.3 million, and Contractual/Professional Services totaling \$39.2 million.

ECONOMIC ANALYSIS

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

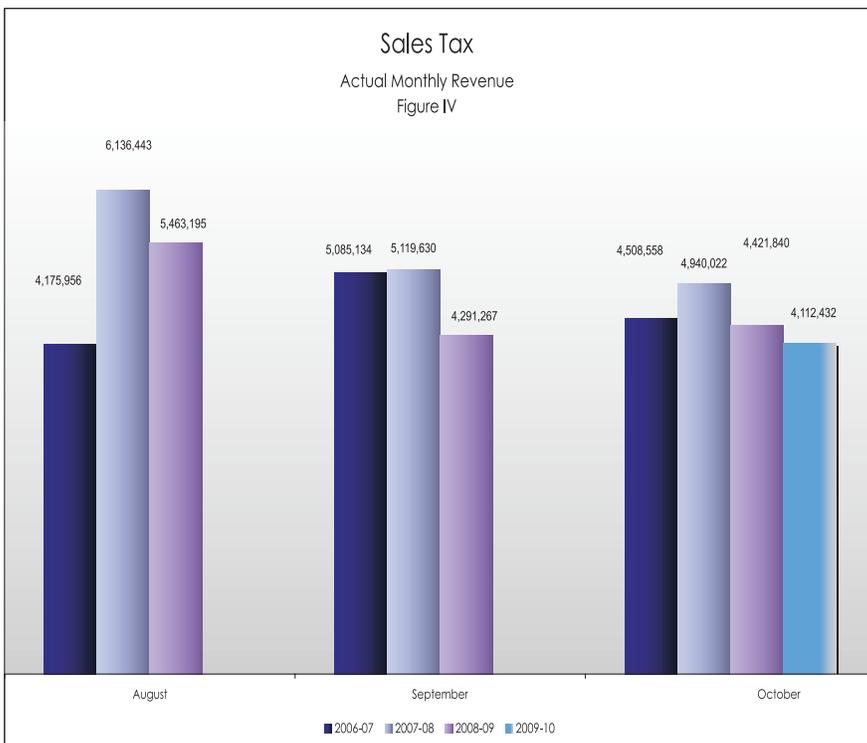
Sales Tax Comparisons City of Plano and Area Cities

Figure III



Allen and Frisco, which have a 2% rate, but distribute half of the amount shown in the graph to 4A and 4B development corporations within their respective cities, and the City of Arlington which has a 1.75% sales tax rate with .25% dedicated to road maintenance and .50% for funding of the Dallas Cowboys Complex Development Project. In the month of October the City of Plano received \$4,112,432 from this 1% tax.

The percentage change in sales tax allocations for the area cities, comparing October 2008 to October 2009, ranged from 4.01% for the City of Richardson to -35.08% for the City of Farmers Branch.



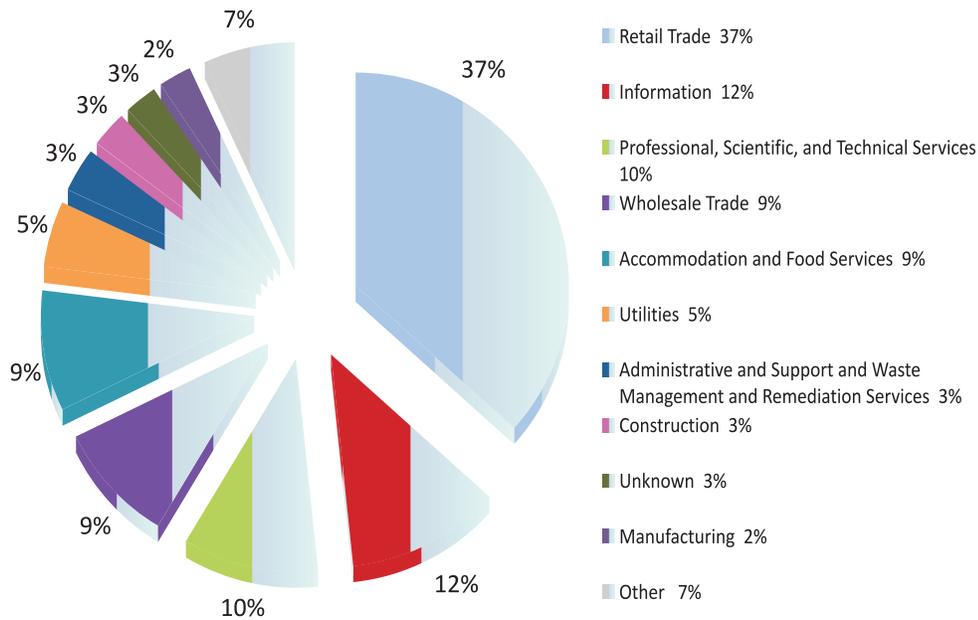
Sales tax allocation of \$4,112,432 was remitted to the City of Plano in the month of October. This amount represents a decrease of 7.0% compared to the amount received in October 2008. Sales tax revenue for 2006-07 totaled \$63,370,505, for 2007-08 totaled \$64,114,729, and for 2008-09 totaled \$57,493,157. Current year to date sales tax revenue is \$4,112,432. Sales tax revenue is generated from the 1% tax on applicable business activity within the City. These taxes were collected by businesses filing monthly returns, reported in August to the State, and received in October by the City of Plano.

Figure IV represent actual sales and use tax receipts for the months of August through July for fiscal years 2006-2007, 2007-2008, and 2008-2009. October shows fiscal years 2006-2007, 2007-2008, 2008-2009, and 2009-2010.

ECONOMIC ANALYSIS

Sales and Use Tax by NAICS Code

Figure V



The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

Figure V shows the percentage of sales and use tax by NAICS Code for August 2009.

Some examples in each code are as follows:

Retail Trade: Wal-Mart, Costco, Kohl's.

Information: AT&T, Verizon, Microsoft licensing.

Professional, Scientific, and Technical Services: EDS, Perot Systems, Cisco Systems.

Wholesale Trade: Oracle USA, Hewlett Packard, Hobby Lobby.

Accommodation and Food Services: Brinker, Starbucks, Sodexo Services.

Utilities: Reliant Energy, Direct Energy, Green Mountain Energy.

Administration, Support, Waste

Management and Remediation Services: Allied Waste Systems, Trugreen, Hadden Landscaping.

Construction: Texas Custom Pools, Outdoor Lighting Services, Scott and Reid General Contractors.

Unknown: Pomerantz Acquisition Corp., Bymobile Inc., and Athleta Inc.

Manufacturing: Pepsico, TI, Apple, Frito Lay.

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

Cumulative Jobs Created in Plano

Figure VI

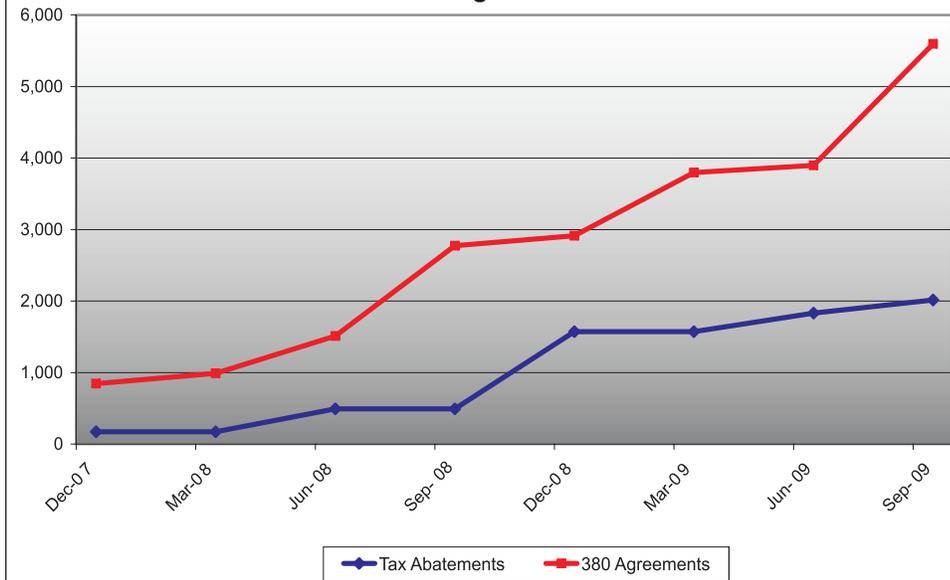


Figure VI, left, tracks the number of jobs cumulatively beginning 4th quarter 2007 created in Plano due to the City entering into either a Property Tax Abatement Agreement or a 380 Economic Development Agreement (380 agreement).

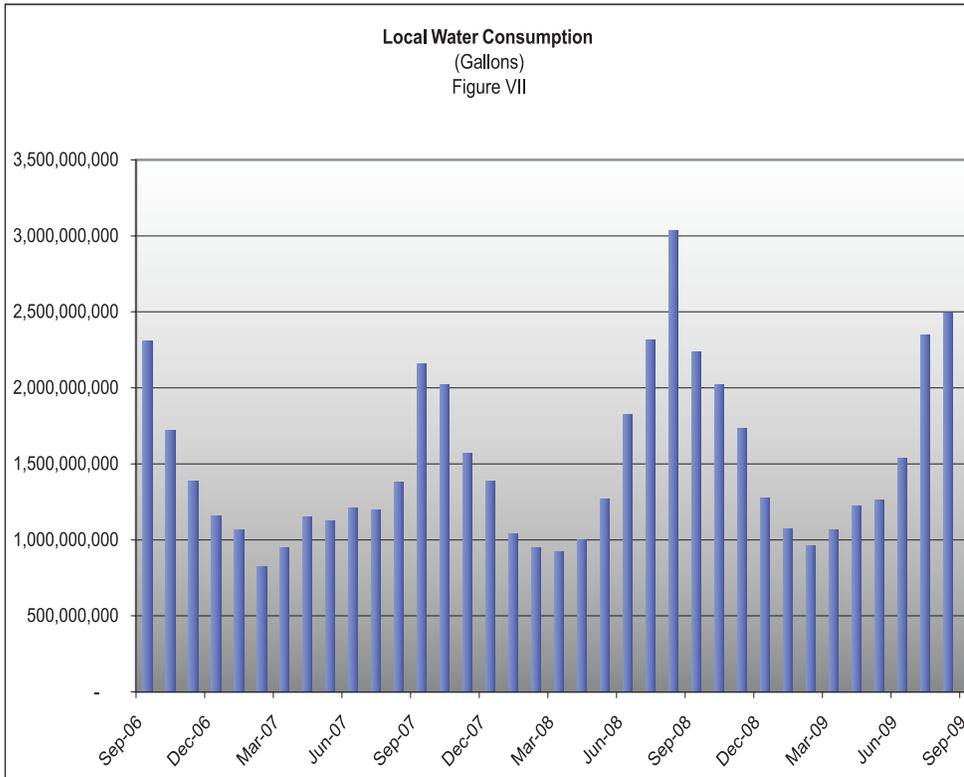
The City of Plano often uses property tax abatements to attract new industry and commercial enterprises, and to encourage the retention and development of existing businesses. The City can limit the property taxes assessed on real property or tangible personal property located on real property due to the repairs or improvements to the property. Only property located within a reinvestment zone is eligible for a tax abatement agreement. During the 3rd quarter of 2009, 1,85 jobs were created via tax abatement agreements.

Enacted by the Texas Legislature in 1991, 380 Agreements let cities make loans and grants of public money to businesses or developers in return for building projects within the city. Cities often pay these grants from the increase in sales or property taxes generated by the project. During the 3rd quarter of 2009, 1,699 jobs were created via 380 agreements.

Please note that the quarterly jobs created in this figure are based on the date the agreement was passed by City Council.

ECONOMIC ANALYSIS

In September, the City of Plano pumped 1,865,053,000 gallons of water from the North Texas Municipal Water District (NTMWD). Consumption was 2,188,779,110 gallons among 78,875 billed water accounts

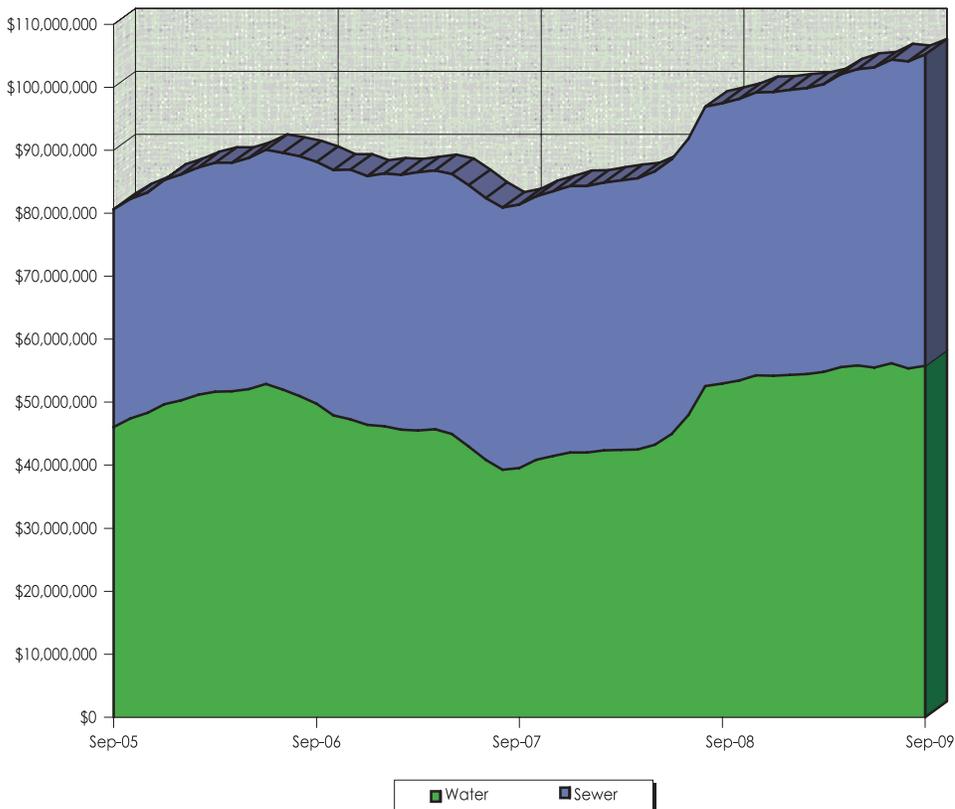


while billed sewer accounts numbered 75,185. The minimum daily water pumpage was 43,429,000 gallons, which occurred on Thursday, September 17th. Maximum daily pumpage was 88,904,000 gallons and occurred on Wednesday, September 2nd. This month's average daily pumpage was 62,168,000 gallons.

Figure VII shows the monthly actual local water consumption.

Annualized Water & Sewer Billings

Figure VIII



The actual water and sewer customer billing revenues in September were \$6,661,929 and \$4,456,494, representing an increase of 7.17% and an increase of 15.56% respectively compared to September 2008 revenues. The aggregate water and sewer accounts netted \$11,118,423 for an increase of 10.38%.

September consumption brought annualized revenue of \$55,785,423 for water and \$49,379,270 for sewer, totaling \$105,164,694. This total represents an increase of 7.89% compared to last year's annualized revenue.

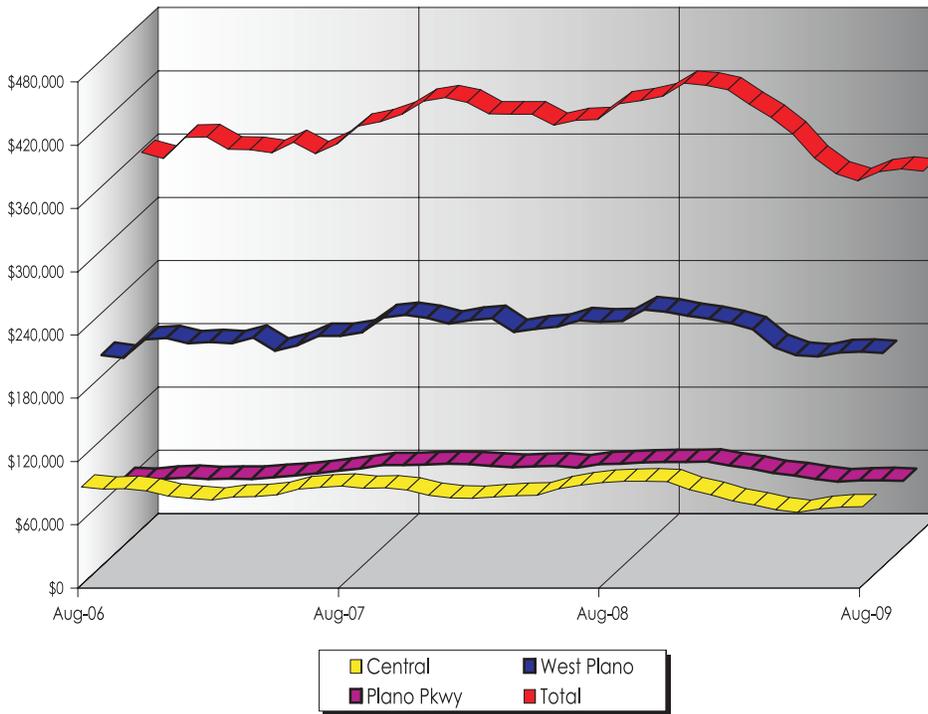
Figure VIII represents the annualized billing history of water and sewer revenues for September 2005 through September 2009.

ECONOMIC ANALYSIS

Hotel/Motel Occupancy Tax

Six Month Trend

Figure IX



August revenue from hotel/motel occupancy tax was \$311,378. This represents a decrease of \$106,203 or - 25.43% compared to August 2008. The average monthly revenue for the past six months (see graph) was \$339,560, a decrease of 17.32% from the previous year's average. The six-month average for the Central area decreased to \$74,183, the West Plano average decreased to \$202,224, and the Plano Pkwy average decreased to \$63,153 from the prior year.

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

*The August revenue and central average include estimates for Candlewood Suites Hotel (E. 190) based on last month's hotel occupancy tax return. This hotel had not made their occupancy tax payments by CMFR submission

Unemployment Rates Unadjusted Rate Comparison Figure X

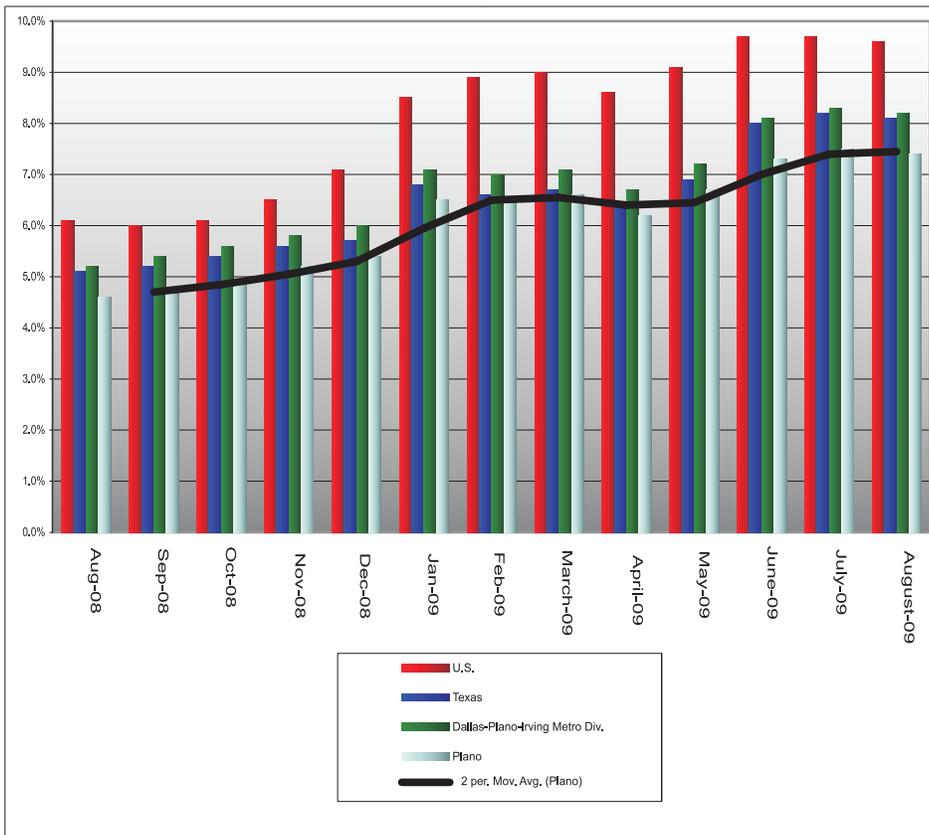
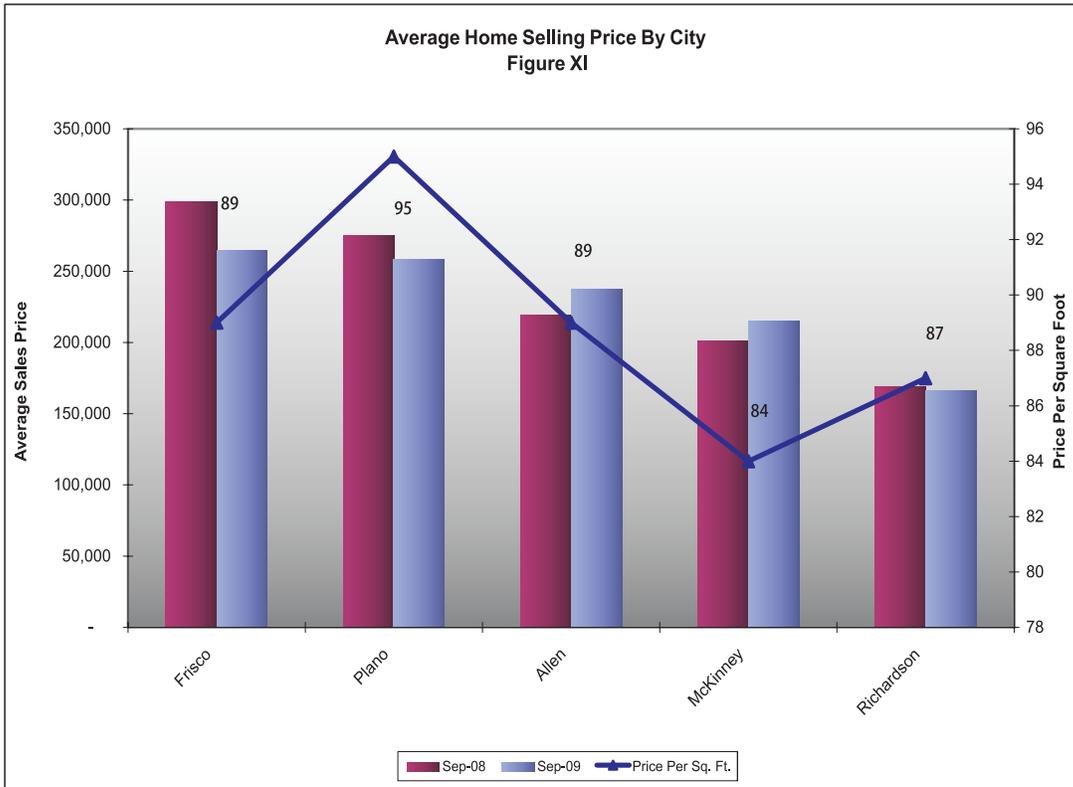


Figure X shows unadjusted unemployment rates based on the Bureau of Labor Statistics U.S. City Average, and Local Area Unemployment Statistics estimates for the State of Texas, the Dallas-Plano-Irving Metropolitan Division and the City of Plano from August 2008 to August 2009.

ECONOMIC ANALYSIS

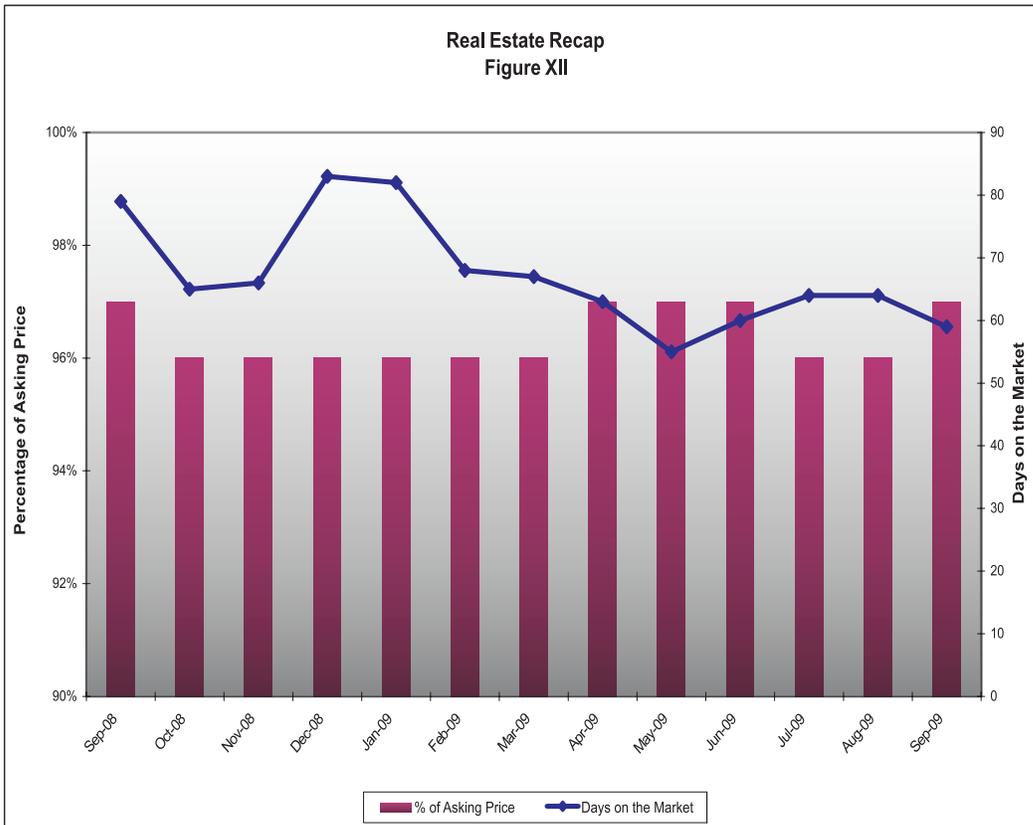
Figure XI shows the average home selling price for the months of September 2008 and September 2009 for the City of Plano and four area cities. The average price per square foot is also included for each city for



the month of September 2009. The average sales price in Plano has decreased \$16,643 from September 2009 to September 2008.

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

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



to September 2009 at 97%. Days on the market has decreased from 79 days in September 2008 to 59 days in September 2009.

ECONOMIC ANALYSIS

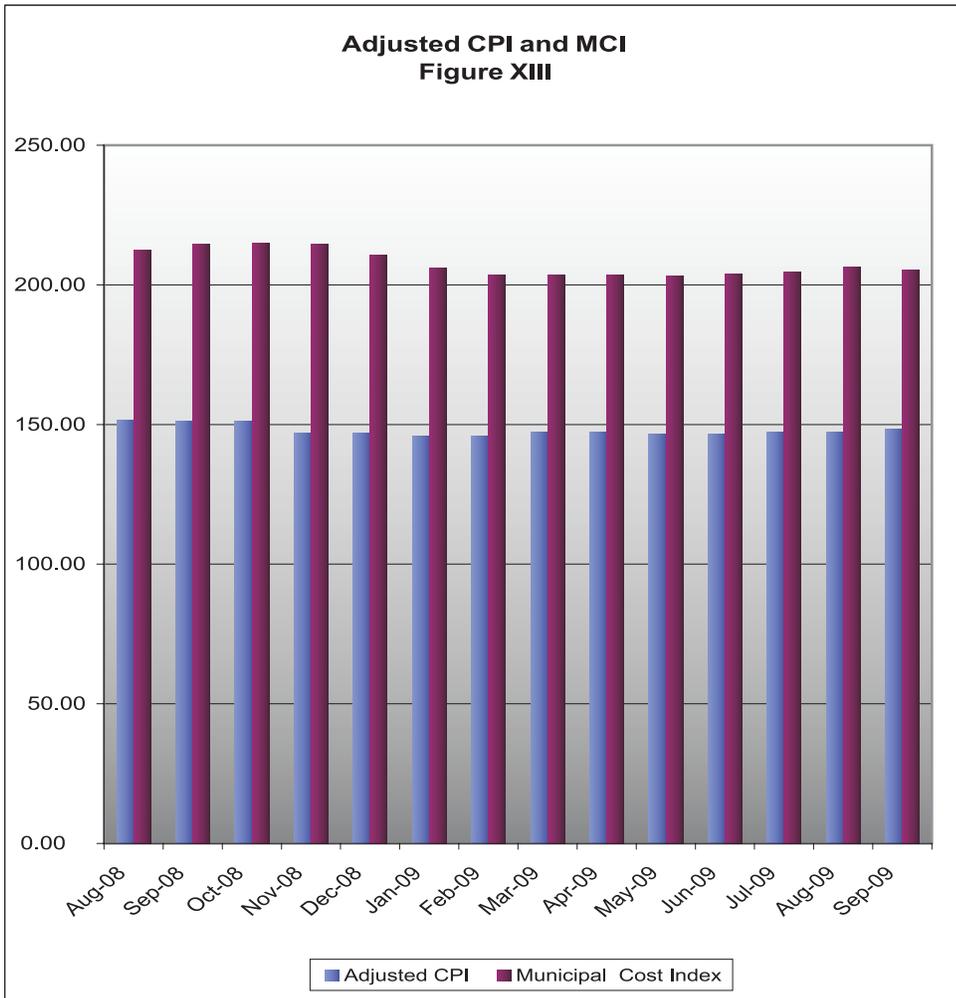


Figure XIII, left, tracks the Dallas-area CPI, using 1982-84 as the base period and the Municipal Cost Index (MCI). For September 2009, the adjusted CPI and MCI were 148.3 and 205.4, respectively.

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

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

ECONOMIC ANALYSIS

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SECTION 3

INVESTMENT REPORT

City of Plano

Comprehensive Monthly Finance Report

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

INVESTMENT REPORT

SEPTEMBER, 2009

Interest Received during September totaled \$546,932 and represents interest paid on maturing investments and coupon payments on investments. Interest allocation is based on average balances within each fund during the month. The two-year Treasury note yield increased throughout the month of September, starting at .92% and ending at .95%.

As of September 30, a total of \$311.2 million was invested in the Treasury Fund. Of this amount, \$58.0 million was General Obligation Bond Funds, \$5.5 million was Municipal Drainage Revenue Bond Funds, and \$247.7 million was in the remaining funds.

Metrics	Current Month Actual	Fiscal YTD	Prior Fiscal YTD	Prior Fiscal Year Total
Funds Invested ¹	\$ 5,531,441	\$ 361,486,327	\$ 132,311,266	\$ 132,311,266
Interest Received ²	\$ 546,932	\$ 4,622,227	\$ 12,955,262	\$ 12,955,262
Weighted Average Maturity (in days) ³	298		104	
Modified Duration ⁴	0.8600		0.2582	
Average 2-Year T-Note Yield ⁵	0.96%		2.08%	

* See interest allocation footnote on Page C-3.

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

Month-to-Month Comparison

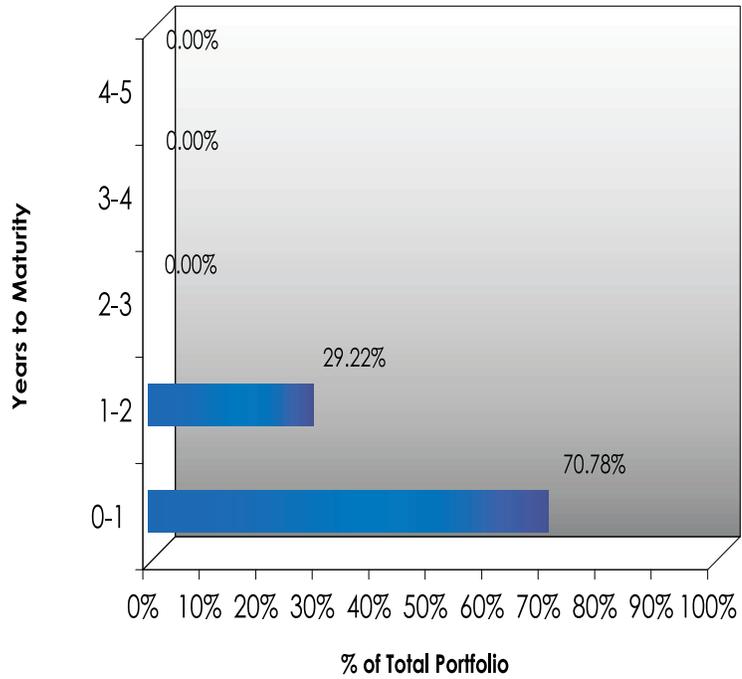
Metrics	Aug-09	Sep-09	Difference
Portfolio Holding Period Yield	1.11%	1.16%	+0.05% (+5 Basis Points)
Average 2-Year T-Note Yield	1.12%	0.96%	-.16% (-16 Basis Points)

INVESTMENT REPORT

Portfolio Maturity Schedule

Figure I

Years to Maturity*	Book Value	% Total
0-1	\$ 225,726,672	70.78%
1-2	93,182,764	29.22%
2-3	0	0.00%
3-4	0	0.00%
4-5	0	0.00%
Total	\$ 318,909,436	100.00%

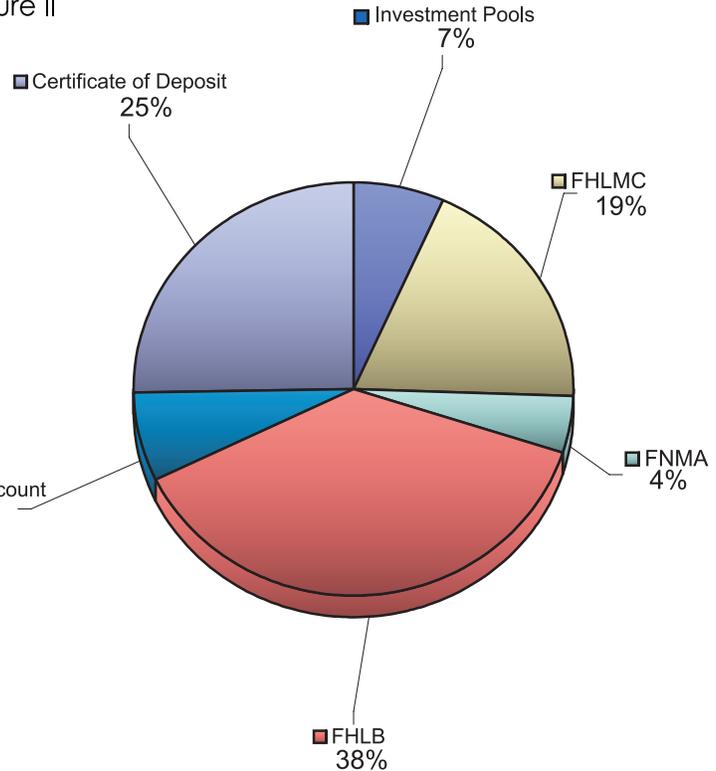


*Does not take into consideration callable issues that can, if called, significantly shorten the Weighted Average Maturity.

Portfolio Diversification

Figure II

Type	Book Value	% Total
Investment Pools	\$ 21,475,774	6.73%
Commercial Paper	0	0.00%
FHLMC	60,378,686	18.93%
FNMA	13,435,032	4.21%
FFCB	0	0.00%
FHLB	120,850,861	37.90%
NOW Account	22,570,084	7.08%
Certificate of Deposit	80,199,000	25.15%
Total	\$ 318,909,436	100.00%



INVESTMENT REPORT

Allocated Interest/Fund Balances September 2009

Fund	Beginning Fund Balance 9/30/2009	Allocated Interest Current Month	Fiscal Y-T-D	Ending Fund Balance 9/30/2009	% of Total
General	38,732,893	(5,359)	830,961	38,727,534	12.45%
G. O. Debt Services	3,287,643	(1,687)	368,791	3,285,956	1.06%
Street & Drainage Improvements	9,315,440	(1,192)	106,474	9,314,248	2.99%
Sewer CIP	10,882,009	(1,358)	142,610	10,880,651	3.50%
Capital Reserve	39,861,264	(4,946)	584,346	39,856,318	12.81%
Water & Sewer Operating	1,726,109	221	(32,528)	1,726,330	0.55%
Water & Sewer Debt Service	328,820	(30)	15,165	328,790	0.11%
Park Service Area Fees	5,627,774	(708)	87,969	5,627,066	1.81%
Property/ Liability Loss	4,506,402	(503)	67,805	4,505,899	1.45%
Information Services	6,843,456	(828)	137,260	6,842,628	2.20%
Equipment Replacement	15,746,142	(1,941)	192,297	15,744,201	5.06%
Developer's Escrow	2,464,196	(378)	58,199	2,463,818	0.79%
G. O. Bond Funds	57,966,757	(7,450)	832,655	57,959,307	18.63%
Municipal Drainage Bond Clearing	5,505,003	(697)	78,981	5,504,306	1.77%
Grants - TXDOT	10,194,607	(1,306)	6,063	10,193,301	3.28%
Other	98,224,047	(12,145)	1,515,432	98,211,902	31.56%
Total	311,212,562	(40,307)	4,992,482	311,172,255	100%

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

Portfolio Statistics

Month	Total Invested (End of Month)	Portfolio Yield	# of Securities Purchased*	Maturities/ Sold/ Called	Weighted Ave. Mat. (Days)	# of Securities
April, 2008	\$ 381,286,506	2.74%	1	5	139	23
May, 2008	\$ 372,129,934	2.87%	3	1	154	25
June, 2008	\$ 359,631,853	2.80%	3	10	89	18
July, 2008	\$ 336,029,216	2.83%	5	4	114	19
August, 2008	\$ 335,093,919	2.69%	7	6	119	20
September, 2008	\$ 300,699,562	2.55%	1	5	104	16
October, 2008	\$ 288,885,757	2.73%	1	4	266	13
November, 2008	\$ 283,603,783	1.90%	1	5	82	9
December, 2008	\$ 309,132,350	1.49%	2	2	67	9
January, 2009	\$ 337,564,218	1.09%	7	3	98	13
February, 2009	\$ 355,625,399	0.82%	5	2	64	16
March, 2009	\$ 380,327,932	1.00%	4	1	112	19
April, 2009	\$ 364,025,210	1.01%	7	4	153	22
May, 2009	\$ 356,669,678	0.87%	12	3	194	31
June, 2009	\$ 347,628,523	1.07%	8	0	221	39
July, 2009	\$ 339,056,884	1.15%	6	3	289	42
August, 2009	\$ 339,629,101	1.11%	2	4	292	40
September, 2009	\$ 318,909,436	1.16%	1	0	298	41

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

INVESTMENT REPORT

Equity in Treasury Pool
By Major Category

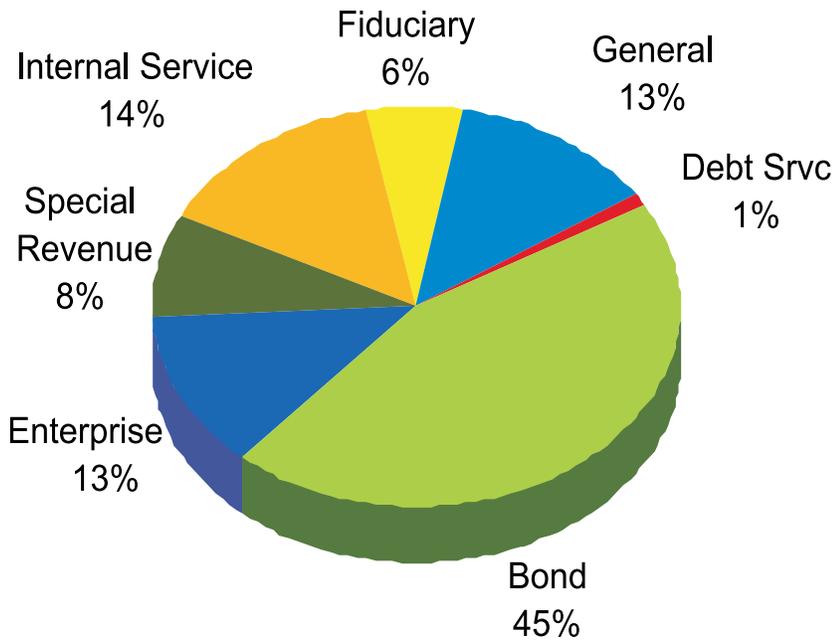
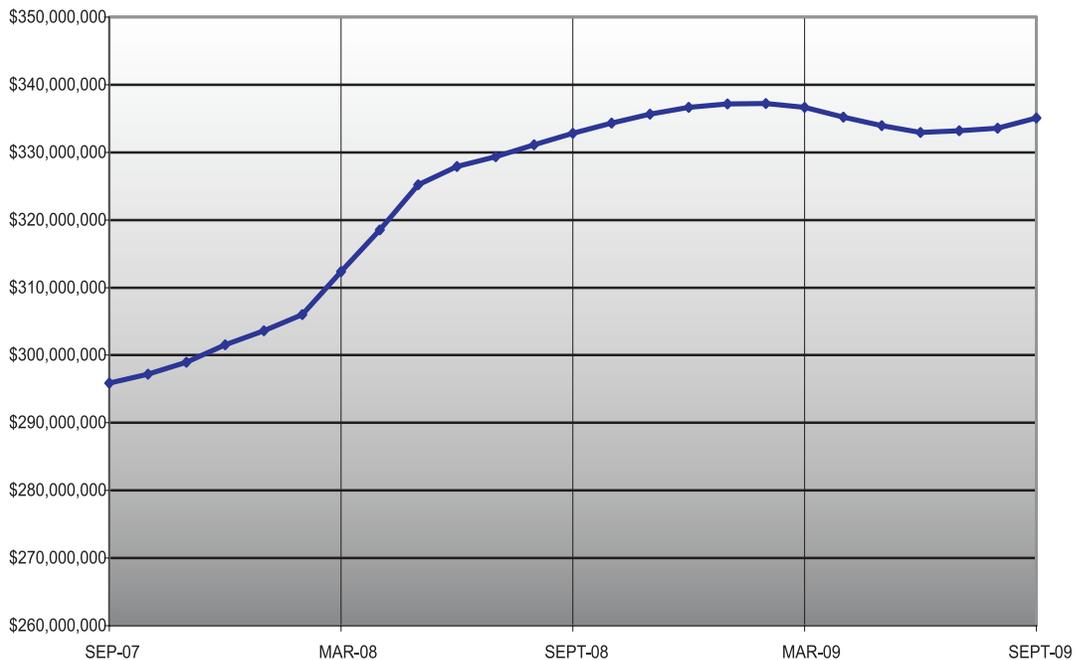


Figure IV shows a breakdown of the various sources of funds for the City's Treasury Pool as of September 30, 2009. The largest category is the Bond Fund in the amount of \$143.1 million. Closest behind is the Internal Service Fund with a total of \$46.8 million, and the Enterprise Fund with \$41.0 million.

Annualized Average Portfolio
Figure V

The annualized average portfolio for September 30, 2009 was \$335,088,189. This is an increase of \$2,244,770 when compared to the September 2008 average of \$332,843,420.



Discussion/Action Items for Future Council Agendas

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

November 9

Departmental Briefing – Property Standards

Zoning Case 2009-18 - Request to amend Subsection 2.824 (RC - Regional Commercial) and Subsection 2.825 (RE - Regional Employment) of Section 2.800 (District Charts), Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses); and Subsection 3.115 (Retirement Housing) of Section 3.100 (Supplementary Regulations for Principal Permitted Uses and Specific Uses) of Article 3 (Supplementary Regulations); and related sections of the Zoning Ordinance pertaining to restaurants/cafeterias and retirement housing uses, and related development standards within the Regional Commercial and Regional Employment zoning districts.

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 – BITR – 6-7 p.m.

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

December 14

Departmental Briefing – Building Inspections

December 17 – Employee Holiday Luncheon – Plano Centre – 11 am – 1 pm

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		Purchasing		
Council Meeting Date:		Budget		
Department:	City Manager's Office	Legal		
Department Head	Tom Muehlenbeck	Assistant City Manager		
Dept Signature:		Deputy City Manager		
		City Manager	<i>[Signature]</i>	10/20/07
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				
CAPTION				
Special Recognition: Bradley Robertson - Winner of the SWANA National Truck Road-E-O First Place in Automated				
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:		Budget		
Department:	City Manager's Office	Legal		
Department Head	Tom Muehlenbeck	Assistant City Manager		
Dept Signature:		Deputy City Manager		
		City Manager	<i>[Signature]</i>	<i>10/20/09</i>
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				
CAPTION				
Proclamation: Animal Shelter Appreciation Week				
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
October 12, 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 5:10 p.m., Monday, October 12, 2009, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. 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 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 6:01 p.m. in the Council Chambers where the following matters were discussed:

Consideration and Action Resulting From Executive Session: Appointments

Planning and Zoning Commission

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Miner, the Council voted 8-0 to appoint David L. Downs and Doug Hazelbaker to two-year terms. Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Miner, the Council voted 8-0 to reappoint James Duggan as Chair.

Personnel Appointments

Animal Shelter Advisory Committee (Chair)

Upon a motion made by Council Member Miner and seconded by Council Member Jackson, the Council voted 8-0 to appoint Sunny Ruth as Chair.

Plano Housing Authority

The Council deferred appointments.

Retirement Security Plan Committee (Chair)

Upon a motion made by Council Member Jackson and seconded by Council Member Harris, the Council voted 8-0 to appoint John Kortenhaus as Chair as recommended by City Manager Muehlenbeck.

Senior Citizens Advisory Board (Chair)

Upon a motion made by Council Member Harris and seconded by Council Member Callison, the Council voted 8-0 to appoint William E. Gibson as Chair.

Discussion and direction re providing a notice to proceed for Pond Excavation and Tennis Court Lighting Renovations

Parks and Recreation Director Fortenberry spoke to the effect of silt ponds located at Hoblitzelle Park, Russell Creek Park and Prairie Meadow Park and to a request to proceed with silt removal at an estimated cost of \$600,000. She spoke to citizen concerns and to aesthetics and responded to the Council regarding natural efforts to control algae.

Ms. Fortenberry spoke regarding the partnership with the Plano Independent School District to utilize school tennis courts with City-provided lighting. She spoke to failed lights at Bowman and Wilson Middle Schools and renovations of other locations at an estimated cost of \$417,500. City Manager Muehlenbeck spoke regarding budget limitations and an opportunity save funds by delaying projects or moving items to the Capital Improvement Program under bonded debt rather than utilizing capital reserve funds. The Council stated a consensus to postpone both projects.

Sign Reduction – Digital Billboard Trade-in Program

Chief Building Official Mata spoke to the concentration of billboard signage along U.S. 75 and a proposal to create a trade-in program allowing for digital billboards in exchange for removal of an existing sign. He spoke to consideration of minimum square footage allowances, sign locations, and a comparison of the products. Mr. Mata advised that there would be no animation on the signs and the presentation would change every eight seconds.

Mr. Mata responded to the Council regarding items to consider including the number of digital billboards that would be installed, possible expansion of the program to include other areas of the City, spacing requirements, and the cost for signs. The Council stated a consensus in directing Staff to move forward.

Departmental Briefing – Public Works/Engineering

Director Public Works/Engineering Upchurch spoke to reorganization which combined two departments and created five major divisions. He reviewed the functions of each group advising that Development Engineering addresses public infrastructure, construction inspection, erosion control during construction, flood plain regulations, drainage problems, easements, utility master planning, street lighting, and utility permitting. Mr. Upchurch spoke to efforts to verify that properties are out of the floodplains in several areas of the City affected by new FEMA maps. He spoke regarding Community Investment Projects including coordination of an annual program, project recommendation for bond referendums, responsibility for consultant selection, design, construction and project administration and spoke to projects included in the 2009-10 CIP budget totaling \$61.8 million. Mr. Upchurch spoke to the Transportation Division providing monthly Council reports on City-related issues, the Facilities group responsible for consultant selection, design, construction and administration of new facilities, maintenance of existing facilities, and custodial services for 90 buildings totaling 1.4 million square feet. He spoke to the Public Works Division addressing streets (1,015 miles), drainage, traffic signals (212), signs (45,000 regulatory, 11,770 residential streets) and markings, construction inspection, utility operation (998 miles of sewer lines, 1,300 miles of water lines and 14,109 fire hydrants), backflow/meter services (19,450 prevention devices) and utility pumping (operating 24 hours per day). He advised that the department is going through reaccreditation.

Council items for discussion/action on future agendas

No items were recommended.

Consent and Regular Agenda

Mayor Dyer requested that Consent Agenda Item “N,” a resolution to review and approve the City’s written Public Funds Investment Policy be removed for individual consideration due to a possible conflict of interest.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:38 p.m.

Phil Dyer, Mayor

ATTEST

Diane Zucco, City Secretary

PLANO CITY COUNCIL

October 12, 2009

COUNCIL MEMBERS

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

STAFF

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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, October 12, 2009, at 7:01 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Sr. Pastor Gene Wilkes of Legacy Church. The Pledge of Allegiance was led by Representatives of the Boys and Girls Club of Collin County Plano.

Mayor Dyer presented a proclamation recognizing HopeLine Domestic Violence Awareness Month, presented Special Recognition to Michael Carroll - Good Samaritan and recognized City Manager Muehlenbeck's selection as a Fellow of the National Academy of Public Administration.

Mayor Dyer administered oaths of office to incoming board and commission members.

COMMENTS OF PUBLIC INTEREST

Plano Firefighters Association Treasurer Laddin Gillespie spoke regarding the Pink Fire Department T-shirt program promoting cancer awareness.

CONSENT AGENDA

Upon the request of Mayor Dyer, Consent Agenda Item "N" was removed for individual consideration due to a possible conflict of interest.

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Deputy Mayor Pro Tem Dunlap, the Council voted 8-0 to approve and adopt all remaining items on the agenda as recommended and as follows:

Approval of Minutes (Consent Agenda Item "A")

September 28, 2009

September 28, 2009 - Special Called Session

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 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. (Consent Agenda Item "B")

Purchase from an Existing Contract

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. (Consent Agenda Item "C")

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. (Consent Agenda Item "D")

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. (Consent Agenda Item "E")

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. (Consent Agenda Item "F")

Approval of Change Order

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. (Consent Agenda Item "G")

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. (Consent Agenda Item “H”)

Adoption of Resolutions

Resolution No. 2009-10-1(R): 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. (Consent Agenda Item “I”)

Resolution No. 2009-10-2(R): 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. (Consent Agenda Item “J”)

Resolution No. 2009-10-3(R): 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. (Consent Agenda Item “K”)

Resolution No. 2009-10-4(R): 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. (Consent Agenda Item “L”)

Resolution No. 2009-10-5(R): 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. (Consent Agenda Item “M”)

Resolution No. 2009-10-6(R): 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. (Consent Agenda Item “O”)

Adoption of Ordinances

Ordinance No. 2009-10-7: 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. (Consent Agenda Item “P”)

Ordinance No. 2009-10-8: 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. (Consent Agenda Item “Q”)

END OF CONSENT

Mayor Dyer stepped down from the bench due to a possible conflict of interest.

Resolution No. 2009-10-9(R): To review and approve the City’s written Public Funds Investment Policy; and providing an effective date. (Consent Agenda Item “N”)

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Callison, the Council voted 7-0 to approve the Public Funds Investment Policy and further to adopt Resolution No. 2009-10-9(R).

Mayor Dyer resumed his place at the bench.

Public Hearing and adoption of Ordinance No. 2009-10-10 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) (Regular Agenda Item “1”)

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Callison, the Council voted 8-0 to remove the item from the table.

Director of Planning Jarrell advised that the applicant requests amendment to allow for an increase in lot coverage in order to be consistent with retail and office districts. She further advised that the Planning and Zoning Commission recommended approval as submitted.

Mayor Dyer opened the Public Hearing. Citizens Maria Schmitz and Alex Glushko spoke in favor of the request. No one else spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Miner, the Council voted 8-0 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 as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2009-14 and further to adopt Ordinance No. 2009-10-10.

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. (Regular Agenda Item "2")

Director of Planning Jarrell advised that the applicant is appealing denial by the Planning and Zoning Commission and that approval would require a three-quarter vote of the Council. She spoke to the proposal to convert an existing vacant theater into a two-story mini-warehouse building and add another building to the property and to the reduced parking requirements. Ms. Jarrell advised that the Commission felt that a mini-warehouse was not the best reuse of the site, had concern regarding the amount of square footage and felt that the property may provide opportunities for other redevelopment proposals. She advised that notification letters were sent related to the appeal and that 50 in opposition have been received from outside of the 200 foot area with one in favor. Ms. Jarrell responded to Council Member Smith advising that the theater has been vacant for approximately 10-12 years.

Mayor Dyer opened the Public Hearing. Jack Harvard, representing the applicant, spoke to the history of development in the area, construction of several office buildings, rezoning in the 1990's and abandonment of the theater. He spoke to the level of property tax paid and to increasing the property's value, failed efforts to find another use, deed restrictions allowing office only on the first floor, and expansion of usable space with redevelopment. Mr. Harvard spoke to possible difficulties in development of the site as residential, efforts to meet with homeowners, and letters in support received from 100% of the land owners of surrounding properties. He spoke to indoor-accessed storage, plans to landscape along the pedestrian walkways, low levels of traffic and possible alternatives for the site including building removal or installation of gas pumps. Mr. Harvard responded to the Council that the first phase would be renovation of the existing building with construction of a second structure at a later time and advised that the building would look similar to a nearby grocery store. Mayor Dyer spoke to concerns related to parking.

Citizen Glenda Sattler spoke the property owner's unresponsiveness when inquiries were made to develop the site and other opportunities that might be viable. Maria Schmitz represented homeowners in Reflections of Old Shepard, Old Shepard, Eldorado Park and Preston Point in opposition to the request. She spoke to the developer's uncertainty in identifying retail users, the property not being marketed to its full potential, and strong retail sales in the Preston/Park area. Ms. Schmitz spoke to furthering the goals of the Urban Study, limited information being provided to area property owners regarding plans for a second building, and considering recommendations of the Commissioners including a senior living facility, and requested the Council deny the appeal.

Mr. Harvard spoke to efforts made to contact homeowners in the area, the site being ill-suited for residential development and agreement to add stipulations for no outdoor storage, two-story limitation and retail/office uses in the front only. He responded to the Council advising that deed restrictions limit height, pedestrian walkways would remain available, and spoke to use of monument signs and to matching signage on existing retail properties. No one else spoke either for or against the request. The Public Hearing was closed.

Zoning Case 2009-15 (cont'd)

Ms. Jarrell responded to the Council advising that there are no City height restrictions for Office-2 zoning, but that setbacks would limit the height, advised that management would need to control the use of storage units as places of business, and spoke to the size of the property as similar to East Side Village which developed as a mixed-use property. She advised there were no requirements for building materials, spoke to limitations on outdoor storage, advised that the base zoning prohibits recreational vehicle/boat storage and that Council may add stipulations to the SUP. Ms. Jarrell responded to Mayor Pro Tem LaRosiliere, advising that Staff felt that storage on this property would not inhibit the area from transforming into a dense, mixed-use and pedestrian-friendly neighborhood and to balancing the presence of a vacant building. She advised that the SUP would remain in place unless there was action to remove it.

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Miner, the Council voted 8-0 to approve the request for an SUP for Public Storage/Mini Warehouse as requested in Zoning Case 2009-15 with the following stipulations:

1. No outside storage shall be allowed including storage of recreational vehicles;
2. All storage units shall be accessible only from the interior of the buildings, except one loading door entry may be accessible from the exterior of each building;
3. All exterior building facades shall be masonry, and the masonry material and building design shall be architecturally consistent with the adjacent retail shopping center;
4. Maximum height shall be two stories; and
5. Two points of pedestrian access from the property to the adjacent retail shopping center shall be provided.

There being no further discussion, Mayor Dyer adjourned the meeting at 8:54 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>[Signature]</i>	10/14/09
Council Meeting Date: 10/26/2009		Budget	C.S.	10-16-09
Department: Purchasing		Legal	<i>[Signature]</i>	10-16-09
Department Head: Mike Ryan		Assistant City Manager	<i>[Signature]</i>	10-16-09
Dept Signature:		Deputy City Manager	<i>[Signature]</i>	10-16-09
		City Manager	<i>[Signature]</i>	10/16/09
Agenda Coordinator (include phone #): Aimee Storm Ext 7248				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER EXISTING CONTRACT				
CAPTION				
Award of Competitive Sealed Proposal No. 2009-84-C for IP Video Security for Communication Towers, in the amount of \$61,652 to 911 Security Cameras Inc., and authorizing the City Manager or his 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: 09/10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	241,385	0	241,385
Encumbered/Expended Amount	0	0	0	0
This Item	0	-61,652	0	-61,652
BALANCE	0	179,733	0	179,733
FUND(S): GENERAL FUND				
COMMENTS: Funds are included in the FY 2009-10 adopted budget for the purchase of a 911 Tower Security Camera system. The remaining balance of funds will be used for other equipment or Public Safety Communications services.				
STRATEGIC PLAN GOAL: Providing a 911 Tower Security Camera System relates to a "Safe Large City."				
SUMMARY OF ITEM				
Staff recommends the Competitive Sealed Proposal of 911 Security Cameras, in the amount of \$61,652 for the purchase of IP Video Security for Communication Towers, which includes 3 years maintenance from the time of acceptance, be accepted as the best value, conditioned upon a timely execution of any necessary contract documents.				
List of Supporting Documents: Memorandum and CSP Recap		Other Departments, Boards, Commissions or Agencies N/A		

B-1

CITY OF PLANO

CSP NO. 2009-84-C FOR IP Video Security for Communication Towers CSP RECAP

CSP opening Date/Time: Apr 14, 2009 3:00:00 PM

Number of Vendors Notified: 1680

Vendors Submitting "No Bids": 1

<u>Number of Proposals Submitted:</u>		<u>Total Weighted Score</u>
911 Security Cameras	10	3.72
Convergint Technologies		2.71
Entech Sales & Service		3.13
Ingersoll Rand		3.53
Kratos/Enco Systems		1.66
MCS (Metroplex)		3.04
Motorola		3.42
Sology LLC		2.81
Wunderlich Malec		3.20

Proposals Evaluated Non-Responsive to Specification: 1

Lensec- Did not participate in mandatory site visit.

Recommended Vendor(s):

911 Security Cameras

Aimee Storm

Aimee Storm, Buyer

October 16, 2009

Date

B-2

B-4

2009-35-C

Title: CITIZEN RELATIONSHIP MANAGEMENT SOLUTION
Cost Formula

Vendor	Low Bid	Next Low Bid	Possible Points	Price Points
g11-Security Cameras, Inc	44,190.00	44,190.00	5	5.00
Convergint	44,190.00	114,427.43	5	1.93
Entech	44,190.00	72,157.00	5	3.06
Ingersoll	44,190.00	62,463.34	5	3.54
Kratos	44,190.00	57,791.37	5	3.82
MCS	44,190.00	150,000.00	5	1.47
Motorola	44,190.00	133,109.00	5	1.66
Sology	44,190.00	84,369.15	5	2.62
Wunderlich	44,190.00	67,862.63	5	3.26

Comment:



Aimee Storm

From: Ron Goldsmith
Sent: Tuesday, October 13, 2009 11:05 AM
To: Aimee Storm
Subject: budget worksheet 2009-84-c
Attachments: FinancialWorksheetcamerasystem.dot

Aimee,
Bid 2009-84-C
PSC recommends 911 Security Cameras, Inc. Single vendor award
Estimated one time annual award of \$61,652.
911 Security Cameras is providing the goods and services at the best value to the City.

Thank you.

Ron Goldsmith
Radio System Manager
City of Plano, Texas
972-941-7942 office
972-941-7945 fax



**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>Def</i>	10-19-09
Council Meeting Date: 10/26/09		Budget	C.S.	10-19-09
Department: Public Works & Engineering		Legal	<i>gob</i>	10-19-09
Department Head: Alan L. Upchurch		Assistant City Manager		
Dept Signature: <i>Alan L. Upchurch</i>		Deputy City Manager	<i>BA</i>	10-20-09
		City Manager	<i>Alan</i>	10/20/09
Agenda Coordinator (include phone #): Irene Pegues (7198) <i>LD for DP</i>		Project No. 5848		
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 checked="" type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
Approval of an engineering contract by and between the City and Freese and Nichols, Incorporated, in the amount of \$153,570, for Erosion Control-London, Creekside, Shady Creek & 2 Sanitary Sewer Creek Crossings, and authorizing the City Manager or his authorized designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	1,860,000	0	1,860,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-153,570	0	-153,570
BALANCE	0	1,706,430	0	1,706,430
FUND(S): MUNICIPAL DRAINAGE CIP & SEWER CIP				
COMMENTS: Funds are included in the 2009-10 Municipal Drainage CIP & Sewer CIP. This item, in the amount of \$153,570, will leave a current year balance of \$1,706,430 for the Shady Creek, London, Creekside Erosion Control and Sewer Erosion Control – Custer at Park & Parker at Spring Creek.				
STRATEGIC PLAN GOAL: Erosion control relates to the City's Goal of Livable and Sustainable Community.				
SUMMARY OF ITEM				
This agreement with Freese and Nichols, Incorporated is for engineering design for Erosion Control-London, Creekside, Shady Creek & 2 Sanitary Sewer Creek Crossings to include the installation of erosion control measures (gabions or other measures) in creek areas at the following addresses or locations (Units 1-3 are funded from Erosion Control funds. Units 4-5 are funded from Aerial Sewer Crossing funds):				
<ol style="list-style-type: none"> 1. 2108 London Drive 2. 6800 Creekside Drive 3. 6601 Shady Creek Circle 4. Rowlett Creek - East Parker Road and East Spring Creek Parkway Intersection 				



**CITY OF PLANO
COUNCIL AGENDA ITEM**

5. Pittman Creek - West of Custer Road approximately 250' and south of Park Boulevard and Custer Road Intersection

The contract fee is for \$153,570 and is detailed as follows:

BASIC SERVICES	TOTAL	Locations 1 – 3	Locations 4 & 5
Preliminary Design	\$21,750	\$13,700	\$8,050
Final Design	\$34,600	\$21,800	\$12,800
Bid Phase Services	\$4,100	\$2,600	\$1,500
Construction Administration	\$10,500	\$6,600	\$3,900
Reimbursable Expenses	<u>\$6,000</u>	<u>\$3,800</u>	<u>\$2,200</u>
TOTAL BASIC FEE	\$76,950	\$48,500	\$28,450
SPECIAL SERVICES			
Surveying	\$21,500	\$13,560	\$7,940
Geotechnical Investigation	\$25,300	\$15,950	\$9,350
Environmental Services	\$15,520	\$9,800	\$5,720
Structural Design	<u>\$14,300</u>	<u>\$9,000</u>	<u>\$5,300</u>
TOTAL SPECIAL SERVICES	\$76,620	\$48,310	\$28,310
TOTAL FEE SERVICES	\$153,570	\$96,810	\$56,760

Funding is available from the 2009-10 Community Investment program. Staff feels the fee is reasonable for this project estimated to cost \$659,000.

List of Supporting Documents:
Engineering Services Agreement
Location Map

Other Departments, Boards, Commissions or Agencies
N/A

C-2

**EROSION CONTROL-LONDON, CREEKSIDE, SHADY CREEK
& 2 SANITARY SEWER CRK CROSSINGS**

PROJECT NO. 5848

ENGINEERING SERVICES AGREEMENT

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

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **EROSION CONTROL-LONDON, CREEKSIDE, SHADY CREEK & 2 SANITARY SEWER CRK CROSSINGS** project located in the City of Plano, Collin and Denton County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

III. Schedule of Work

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

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

VII. INDEMNITY

ENGINEER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM THE SERVICES PROVIDED BY ENGINEER AND TO THE EXTENT CAUSED BY THE NEGLIGENT ACT OR OMISSION OR INTENTIONAL WRONGFUL ACT OR OMISSION OF

C-4

ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM ENGINEER IS LEGALLY RESPONSIBLE (HEREINAFTER "CLAIMS"). ENGINEER IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE DEFENSE COUNSEL TO BE RETAINED BY ENGINEER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ENGINEER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ENGINEER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ENGINEER SHALL RETAIN CITY APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ENGINEER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND ENGINEER SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

VIII. Independent Contractor

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

IX. Assignment and Subletting

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

X. Audits and Records/Prohibited Interest

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

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

XI. Contract Termination

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

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this

C-6

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

XIV. Complete Contract

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

XV. Mailing of Notices

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

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

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

Freese and Nichols, Incorporated
1701 North Market Street, Suite 500, LB 1
Dallas, TX 75202-2001
Attn: Kevin R. Johnson

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

CONTINUED ON NEXT PAGE

C-8

F. Effective Date:

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

SIGNED on the date indicated below.

FREESE AND NICHOLS, INCORPORATED
A **TEXAS** Corporation

DATE: _____

BY: _____
Tricia H. Hatley
PRINCIPAL

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

C-9

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **TRICIA H. HATLEY, PRINCIPAL**, of **FREESE AND NICHOLS, INCORPORATED**, 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

C-10

EXHIBIT A
SCOPE OF SERVICES
EROSION CONTROL-LONDON, CREEKSIDE, SHADY CREEK
& 2 SANITARY SEWER CRK CROSSINGS
PROJECT NO. 5848
CIP NO. 70112 & 48823

PROJECT DESCRIPTION

The project includes design and plan preparation for installation of new erosion control structures for channel and bank erosion improvements at the following sites within the City of Plano, Texas:

1. 2108 London Drive
2. 6800 Creekside Drive
3. 6601 Shady Creek Circle
4. Rowlett Creek - East Parker Road and East Spring Creek Parkway Intersection
5. Pittman Creek – West of Custer Road approximately 250' and south of Park Boulevard and Custer Road Intersection

The project also includes design and plan preparation for installation of two new sanitary sewer lines in conjunction with items 4 and 5 listed above:

1. Approximately 200 LF of new 8" sanitary sewer line by open cut to replace the existing 8" sanitary sewer line just northeast of East Parker Road and East Spring Creek Parkway Intersection including approximately 50 LF of aerial crossing across Rowlett Creek with connection to manholes on both the east and west sides of the creek.
2. Approximately 150 LF of new 8" sanitary sewer line by open cut to replace the existing 8" sanitary sewer line south of the Park Boulevard and Custer Road Intersection located approximately 250 west of Custer Road. This line also includes approximately 50 LF of aerial crossing across Pittman Creek with connection to manholes on both the north and south sides of the creek. This location shall be evaluated by the consultant to determine if the existing sewer line should be left in place with the installation of additional pier support and/or end blocking without replacement of the sewer line. The engineer shall make a recommendation to the City on this question.

BASIC SERVICES

I. DESIGN STANDARDS

C-11

1. This project shall be designed in accordance with the following:
 - Geodetic Monumentation Manual
 - Manual for Right-of-Way Management
 - Storm Drainage Design Manual
 - Stream Bank Stabilization Manual
 - Erosion & Sediment Control Manual
 - Thorough Fare Standards Rules & Regulations
 - Manual for the Design of Water & Sanitary Sewer Lines
 - Standard Construction Details
 - Barrier Free Ramp Details
 - NCTCOG Standard Specifications for Public Works Construction
 - Special Provisions to Standard Specifications for Public Works Construction
 - Sample Plan Set
2. All plans submitted to the City shall be signed and sealed in accordance with state law.

II. PRELIMINARY ENGINEERING

A. Research/Data Collection/ Design Survey

1. Review Reports, utility plans and Data Collection including reviewing any available City of Plano reports on the erosion problems and obtaining pertinent utility plans, street plans, plats, existing easement information, and other features within the project area.
2. Field Surveying for Design Phase
 - a. Establish a local control network and tie into the existing City of Plano control network on all sites.
 - b. Tie right-of-way lines and property lines to the sites.
 - c. Verify horizontal and vertical locations of existing city facilities on the sites.
 - d. When underground utilities are exposed at the City's request, tie to the local control network.
 - e. Obtain topographic information including cross-sections of the existing ground features as needed for design.
 - f. Locate all pertinent creek features for design including top of bank, existing walls and slabs, existing buildings, existing pavements, fences, trees 4" diameter and larger, and utility appurtenances such

C-12

as water valves, fire hydrants, manholes, etc., (within construction area) on the sites.

- g. Contact utility companies to locate and uncover utilities which conflict with the proposed project. Tie uncovered utilities to the local control network.
- h. During the construction phase, set construction control points.

3. Geotechnical Engineering:

- a. Perform 10 borings (2 at each site) using truck-mounted and hand methods at all sites to collect necessary soil samples. The engineer will take reasonable precautions to avoid damage to utilities and flatwork at the sites, and will be responsible for any damage done at the site.
- b. If some of the borings cannot be accessed, a Kleinfelder geologist will perform a visual survey of the creek area behind 6800 Creekside Lane, 2108 London Drive and 6601 Shady Creek Circle. We understand that the limestone is visible in the bottom of the creek. Our geologist will locate and flag the visible stratigraphy in the creek bank face.
- c. Do the laboratory testing required for the design of the erosion control structure.
- d. An engineering analysis and evaluation of the field and laboratory data will be performed for the project, based on available project concepts. Information to be provided in the report includes
 - i. Plan of borings illustrating the approximate location of each boring and scale to which the drawing is made
 - ii. A log of each boring indicating the boring number, depth of each stratum, soil classification and description, and groundwater information
 - iii. Description of the field exploration and laboratory testing
 - iv. Summary of laboratory test results
 - v. Discussion of subsurface soil and groundwater conditions
 - vi. General discussion of the site geology
 - vii. Estimated soil movements, including calculated potential vertical rise (PVR)
 - viii. Recommendations for use during design of permanent rock anchors
 - ix. Recommendations for backfill
 - x. Recommended foundation type, depth and lateral earth pressure values for use during design of retaining walls
 - xi. Estimated shear strength parameters for on-site materials using soil classification data
 - xii. Slope stability analysis of five slope geometries (supplied by Freese and Nichols, Inc.)

4. Environmental Evaluation

This scope assumes that the repair of the erosional failures can be designed and authorized under the terms and conditions of Nationwide Permit 13, *Bank stabilization*, without requiring a preconstruction notification (PCN) and that the repair of the sanitary sewer line can be authorized under the terms and conditions of Nationwide Permit 12, *Utility line activities* or Nationwide Permit 3, *Maintenance* as appropriate, without requiring a PCN.

This scope is proposed with exception of the repair site located at 6601 Shady Creek. FNI scientists observed surface characteristics that indicate the potential presence of a jurisdictional wetland which is located where the repairs are proposed. The discharge of fill material into a wetland would trigger a PCN to the USACE under the terms and conditions of NWP 13. The status of this area cannot be confirmed until a wetland delineation including digging test pits has been done. Item a below includes a wetland delineation of this site.

- a. Conduct site visit for each repair location
FNI environmental scientists will conduct a site visit to make observations at the repair locations in order to delineate existing conditions (environment) and assess project impacts. The presence and locations of waters of the U.S. including wetlands, potential threatened/endangered species habitat; and vegetation cover types will be identified in the proposed ROW. The ordinary high water mark (OHWM) of the stream at each repair location will be delineated using numbered stakes or pin-flags for surveyors to tie in. A wetland delineation for the site at 6601 Shady Creek will also be performed.
- b. Prepare Technical Memorandum
FNI will prepare a memorandum documenting the results of the field study and provide an opinion on the Section 404 permitting requirements. FNI will coordinate with the project team to determine fill calculations below the OHWM. FNI will recommend what, if any, additional studies are needed and a proposed course of action needed to get the project authorized under a Section 404 permit without requiring a preconstruction notification. In accordance with general condition 18, *Historic Properties*, FNI will prepare a letter (for the City's review) for each project site to the Texas Historical Commission describing the sites and requesting the Committee's review.
- c. FNI environmental scientists will attend up to one meeting with the City to discuss the draft Technical Memorandum, the City's comments, and the USACE permitting process.

C-14

B. Preliminary Design

1. Prepare preliminary plans (plan sheets are 22" x 34") including the following:
 - i. Cover sheet
 - ii. Project layout control sheet(s). Scale 1" = 50'.
 - iii. Gabion Wall plan and profile sheets
 - iv. Quantity Sheet.
 - v. Erosion Control Sheets including plan and profile of proposed gabion wall improvements and anchor locations.
 - vi. Detail Sheets (Including erosion protection, SWPPP, and wastewater).
 - vii. Preliminary cross-sections of proposed erosion protection indicating the general orientation of the improvements with respect to the channel.
 - viii. Wastewater plan and profile sheets. Scale 1" = 20'.
 - ix. Prepare SWPPP meeting EPA and City of Plano requirements

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

2. Establish design concepts for repair and/or anchorage of existing gabion retaining wall elements.
3. Locate utility crossings, adjacent utilities, and other improvements within a limit of twenty feet beyond the proposed improvement at each site.
 - a. Work with affected utility companies such as water, gas, telephone, cable TV, and electricity to obtain information for horizontal and vertical data for their facilities. Identify which utilities must be protected or relocated.
 - b. Tie locations of exposed utilities to the local control network. When underground utilities are uncovered, tie locations to the local control network.
4. Establish preliminary easement needs including permanent and temporary construction easements. Show all existing easements on the plans.
5. Meet with homeowners and/or property owners at prospective construction access locations. Coordinate between owners and City regarding this access and the City's preparation of temporary access and construction easements, if required. Engineer will provide the Contractor and the City of Plano with site access information and agreement concepts. Engineer will provide City with access maps to

define the route to be used by the City to obtain right-of-entry permission for the contractor from the property owner. Any required reimbursement for these easements is to be paid by the City or the Contractor.

6. Verify with previously approved hydraulic models that the proposed alignment does not raise the 100-year water surface elevation.
7. Prepare an estimate of construction quantities and develop a preliminary opinion of probable cost for the proposed solution. The purpose of the opinion is to confirm that the project is in general accordance with the construction budget.
8. Submit to the City of Plano four (4) sets of preliminary plan drawings for each erosion control structure site listed above.
9. Attend one meeting at the City of Plano to review and discuss the preliminary plan drawings and engineering comments.
10. Distribute one set of preliminary drawings to local utility companies to obtain information regarding impacts to their facilities.

III. FINAL ENGINEERING

A. Final Design

1. Finalize plan for proposed improvements.
2. Revise preliminary plans and incorporate comments from the City of Plano and property owners.
3. Incorporate comments from the utility companies. If necessary, coordinate with utility companies to locate and uncover utilities which conflict with the proposed erosion control structure. Tie the location of uncovered utilities to the local control network.
4. Incorporate standard details into the plans and prepare additional details as required.

B. Prepare final technical specifications for the erosion control structures and wastewater improvements.

C. Prepare necessary right-of-entry agreements to be signed by individual property owners if necessary to gain minimal access for construction purposes onto individual property.

C-16

- D. Revise the quantity estimate and prepare a revised final estimate of probable construction cost based on the final design of the project.
- E. Assist in preparing final bid documents. The City of Plano will prepare the final form of construction documents. The following information to be supplied by the Engineer shall include:
 - 1. One copy of the finalized technical specifications.
 - 2. Project specific information for use with the City of Plano standard construction agreement form, including the notice to contractors, bid proposal and contract bid schedule forms.
 - 3. One set of blueline or blackline prints of final drawings and one electronic set of final drawings for Purchasing.
- F. Furnish the City of Plano with the following final documents:
 - 1. Three sets of blueline or blackline prints of final drawings for approval by City.

IV. BID PHASE

- A. Assist the City of Plano staff in advertising for bids. Furnish additional sets of contract documents for bidding or as directed by the City of Plano.
 - 1. Furnish additional sets of plans and bid documents for up to four plan review rooms to be determined by the City. These documents are to be furnished at no cost to the plan review rooms.
 - 2. The cost for information (plans and contract document) provided for the purpose of securing bids shall be recovered by the Engineer by a non-refundable deposit from Contractors. Maintain a list of plan holders.
- B. Assist the City in conducting pre-bid conference, as required.
- C. Assist the City of Plano in securing bids, issuing notice to bidders notifying construction news publications. The notice to bidders will be furnished by the City of Plano for publication in the local news media. The cost for publications shall be paid by the City of Plano.
- D. Assist City of Plano in the opening, tabulation, and analysis of the bids received and furnish recommendations on the award of the contract or the appropriate action to be taken by the City of Plano.

C-17

1. Evaluate the lowest and second lowest bidder. Bid evaluation will include the contractor's:
 - a. Past work history
 - b. Financial resources;
 - c. Physical resources to produce the project.
2. Provide a summary of the bid analysis to the City for use in selection and award of the construction project.

V. CONSTRUCTION ADMINISTRATION

- A. Furnish 13 sets of final plans and seven (7) sets of the contract documents.
- B. Assist the City of Plano staff in conducting one pre-construction conference with the Contractor.
- C. Provide construction control points to be used for construction. Set horizontal and vertical control monuments, with coordinates tied to the Horizontal Control Plan. Fee amount for this activity is included under "Design Survey" amount.
- D. If questions related to testing occur, assist the City of Plano with recommendations for testing of materials and laboratory control during construction, which is to be conducted at the City's expense.
- E. Perform site visits to each site each month (estimated at 4 total visits) to observe the progress and the quality of work and to attempt to determine if the work is proceeding in accordance with the Contract Documents. If the Engineer is requested to visit the site more frequently, the requested visits shall be considered an Additional Service if the agreed fee for Construction Administration has been exceeded. In performing the services above, the Engineer will endeavor to protect the City of Plano against defects and deficiencies; however, it is understood that the Engineer does not guarantee the Contractor's performance, nor is the Engineer responsible for supervision of the Contractor's operation and employees. The Engineer shall not be responsible for the acts or omissions of any person at the Project sites or otherwise performing any of the work of the Project.
- F. Review samples, catalog data, shop drawings, laboratory tests, shop mill tests of material and test equipment and other submittal information to assure conformity with construction plans. Provide written responses to requests for information or clarification. It is anticipated there will be a maximum of 12 submittals to be reviewed.

C-18

- G. Interpret intent of the drawings and technical specifications for the City of Plano and the Contractor. Respond to contractor's verbal technical questions.
- H. Conduct, in company with the City's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Contract Documents.
- I. Revise the construction drawings in accordance with the information furnished by construction Contractor reflecting the changes in the Project made during construction. The Engineer shall submit one set of "as-builts" to the Engineering Inspector for review and approval. Upon approval, the engineer shall submit the following to the City:
 - 1. One set of 22" x 34" black-line plans shall be submitted to the Engineering Department from Design Engineer.
 - 2. Two CD-ROM disks containing scanned images of the 22" x 34" final "as-built" black-line drawings (with "as-built stamps" bearing the signature of the Engineer and the date.) The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.) Each file shall be named in numeric order format or converted to DXF format.

PART IV - ADDITIONAL SERVICES

Additional Services to be performed by Engineer, if authorized by the City of Plano, which are not included in the above-described basic services, are described as follows:

- A. Surveying for any new permanent or temporary easements;
- B. Assisting City of Plano with public meetings or hearings to inform residents beyond that contained in the above scope of services;
- C. Performing title searches and examination of deed records;
- D. Investigations involving detailed consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, traffic engineering reports and studies, flood plain reclamation plans, and material audits or inventories required construction performed by the City;

C-19

- E.** Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications;
- F.** Providing full time site inspection during construction of the project;
- G.** Performing designs for trench safety and retaining walls, etc. which are not included in the above Scope of Services;
- H.** Revisions to plans as result of revisions after completion of original final design (unless to correct error on original plans);
- I.** Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including preparation of engineering data and reports for assistance to the City of Plano;
- J.** Assisting the City of Plano in claims disputes with the Contractor(s);
- K.** Assisting the City of Plano with any aspect regarding homeowner meetings;
- L.** Assisting the City of Plano in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by Engineer on a fee basis negotiated by the respective parties outside of and in addition to this Agreement;
- M.** Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance other than listed in the above Scope of Services, and other assistance required to address environmental issues;
- N.** Any Corps of Engineers work including but not limited to wetlands delineation (other than as included in the Scope of Services), meetings with the Corps of Engineers staff, wetlands mitigation, or any other work not listed in the Scope of Services;
- O.** Attending homeowners and/or Council meetings including preparation of all displays, reports, or other data for use at such meetings;
- P.** Preparation of plans and/or specifications related to the relocation of utilities;
- Q.** Fees for permits and advertising;
- R.** Flood plain reclamation plans;

C-20

- S. Consulting services by others not included in proposal;
- T. Quality control and testing services during construction;
- U. Preparation and processing monthly or final construction pay estimates;
- V. Preparation of a hydraulic model for a creek or creek section for which a City accepted model has not already been developed;
- W. Determination of a floodway;
- X. Revision of hydraulic models, reports, or graphics other than minor adjustments as needed for final submittal;
- Y. Preparation of a Request for Letter of Map Revision or Conditional Letter of Map Revision, or any work pertaining to it.

C-21

**EXHIBIT B
COMPLETION SCHEDULE
EROSION CONTROL-LONDON, CREEKSIDE, SHADY CREEK
& 2 SANITARY SEWER CRK CROSSINGS
PROJECT NO. 5848
CIP NO. 70112 & 48823**

Activity	Completion Time (Calendar Days)
1. Notice to Proceed	1
2. Research and Data Collection	10
3. Design Survey	30
4. Preliminary Design	45
5. City Review	30
6. Final Design (Pre-Final Submittal) / ROW & Easement Documents	40
7. City Review	30
8. Final Design/Documents for Bidding	30
9. City Review	30
10. Advertise for Bids	21
11. Receive Bids	1
12. Recommendation	1
13. Prepare Council Agenda	1
14. Council Award	1
15. Prepare/Execute Contract	7
16. Schedule Preconstruction	1
17. Notice to Proceed	1
18. Construction	150

C-22

**EXHIBIT C
PAYMENT SCHEDULE
EROSION CONTROL-LONDON, CREEKSIDE, SHADY CREEK
& 2 SANITARY SEWER CRK CROSSINGS
PROJECT NO. 5848
CIP NO. 70112 & 48823**

A. Basic Services: Compensation to FNI for the Basic Services shall be the total fee computed on the basis of the schedule of charges and shall not exceed \$76,950. If additional work and reimbursable expenses are required, they will not be billed to the CITY without prior notification and written approval by the CITY'S Representative. Fee will be divided between locations 1-3 (erosion control for bak stabilization) and locations 4-5 (sanitary sewer crossings)

	Total	Loc. 1-3	Loc.4 -5
Preliminary Design	\$ 21,750	13,700	8,050
Final Design	\$ 34,600	21,800	12,800
Bid Phase Services	\$ 4,100	2,600	1,500
Construction Administration	\$ 10,500	6,600	3,900
Reimbursable Expenses	\$ 6,000	3,800	2,200
Total	<u>\$ 76,950</u>	<u>48,500</u>	<u>28,450</u>

B. Additional Services: Compensation to FNI for the Additional Services shall be the total fee computed on the basis of the schedule of charges but shall not exceed \$76,620. If additional work and reimbursable expenses are required, they will not be billed to the CITY without prior notification and written approval by the CITY'S Representative.

Surveying (includes const. control)	\$ 21,500	13,560	7,940
Geotechnical Investigation	\$ 25,300	15,950	9,350
Environmental Services	\$ 15,520	9,800	5,720
Structural Design	\$ 14,300	9,000	5,300
Total	<u>\$ 76,620</u>	<u>48,310</u>	<u>28,310</u>

Total Fee \$153,570 96,810 56,760

If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Exhibit A, FNI will notify CITY for CITY'S approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

Schedule of Charges for Basic Services and Additional Work:

<u>POSITION</u>	<u>RATE</u>
PRINCIPAL	225
GROUP MANAGER	225
SENIOR ENGINEER	180
ENGINEER (PE)	150
ENGINEER (EIT)	110
ENVIRONMENTAL SCIENTIST VII	185
ENVIRONMENTAL SCIENTIST VI	155
ENVIRONMENTAL SCIENTIST V	135
ENVIRONMENTAL SCIENTIST IV	120

C:\Documents and Settings\Elizabethm\Local Settings\Temporary Internet Files\OLKCE\ErosionControl\EXCSHADYREV100509.docx
CO-1

FNI _____
OWNER _____

Engineering Services Agreement **Exhibit C – Page 1**
Erosion Control-London, Creekside, Shady Creek & 2 Sanitary Sewer Crk Crossings
Project No. 5848

C-23

ENVIRONMENTAL SCIENTIST III	115
ENVIRONMENTAL SCIENTIST II	100
SR. CONSTRUCTION CONTRACT ADMINISTRATOR	155
CONSTRUCTION CONTRACT ADMINISTRATOR	100
GIS COORDINATOR	115
GIS ANALYST	65
TECHNICIAN	80
CONTRACT ADMINISTRATOR	90
WORD PROCESSING/SECRETARIAL	55
CO-OP	50

The individual salaries will be adjusted annually.

REIMBURSABLE EXPENSES

<u>Plotting</u>		<u>Printing</u>	
Bond	\$ 4.00 per plot	Bluelines/Blacklines	\$0.55 per square foot
Color	\$21.50 per plot	Offset and Xerox Copies/Prints	\$0.10 per side copy
Vellum	\$11.50 per plot	Color Copies/Prints	\$0.50 per side copy
Mylar	\$15.00 per plot	Binding	\$5.75 per book

Travel

50.5¢ per mile

OTHER DIRECT REIMBURSABLE EXPENSES

Other direct reimbursable expenses are reimbursed at actual cost times multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from Dallas and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, tests, and other work required to be done by independent persons other than staff members.

Z:\ENGINEER\JamesCaswell\5848 Erosion London,Crekside,Shadycreek\ErosionControl\EXCSHADYREV100509.docx CO-2
FNI _____
OWNER _____

Engineering Services Agreement **Exhibit C – Page 2**
Erosion Control-London, Creekside, Shady Creek & 2 Sanitary Sewer Crk Crossings
Project No. 5848

EMM:LEGAL-2009-09E-5848-F&N-ErosionControl.doc

C-24

EXHIBIT "D"

ENGINEERING

INSURANCE

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

1. General Insurance Requirements:

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

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

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

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

C-25

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

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

- 2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
 - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

C-26

- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

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

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate of \$3,000,000

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

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

C-28

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of **FREESE AND NICHOLS, INCORPORATED** (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 Consultant

By:

Signature

Print Name

Title

Date

STATE OF TEXAS §

§

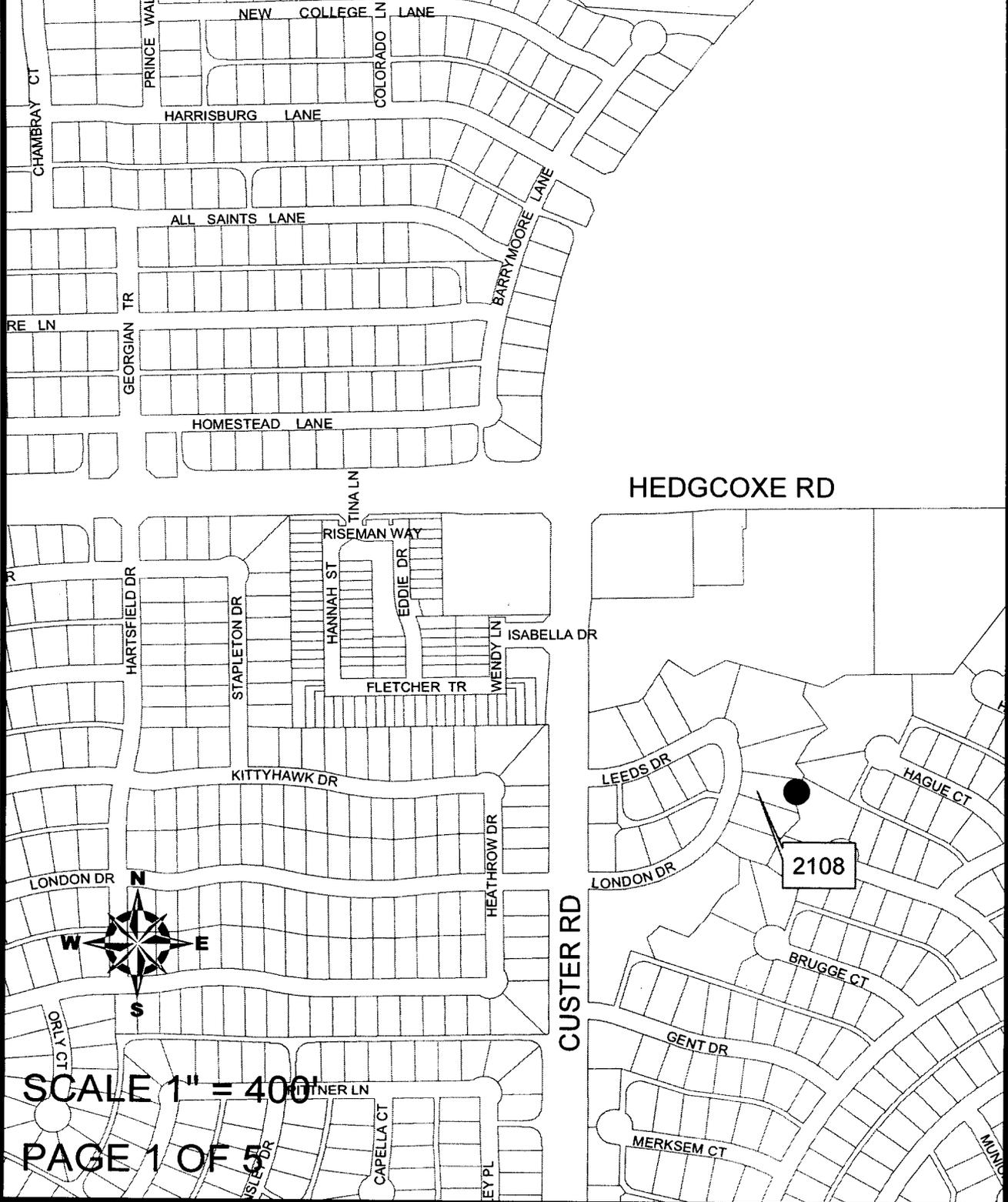
COUNTY OF DALLAS §

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

Notary Public, State of Texas

C-30

EROSION CONTROL - 2108 LONDON DRIVE PROJECT NO. 5848

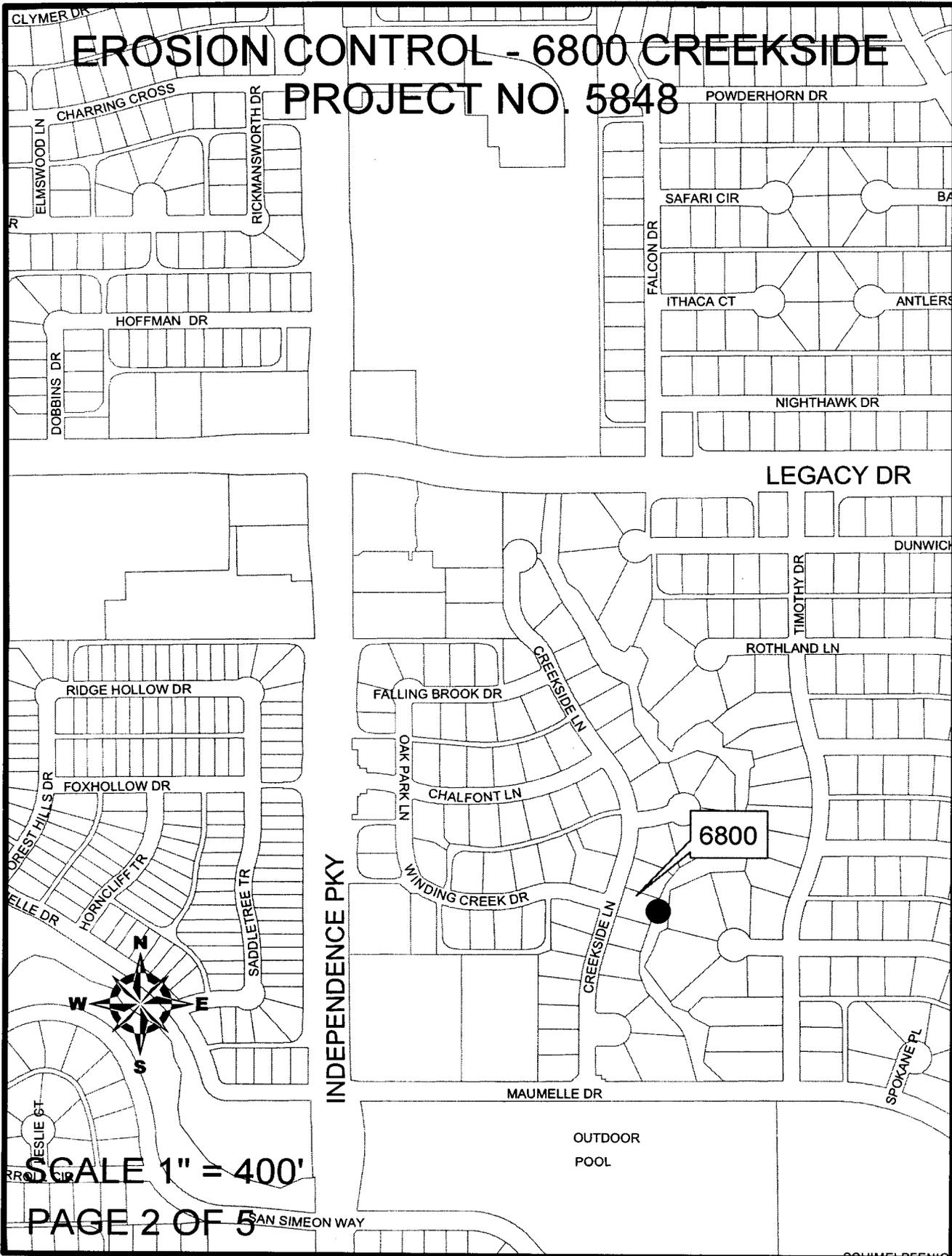


SCALE 1" = 400'

PAGE 1 OF 5

C-31

EROSION CONTROL - 6800 CREEKSIDE PROJECT NO. 5848

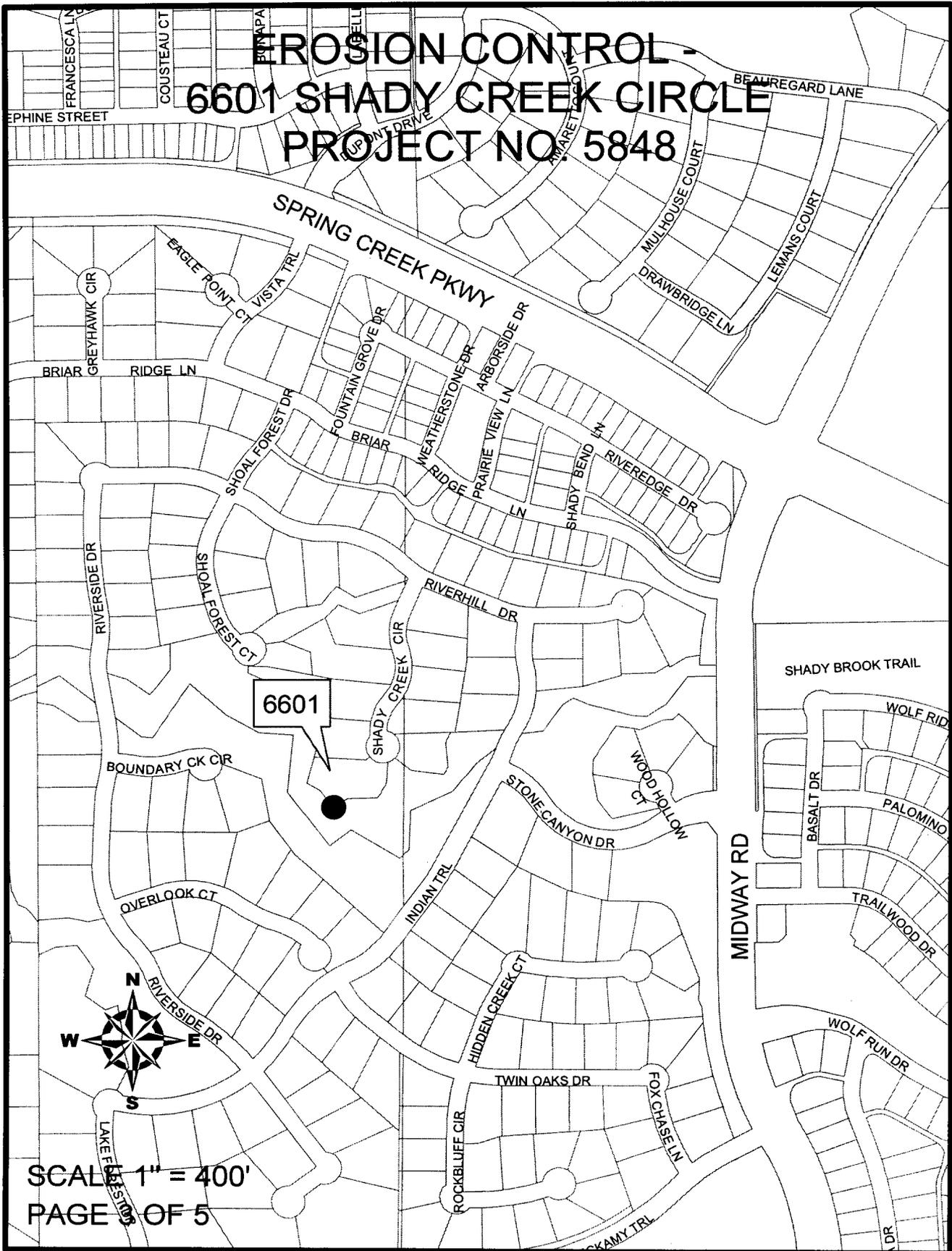


SCALE 1" = 400'

PAGE 2 OF 5

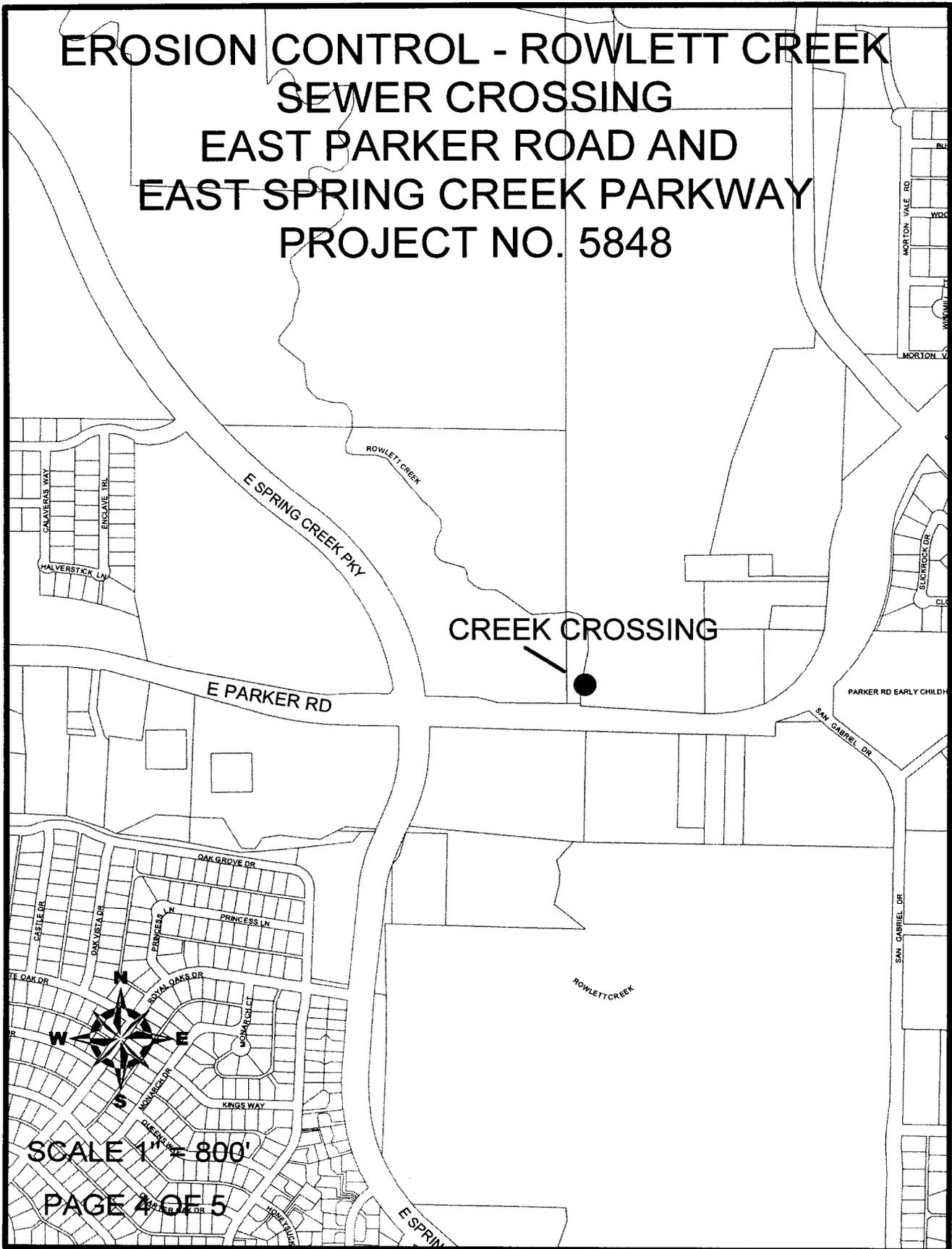
C-32

EROSION CONTROL - 6601 SHADY CREEK CIRCLE PROJECT NO. 5848



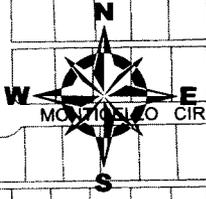
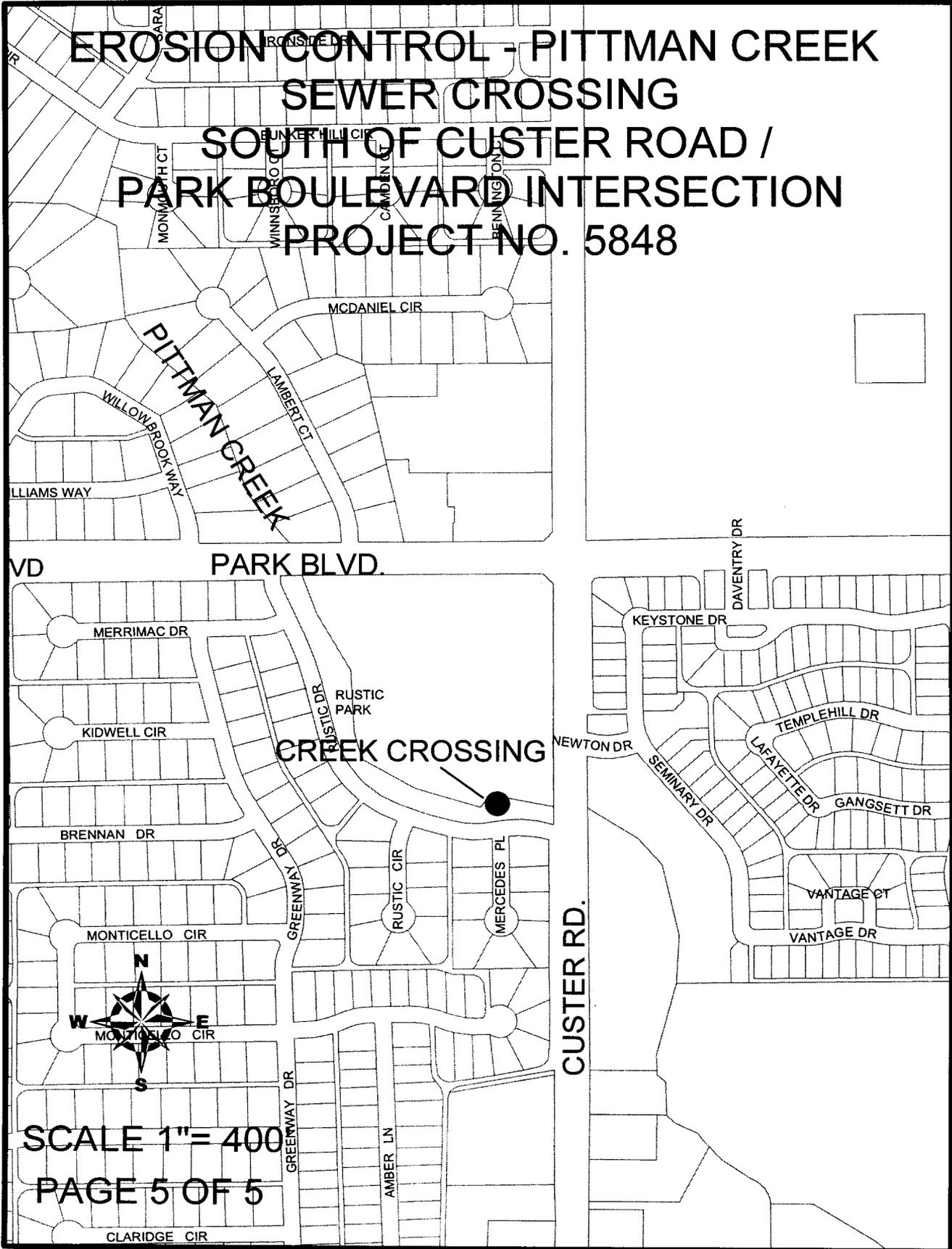
C-33

**EROSION CONTROL - ROWLETT CREEK
SEWER CROSSING
EAST PARKER ROAD AND
EAST SPRING CREEK PARKWAY
PROJECT NO. 5848**



C-34

**EROSION CONTROL - PITTMAN CREEK
SEWER CROSSING
SOUTH OF CLUSTER ROAD /
PARK BOULEVARD INTERSECTION
PROJECT NO. 5848**



**SCALE 1" = 400'
PAGE 5 OF 5**

C-35



**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>MR</i>	10/9/09
Council Meeting Date:	10/26/09	Budget	C.S.	10/7/09
Department:	Parks and Recreation	Legal	<i>jo - pu</i>	10/7/09
Department Head	Amy Fortenberry	Assistant City Manager		
Dept Signature:	<i>Amy Fortenberry</i>	Deputy City Manager	<i>RS</i>	10/7/09
		City Manager	<i>JK</i>	10/8/09
Agenda Coordinator (include phone #):		Susan Berger (7255)		

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

CAPTION

Approval of a Landscape Architecture Professional Services Agreement by and between the City of Plano and La Terra Studio, Inc. in the amount of \$54,750 for Athletic Facility Improvements - 2009 Hoblitzelle Park and Enfield Park and authorizing the City Manager or his designee to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	12,240	602,760	300,000	915,000
Encumbered/Expended Amount	-12,240	0	0	-12,240
This Item	0	-54,750	0	-54,750
BALANCE	0	548,010	300,000	848,010

FUND(S): **CAPITAL RESERVE**

COMMENTS: Funds are included in the 2009-10 Capital Reserve. This item, in the amount of \$54,750, will leave a current year balance of \$548,010 for the Restroom Renovations project.

STRATEGIC PLAN GOAL: Park restroom renovations relate to the City's Goal of Premier City in Which to Live.

SUMMARY OF ITEM

This agreement provides for Landscape Architectural Services to prepare plans and construction documents for improvements at Hoblitzelle Park and Enfield Park. The services include information gathering, design development, preparation of construction documents, construction observation, and coordination of Texas Department of Licensing and Regulation plan review and inspection.

Improvements at Hoblitzelle Park include demolition and replacement of the athletic field restroom which was constructed in 1987. The foundation of the restroom building was severely damaged by previous drought conditions. The concrete plaza area surrounding the restroom was also damaged by the drought and will be replaced. Other improvements at Hoblitzelle Park include renovation of metal safety railing and the athletic field fencing. Improvements at Enfield Park include renovation of both restrooms to bring them into compliance with Texas Department of Licensing Regulation requirements for compliance with current ADA standards.

d-1



**CITY OF PLANO
COUNCIL AGENDA ITEM**

The cost for these services is \$54,750 which represents 10.4% of the estimated construction cost of \$525,000. This fee is consistent with other park improvement projects of this size and scope.

La Terra Studio, Inc. is on the 2009-10 list of selected consultants for Landscape Architecture services.

List of Supporting Documents:

Agreement
Location Map

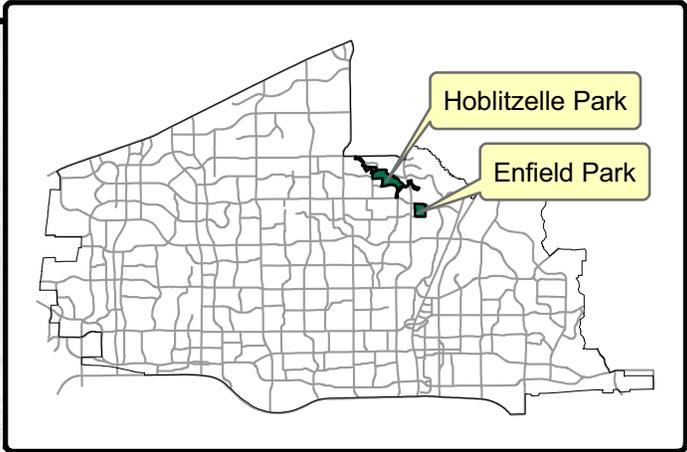
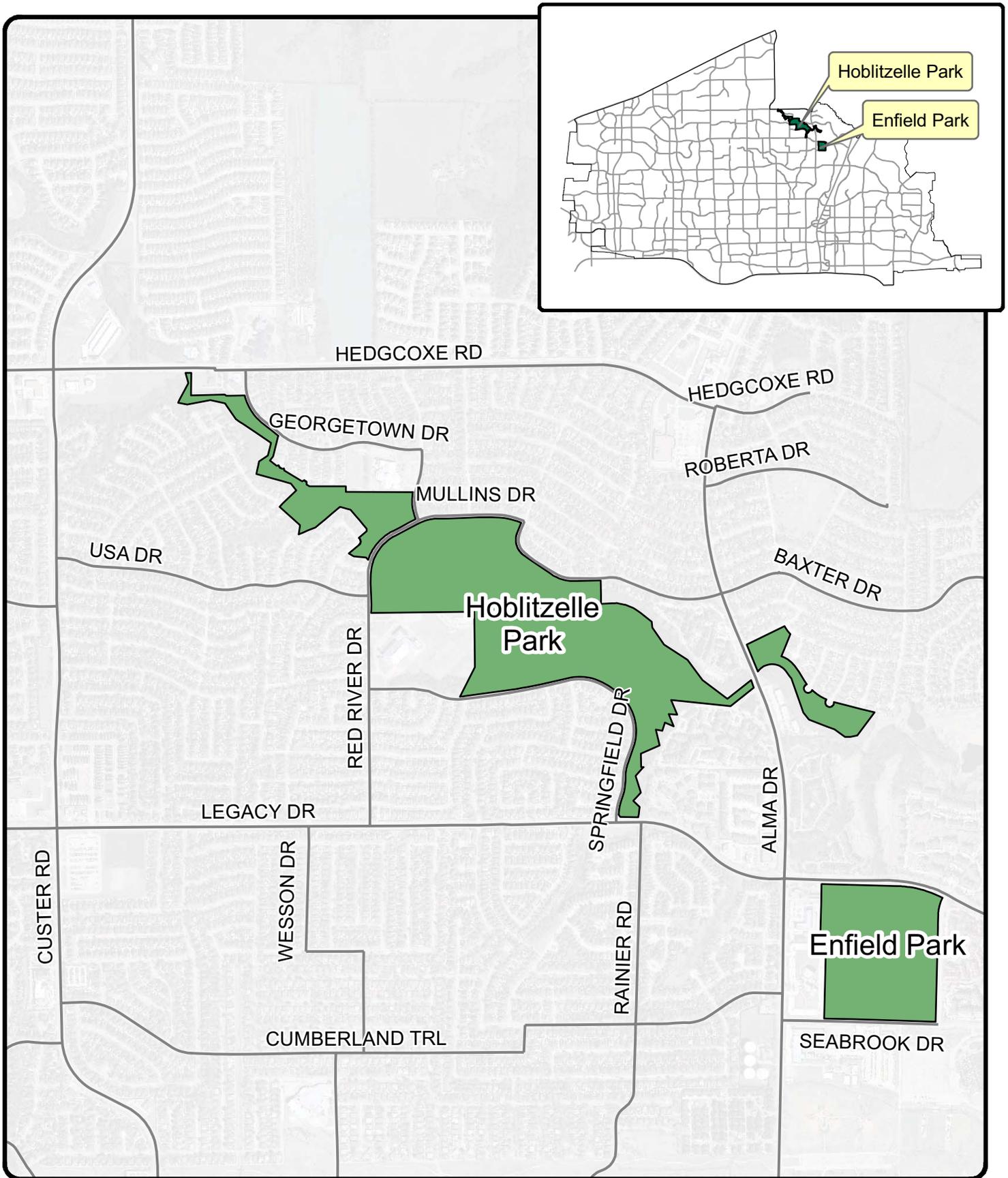
Other Departments, Boards, Commissions or Agencies

d-2



Location Map

Enfield Park & Hoblitzelle Park



**ATHLETIC FACILITY IMPROVEMENTS – 2009
HOBLITZELLE PARK & ENFIELD PARK**

PROJECT NO. 6021

LANDSCAPE ARCHITECT SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **LA TERRA STUDIO, INC.**, a **TEXAS** Corporation, licensed to do business in the State of Texas, hereinafter referred to as "Architect", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Architect to perform landscape architectural services in connection with the **ATHLETIC FACILITY IMPROVEMENTS – 2009 HOBLITZELLE PARK & ENFIELD PARK** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Architect

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

II. Scope of Services

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

III. Schedule of Work

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

d-3

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

VII. INDEMNITY

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

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE DEFENSE COUNSEL TO BE RETAINED BY ARCHITECT 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 ARCHITECT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ARCHITECT'S OBLIGATION TO INDEMNIFY CITY

d-4

PURSUANT TO THIS AGREEMENT. ARCHITECT 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 ARCHITECT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND ARCHITECT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

VIII. Independent Contractor

Architect covenants and agrees that Architect is an independent contractor and not an officer, agent, servant or employee of City; that Architect 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 Architect, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Architect.

IX. Assignment and Subletting

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

X. Audits and Records/Prohibited Interest

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

The Architect agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Architect shall execute the affidavit shown in Exhibit "E". Architect

al-5

understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

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

XII. Architect's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

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

XIV. Complete Contract

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

dl-6

XV. Mailing of Notices

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

City of Plano
Parks Department
P.O. Box 860358
Plano, TX 75086-0358

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

La Terra Studio, Inc.
2109 Commerce Street
Dallas, TX 75201
Attn: Kris Brown

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

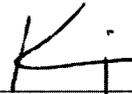
F. Effective Date:

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

SIGNED on the date indicated below.

LA TERRA STUDIO, INC.
A Texas Corporation

DATE: 9.24.09

BY: 
Kris Brown
PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

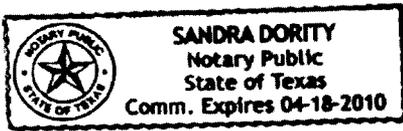

Diane C. Wetherbee
CITY ATTORNEY

d-8

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 24 day of September, 2009, by **KRIS BROWN, PRESIDENT** of **LA TERRA STUDIO, INC.**, a **TEXAS** corporation, licensed to do business in the State of Texas, on behalf of said corporation.



[Handwritten Signature]

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

d-9



EXHIBIT A
SCOPE OF SERVICES

**ATHLETIC FACILITY IMPROVEMENTS 2009
HOBLITZELLE PARK & ENFIELD PARK**

Section I Basic Services

la **terra** studio's Scope of Services is divided into separate phases listed below:

- A- Information Gathering / Coordination
- B- Schematic / Conceptual Design
- C- Design Development / Construction Documents
- D- Procurement - Bid Phase
- E- Construction Phase

A. Information Gathering / Coordination

A.1 Data Collection

la **terra** studio will coordinate & obtain GIS digital data from the city depicting existing topography, infrastructure lines & building footprints. Any other site elements will be verified / measured in the field.

A.2 Data Conversion

la **terra** studio will convert the collected data into usable base information for use during the following phases.

B. Schematic / Conceptual Design

B.1 Conceptual Design

la **terra** studio present (1) schematic plan in CAD format for approval and further design development.

~Proposed Conceptual & Schematic Design Elements~

Hoblitzelle Site	Enfield Site
<ul style="list-style-type: none">◆ Restroom Removal & Replacement◆ Architectural Design Coordination With Vendor◆ Engineering Plans (as required)◆ Plaza Renovation	<ul style="list-style-type: none">◆ Restroom modifications in compliance with Texas Accessibility Standards

C. Design Development / Construction Documents

C.2 Construction Drawings ~ 60% & 90% Review

la **terra** studio will begin production on preliminary Construction Drawings & Details.

***note: One (1) set of Plans & Specifications will be issued as "Not For Regulatory Approval, Permitting, or Construction" for internal City Review*

d-10



- Proposed Construction Drawing Elements -

la terra studio

<p>Drawing Set (24"x36") to include: Coversheet Site Locator Map Erosion Control BMPs Demolition Plan Grading Plans Site Plans</p>	<p>Site Layout Plans Dimension Control Plans Mechanical Engineering Plans Structural Engineering Plans Electrical Engineering Plans DETAILS: Paving, Site; Structural; Electrical; Erosion Control BMPs</p>
---	--

C.3 Technical Specifications - 90% Review

la **terra studio** will prepare Technical Specifications for use within the construction Project Manual. A standard format will be used in conjunction with any City of Plano standard specifications issued by staff.

***note: City responsible for providing la terra studio with "front-end" boiler plate contract documents to be included within the Project Manual (see items below):*

C.4 Construction Drawings - 100% Review

la **terra studio** will finalize production of Construction Drawings & Details.

***note: Three (3) sets of Plans & Specifications will be issued as "Not For Regulatory Approval, Permitting, or Construction" for final internal City Review*

C.5 Project Manual - 100% Review

la **terra studio** will finalize Technical Specifications and submit (1) unbound Project Manual with the following items:

<ul style="list-style-type: none"> -Coversheet -Table of Contents -Notice to Contractors** -Bid Schedule with Unit Pricing -Construction Agreement** -Performance Bond** -Payment Bond** 	<ul style="list-style-type: none"> -Maintenance Bond** -Insurance Requirements** -Certificate of Insurance** -Special Conditions** -TCEQ-TPDES Permit Req.** -Technical Specs -Approved Materials List**
---	---

C.6 TDLR Plan Review Submittal

la **terra studio** will submit (1) plan set to the Texas Department of Licensing & Regulation for accessibility review as required per TDLR regulations. Upon TDLR plan review completion, la **terra studio** will address and / or make revisions to plans and specifications as required to meet accessibility standards.

***note: Fees for TDLR plan review & EABPRJ registration will be paid for by la terra studio. The City is responsible for TDLR site inspection coordination & fees.*

C.7 Deliverables

Upon final approval of the Construction Documents, la **terra studio** will provide the City with one (1) set of signed and sealed plans. Final drawings will also be submitted in the following digital formats: .dxf; .pdf

D. Procurement (bid phase services)

D.1 Procurement - Bid Phase

Upon final approval of the Construction Documents, la **terra studio** will provide the City assistance in bidding and awarding the Procurement Contract.

This will include the following:

- Furnish one (1) set of signed and sealed reproducible plans and a project manual for bidding, plus a digital copy of plans and the assembled project manual in PDF format.
- Plans & Specs. will be picked-up at the office of la **terra studio**.
- Attendance at the pre-bid meeting to be held at the City Hall
- Answer contractor inquiries during Bid Phase & Issuance of Addendums

al-11



la terra studio

- Provide a bid tabulation of all valid bids received
- A summary of the bid analysis will be provided to the City for use in selection and awarding of the Procurement Contract.
 - **note: Reproduction costs associated during the Bid Phase will be recouped by a non-refundable fee paid for by prospective bidders*
 - **note: (1) Bid set will be made available to (1) PUBLIC plan room at no charge if plans are returned in GOOD condition -Plan Room set will be made available on first-come-first-serve-basis-*

E. Construction Phase

E.1 Construction Phase

la **terra** studio will participate in (4) monthly Project Site Visits with the Project's contractor to generally review the progress of construction and to see if the work completed is generally consistent with the design intent of Landscape Architect's Construction Documents. Site visits will occur throughout the life of the project, or as deemed necessary by the City or la terra studio. Following each Project Site Visit, a written "Site Observation" report will be submitted to City staff.

***note: Although Landscape Architect may observe and discuss potential problems, these visits are not construction inspections or a guarantee that there will not be construction deficiencies*

D.2 Submittals

la **terra** studio will Review required contractor submittals, such as shop drawings and samples, but only to determine if they conform to the Landscape Architect's visual, technical, and aesthetic design intent.

Section II Limitations

F.1 Professional Services Limitations

Limitations to professional services not included in basic and/or additional services include, but are not limited to the following:

- perspective illustrations -color rendering -utility mapping
- FEMA map revisions/verification -environmental assessments -ROW dedication -SWPPP maintenance or inspection -traffic studies
- wetlands determination & 404 permitting

In addition, limitations listed (above) can be performed as additional services as defined by Section III (b) (below)

Section III Additional Services

A. Information Gathering / Coordination

A.1 Additional Services

a. Hourly Rates

The Landscape Architect will provide Additional Services on an hourly basis with a mutually agreed "not to exceed" total or a mutually agreed upon flat fee in writing. Hourly rates for Additional Services are as follows:

- Principal - Registered Landscape Architect \$110.00/hour
- Landscape Architect In-training \$ 70.00/hour
- CAD / GIS Tech. \$ 55.00/hour
- Administrative \$ 40.00/hour

b. Services

Additional services equal any service not listed as a Basic Service

al-12

la terra studio, inc.
2109 commerce - dallas - texas - 75201



la terra studio

EXHIBIT B

Estimated Schedules and Project Budget

**ATHLETIC FACILITY IMPROVEMENTS 2009
HOBLITZELLE PARK & ENFIELD PARK**

Landscape Architect shall render its services as expeditiously as is consistent with professional skill and care. During the course of the Project, anticipated and unanticipated events may impact any Project schedule.

As of the date of this agreement, client's project construction budgets are approximately:

\$450,000 (Hoblitzelle)
\$150,000 (Enfield)

Client agrees to promptly notify Landscape Architect if Client's schedule or budget changes. Client acknowledges that significant changes to the Project or construction schedule or budget or to the Project's scope may require Additional Services of Landscape Architect.

***Note: The above schedule is for the design team's work effort only and does not include time required for internal review and approval by the City of Plano.*

d-13

la terra studio, inc.
2109 commerce - dallas - texas - 75201



la terra studio

EXHIBIT C
PAYMENT SCHEDULE
ATHLETIC FACILITY IMPROVEMENTS 2009
HOBLITZELLE PARK & ENFIELD PARK

Client agrees to pay Landscape Architect as follows:

~Basic Services~

Information Gathering (ref. section I-A)	Phase Total	\$ 3,500
Schematic / Conceptual Design (ref. section I-B)	Phase Total	\$ 4,500
Design Development / Construction Documents (ref. section I-C)	Phase Total	\$17,250
Procurement Phase Services (ref. section I-D)	Phase Total	\$ 7,500
Construction Phase Services (ref. section I-E)	Phase Total	\$ 3,500
TOTAL BASIC SERVICES		\$36,250

Incidental Expenses & Project Allowance (equipment, prints, mileage, postage, courier)
Sub Total **\$ 3,200**

TDLR Plan Review
Sub Total **\$ 800**

~Additional Services~ (sub-consulting services)

Engineering		\$14,500
TOTAL ESTIMATED ADDITIONAL SERVICES		\$14,500

TOTAL Basic; Additional Services & Fees **\$ 54,750**

Invoices will be submitted monthly based on a percentage of completion

STATEMENT OF JURISDICTION

The Texas Board of Architectural Examiners (TBAE) has jurisdiction over complaints regarding the professional practices of persons registered as landscape architects in Texas.



TEXAS Board of
Architectural Examiners
Architects • Interior Designers • Landscape Architects

TBAE
P.O. Box 12337
Austin, TX 78711-2337
(512) 305 - 9000
<http://www.tbac.state.tx.us/active/home.html>

d-14

EXHIBIT "D"

LANDSCAPE ARCHITECT

INSURANCE

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

1. General Insurance Requirements:

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

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

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

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

d-15

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

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

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

d-16

vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.

2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

2.2 Professional Errors and Omissions

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

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

dl-17

LANDSCAPE ARCHITECT

City of Plano - Insurance Checklist

("X" means the coverage is required.)

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

d-18

18. Garagekeepers' Legal \$ _____ - Comprehensive
\$ _____ - Collision
19. Owners Protective Liability \$500,000 Combined single limits
20. City named as additional insured on General Liability policy.. This coverage is primary to all other coverages the City may possess.
21. City provided with Waiver of Subrogation on Workers' Compensation or Alternative program if applicable.
22. Ten (10) days notice of cancellation, non-renewal, material change or coverage reduction endorsement required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
23. The City of Plano prefers an A.M. Best's Guide Rating of "A-", "VI" or better or Standard and Poors Rating AA or better; Authorized to do business in the State of Texas (not applicable for workers' compensation assigned through pool or alternative compensation programs).
24. The Certificate must state project title and project number.
25. Other Insurance Required.

INSURANCE AGENT'S STATEMENT

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

26. The above policy(s) carry the following deductibles: E = 0 \$5,000 Ded

Full limits of coverage available for:
 General Liability
 Automobile Liability

Professional Liability

27. Liability policies are (indicate):

General Liab.
 OCCURRENCE

Professional
 CLAIMS MADE

Troy D. Sibelius
 Signature

9/22/09
 Date

TROY D SIBELIUS
 Insurance Agent (Print)

La Terra Studio, Inc
 Name of Insured

9/22/09
 Date

d-19

ACORD CERTIFICATE OF LIABILITY INSURANCE		9/4/2009
PRODUCER (303)756-9909 Keller-Lowry Insurance Inc 1777 S Harrison St #700 Denver, CO 80210 Teresa Heupe	FAX (303)756-8818	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: LA TERRA STUDIO, INC. 2109 COMMERCE STREET DALLAS, TX 75201	<i>OK</i>	INSURERS AFFORDING COVERAGE
	INSURER A Hartford Accident & Indemnity	NAIC # 22357 <i>A+</i>
	INSURER B Hartford Underwriters Ins Co	30104 <i>A+</i>
	INSURER C U.S. Specialty Insurance Co	29599 <i>A+</i>
	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 TR	INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	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 checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO <input type="checkbox"/> SECT <input type="checkbox"/> LOC	345BAPD2497	09/29/2008	09/29/2009	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	X	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	345BAPD2497	09/29/2008	09/29/2009	COMBINED SINGLE LIMIT (E & BODILY) \$ 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 \$ EA ACC \$ OTHER THAN AUTO ONLY AGG \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	34WECNX1027	09/25/2008	09/25/2009	WC STATUTORY LIMITS <input checked="" type="checkbox"/> E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C		OTHER Professional Liability	U5081298501	11/13/2008	11/13/2009	\$1,000,000 Per Aggregate \$1,000,000 Per Claim \$5,000 Ded.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Certificate holder is added as additional insured for General Liability with respects their interest by contract with the named insured.
Waiver of subrogation is added in favor of certificate holder for General Liability and Workers Compensation. * 10 Day Notice for NON-Payment of Premium
Job Description: Athletic Facility Improvements 2009 Hoblitzelle Park & Enfield Park

CERTIFICATE HOLDER City of Plano 1409 Avenue K Plano TX 75074	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 MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES AUTHORIZED REPRESENTATIVE Troy Sibelius, CIC/TMH
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d-20

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 endorsements.

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.

ACORD 25 (2001/08)

d-21

Additional Coverages and Factors

12/18/2008

Line of Business Coverages for General Liability

Coverage	Limits	Ded/Ded Type	Rate	Premium	Factor
Each Occurrence	1,000,000				
General Aggregate	2,000,000				
Products/Completed Ops Aggregate	2,000,000				
Personal & Advertising Injury	1,000,000				
Medical Expense	10,000				
Fire Damage	300,000				
Hired Auto	1,000,000				
Non-owned	1,000,000				
Terrorism					

Line of Business Coverages for Workers Compensation

Coverage	Limits	Ded/Ded Type	Rate	Premium	Factor
WC & Employer's Liability	100,000/500,000/ 100,000				

State Level Coverages for TX

Coverage	Limits	Ded/Ded Type	Rate	Premium	Factor
Expense constant				180.00	
Merit surcharge				-276.00	0.85000
Terrorism				72.00	0.02400

d-22



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

00191
*0000234NX10270309

Policy Number: 34 WEC NX1027

Endorsement Number: 01

Effective Date: 09/25/08 Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: LA TERRA STUDIO, INC.

2109 COMMERCE STREET
DALLAS, TX 75201

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule. The premium for this endorsement is shown in the Schedule.

SCHEDULE

1. Specific Waiver

Name of person or organization:

Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:

3. Premium:

The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Minimum Premium:

5. Advanced Premium:

Countersigned by _____
Authorized Representative

Form WC 42 03 04 Printed in U.S.A.
Process Date: 07/31/08

Policy Expiration Date: 09/25/09

A-23

BUSINESS LIABILITY COVERAGE FORM

Form SS 00 08 04 05

© 2005, The Hartford

Landscape Architectural Services Agreement
Athletic Facility Improvements – 2009 Hoblitzelle Park & Enfield Park
Project No. 6021

Exhibit D Page 10

EMM:LEGAL-2009-09L-LATERRA-6021-KM

d-24

BUSINESS LIABILITY COVERAGE FORM

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

- a. **Any Insured**
To any insured, except "volunteer workers".
- b. **Hired Person**
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. **Injury On Normally Occupied Premises**
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. **Workers' Compensation And Similar Laws**
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. **Athletics Activities**
To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.
- f. **Products-Completed Operations Hazard**
Included with the "products-completed operations hazard".
- g. **Business Liability Exclusions**
Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured.

a. **Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

(a) Owned, occupied or used by.



BUSINESS LIABILITY COVERAGE FORM

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

d-26

BUSINESS LIABILITY COVERAGE FORM

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

BUSINESS LIABILITY COVERAGE FORM

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

d-28

BUSINESS LIABILITY COVERAGE FORM

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications, or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

d-29

BUSINESS LIABILITY COVERAGE FORM

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

**E. LIABILITY AND MEDICAL EXPENSES
GENERAL CONDITIONS**

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

d-30

BUSINESS LIABILITY COVERAGE FORM

This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault, or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured, or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows.

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builders Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. - Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. - Coverages.

dl-31

BUSINESS LIABILITY COVERAGE FORM

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance, or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance, and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

d-32

BUSINESS LIABILITY COVERAGE FORM

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor Of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

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d-33

BUSINESS LIABILITY COVERAGE FORM

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

d-34

BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

d-35

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of **LA TERRA STUDIO, INC.**, (herein "Architect") 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.

la terra studio, inc
Name of Architect

By: [Signature]
Signature

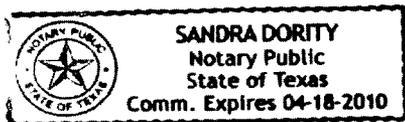
Kris Brown
Print Name

President
Title

9.24.09
Date

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 24 day of September, 2009.



[Signature]
Notary Public, State of Texas

d-36



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>Jep</i> 10-19-09	
Council Meeting Date: 10/26/09		Budget	<i>C.S.</i> 10-19-09	
Department:	Public Works & Engineering	Legal	<i>JAG</i> 10/19/09	
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>RA</i> 10-20-09	
		City Manager	<i>RA</i> 10/20/09	
Agenda Coordinator (include phone #): Irene Pegues (7198) <i>Is for IP</i>		Project No. 5715		
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 Weir Bros., Inc., increasing the contract by \$54,795, for Razor Road from Ohio Drive to SH 121, Change Order No. 1. Original Bid No. 2009-81-B				
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	1,101,649	3,280,351	0	4,382,000
Encumbered/Expended Amount	-1,101,649	-2,797,042	0	-3,898,691
This Item	0	-54,795	0	-54,795
BALANCE	0	428,514	0	428,514
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: Funds are included in the 2009-10 Street Improvement CIP. This change order, in the amount of \$54,795, will leave a current year balance of \$428,514 for the Razor – Ohio to SH 121 project.				
STRATEGIC PLAN GOAL: Street improvements relate to the City's Goal of Safe, Efficient Travel.				
SUMMARY OF ITEM				
This change order, in the amount of \$54,794.56, is for revising the scope of work to include the addition of four turn lanes and median openings on Razor Road. The four turn lanes and median openings are being added to serve a future private development. The developer is reimbursing the City for the cost of these improvements.				
Staff recommends approval of Change Order No. 1. The contract total will be \$4,254,306.48 which includes change orders of 1.3% of the original contract amount of \$4,199,511.92.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Change Order No. 1		N/A		
Location Map				

CHANGE ORDER NO. 1

**RASOR ROAD FROM OHIO DRIVE TO SH 121
PROJECT NO. 5715
PURCHASE ORDER NO. 103715
CIP NO. 33-31411
BID NO. 2209-81-B**

A. INTENT OF CHANGE ORDER

The intent of this change order is to modify the provisions of the contract entered into by the **CITY OF PLANO, TEXAS**, and **WEIR BROS., INC.**, for the **RASOR ROAD FROM OHIO TO SH 121 PROJECT** dated **June 22, 2009**.

B. DESCRIPTION OF CHANGE

The change order is for adding four left turn lanes and median openings on Rasor Road.

C. EFFECT OF CHANGE

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

<i>ITEM NO.</i>	<i>ITEM DESCRIPTION</i>	<i>ORIGINAL QUANTITY</i>	<i>REVISED QUANTITY</i>	<i>UNIT</i>	<i>UNIT PRICE</i>	<i>AMOUNT OF CHANGE</i>
9	Lime Stabilized @ 1270 SY @ 1.6/SY	47,401.00	48,671.00	SY	\$1.60	\$2,032.00
10	Hydrated lime (36# /SY) @23 tons @ \$125.00/ ton =	854.00	877.00	TON	\$125.00	\$2,875.00
11A	8" 5000psi Conc Turn lane Pave @ 1200 SY @ \$ 34.70/SY	0.00	1,200.00	SY	\$34.70	\$41,640.00
14	6" reinf Landscape ramp @4 each \$550.00 =	13.00	17.00	EA	\$550.00	\$2,200.00
18	4"x4" Acrylic Traffic Buttons clear 52 each @ \$2.93/ea	1,285.00	1,337.00	EA	\$2.93	\$152.36
19	4" Nonreflective ceramic traffic Button @52 each @\$2.60/ea	3,126.00	3,178.00	EA	\$2.60	\$135.20
41	Mono Median Nose @ 8 Each @ \$720.00	1,271.00	1,279.00	SF	\$720.00	\$5,760.00
	TOTAL					\$54,794.56



Original Contract Amount	<u>\$ 4,199,511.92</u>
Contract Amount (Including Previous Change Orders)	<u>\$ 4,199,511.92</u>
Amount, Change Order No. 1	<u>\$ 54,794.56</u>
Revised Contract Amount	<u>\$ 4,254,306.48</u>
Total Percent Increase Including Previous Change Orders	<u>1.30%</u>

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add **8** day(s) to this project:

Original Contract Time	<u>200 working days</u>
Amount (Including Previous Change Orders)	<u>200 working days</u>
Amount, Change Order No. 1	<u>8 working days</u>
Revised Contract Time	<u>208 working days</u>
Total Percent Increase Including Previous Change Orders	<u>4.00%</u>

CONTINUED ON NEXT PAGE

e-3

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **WEIR BROS., INC.**, do hereby agree to append this Change Order No. 1 to the original contract between themselves, dated June 22, 2009.

OWNER: CITY OF PLANO

CONTRACTOR: WEIR BROS., INC.

By: _____
(signature)

By: _____
(signature)

Print
Name: THOMAS H. MUEHLENBECK

Print
Name: MIKE WEIR

Print
Title: CITY MANAGER

Print
Title: VICE PRESIDENT

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney

e-4

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **MIKE WEIR, VICE PRESIDENT** of **WEIR BROS., INC.**, a **TEXAS** corporation, on behalf of said corporation.

Notary Public, State of Texas

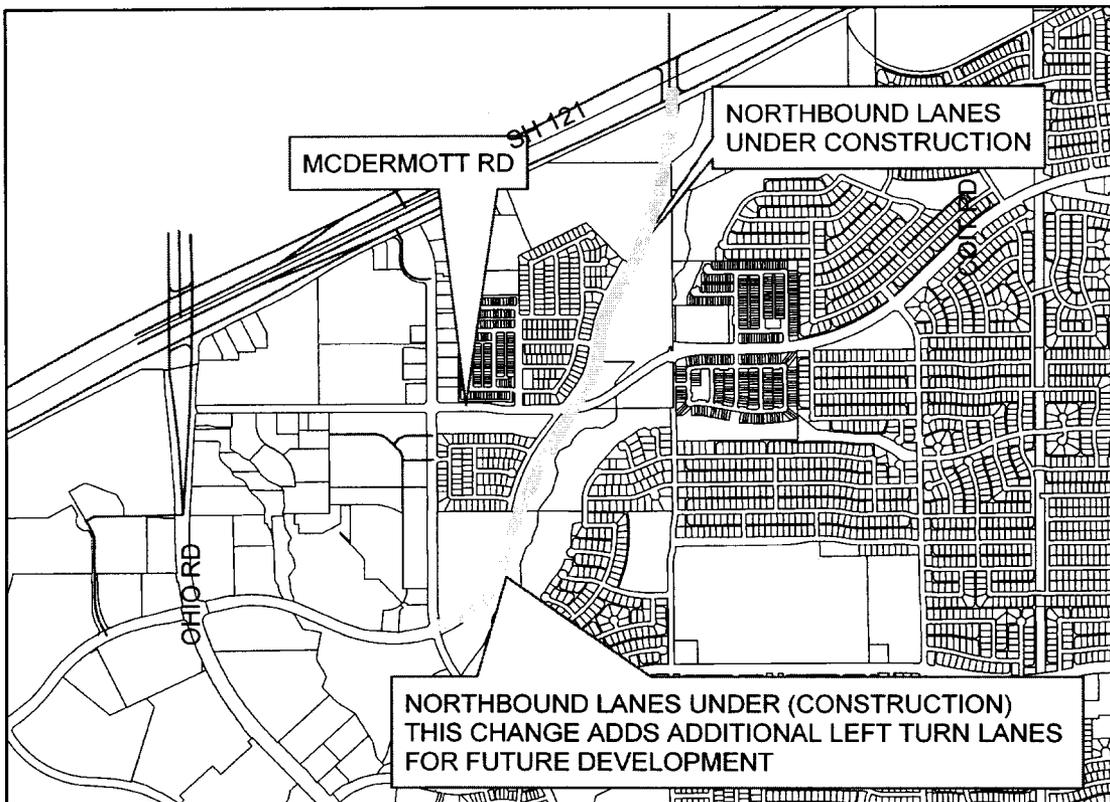
STATE OF TEXAS §
§
COUNTY OF COLLIN §

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

e-5

Rasor Road - Ohio to SH 121 (ADDITIONS TO SCOPE OF WORK)



**CITY OF PLANO ENGINEERING DEPARTMENT
COMMUNITY INVESTMENT PROJECT**



1 in = 2,000 ft

e-6



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]	10-19-09		
Council Meeting Date:	October 26, 2009	Budget	C.S. 10-16-09		
Department:	Library Administration	Legal	[Signature] 10-16-09		
Department Head	Joyce Baumbach	Assistant City Manager	[Signature] 10-16-09		
Dept Signature:	[Signature: Joyce Baumbach]	Deputy City Manager	[Signature] 10/16/09		
		City Manager	[Signature] 10/16/09		
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 Collin County, Texas providing the terms and conditions for receipt of funding in the amount of \$79,674.88 from Collin 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	79,675	0	79,675
BALANCE		0	79,675	0	79,675
FUND(S): GENERAL FUND					
COMMENTS: Approval of this item will result in \$79,675 in revenue from the Collin 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 Collin County.					
STRATEGIC PLAN GOAL: Providing Interlocal library services relates to a "Financially Strong City with Service Excellence."					
SUMMARY OF ITEM					
Approval of this Interlocal Cooperation Agreement for Library Services between the City of Plano and Collin County is requested for receipt of funding in the amount of \$79,674.88 from Collin 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 COLLIN COUNTY, TEXAS PROVIDING THE TERMS AND CONDITIONS FOR RECEIPT OF FUNDING IN THE AMOUNT OF \$79,674.88 FROM COLLIN 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 Collin County, Texas, (see Exhibit "A") providing terms and conditions for receipt of funding from Collin County, Texas in the amount of \$79,674.88; 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.

B-2

RESOLUTION NO. _____

Page 2

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

6-3

THE STATE OF TEXAS

COUNTY OF COLLIN

**INTERLOCAL AGREEMENT BETWEEN
THE COUNTY OF COLLIN
AND
THE CITY OF PLANO**

I.

This agreement is made and entered by and between Collin County, a political subdivision of the State of Texas, hereinafter referred to as the "**COUNTY**" and the City of Plano, a municipality of Collin County, Texas, hereinafter referred to as the "**MUNICIPALITY**".

II.

The **COUNTY** and **MUNICIPALITY** agree as follows:

The **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 and residents of Collin County.

The **LIBRARY**, as an entity established by the **MUNICIPALITY**, is a City Council created entity established for administering and providing library services for the general public in Collin County, Texas.

The undersigned officers or agents of the **COUNTY** and the **MUNICIPALITY** are properly authorized officials and agents and each has the necessary authority to execute this contract on behalf of said agent's principal and that any necessary resolutions or orders extending said authority have been duly passed and are now in full force and effect.

The **COUNTY** agrees to fund the **MUNICIPALITY** in the amount of \$79,674.88 for the 2010 fiscal year (October 2009 through September 2010) of the **COUNTY**, under the conditions and terms set out herein.

B-4

In exchange for said funds provided by the **COUNTY**, the library as an entity of the **MUNICIPALITY**, will provide the following services to the citizens of Collin County for the fiscal year of 2010:

The library, as an entity of the **MUNICIPALITY**, shall continue to provide full library services for residents of Collin County, Texas, without distinction between those who reside within or without an incorporated area of the county.

The library, as an entity of the **MUNICIPALITY**, shall perform such other functions and duties as may be required of it by law or by lawful authority.

All benefits and services provided by the **MUNICIPALITY** and the administration of its program or programs shall be done in conformity with all State and Federal Laws and without regard to race, religion, gender or ethnic background of the persons being served, and without regard to the immigration status of the persons being served.

All funds provided to the **MUNICIPALITY** by the **COUNTY** shall be used solely for library services to the public.

The library as an entity of the **MUNICIPALITY**, shall diligently prepare and keep accurate and current records of its board meetings, official actions and expenditures and shall permit inspection and copying of said records by authorized agents of the Commissioners' Court, District Attorney and County Auditor of Collin County, Texas from 8:00 A.M. to 5:00 P.M. Monday through Friday of each week (except officially recognized holidays).

Further, the library, as an entity of the **MUNICIPALITY**, agrees to submit to audits by the County Auditor in accordance with the directions of said official.

The library, as an entity of the **MUNICIPALITY**, shall comply with the Texas Open Records Act and the Texas Open Meetings Act, provided that matters and records deemed confidential by law shall not be compromised.

6-5

For the aforementioned services provided by the **LIBRARY**, as an entity of the **MUNICIPALITY**, the **COUNTY** agrees to pay **MUNICIPALITY** for the full performance of this agreement: the sum of \$79,674.88 with equal payments of \$19,918.72 to be made on a quarterly basis. The **MUNICIPALITY** understands and agrees that payment by the **COUNTY** to the **MUNICIPALITY** shall be made in accordance with the normal and customary processes and business procedures of the **COUNTY**, and in conformance with applicable state law.

Neither of the parties to this agreement waives or shall be deemed hereby to waive any immunity or defense that would otherwise be available to it against claims arising from the exercise of governmental powers and functions. The **MUNICIPALITY** is not given authority by this contract to place the **COUNTY** under any manner of legal obligation to any third party, person, entity or agency, and is not hereby made an agent of the **COUNTY** for the purpose of incurring liability. The **MUNICIPALITY** does not have under this agreement authority or legal capacity to admit or confess error or liability on behalf of the **COUNTY**.

The effective date of this agreement shall be the day that it is signed by both parties.

This agreement and any of its terms and provisions, as well the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas.

8-6

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.

EXECUTED in duplicate originals this, the ___ day of _____, 2009.

COUNTY

BY: _____
Name: _____
Title: _____
Dated: _____

MUNICIPALITY

BY: _____
Name: _____
Title: _____
Dated: _____

Plano City Council Meeting

Dated: _____

ATTEST:

By: _____
City Secretary

APPROVED AS TO FORM:

City Attorney

APPROVED AS TO CONTENT:

Joyce Baumbach, Director of Libraries
Plano Public Library System

6-7



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	MB	10/8/09
Council Meeting Date: 10/26/09		Budget	C.S.	10-8-09
Department: Parks and Recreation		Legal	JSTW	10-12-09
Department Head: Amy Fortenberry		Assistant City Manager		
Dept Signature: <i>Amy Fortenberry</i>		Deputy City Manager	RA	10-15-09
		City Manager	JSTW	10/15/09
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 a funding agreement between the City of Plano, Texas, and the Shops at Legacy (North), L.L.C. whereby the City will provide funding in part for the 2009 Lights of Legacy Tree Lighting Festival event; authorizing the City Manager, or his designee, to execute such agreement; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	50,000	0	50,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-50,000	0	-50,000
BALANCE	0	0	0	0
FUND(S): GENERAL FUND				
COMMENTS: Funding for this item, in the amount of \$50,000, is included in the approved FY 2009-10 Budget.				
STRATEGIC PLAN GOAL: The Lights of Legacy Tree Lighting Festival relates to the City's goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
Agreement between the City of Plano and the Shops at Legacy to provide partial funding for The Lights of Legacy. The City will contribute \$50,000 for this annual event benefiting Children's Medical Center Legacy.				
List of Supporting Documents: Agreement			Other Departments, Boards, Commissions or Agencies	

J-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF A FUNDING AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS, AND THE SHOPS AT LEGACY (NORTH), L.L.C. WHEREBY THE CITY WILL PROVIDE FUNDING IN PART FOR THE 2009 LIGHTS OF LEGACY TREE LIGHTING FESTIVAL EVENT; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE SUCH AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Shops at Legacy (North) holds an annual tree lighting event, The Lights of Legacy, benefiting the Children's Medical Center Legacy; and

WHEREAS, the City wishes to promote visitors to the City of Plano through the Festival; and

WHEREAS, the City Council finds that a grant of funds and provision of in-kind services, "City Services," to the Shops at Legacy (North) for the Festival, is in the best interest of the residents of the City of Plano and is a valid public purpose; and

WHEREAS, the City Council desires to enter into the funding agreement with The Shops at Legacy (North), L.L.C. (hereafter "Agreement") attached hereto 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 hereby approves the terms and conditions of the Agreement.

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

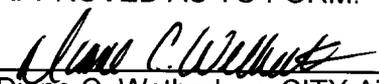
DULY PASSED AND APPROVED this the 26th day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

g-2

**AGREEMENT BETWEEN THE CITY OF PLANO
AND
THE SHOPS AT LEGACY (NORTH), L.L.C.
FOR THE 2009 LIGHTS OF LEGACY TREE LIGHTING FESTIVAL**

The **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as "City"), and **THE SHOPS AT LEGACY (NORTH), L.L.C.**, a Texas Limited Partnership, acting herein through its duly authorized representative (hereinafter referred to as "Contractor"), enter into this agreement for performance of the **2009 LIGHTS OF LEGACY TREE LIGHTING FESTIVAL** event (hereinafter referred to as "Festival").

WHEREAS, The Shops at Legacy holds an annual tree lighting event, The Lights of Legacy, benefiting the Children's Medical Center Legacy; and

WHEREAS, the City wishes to promote visitors to the City of Plano through the Festival.

WHEREAS, the City Council finds that a grant of funds and provision of in-kind services, "City Services," to the Contractor for the Festival, 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 provide funds and City Services in the nature of public safety or other services for the purposes outlined in the Festival Grant Application (hereinafter referred to as "Application"); and

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

J-3

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 **\$40,000** to support the **Lights of Legacy tree lighting event, November 22, 2009**. The City's source of these funds is general fund 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 **\$10,000** to assist with the event on **November 22, 2009**. 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; and Insurance. 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

J-4

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 perform all activities under this Agreement for the purposes outlined in the Application, which is made a part hereof by reference and incorporated as Exhibit "A". Subsequent to the initial contract submittal, should the Contractor wish to provide activities for a purpose other than those stated in Exhibit "A", the Contractor must submit a revision and request approval from the City Manager. No change may occur unless approved by the City Manager, or his designee.

2.02 All City Services must comply with the Agreement and attachments hereto and 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".

**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

REPORTING REQUIREMENTS

5.01 Within sixty (60) days following the event, Contractor agrees to provide a final written report of its activities and funds and City Services received by Contractor as well as a description of program goals achieved and/or progress toward those goals. These reports shall contain a notarized Certificate of Compliance from an officer or general partner, as applicable. 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".

g-6

**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 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

g-7

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 **November 1, 2009** through **December 1, 2009**. 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.

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.

J-8

**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
The Shops at Legacy (North) L.L.C.
Attn: K/S Legacy L.L.C.
Fehmi Karahan, Manager
7200 Bishop Road, Suite 250
Plano, Texas 75024

9-9

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____.

THE SHOPS AT LEGACY (NORTH), L.L.C

**By: K/S Legacy L.L.C.,
a Texas limited liability company,
General Partner**

**By: _____
Fehmi Karahan
Manager**

Date: _____

CITY OF PLANO, TEXAS

**By: _____
Thomas H. Muehlenbeck
CITY MANAGER**

Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

g-10

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 2009 by _____, of THE SHOPS AT LEGACY, L.L.C., a Texas Limited Partnership, on behalf of said Partnership.

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 _____, 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

9-11

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.

8-12

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, *Reporting Requirements* 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.

J-13

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 will be appropriated by the City in the amounts listed on the chart below. These expenses shall be considered a part of the grant by the City.

Police	\$10,000
TOTAL	\$10,000

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.

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.

8-14

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 _____

J-15

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.

J-16



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] 10/16/09	
Council Meeting Date:	10/26/09	Budget	C.S. 10-16-09	
Department:	Sustainability & Environmental Svcs	Legal [Signature]	10-16-09	
Department Head	Nancy Nevil	Assistant City Manager		
Dept Signature:	[Signature]	Deputy City Manager	R/S 10-19-09	
		City Manager	[Signature] 10/19/09	
Agenda Coordinator (include phone #): Tiffany Stephens x4264				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS PROVIDING TERMS AND CONDITIONS FOR THE FUNDING OF A SECOND CHANCE SWAP AND REUSE EVENT; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN DEPUTY CITY MANAGER 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:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	28,394	0	28,394
BALANCE	0	28,394	0	28,394
FUND(S): SUSTAINABILITY & ENVIRONMENTAL SERVICES, GRANT FUND				
COMMENTS: If approved, this grant will provide funding in the amount of \$28,394 for expenditures to create and implement reuse and swap events in conjunction with Texas Recycles Day 2010, the expansion of Zero Waste activities at the Live Green Expo in 2010 and the creation of a Green Corps Youth internship program to support expansion of recycling opportunities.				
STRATEGIC PLAN GOAL: Grants to create and implement reuse and swap events relate to the City's Goal of Great Neighborhood - 1 st Choice to Live and Partnering for Community Benefit.				
SUMMARY OF ITEM				
Fund will cover costs for the creation and implementation of reuse and swap events in conjunction with Texas Recycles Day 2010 , the expansion of Zero Waste activities at the Live Green Expo in 2010 and the creation of a Green Corps Youth internship program to support expansion of recycling opportunities for the residents of Plano and surrounding areas.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
NCTCOG Grant Application				

B-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS PROVIDING TERMS AND CONDITIONS FOR THE FUNDING OF A SECOND CHANCE SWAP AND REUSE EVENT; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, A DEPUTY CITY MANAGER AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas and the North Central Texas Council of Governments (NCTCOG), providing terms and conditions for a Second Chance Swap and Reuse Event to cover costs for the creation and implementation of reuse and swap events in conjunction with Texas Recycles Day 2010 , the expansion of Zero Waste activities at the Live Green Expo in 2010 and the creation of a Green Corps Youth internship program to support expansion of recycling opportunities for the residents of Plano and surrounding areas; a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, the City has qualified to receive grant funding for this Program from NCTCOG and is of the opinion that utilizing such funding will increase the City's recycling diversion rate; 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 in his absence, a Deputy City Manager, 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:

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, in his absence, a Deputy City Manager, 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.

h-a

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

PHIL DYER, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

h-3

**North Central Texas Council of Governments (NCTCOG)
FY2010 SOLID WASTE IMPLEMENTATION PROJECT APPLICATION**

Application Directions:

Use *Arial font size 11, copy on both sides of the page and staple all copies in upper left corner.* Required submittal --34 double-sided copies plus a Microsoft Word formatted copy of your application on **CD or diskette**.

PLEASE DO NOT INCLUDE LETTERS OF SUPPORT, MAPS, PHOTOGRAPHS, PRODUCT SPECIFICATIONS, OR ANY OTHER DOCUMENTATION NOT REQUESTED. INCLUSION OF SUCH MATERIAL or NOT INCLUDING ALL SECTIONS OF THIS APPLICATION MAY RESULT IN REMOVAL OF YOUR REQUEST FROM COMPETITION. NOTE: Letters will be accepted that verify another local government, a private service provider and/or a non-profit agency is **partnering** with the local government seeking this grant funding.

FORM 1: LOCAL GOVERNMENT AND GRANT PROJECT INFORMATION (Forms 1 - 4: up to 10 points)

1. Project Local government Information	
Local Government: City of Plano	Project Contact Name: Kim Soto
Complete Mailing Address with zip code: City of Plano P.O. Box 860358 Plano, TX 75086-0358	Telephone Number: (972)769-4343
Fax Number: (972)769-4219	Email Address: kims@plano.gov

2. Project Title with a single sentence description of what the grant funding will cover:
Title: Second Chance Swap and Reuse Event Description: Grant will provide funding for the creation and implementation of reuse and swap events in conjunction with Texas Recycles Day 2010, the expansion of Zero Waste activities at the Live Green Expo in 2010 and the creation of a Green Corps Youth internship program to support expansion of recycling opportunities for the residents of Plano and surrounding areas.

3. Grant Project Information:
<p>a. Please check only <u>one</u> goal of the three <i>Regional Solid Waste Management Plan</i> Goals, and identify the one specific Objective and one Action Recommendation from the <i>Regional Plan</i> that best applies to your project. This information can be found in the <i>Request for Applications (RFA)</i>.</p> <p><input checked="" type="checkbox"/> Time to Recycle Goal <input type="checkbox"/> Stop Illegal Dumping Goal <input type="checkbox"/> Assuring Capacity for Trash Goal</p> <p>Identify the <u>one</u> Objective to be undertaken (quote directly from the <i>Regional Plan</i>): Increase citizen participation in reuse and recycling of residential waste through innovative programs.</p> <p>Action Recommendation (quote <u>one</u> Action Recommendation taken directly from the <i>Regional Plan</i>): Develop and expand existing services outside the typical curbside materials such as yard waste, organic food scraps, boxboard, etc.</p>
b. Amount of Grant Funding Requested (minimum \$10,000): \$28,394

4. Authorized Signature (signatory must have contract signing authority for the eligible local government entity listed above):								
<table> <tr> <td>Signature</td> <td>Director, Sustainability & Environmental Services</td> </tr> <tr> <td>Nancy Nevil</td> <td>Title</td> </tr> <tr> <td>Print name</td> <td>October 8, 2009</td> </tr> <tr> <td></td> <td>Date</td> </tr> </table>	Signature	Director, Sustainability & Environmental Services	Nancy Nevil	Title	Print name	October 8, 2009		Date
Signature	Director, Sustainability & Environmental Services							
Nancy Nevil	Title							
Print name	October 8, 2009							
	Date							

H-4

FORM 2: CERTIFICATIONS AND ASSURANCES**I. Certifications**

In order to receive grant funds under this program, the proposed project must conform to the provisions of the Request for Applications. By signing this Application, the person acting on behalf of the local government agrees to the certifications listed below and to abide by the provisions of the RFA.

1. Authority to Sign Application

The person signing this Application hereby certifies that he/she has authority from the local government to sign the Application and that such authority will bind the local government in subsequent agreements.

2. Application Contains No False Statements

The local government certifies that this Application has no false statements and that the local government understands that signing this Application with a false statement is a material breach of contract and shall void the submitted Application and any resulting contracts. The local government understands that NCTCOG will not accept any amendment, revision, addition or alteration to this Application after the final date and time for submission.

4. Governmental Status

The local government certifies that it is located in the State of Texas and fits within one of the governmental classifications listed below, as determined under state law:

- a. City;
- b. County;
- c. Public school districts or independent school districts (not including Universities or post secondary educational institutions);
- d. Other general and special law district with the authority and responsibility for water quality protection or municipal solid waste management, including river authorities; and,
- e. Council of Governments.

5. Solid Waste Fee Payments

The local government certifies that it is not delinquent in payment of solid waste disposal fees owed to the State.

6. Conformance to Standards

The local government certifies to the best of their knowledge and ability that the proposed project, including all activities in the proposed Scope of Work and proposed expenditures, conforms to eligible category standards and allowable expense and funding standards as set forth in the Request for Applications.

7. Consideration of Private Industry

The following certification applies **only** if the project is under one of the following funding categories:

- Source Reduction and Recycling
- Citizens' Collection Stations and "Small" Registered Transfer Stations
- A demonstration project under the Educational and Training Projects category

The local government certifies that it has notified private service providers in accordance with the requirements set forth in the Request for Applications and the instructions provided with this application form. The local government further certifies to the best of their knowledge and ability that the proposed project **will promote cooperation** between public and private entities, is **not** otherwise readily available, and **will not** create a competitive advantage over a private industry that provides recycling or solid waste services.

8. Consistency with the *Regional Solid Waste Management Plan*

The local government certifies to the best of their knowledge and ability that the proposed project is consistent with applicable goals, objectives, and action recommendations of the *Regional Solid Waste Management Plan*.

10. Technical Feasibility

The local government certifies that it has carefully reviewed its Scope of Work and that to the best of their knowledge and ability all activities are technically feasible and can be satisfactorily completed within the grant period as set forth in the Request for Applications.

11. Costs Reasonable and Necessary

The local government certifies to the best of their knowledge and ability that the proposed project activities in the Scope of Work and the expenses outlined in the Budget are reasonable and necessary to accomplish the project objectives, and the proposed expenses are consistent with the costs of comparable goods and services.

12. Certification by Law Enforcement Programs

As provided by the General Appropriations Act (80th Leg. R.S.), funds may not be expended to any law enforcement agency regulated by Chapter 1701, Texas Occupations Code, unless: (a) the law enforcement agency is in compliance with all rules on Law Enforcement Standards and Education; or (b) the Commission

on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.

II. Assurances

If the Application is approved for funding, the grant funds will be awarded through an Interlocal Agreement contract between the local government and NCTCOG. This Agreement will contain a number of standards, requirements, and processes that must be complied with as a condition of receiving the funding. In order to ensure an understanding by the local government of some of the main conditions that will be included in the Interlocal Agreement, the local government is asked to review the following assurances. By signing this Application, the person acting on behalf of the local government indicates their understanding of these conditions and provides assurances that these and other conditions set forth in the Interlocal Agreement will be adhered to if funding is awarded.

1. Compliance with Standard Pertaining to Real Property and Equipment

Local government provides assurances that, if funded, the local government will comply with the contract provisions pertaining to title and to management of real property and equipment. The contract will contain obligations and conditions regarding the use of the equipment and/or facilities (the "property") acquired under the agreement. Included in the provisions are obligations to provide adequate maintenance and conduct physical property inventories; restrictions and conditions on the use, replacement, sale, or transfer of the property; as well as obligations to continue in the use or transfer of the property to adhere to the provisions that grant funds are not being used to create a competitive advantage over private industry.

2. Participation in NCTCOG/TCEQ Recycling Surveys and Reporting

Local government provides assurances that, if funded, the local government will respond to annual recycling program surveys and/or other requests from NCTCOG or the Texas Commission on Environmental Quality for information on municipal solid waste management activities.

3. Compliance with Progress and Results Reporting Requirements

Local government provides assurances that, if funded, the local government will comply with requirements for: reporting on the progress of the project tasks and deliverables; documenting the results of the project and providing those results to the NCTCOG on a schedule established by the NCTCOG, and to continue to document the results of the project activities for the life of the project, and to provide the NCTCOG with a follow-up results report approximately one year after the end of the grant term.

4. Financial Management

Local government provides assurances that, if funded, the local government will comply with contract provisions and requirements necessary to ensure that expenses are reasonable and necessary, and to adhere to financial administration and reimbursement procedures and provide financial reports on a schedule established by NCTCOG.

5. Compliance with Americans with Disabilities Act

Local government provides assurances that, if funded, the local government will comply with all the applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101-12213 (Pamph.1995).

6. Compliance with the Single Audit Act

Local government provides assurances that, if funded, the local government will comply with the Single Audit Act as defined by the Uniform Grant Management Standards (UGMS), January 1998.

7. Compliance with Program and Fiscal Monitoring

Local government provides assurances that, if funded, the local government will comply with program and fiscal monitoring provisions of the contract, including: providing additional reports or information as may be requested to adequately track the progress of the project, and allowing site visits to evaluate the progress of the project and to view any grant-funded equipment or facility.

Please sign the following if your local government agrees to comply with these Certifications and Assurances.

NOTE: Signatory must have contract signing authority for the eligible local government entity.

Signature: _____

Typed/Printed name: Nancy Nevil

Title: Director, Sustainability & Environmental Services

Local Government: City of Plano

h-6

FORM 3: AUTHORIZED REPRESENTATIVES

The local government hereby designates the individual(s) named below as the person/persons authorized to receive direction from NCTCOG, to manage the work being performed, and to act on behalf of the local government for the purposes shown:

- 1. Authorized Project Representative.** The following person is authorized to receive direction, manage work performed and sign required periodic status and statistical reports:

Signature:
Printed Name: Kim Soto
Title: Environmental Education Coordinator

- 2. Authorized Financial Representative.** The following person is authorized to act on behalf of this local government in all financial and fiscal matters including authorizing and signing reimbursement requests:

Signature:
Printed Name: Nancy Nevil
Title: Director, Sustainability & Environmental Services



FORM 5. PROJECT DESCRIPTION(Up to 30 points)**Goal 1: Time to Recycle**

Objective: Increase citizen participation in reuse and recycling of residential waste through innovative programs.

Action Recommendation: Develop and expand existing services outside the typical curbside materials such as yard waste, organic food scraps, boxboard, etc.

The City of Plano Sustainability & Environmental Services (SES) is asking for \$28,394 in grant funding to expand existing recycling opportunities for Plano residents. Grant funds will allow for improvement of organics collection and recycling at public events, a unique one-day city-wide recycling and reuse event, and the implementation of a Green Corps youth program to support these and other ongoing recycling related projects.

The City of Plano has consistently improved collection services, from the implementation of curbside recycling and yard debris collection in 1991, to the expansion of the program by converting to 95-gallon roll carts in 1999 with a 10% increase in recycling tonnage for the following 5 years. City recycling rates have leveled out at 38%. There is an obvious need to expand programs beyond the typical curbside collection efforts. We continually receive feedback from residents indicating they want to see more recycling opportunities at public venues and events and they want to see initiatives be successful.

The proposed project includes the following components:

1. **Second Chance Reuse and Swap Events (Texas Recycles Day):** Multiple events organized and run by community organizations and volunteers will include a clothing swap, a bicycle exchange, and a sporting goods collection open to the public. Swap events provide an opportunity for residents to reduce clutter and simplify their lives by contributing unwanted but useful items to others. Swap events divert items from the landfill through reuse and eliminate waste associated with production and manufacture of new items. Events educate the public, provide opportunities for community involvement and provide goods for reuse in segments of the population that are in need. Funding will cover costs of promotion, supplies and volunteer incentives.
2. **Green Corps Youth Program:** This program offers a year-long internship opportunity to 6 local juniors in high school. Green Corps interns will receive education and training in multiple aspects of sustainability issues and specifically in waste management, provide service for the SES at numerous events, play a key role in the planning and execution of the Second Chance Reuse and Swap events, and complete a personally meaningful waste reduction project in their community. Training for the interns will be based on the training developed for our Live Green in Plano Volunteer program. The Green Corps program allows EECO educators to expand their reach in the community, including improving outreach to younger segments of the population and development of projects that resonate with community members, while developing future leaders in the area of the environment. Green Corps members will be eligible to receive a stipend for their involvement and dedication as an intern.
3. **Expanded and Improved Collection at Public Events:** The Green Corps interns will oversee the Green Ambassador volunteers who support the collection of organic and recyclable materials at the Live Green Expo. With an expected attendance of more than 14,000, a successful Zero Waste initiative at the Live Green Expo has a potential impact throughout North Texas. Green Ambassadors play a pivotal role in the success of Zero Waste activities at the Expo. Not only do they ensure the proper sorting of materials, guaranteeing reduction of waste going to the landfill while ensuring high quality organic matter for compost operations, they raise awareness and provide education for guests, exhibitors and other volunteers. The Live Green Expo will set an example for other public events. The Green Corps intern will learn from their Expo experience and develop projects that focus on recycling and waste reductions at their schools or in other public venues, further expanding this aspect of the grant project.



Effectiveness of the events will be measured by total amount of materials collected for donation, volumes recycled, numbers of community members participating in reuse and swap events, numbers of community organizations involved with events, LGIP volunteers stepping to the forefront to plan specific events, website hits, organizational volunteers involved in the events.

The project team will include two EECO educators, an EECO college intern, and an Administrative Assistant.

SESD is requesting \$28,394 (\$.39 per household) and making \$39,460 in contributions and in-kind services.

Requested money will cover the costs of:

Production and creation of advertising materials and outreach efforts for the Second Chance Swap and Reuse Events (\$8,386)

Second Chance Swap and Reuse Events, facility fees, material rentals, supplies, personnel and volunteer support (\$3,567).

Green Corps Youth Interns (\$12,096)

Promotional materials and signage for Zero Waste Initiative at the Live Green Expo (\$4,345)

FORM 5a. PROJECT CONTINUATION(Up to 10 points)

City of Plano SES will serve as a liaison and center point for the coordination of the Second Chance Swap and Reuse Events. In future years, events will be maintained and coordinated by the 2010 participating organizations. The dedicated Environmental Education Coordinator on staff and the department's college intern will continue to support the production of these events.

Community projects completed by Green Corps interns will expand the reach of current SES staff. Projects will be designed to be carried on and have lasting usefulness for the groups and facilities where they will take place. Future funding through the SES budget can be made available for continuation of the Green Corps program based upon evaluation of results.

The Live Green Expo is dedicated to becoming a Zero Waste event, as stated in the environmental standards documents. The program will continue to expand and develop in coming years.

SES has successfully managed numerous grants in previous years, always maximizing the value of grant monies awarded. Furthermore, SES has continued to expand both residential and commercial waste diversion and recycling programs through cost-effective and cutting edge technology approaches, while sustaining all grant funded programs as shown by some of the following examples:

- 2006 Green Living in Plano Residential Education Campaign Grant – funds used to cover creative and production costs for the Live Green in Plano education campaign and development and implementation of the Live Green in Plano Expo. The SESD 2007-08 budget allocated additional funds totaling \$160,466 to support Live Green in Plano.
- 2006 Green Living Volunteer Corps Development Program Grant – funds used to hire Volunteer Coordinator to develop a resident's Live Green in Plano Volunteer Corp. This position was approved as a full-time position in the SESD 2007-08 budget.
- 2005 Greening Plano's Outdoor Venues – funds used to implement recycling programs through our Web site and funded a coordinator for nine months. This position was approved as a full-time position in July 2005. The SESD 2007-08 budget included an expansion of this program to include the purchase and installation of 126 additional recycling containers at five park locations.
- Household Hazardous Waste Program – start-up cost for HHW Reuse Center. Program served as a model for regional and has been expanded to accept HHW from City of Allen.
- Commercial Waste Reduction Program – grant funded part-time coordinator who was hired full-time and the City has since added a supervisor and four full-time coordinators to promote this program.



FORM 6. PROJECT WORK PROGRAM AND TIMELINE(Up to 25 points)

1. **Execution of the Interlocal Agreement with NCTCOG** – December 2009
2. **Quarterly Status Reports on the progress of the grant project** (Education Coordinator)- every three months
3. **Initiation of Green Corps** (Education Coordinator)– December 2009- January 2010
 - Promote Internships through local high schools
 - Conduct Informational Meetings
 - Collect applications, perform interviews and select candidates
 - Obtain parent approval and sign contracts with interns
4. **Training and Development of Green Corps Interns** (Education Coordinator) –February 2010- August 2010
 - Carbon Footprint Workshop for Interns
 - Field trips to MRF, transfer station, landfill, compost grind site, reuse center, community garden, electronic recycling facility
 - Film screenings- Garbage, Story of Stuff, Kilowatt Ours, Who Killed the Electric Car?, Tapped
 - Intern write-up and debriefs of fieldtrips and film screenings to follow each activity (Interns)
5. **Promotion and Preparation for Zero Waste Activities at Live Green Expo-** January 2010- April 2010
 - Identify and contact designers (Education Coordinator)- January 2010
 - Request proposals for designs that fit with other Expo marketing (Education Coordinator)- January 2010
 - Approve designs and ideas for signage (Supervisor)- February 2010
 - Order signage and other promotional collateral (Education Coordinator)- February 2010
 - Identify and order promotional items (i.e zero waste lunch kits, etc) (Education Coordinator)- February 2010
 - Order Green Ambassador t-shirts (Education Coordinator)- February 2010
 - Cross promote Zero Waste with other Expo media activities (Media Specialist)- February 2010- April 2010
 - Install signage at venue (Interns)- April 2010
6. **Recruiting and Training of Green Ambassadors for Live Green Expo-** February 2010- April 2010
 - Identify and recruit volunteers through LGIP volunteer pool and school contacts (Education Coordinator/ Interns)- February 2010- April 2010
 - Train Green Ambassadors (Education Coordinator/ Interns)- April 2010
7. **Design and Development of Zero Waste Educational Exhibit-** January 2010-April 2010
 - Identify key elements of educational message (Education Coordinator)- January 2010
 - Identify and contact designers (Education Coordinator)- January 2010
 - Request proposals for designs (Education Coordinator)- January 2010
 - Approve designs and ideas for exhibit (Supervisor)- February 2010
 - Order exhibit (Education Coordinator)- February 2010
 - Display exhibit at Expo- April 2010
8. **Live Green Expo Zero Waste Event** – April 2010
 - Complete Environmental Standards Document (Expo Team)
 - Educate vendors, exhibitors and volunteers on Zero Waste initiative (Expo Team, Volunteer Coordinator, Zero Waste Coordinator)- present- April 2010
 - Educate visitors and sort waste (Green Ambassadors, Zero Waste Coordinator)- April 2010
 - Audit materials collected (Zero Waste Coordinator, Interns)- April 2010
9. **Green Corps Intern Project Development and Implementation** – June 2010-May 2011
 - Job shadowing (Education Coordinators/ Interns)- June 2010- July 2010



- Individual project development (Education Coordinator/ Interns)- June 2010- August 2010
 - Obtain support from partnering organizations (Interns)- August 2010
 - Finalize projects for approval (Interns/ Coordinator)- August 2010- September 2010
 - Implementation of projects (Interns)- September 2010- May 2011
 - Monthly follow up meetings and progress reports (Interns)- September 2010-May 2011
 - Final presentation of project results and impacts (Interns)- May 2011
10. **Second Chance Swap and Reuse Events** – November 2010
- Develop concept and format (Education Coordinator/ Interns)- January 2010
 - Identify and confirm partner organizations (Education Coordinator/ Interns)- February 2010- May 2010
 - Identify and confirm venues (Education Coordinator)- May 2010
 - Assign areas of responsibility (Education Coordinator)- June 2010
 - Identify and contact designers (Education Coordinator)- May 2010
 - Request proposals for designs for event identification (Education Coordinator)- May 2010
 - Approve designs and ideas for signage (Supervisor)- June 2010
 - Order signage and other promotional collateral (Education Coordinator)- July 2010
 - Identify and order promotional items and volunteer supplies (Education Coordinator)- July 2010
 - Prepare ads, press releases and website updates to promote event (Education Coordinator)- September 2010
 - Recruit and train volunteers (Education Coordinator)- October 2010- November 2010
 - Implement Events (Team)- November 2010
11. **All expenditures and activities completed** – June 30, 2011
12. **Final reporting, reimbursement request and Release of All Claims** to NCTCOG 5 p.m. on Friday, July 31, 2011



8. PROJECT BUDGET SUMMARY
(up to 25 points)

Provide a detailed explanation of the costs associated with the proposed project. Offer a breakdown of the total amount of funding being requested for the proposed project. The expenses must be consistent with the category expense standards provided in the Request for Applications. Complete any of the detailed budget forms which are applicable to your proposed budget.

Budget Category	Grant Funding Amount Sought <i>Please round costs to the nearest dollar.</i>
1. Personnel/Salaries	\$810
2. Fringe Benefits	\$
3. Travel (Does not include registration)	\$
4. Supplies (<u>consumable</u> general office supplies)	\$
5. Equipment (unit cost of \$5,000 or more)	\$
6. Construction	\$
7. Contractual (other than construction costs)	\$12,000
8. Other (anything not itemized above)	\$15,584
9. Total Direct Charges (sum of 1-8)	\$28,394
10. Indirect Charges*	\$
11. Total (sum of 9 – 10)	\$28,394

12. Fringe Benefit Rate:	_____ %	
13. Indirect Cost Rate:	_____ %	

Identify, in detail, each budget category to which your indirect cost rate applies and explain any special conditions under which the rate will be applied:

-
-

*In accordance with the UGMS, indirect charges may be authorized if the Local government has a negotiated indirect cost rate agreement signed within the past 24 months by a federal cognizant agency or state single audit coordinating agency. Alternatively, the Local government may be authorized to recover up to 10% of direct salary and wage costs (excluding overtime, shift premiums, and fringe benefits) as indirect costs, subject to adequate documentation. If your local government has an approved cost allocation plan, please enclose documentation of your approved indirect rate.

Matching Funds Contributions: \$39,460
Local match through cash or in-kind services is encouraged.

Please explain in separate line items the detail of any matching funds or contributions to be provided by the local government. In-kind services should relate only to staff or services directly involved with your proposed project. Describe the relative importance or effort the local contribution will have in relationship to the entire project. **This information will be used in contracting with successful projects and will be tracked for proper payment.**

Recycling and Zero Waste Education Coordinator- 860 hours @ \$19/ hour **\$13,340**
 Volunteer Time- 160 hours @ \$12/ hour **\$1,920**
 Green Ambassador Time- 720 hours @ \$10/ hour **\$7,200**
 College Intern- 120 hours @ \$15/ hour **\$1,800**
 Education Team Comp Time- 60 hours @ \$30/ hour **\$1,800**
 Cross Promotion of Zero Waste **\$13,400**



Complete any of the following detailed budget forms that are applicable to your budget.

Form 8a - Detailed Personnel/Fringe/Indirect Charges Budget: Total \$810

This budget information should be completed if any expenses are entered for Personnel (Line 1), Fringe Benefits (Line 2) and/or Indirect Charges (Line 10) of your Project Budget Summary. In the space below, list the names and titles of individuals whose salaries will be paid for, in all or in part, from project funds. Also, indicate if funds are for a new or existing employee (attach additional sheets if necessary).

Employee name To be identified
 Title 3 Drivers
 Salary \$ **810** (10 hours of OT pay for Second Chance Swap support @ \$27/ hour)

Employee name _____
 Title _____
 Salary \$ _____

Employee name _____
 Title _____
 Salary \$ _____

TOTAL PERSONNEL/FRINGE/INDIRECT CHARGES: \$ _____

If your budget lists fringe benefits (Line 2) and/or indirect costs (Line 10), please provide the following:

- Fringe benefit rate: _____%
- Indirect charge rate*: _____%

*In accordance with the UGMS, indirect charges may be authorized if the local government has a negotiated indirect cost rate agreement signed within the past 24 months by a federal cognizant agency or state single audit coordinating agency. The local government may be authorized to recover up to 10% of direct salary and wage costs (excluding overtime, shift premiums, and fringe benefits) as indirect costs, subject to adequate documentation. If you have an approved cost allocation plan, please enclose documentation of your approved indirect rate.

Form 8f - Detailed Contractual Budget: Total \$12,000
(All contractual expenses must be pre-approved by NCTCOG.)

This budget section should be completed if any expenses are entered for Contractual (Line 7) of your Project Budget Summary. Expenses include the cost of professional services or tasks provided by firm or individual who is not employed by the project funds recipient, other than those related to construction. All local government municipal laws and regulations including UGMS for bidding and contracting for services must be followed. Please itemize below the contractual expenses associated with the proposed project, providing as many details as possible at this time.

<u>Contractual</u>	<u>Costs</u>
6 Green Corps Interns – 1 year @ \$2000/ year	\$12,000
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL CONTRACTUAL: \$12,000	

H-14

Form 8g - Detailed Other Expenses Budget:

Total \$15,584

This budget sheet should be completed if any expenses are entered under the Other (Line 8) of your Project Budget. "Other" expenses are those for items or services that do not readily fit into any of the previous budget categories in this application. If any of the expenses listed below are included in the calculation of your rate for indirect charges, do not list them on this sheet.

Other expenses

Costs

<input type="checkbox"/> Postage/delivery	\$ _____
<input type="checkbox"/> Telephone/FAX	\$ _____
<input type="checkbox"/> Utilities	\$ _____
X Printing/reproduction	\$1,930
X Advertising, public notices	\$6,510
X Signage	\$3,111
<input type="checkbox"/> Training (registration fees)	\$ _____
X Office space, equipment rentals	\$2277
<input type="checkbox"/> Basic office furnishings	\$ _____
<input type="checkbox"/> Books and reference materials	\$ _____
<input type="checkbox"/> Repair and maintenance	\$ _____
<input type="checkbox"/> Computer Hardware	\$ _____
<input type="checkbox"/> Computer Software	\$ _____

Miscellaneous ALL other expenses

(Separately itemize these expenses below:)

<u>Delivery equipment rentals</u>	\$480
<u>Green Corps Shirts</u>	\$96
<u>Green Ambassador t-shirts</u>	\$800
<u>Latex Gloves</u>	\$50
<u>Compostable Food Waste Bags</u>	\$180
<u>Clear Stream Recycling Bags</u>	\$150

TOTAL OTHER: \$15,584

REQUIRED

ATTACHMENTS TO THE GRANT APPLICATION

1. The governing body of the local government **must** approve a resolution or court order authorizing the Grant Project Application as well as the acceptance of grant funds if the Application ranks high enough to be considered for funding.

This resolution or court order **must** be formally signed by the appropriate official and be notarized and signed (or stamped with the local government's seal) in addition to those signatures required in the Grant Project Application. **Please furnish information regarding when your government's document will be officially executed for the benefit of the individual scoring your proposal.**

This resolution or court order will be due to NCTCOG no later than Friday, October 30, 2009.

2. If indirect costs are included in the project budget, attach the local government's latest **indirect cost allocation plan**, including documentation of approval of the plan and the indirect cost rate by the local government's Federal Cognizant Agency or State Coordinating Agency.

H-16



**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>VP</i>	10/16/09
Council Meeting Date:	10/26/09	Budget	C.S.	10-16-09
Department:	Sustainability & Environmental Svcs	Legal <i>JS</i>		10-16-09
Department Head	Nancy Nevil	Assistant City Manager		
Dept Signature:	<i>VP</i>	Deputy City Manager	<i>RH</i>	10-19-09
		City Manager	<i>JS</i>	10/19/09
Agenda Coordinator (include phone #): Tiffany Stephens x4264				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS PROVIDING TERMS AND CONDITIONS FOR THE FUNDING OF A DISASTER DEBRIS MANAGEMENT PLAN; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, A DEPUTY CITY MANAGER 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: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	44,000	0	44,000
BALANCE	0	44,000	0	44,000
FUND(S): SUSTAINABILITY & ENVIRONMENTAL SERVICES, GRANT FUND				
COMMENTS: If approved, this grant will provide funding in the amount of \$44,000 for expenditures to develop a Disaster Debris Management Plan to identify actions required to plan for and respond to a natural or man-made debris-generating event.				
STRATEGIC PLAN GOAL: Grants to develop a Disaster Debris Management Plan relate to the City's Goal of Great Neighborhood - 1 st Choice to Live and Partnering for Community Benefit.				
SUMMARY OF ITEM				
A Disaster Debris Management Plan for the City of Plano to identify actions required to plan for and respond to a natural or man-made debris-generating event.				
List of Supporting Documents: NCTCOG Grant Application		Other Departments, Boards, Commissions or Agencies		

i-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS PROVIDING TERMS AND CONDITIONS FOR THE FUNDING OF A DISASTER DEBRIS MANAGEMENT PLAN; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, A DEPUTY CITY MANAGER AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas and the North Central Texas Council of Governments (NCTCOG), providing terms and conditions for a Disaster Debris Management Plan for the City of Plano to identify actions required to plan for and respond to a natural or man-made debris-generating event; a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, the City has qualified to receive grant funding for this Program from NCTCOG and is of the opinion that utilizing such funding will result in the City being better prepared to restore public services, ensure public health and safety of community in the aftermath of a disaster, and be better positioned to receive disaster assistance from participating entities;

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 in his absence, a Deputy City Manager, 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:

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, in his absence, a Deputy City Manager, 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.

i-2

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

PHIL DYER, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

i-3

**North Central Texas Council of Governments (NCTCOG)
FY2010 SOLID WASTE IMPLEMENTATION PROJECT APPLICATION**

Application Directions:

Use Arial font size 11, copy on both sides of the page and staple all copies in upper left corner. Required submittal -- 34 double-sided copies plus a Microsoft Word formatted copy of your application on CD or diskette.

PLEASE DO NOT INCLUDE LETTERS OF SUPPORT, MAPS, PHOTOGRAPHS, PRODUCT SPECIFICATIONS, OR ANY OTHER DOCUMENTATION NOT REQUESTED. INCLUSION OF SUCH MATERIAL or NOT INCLUDING ALL SECTIONS OF THIS APPLICATION MAY RESULT IN REMOVAL OF YOUR REQUEST FROM COMPETITION. NOTE: Letters will be accepted that verify another local government, a private service provider and/or a non-profit agency is partnering with the local government seeking this grant funding.

FORM 1: LOCAL GOVERNMENT AND GRANT PROJECT INFORMATION (Forms 1 through 4: up to 10 points)

1. Project Local government Information

Local Government: City of Plano	Project Contact Name: Disaster Debris Management Plan
Complete Mailing Address with zip code: P.O. Box 860358 Plano, TX 75086-0358	Telephone Number: 972-941-5554
Fax Number: 972-941-7651	Email Address: shanes@plano.gov

2. Project Title with a single sentence description of what the grant funding will cover:

Development of a Disaster Debris Management Plan for the City of Plano to identify actions required to plan for and respond to a natural or man-made debris-generating event.

3. Grant Project Information:

a. Please check only one goal of the three *Regional Solid Waste Management Plan Goals*, and identify the one specific Objective and one Action Recommendation from the *Regional Plan* that best applies to your project. This information can be found in the *Request for Applications (RFA)*.

- Time to Recycle Goal
- Stop Illegal Dumping Goal
- Assuring Capacity for Trash Goal

Identify the one Objective to be undertaken (quote directly from the *Regional Plan*): Facilitate the development and implementation of local and sub-regional integrated solid waste management plans

Action Recommendation (quote one Action Recommendation taken directly from the *Regional Plan*): Assist local governments in developing strategies to deal with impacts of disasters on solid waste management

b. Amount of Grant Funding Requested (minimum \$10,000): \$44,000

4. Authorized Signature (signatory must have contract signing authority for the eligible local government entity listed above):

_____ Signature	_____ Director of Emergency Management Title
_____ Shane Stovall Print name	_____ Date

i-4

FORM 2: CERTIFICATIONS AND ASSURANCES

I. Certifications

In order to receive grant funds under this program, the proposed project must conform to the provisions of the Request for Applications. By signing this Application, the person acting on behalf of the local government agrees to the certifications listed below and to abide by the provisions of the RFA.

1. Authority to Sign Application

The person signing this Application hereby certifies that he/she has authority from the local government to sign the Application and that such authority will bind the local government in subsequent agreements.

2. Application Contains No False Statements

The local government certifies that this Application has no false statements and that the local government understands that signing this Application with a false statement is a material breach of contract and shall void the submitted Application and any resulting contracts. The local government understands that NCTCOG will not accept any amendment, revision, addition or alteration to this Application after the final date and time for submission.

4. Governmental Status

The local government certifies that it is located in the State of Texas and fits within one of the governmental classifications listed below, as determined under state law:

- a. City;
- b. County;
- c. Public school districts or independent school districts (not including Universities or post secondary educational institutions);
- d. Other general and special law district with the authority and responsibility for water quality protection or municipal solid waste management, including river authorities; and,
- e. Council of Governments.

5. Solid Waste Fee Payments

The local government certifies that it is not delinquent in payment of solid waste disposal fees owed to the State.

6. Conformance to Standards

The local government certifies to the best of their knowledge and ability that the proposed project, including all activities in the proposed Scope of Work and proposed expenditures, conforms to eligible category standards and allowable expense and funding standards as set forth in the Request for Applications.

7. Consideration of Private Industry

The following certification applies **only** if the project is under one of the following funding categories:

- Source Reduction and Recycling
- Citizens' Collection Stations and "Small" Registered Transfer Stations
- A demonstration project under the Educational and Training Projects category

The local government certifies that it has notified private service providers in accordance with the requirements set forth in the Request for Applications and the instructions provided with this application form. The local government further certifies to the best of their knowledge and ability that the proposed project **will promote cooperation** between public and private entities, is **not** otherwise readily available, and will **not** create a competitive advantage over a private industry that provides recycling or solid waste services.

8. Consistency with the *Regional Solid Waste Management Plan*

The local government certifies to the best of their knowledge and ability that the proposed project is consistent with applicable goals, objectives, and action recommendations of the *Regional Solid Waste Management Plan*.

10. Technical Feasibility

The local government certifies that it has carefully reviewed its Scope of Work and that to the best of their knowledge and ability all activities are technically feasible and can be satisfactorily completed within the grant period as set forth in the Request for Applications.

11. Costs Reasonable and Necessary

The local government certifies to the best of their knowledge and ability that the proposed project activities in the Scope of Work and the expenses outlined in the Budget are reasonable and necessary to accomplish the project objectives, and the proposed expenses are consistent with the costs of comparable goods and services.

12. Certification by Law Enforcement Programs

As provided by the General Appropriations Act (80th Leg. R.S.), funds may not be expended to any law enforcement agency regulated by Chapter 1701, Texas Occupations Code, unless: (a) the law enforcement agency is in compliance with all rules on Law Enforcement Standards and Education; or (b) the Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.

u-5

II. Assurances

If the Application is approved for funding, the grant funds will be awarded through an Interlocal Agreement contract between the local government and NCTCOG. This Agreement will contain a number of standards, requirements, and processes that must be complied with as a condition of receiving the funding. In order to ensure an understanding by the local government of some of the main conditions that will be included in the Interlocal Agreement, the local government is asked to review the following assurances. By signing this Application, the person acting on behalf of the local government indicates their understanding of these conditions and provides assurances that these and other conditions set forth in the Interlocal Agreement will be adhered to if funding is awarded.

1. Compliance with Standard Pertaining to Real Property and Equipment

Local government provides assurances that, if funded, the local government will comply with the contract provisions pertaining to title and to management of real property and equipment. The contract will contain obligations and conditions regarding the use of the equipment and/or facilities (the "property") acquired under the agreement. Included in the provisions are obligations to provide adequate maintenance and conduct physical property inventories; restrictions and conditions on the use, replacement, sale, or transfer of the property; as well as obligations to continue in the use or transfer of the property to adhere to the provisions that grant funds are not being used to create a competitive advantage over private industry.

2. Participation in NCTCOG/TCEQ Recycling Surveys and Reporting

Local government provides assurances that, if funded, the local government will respond to annual recycling program surveys and/or other requests from NCTCOG or the Texas Commission on Environmental Quality for information on municipal solid waste management activities.

3. Compliance with Progress and Results Reporting Requirements

Local government provides assurances that, if funded, the local government will comply with requirements for: reporting on the progress of the project tasks and deliverables; documenting the results of the project and providing those results to the NCTCOG on a schedule established by the NCTCOG, and to continue to document the results of the project activities for the life of the project, and to provide the NCTCOG with a follow-up results report approximately one year after the end of the grant term.

4. Financial Management

Local government provides assurances that, if funded, the local government will comply with contract provisions and requirements necessary to ensure that expenses are reasonable and necessary, and to adhere to financial administration and reimbursement procedures and provide financial reports on a schedule established by NCTCOG.

5. Compliance with Americans with Disabilities Act

Local government provides assurances that, if funded, the local government will comply with all the applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101-12213 (Pamph.1995).

6. Compliance with the Single Audit Act

Local government provides assurances that, if funded, the local government will comply with the Single Audit Act as defined by the Uniform Grant Management Standards (UGMS), January 1998.

7. Compliance with Program and Fiscal Monitoring

Local government provides assurances that, if funded, the local government will comply with program and fiscal monitoring provisions of the contract, including: providing additional reports or information as may be requested to adequately track the progress of the project, and allowing site visits to evaluate the progress of the project and to view any grant-funded equipment or facility.

Please sign the following if your local government agrees to comply with these Certifications and Assurances.

NOTE: Signatory must have contract signing authority for the eligible local government entity.

Signature: _____

Typed/Printed name: Shane Stovall

Title: Director of Emergency Management

Local Government: City of Plano

i-6

FORM 3: AUTHORIZED REPRESENTATIVES

The local government hereby designates the individual(s) named below as the person/persons authorized to receive direction from NCTCOG, to manage the work being performed, and to act on behalf of the local government for the purposes shown:

- 1. Authorized Project Representative.** The following person is authorized to receive direction, manage work performed and sign required periodic status and statistical reports:

Signature:
Printed Name: Hal Grieb
Title: Sr. Emergency Management Specialist

- 2. Authorized Financial Representative.** The following person is authorized to act on behalf of this local government in all financial and fiscal matters including authorizing and signing reimbursement requests:

Signature:
Printed Name: Shane Stovall
Title: Director, Homeland Security

2-7

FORM 5. PROJECT DESCRIPTION(Up to 30 points)

Goal: Assuring Capacity for Trash

Objective: Facilitate the development and implementation of local and sub-regional integrated solid waste management plans.

Action Recommendation: Assist local governments in developing strategies to deal with impacts of disasters on solid waste management.

The City of Plano is requesting grant funds to hire a consultant to assist in developing a Disaster Debris Management Plan. Plano has experienced three significant storms in as many years, with one event stretching the city's capabilities. The purpose of the Plan will be to:

- Assess current resources related to collection and disposal of large quantities of debris
- Outline the City's response to the major phases of a disaster planning (pre-event preparations, post-event response, and post event recovery)
- Define roles and responsibilities of key City staff positions
- Assist City staff in developing pre-event debris contracts, multi-jurisdictional and interdepartmental coordination guidelines, collection zones, right-of-way agreements, and monitoring guidelines
- Develop strategies and processes for effective debris forecasting, monitoring and estimating
- Ensure compliance with NIMS, ICS, FEMA Guidelines
- Identify procedures for identifying and separating potential hazardous material, appliances and recyclable material from other wastes
- Identify temporary debris staging and recovery sites

Residents of Plano will benefit from the City having a well-defined plan for handling any future debris-generating event as it will result in streamlining debris removal and reducing any public health threat. In addition, the City will benefit from increased potential reimbursement from the Federal Emergency Management Agency which will decrease costs to the taxpayers.

The cost of the project is based on an estimate from a consultant specializing in debris management plans. The cost is \$.27 per capita.

1-8

FORM 5a. PROJECT CONTINUATION(Up to 10 points)

The City of Plano Department of Emergency Management (DEM) provides an all-hazards approach to emergency management and homeland security services for the City of Plano. The City of Plano DEM is committed to taking a proactive approach to coordinating and managing debris removal operations as part of the overall emergency management plan. With a comprehensive debris management plan, the City of Plano will be better prepared to restore public services and ensure the public health and safety of the community in the aftermath of a disaster, and will be better positioned to receive disaster assistance from participating entities. The development and adoption of a debris management plan is an essential part of effective planning for the response and recovery phases of disasters.

The City of Plano's Sustainability & Environmental Services Department has received numerous grants from NCTCOG and has successfully managed these grants and continued support and funding for them, as indicated below:

- 2006 Live Green in Plano Residential Education Campaign including implementation of the *Live Green in Plano Expo*. Plano continues annual funding of *LGIP*.
- 2006 Green Living Volunteer Corps Development Program Grant to hire Volunteer Coordinator to develop a resident's *Live Green in Plano* Volunteer Corp. Position was approved as full-time position.
- Regional Yard Trimmings Diversion program in NTMWD area – funds used to educate all NTMWD member residents of opportunity to divert yard trimmings from landfill to regional composting facility, diverting 58,000 tons from the landfill annually.
- 2005 Greening Plano's Outdoor Venues implemented recycling programs through Web site and funded coordinator (9 months). Position was approved as full-time and city expanded program at five park locations.
- Household Hazardous Waste Program – start-up cost for HHW Reuse Center. Program served as model for region and was expanded to accept HHW from City of Allen.
- Commercial Waste Reduction Program – grant funded part-time coordinator. Position was hired full-time and program expanded by three positions.

FORM 6. PROJECT WORK PROGRAM AND TIMELINE
(Up to 25 points)

For each task describe as concisely as possible the major steps or activities involved, identify the responsible entities and establish a specific timeline to accomplish each task. The Scope of Work must include:

- detailed purpose and goal of the project (must be consistent with implementing the *Regional Solid Waste Management Plan* goals, objectives and action recommendations)
- specific task statements with responsible entity identified
- list of deliverables/products/activities under each task
- schedule of deliverables

1. **Interlocal agreement approved** **December 2009**
 - **Execution of the Interlocal Agreement with NCTCOG** (Manager)
 -
2. **Grant Management and Administrative Responsibilities with NCTCOG**
 - Submit Quarterly Report on status of grant project (Manager, Ed Coord, Admin. Assistant for all reports) March 2010
 - Submit Quarterly Report on status of grant project June 2010
 - Submit Quarterly Report on status of grant project September 2010
 - Submit Quarterly Report on status of grant project December 2010
 - Submit Quarterly Report on status of grant project March 2011
 - Submit Quarterly Report on status of grant project June 2011
 - All expenditures and activities completed June 30, 2011
 - Submit Final Report on grant project July 2011
 - **Final reporting, reimbursement request and Release of All Claims due to NCTCOG by 5 p.m.** **Friday, July 31, 2011**
3. **Execute contract with Consultant** **January 2010**
4. **Conduct Debris Management Site Analysis** **February 2010**
 - Develop Criteria
 - Conduct Site Evaluations
 - Prepare DMS Site Report and Ranking of Potential DMSs
5. **Prepare Disaster Debris Management Plan** **April 2010**
 - Develop Multi-Hazard Crosswalk
 - Develop Draft Version of Plan
 - Develop Final Version of Plan
6. **Debris Estimation Planning and Training** **June 2010**
 - Develop Debris Estimation Training Materials
 - Conduct Debris Estimation Training

1-10

8. PROJECT BUDGET SUMMARY

(up to 25 points)

Provide a detailed explanation of the costs associated with the proposed project. Offer a breakdown of the total amount of funding being requested for the proposed project. The expenses must be consistent with the category expense standards provided in the Request for Applications. Complete any of the detailed budget forms which are applicable to your proposed budget.

Budget Category	Grant Funding Amount Sought <i>Please round costs to the nearest dollar.</i>
1. Personnel/Salaries	\$
2. Fringe Benefits	\$
3. Travel (Does not include registration)	\$
4. Supplies (<u>consumable</u> general office supplies)	\$
5. Equipment (unit cost of \$5,000 or more)	\$
6. Construction	\$
7. Contractual (other than construction costs)	\$44,000
8. Other (anything not itemized above)	\$
9. Total Direct Charges (<i>sum of 1-8</i>)	\$
10. Indirect Charges*	\$
11. Total (<i>sum of 9 - 10</i>)	\$44,000

12. Fringe Benefit Rate:	_____ %	
13. Indirect Cost Rate:	_____ %	

Identify, in detail, each budget category to which your indirect cost rate applies and explain any special conditions under which the rate will be applied:

-
-

*In accordance with the UGMS, indirect charges may be authorized if the Local government has a negotiated indirect cost rate agreement signed within the past 24 months by a federal cognizant agency or state single audit coordinating agency. Alternatively, the Local government may be authorized to recover up to 10% of direct salary and wage costs (excluding overtime, shift premiums, and fringe benefits) as indirect costs, subject to adequate documentation. If your local government has an approved cost allocation plan, please enclose documentation of your approved indirect rate.

Matching Funds Contributions: \$ 3,000
 Local match through cash or in-kind services is encouraged.

Please explain in separate line items the detail of any matching funds or contributions to be provided by the local government. In-kind services should relate only to staff or services directly involved with your proposed project. Describe the relative importance or effort the local contribution will have in relationship to the entire project. **This information will be used in contracting with successful projects and will be tracked for proper payment.**
Staff participation in meetings, reviewing and commenting on documents, providing historical debris estimates, and providing man/equipment capabilities

a-11



**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:	10/26/09	Purchasing	<i>MR</i> 10/16/09
Department:	Sustainability & Environmental Svcs	Budget	<i>C.S.</i> 10-16-09
Department Head	Nancy Neyil	Legal	<i>HA</i> 10-19-09
Dept Signature:	<i>N</i>	Assistant City Manager	
		Deputy City Manager	<i>RA</i> 10-19-09
		City Manager	<i>MR</i> 10/19/09
Agenda Coordinator (include phone #): Tiffany Stephens x4264			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS PROVIDING TERMS AND CONDITIONS FOR THE FUNDING OF A BIOMASS PELLETIZER FEASIBILITY STUDY; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN DEPUTY CITY MANAGER 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	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	68,000	0	68,000
BALANCE	0	68,000	0	68,000

FUND(S): SUSTAINABILITY & ENVIRONMENTAL SERVICES, GRANT FUND

COMMENTS: If approved, this grant will provide funding in the amount of \$68,000 for expenditures to evaluate waste management technologies for processing urban wood waste to packaged fuel feedstock.

STRATEGIC PLAN GOAL: Grants to evaluate waste management technologies relate to the City's Goal of Great Neighborhood - 1st Choice to Live and Partnering for Community Benefit.

SUMMARY OF ITEM

A Biomass Pelletizer Feasibility Study to provide an opportunity to evaluate waste management technologies for processing urban wood waste to packaged fuel feedstock providing the City of Plano with a decision tool for the implementation of innovative technology compatible with the NCTCOG's mission and help the City of Plano to continue to divert significant amounts of urban wood waste from landfill and potentially resulting in significant energy savings over fossil fuels through use in co-firing/CHP systems while reducing greenhouse gas emissions.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: NCTCOG Grant Application	Other Departments, Boards, Commissions or Agencies

J-2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS PROVIDING TERMS AND CONDITIONS FOR THE FUNDING OF A BIOMASS PELLETIZER FEASIBILITY STUDY; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, A DEPUTY CITY MANAGER AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas and the North Central Texas Council of Governments (NCTCOG), providing terms and conditions for a Biomass Pelletizer Feasibility Study to provide an opportunity to evaluate waste management technologies for processing urban wood waste to packaged fuel feedstock providing the City of Plano with a decision tool for the implementation of innovative technology compatible with the NCTCOG's mission and help the City of Plano to continue to divert significant amounts of urban wood waste from landfill and potentially resulting in significant energy savings over fossil fuels through use in co-firing/CHP systems while reducing greenhouse gas emissions; a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, the City has qualified to receive grant funding for this Program from NCTCOG and is of the opinion that utilizing such funding will provide information necessary to making sound business decisions regarding future technological investments; 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 in his absence, a Deputy City Manager, 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:

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, in his absence, a Deputy City Manager, 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.

J-3

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

PHIL DYER, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

J-4

**North Central Texas Council of Governments (NCTCOG)
 FY2010 SOLID WASTE IMPLEMENTATION PROJECT APPLICATION**

Application Directions:

Use Arial font size 11, copy on both sides of the page and staple all copies in upper left corner. Required submittal -- 34 double-sided copies plus a Microsoft Word formatted copy of your application on CD or diskette.

PLEASE DO NOT INCLUDE LETTERS OF SUPPORT, MAPS, PHOTOGRAPHS, PRODUCT SPECIFICATIONS, OR ANY OTHER DOCUMENTATION NOT REQUESTED. INCLUSION OF SUCH MATERIAL or NOT INCLUDING ALL SECTIONS OF THIS APPLICATION MAY RESULT IN REMOVAL OF YOUR REQUEST FROM COMPETITION. NOTE: Letters will be accepted that verify another local government, a private service provider and/or a non-profit agency is partnering with the local government seeking this grant funding.

FORM 1: LOCAL GOVERNMENT AND GRANT PROJECT INFORMATION (Forms 1 through 4: up to 10 points)

1. Project Local government Information

Local Government: City of Plano	Project Contact Name: Nancy Nevil
Complete Mailing Address with zip code: 4120 W. Plano Parkway Plano, TX 75093	Telephone Number: 972-769-4276
Fax Number: 972-769-4172	Email Address: nancyn@plano.gov

2. Project Title with a single sentence description of what the grant funding will cover:

The funding will provide an opportunity to evaluate waste management technologies for processing urban wood waste to packaged fuel feedstock providing the City of Plano with a decision tool for the implementation of innovative technology compatible with the NCTCOG's mission and help the City of Plano to continue to divert significant amounts of urban wood waste from landfill and potentially resulting in significant energy savings over fossil fuels through use in co-firing/CHP systems while reducing greenhouse gas emissions.

3. Grant Project Information:

a. Please check only one goal of the three *Regional Solid Waste Management Plan Goals*, and identify the one specific Objective and one Action Recommendation from the *Regional Plan* that best applies to your project. This information can be found in the *Request for Applications (RFA)*.

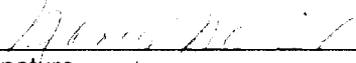
- Time to Recycle Goal
- Stop Illegal Dumping Goal
- Assuring Capacity for Trash Goal

Identify the one Objective to be undertaken (quote directly from the *Regional Plan*): Promote innovative technologies to reduce waste.

Action Recommendation (quote one Action Recommendation taken directly from the *Regional Plan*): Create and maintain collaborative partnerships for development of innovative recycling and waste management techniques and technologies.

b. Amount of Grant Funding Requested (minimum \$10,000): \$68,000

4. Authorized Signature (signatory must have contract signing authority for the eligible local government entity listed above):



Signature

Director - Sustainability and Environmental Services
Title

Nancy Nevil
Print name

October 6, 2009
Date

J-6

FORM 2: CERTIFICATIONS AND ASSURANCES

I. Certifications

In order to receive grant funds under this program, the proposed project must conform to the provisions of the Request for Applications. By signing this Application, the person acting on behalf of the local government agrees to the certifications listed below and to abide by the provisions of the RFA.

1. Authority to Sign Application

The person signing this Application hereby certifies that he/she has authority from the local government to sign the Application and that such authority will bind the local government in subsequent agreements.

2. Application Contains No False Statements

The local government certifies that this Application has no false statements and that the local government understands that signing this Application with a false statement is a material breach of contract and shall void the submitted Application and any resulting contracts. The local government understands that NCTCOG will not accept any amendment, revision, addition or alteration to this Application after the final date and time for submission.

4. Governmental Status

The local government certifies that it is located in the State of Texas and fits within one of the governmental classifications listed below, as determined under state law:

- a. City;
- b. County;
- c. Public school districts or independent school districts (not including Universities or post secondary educational institutions);
- d. Other general and special law district with the authority and responsibility for water quality protection or municipal solid waste management, including river authorities; and,
- e. Council of Governments.

5. Solid Waste Fee Payments

The local government certifies that it is not delinquent in payment of solid waste disposal fees owed to the State.

6. Conformance to Standards

The local government certifies to the best of their knowledge and ability that the proposed project, including all activities in the proposed Scope of Work and proposed expenditures, conforms to eligible category standards and allowable expense and funding standards as set forth in the Request for Applications.

7. Consideration of Private Industry

The following certification applies **only** if the project is under one of the following funding categories:

- Source Reduction and Recycling
- Citizens' Collection Stations and "Small" Registered Transfer Stations
- A demonstration project under the Educational and Training Projects category

The local government certifies that it has notified private service providers in accordance with the requirements set forth in the Request for Applications and the instructions provided with this application form. The local government further certifies to the best of their knowledge and ability that the proposed project **will promote cooperation** between public and private entities, is **not** otherwise readily available, and will **not** create a competitive advantage over a private industry that provides recycling or solid waste services.

8. Consistency with the *Regional Solid Waste Management Plan*

The local government certifies to the best of their knowledge and ability that the proposed project is consistent with applicable goals, objectives, and action recommendations of the *Regional Solid Waste Management Plan*.

10. Technical Feasibility

The local government certifies that it has carefully reviewed its Scope of Work and that to the best of their knowledge and ability all activities are technically feasible and can be satisfactorily completed within the grant period as set forth in the Request for Applications.

11. Costs Reasonable and Necessary

The local government certifies to the best of their knowledge and ability that the proposed project activities in the Scope of Work and the expenses outlined in the Budget are reasonable and necessary to accomplish the project objectives, and the proposed expenses are consistent with the costs of comparable goods and services.

12. Certification by Law Enforcement Programs

As provided by the General Appropriations Act (80th Leg. R.S.), funds may not be expended to any law enforcement agency regulated by Chapter 1701, Texas Occupations Code, unless: (a) the law enforcement agency is in compliance with all rules on Law Enforcement Standards and Education; or (b) the Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.

II. Assurances

If the Application is approved for funding, the grant funds will be awarded through an Interlocal Agreement contract between the local government and NCTCOG. This Agreement will contain a number of standards, requirements, and processes that must be complied with as a condition of receiving the funding. In order to ensure an understanding by the local government of some of the main conditions that will be included in the Interlocal Agreement, the local government is asked to review the following assurances. By signing this Application, the person acting on behalf of the local government indicates their understanding of these conditions and provides assurances that these and other conditions set forth in the Interlocal Agreement will be adhered to if funding is awarded.

1. **Compliance with Standard Pertaining to Real Property and Equipment**

Local government provides assurances that, if funded, the local government will comply with the contract provisions pertaining to title and to management of real property and equipment. The contract will contain obligations and conditions regarding the use of the equipment and/or facilities (the "property") acquired under the agreement. Included in the provisions are obligations to provide adequate maintenance and conduct physical property inventories; restrictions and conditions on the use, replacement, sale, or transfer of the property; as well as obligations to continue in the use or transfer of the property to adhere to the provisions that grant funds are not being used to create a competitive advantage over private industry.

2. **Participation in NCTCOG/TCEQ Recycling Surveys and Reporting**

Local government provides assurances that, if funded, the local government will respond to annual recycling program surveys and/or other requests from NCTCOG or the Texas Commission on Environmental Quality for information on municipal solid waste management activities.

3. **Compliance with Progress and Results Reporting Requirements**

Local government provides assurances that, if funded, the local government will comply with requirements for: reporting on the progress of the project tasks and deliverables; documenting the results of the project and providing those results to the NCTCOG on a schedule established by the NCTCOG, and to continue to document the results of the project activities for the life of the project, and to provide the NCTCOG with a follow-up results report approximately one year after the end of the grant term.

4. **Financial Management**

Local government provides assurances that, if funded, the local government will comply with contract provisions and requirements necessary to ensure that expenses are reasonable and necessary, and to adhere to financial administration and reimbursement procedures and provide financial reports on a schedule established by NCTCOG.

5. **Compliance with Americans with Disabilities Act**

Local government provides assurances that, if funded, the local government will comply with all the applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101-12213 (Pamph.1995).

6. **Compliance with the Single Audit Act**

Local government provides assurances that, if funded, the local government will comply with the Single Audit Act as defined by the Uniform Grant Management Standards (UGMS), January 1998.

7. **Compliance with Program and Fiscal Monitoring**

Local government provides assurances that, if funded, the local government will comply with program and fiscal monitoring provisions of the contract, including: providing additional reports or information as may be requested to adequately track the progress of the project, and allowing site visits to evaluate the progress of the project and to view any grant-funded equipment or facility.

Please sign the following if your local government agrees to comply with these Certifications and Assurances.

NOTE: Signatory must have contract signing authority for the eligible local government entity.

Signature: _____

Typed/Printed name: Nancy Nevil

Title: Director – Sustainability and Environmental Services _____

Local Government: City of Plano, Texas

FORM 3: AUTHORIZED REPRESENTATIVES

The local government hereby designates the individual(s) named below as the person/persons authorized to receive direction from NCTCOG, to manage the work being performed, and to act on behalf of the local government for the purposes shown:

- 1. Authorized Project Representative.** The following person is authorized to receive direction, manage work performed and sign required periodic status and statistical reports:

Signature: 
Printed Name: Yarcus Lewis, LEED AP
Title: Project Management Coordinator

- 2. Authorized Financial Representative.** The following person is authorized to act on behalf of this local government in all financial and fiscal matters including authorizing and signing reimbursement requests:

Signature: 
Printed Name: Nancy Nevil
Title: Director – Sustainability and Environmental Services

FORM 4: RESOLUTIONS OR COURT ORDERS

The governing body of the local government **must** approve a resolution or court order authorizing the Project Application submittal as well as receipt of funding if the project is approved. An original of this resolution or court order **must** be submitted to NCTCOG by **Friday, October 30, 2009**.

EXAMPLE of a RESOLUTION or COUNTY COMMISSIONERS' COURT ORDER

RESOLUTION or COUNTY COMMISSIONERS' COURT ORDER OF (Name of local government entity) AUTHORIZING THE FILING OF A PROJECT APPLICATION WITH THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS FOR A REGIONAL SOLID WASTE PROGRAM LOCAL IMPLEMENTATION PROJECT; AUTHORIZING (Person and title) TO ACT ON BEHALF OF (Name of local government entity) IN ALL MATTERS RELATED TO THE APPLICATION; AND PLEDGING THAT IF FUNDING FOR THIS PROJECT IS RECEIVED (Name of local government entity) WILL COMPLY WITH ALL PROJECT REQUIREMENTS OF NCTCOG, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE STATE OF TEXAS.

WHEREAS, the North Central Texas Council of Governments is directed by the Texas Commission on Environmental Quality to administer solid waste project funds for the implementation of NCTCOG's adopted Regional Solid Waste Management Plan; and

WHEREAS, (Name of local government entity) in the State of Texas is qualified to apply for project funds under the Request for Project Applications.

NOW, THEREFORE, BE IT RESOLVED BY (Name of local government entity) IN (Location of office) TEXAS THAT;

1. (Name/title of individual) is authorized to request grant project funding under the North Central Texas Council of Governments' Request for Project Applications of the Regional Solid Waste Local Project Funding Program and act on behalf of (Name of local government entity) in all matters related to the grant project application and any subsequent project contract that may result.
2. If the grant project is funded, (Name of local government entity) will comply with the requirements of the North Central Texas Council of Governments, Texas Commission on Environmental Quality and the State of Texas.
3. The local government will allocate and expend the necessary moneys to support this grant project and then seek reimbursement from NCTCOG on a timely basis.
4. The grant project funds and any project-funded equipment or facilities will be used only for the purposes for which they are intended under the project.
5. The grant activities for this project will comply with and support the adopted regional (and local) solid waste management plans adopted for the geographical area in which the activities are performed.

PASSED AND APPROVED by (board or chief official as applicable) in (city and county), Texas, on this the (number/day) day of (month), (year).

(Signature of Authorized Official) **Notary or City Secretary:** _____ (Signature)

J-10

FORM 5. PROJECT DESCRIPTION

(Up to 30 points)

Currently, through a ten-year "Interlocal Cooperation Agreement Regional Composting Program" that was signed on November 20, 2003 and expires on November 20, 2013, the City of Plano accepts yard trimming, brush, clean wood material, tree trimming, grass clipping, etc. as part of their requirement to mulch and compost the "green" waste for the North Texas Municipal Water District (NTMWD) five Solid Waste Members Cities. The amount of urban wood waste recycled through this program continues to steadily increase each year; however, in the North Texas region there has only been a slight increase over the past ten years with a few municipalities implementing these programs. A large fraction of the urban wood being recycled is "clean" wood waste and consists primarily of land clearing debris, and pallets and crates. A smaller quantity of construction and demolition wood waste is recycled. Some success has been achieved in developing end uses and markets for this material – specifically compost and mulch products. However, the overall market development has been curtailed by a poor understanding of product quality, end user requirements, perceptions about construction and demolition wood, regulatory constraints and application to co-firing/combined heat & power (CHP) energy and alternative fuel markets. As per the objective to expand commercial recycling efforts in business and governments across the region under Goal 1 – "Time To Recycle", the City is seeking to evaluate and promote processing technologies to reduce waste and promote the conversion of urban wood waste to fuel by:

- Identifying, describing and categorizing processing technologies based on type of technology, commercial status, and potential applicability to municipalities/processors;
- Helping processors understand the characteristics of their product relative to the specifications and constraints of the wood-to-fuel marketplace;
- Providing processors with technical and market information needed to initiate processing or increase processing capacity to meet demands in the energy and fuel markets; and
- Providing end users with feedstock quality data from various processing technologies and the application of feedstock to their existing or planned facilities.

This study will present the results of an evaluation of new and emerging waste management technologies and approaches for converting urban wood waste to packaged fuel feedstock – cubes, logs or pellets. The objective of this Evaluation is to provide information to assist the City of Plano (City) and member Cities of the North Central Texas Council of Governments (NCTCOG) in its ongoing planning efforts regarding the consideration of innovative processing technologies as part of its waste management system. The study will identify which innovative technologies are available now, i.e., commercially operational processing urban wood waste, which are soon-to-be commercially in use, and which are promising, but in an earlier stage of development. "Processing" technologies will include cubers, briquetters and pelletizers. It will also identify the potential advantages and disadvantages that may exist in pursuing innovative technologies.

The geographic boundary of the study in the NCTCOG region; however, due to the large number of major industries, commercial business and municipalities; the study and potential processing of wood to fuel feedstock will affect many local government programs, school districts, industry, and commercial business across a large geographic region crossing city limits, county lines, and interstate boundaries. Consequently, a large population will be potentially impacted by the study.

The study would build confidence among stakeholders within the NCTCOG and City of Plano in the processing technologies and provide an opportunity of outreach of waste reduction/diversion and conversion technologies. In addition to evaluating the technical feasibility of processing technologies, the City will perform an evaluation of the capital, operating and maintenance costs of the feasible systems. The City will also evaluate the potential for integration of the technology in existing grinding operations. It will also evaluate the specific types of biomass from urban waste that may readily exist or be established in the future, along with co-firing characteristics, regulatory constraints, existing or planned co-firing/CHP systems in the region, and potential incentives and funding opportunities. An economic analysis will be conducted to determine capital expenditures, operating and maintenance expenses, and potential revenue from

proceeded wood waste. Along with diverting waste from landfills, the use of wood biomass for energy can result in significant savings over fossil fuels while reducing greenhouse gas emissions and keeping energy dollars circulating within a community.

This proposed study has not been conducted for urban wood waste within the Metroplex and therefore costing or funding cannot be compared to similar projects. The total overall cost for this project is \$68,000. The City is anticipating contributing \$8,000 as in-kind services. For \$68,000 in grant funds, the opportunity exists to evaluate waste management technologies for processing urban wood waste to packaged fuel feedstock providing the City with a decision tool for the implementation of innovative technology compatible with the NCTCOG's mission and help the City of Plano reduce the quantity of waste disposed in the landfill. Due to the exponential growth in population within the area, both the NCTCOG and the City are seeking to reduce waste and insure sufficient landfill capacity – this study provides the opportunity to potentially implement innovative technology and for the City to respond proactively to sustainability principles.

FORM 5a. PROJECT CONTINUATION

(Up to 10 points)

The urban waste wood fuel industry could be described as an emerging (or developing) industry, but future growth of the industry in North Central Texas region appears to be a certainty. Numerous feasibility studies are being conducted by municipalities and water authorities/districts for the gasification of biosolids from wastewater treatment plants as an alternative to land application and landfill disposal. A key component of these systems is the mixture of a wood substrate. In addition, both the public and private sectors in the region are evaluating biomass CHP systems. In order for this market to remain viable, processors need to work closely with the end user to provide a product that meets their requirements. This will be a focus of the evaluation to insure long-term collaborative partnerships are identified and established between the processors and end users.

Currently, through a ten-year "Interlocal Cooperation Agreement Regional Composting Program" that was signed on November 20, 2003 and expires on November 20, 2013, the City of Plano accepts yard trimming, brush, clean wood material, tree trimming, grass clipping, etc. as part of their requirement to mulch and compost the "green" waste for the NTMWD five Solid Waste Members Cities. This project will provide an opportunity to demonstrate the City's and Member Cities' commitment to sustainable management of solid waste as well as:

- **Provides a local solution that is realistic and long-term:** it's a local solution that is technologically and environmentally sustainable and provides a municipality and its residents and businesses with an incentive to continue to divert its urban wood waste.
- **Creates a regional partnered solution:** The study will compliment the goals of cities of a regional effort to divert significant volumes of urban wood waste from the landfill to extend landfill life.
- **Deliver value for money:** The processing of urban wood waste into a fuel feedstock is beneficial to the City and its Member Cities from an economic and financial perspective. This model could be transitioned to other municipalities.
- **Provide a source of renewable energy:** The implementation of potential processing facilities enables the productive reuse of waste to generate the electricity to supplement power to public and private operations.

FORM 6. PROJECT WORK PROGRAM AND TIMELINE

(Up to 25 points)

Task 1 – Projections, Trends & Identification of Incentives and Regulations Related to Processing Technologies

Activity A – Current and projected municipal waste management needs and practices will be reviewed and considered related only to urban wood waste. Also, potential changes and trends in waste generation and composition as well as environmental, transportation, biomass incentives, and regulations will be identified and evaluated to determine if such trends may impact new and emerging technologies. “New and emerging technologies” will be defined.

Deliverable – Technical memorandum.

Schedule – Activity will be completed within three (3) months after receipt of Notice to Proceed.

Task 2- Preparation of Evaluation Methodology & Screening Criteria

Activity A – Based on the study objectives and the background information, a three-step evaluation Methodology will be developed. It will consist of:

- Step 1: Selection of Technologies to be Evaluated (First-level Screening)
- Step 2: Review and Primarily Evaluation of Processing Technologies (Second-level Screening)
- Step 3: Detailed Evaluation of Technologies

Technologies to be selected for the study include: cubing, briquetting and pelletizing processing equipment. The First-level Screening criteria will consist of:

- Readiness
- Reliability
- Size & Design Flexibility
- Utility Needs
- Energy Performance
- Minimum Pretreatment of Waste Wood
- Marketability of Products
- Number of Installations
- Estimated Costs

Deliverable – Technical memorandum.

Schedule – Activity will be completed within one (1) month after the completion of all activities in Task 1.

Task 3- Review and Primarily Evaluation of Processing Technologies

Activity A – The City will evaluate up to three (3) processing technologies for each category: cubing, briquetting and pelletizing. Beginning with our preliminary review of information under this Task 2, and continuing through detailed evaluations of technologies (Task 4), our review and evaluation will focus on three areas of interest for the verification and validation process: technical, environmental and cost. The City's review and evaluation will be performed by a team consisting of engineers, environmental specialists, and economic analysts.

J-14

Following our initial review and preliminary evaluation of information/data, the City will summarize our findings in a memorandum. The primary purpose of the memorandum will be to identify data gaps specific to the technologies and to highlight information requiring further clarification. Our findings will be used as a basis of formulating additional, questions to the manufacturers/vendors and establishing discussion topics for telephonic conversations to be conducted under Task 3 – Activity B.

Activity B – Upon completing a review and preliminary evaluation, telephonic conversations will be made to manufacturers/vendors. The purpose of the call will be to further clarify information, address data gaps, and engage in discussions necessary for completing an evaluation of the technologies. These calls will also provide an opportunity to develop and foster relationships for continuation of the study beyond NCTCOG funding.

Deliverable – Technical memorandum and notes from telephonic conversations.

Schedule – Activity will be completed within one (1) month after the completion of all activities in Task 2.

Task 4 – Detailed Evaluation of Technologies

Activity A – Work completed under Tasks 1 through 3 will provide an interactive, progressive approach to obtain and evaluate the most current, detailed information available for the technologies included in the focused research. As mentioned in Task 3, the City’s review and evaluation will focus on three areas of interest: technical, environmental, and cost. An overview of primary issues to be addressed through the evaluation process is provided below:

Technical Evaluation

The City will request, review and evaluate technical information. Some of the more important technical elements that will be evaluated and independently validated include:

- Process schematics and major system components: to be reviewed to determine if the process is complete and fully described (e.g., including up-front processing, management of end products, and ancillary systems).
- Mass and energy balances: to be reviewed and confirmed through independent calculations, if necessary.
- Facility site layout and equipment general arrangement: to be reviewed and evaluated for access and efficient operation, including consideration of site size requirements.
- Operating data: data such as wood waste throughput, operating hours, annual availability, quantity and characteristics of products, sales of products, and quantity and characteristics of residuals requiring disposal, will be tabulated and evaluated, compared to expected performance.

Environmental Evaluation

The City will request copies of environmental permits issued for operation of each technology, and will review environmental limitations contained in those permits, if applicable. The City will also request documentation of facility performance with permit requirements.

Cost Analysis

Manufacturers/vendors will be requested to provide more detailed information on project economics for reference facilities using the technology, including capital costs, annual operating and maintenance costs, annual income from sale of products and tip fees. Supporting documentation will be requested for project economics, along with disclosure of assumptions used to develop cost estimates. The City will review and evaluate the economic information provided by technology vendors. We will identify the cost elements that could have the greatest impact on project economics (e.g., capital cost, operating costs, market volatility for end products, financing costs) and will assess the potential variability of such costs as well as the impact such variability could have on the projected tip fees. Overall, the objective of the City's cost analysis will be to summarize and compare project economics as estimated by the technology vendors, and to provide an independent assessment of the reasonableness of these economics.

J-15

When applicable, a comparative analysis will be conducted.

Deliverable – Technical memorandum with profile sheets for each evaluated technology.

Schedule – Activity will be completed within three (3) month after the completion of all activities in Task 4.

Task 5 – Processing Analyses/Feasibility Study

The City will perform a processing analysis feasibility study to determine the implement ability of processing urban wood waste to packaged fuel feedstock.

Activity A – The City will prepare a report addressing the processing of various urban wood wastestreams and the current grinding operation at the NTMWD Custer Road Transfer Station. Data collected during Task 1 will be incorporated into this report as appropriate. This includes current and projected municipal waste management needs and practices that will be reviewed and considered related only to urban wood waste. Also, potential changes and trends in waste generation and composition as well as environmental, transportation, biomass incentives, and regulations will be identified and evaluated to determine if such trends may impact new and emerging technologies.

Deliverable – Technical memorandum. The City will incorporate all results in the Processing Feasibility Analysis Report as appropriate.

Schedule – Activity will be completed within one (1) month after the completion of all activities in Task 4.

Activity B – Determine local market and market stability for packaged fuel feedstock to include the market price, prognosis of future price, and any preparation required. Identify municipalities, industries and others in the region that will potentially utilized the feedstock in co-firing/CHP applications. Conduct an economic analysis for the fuel feedstock to include capital expenditures, operating and maintenance expenses, and potential revenue from proceeded wood waste.

Deliverable – Technical memorandum. The City will incorporate all results in the Recycling Feasibility Analysis Report as appropriate.

Schedule – Activity will be completed within one (1) month after the completion of all activities in Task 4.

Within nine (9) months from the Notice to Proceed, the City will prepare a draft report for the Processing Analyses/Feasibility Study. Upon review by the NCTCOG and incorporation of comments and/or revisions, the City will prepare the final report with the submission of five (5) bound color copies, one (1) original unbound, and one electronic file as a Microsoft Word and PDF document.

Task 6 – Meetings

The City will participate in meetings as required to successfully complete this project. These meetings will be held to discuss, review and respond to comments on each of the technical memoranda, drafts and final reports. The City will be responsible for preparing the agenda for these progress meetings and distributing it to the appropriate attendees. The City will also prepare the minutes from these meetings. Meeting minutes will include a summary of key issues discussed and their disposition, a list of meeting attendees with addresses and telephone numbers, and any other pertinent information discussed at the meeting.

TIMELINE

NTP – “Notice to Proceed” Anticipated November 2009

Project Schedule 2009 - 2010										
Tasks	Nov	Dec	Jan	Feb	March	April	May	June	July	August
NTP										
Task 1										
Activity A										
Task 2										
Activity A										
Task 3										
Activity A										
Activity B										
Task 4										
Activity A										
Task 5										
Activity A										
Activity B										
Final Report										

Project completed by August 30, 2010

FORM 7: EXPLANATION REGARDING PRIVATE INDUSTRY NOTIFICATION

According to state law (Section 361.014 (b) TX Health & Safety Code), a project or service funded under this program must promote cooperation between public and private entities, and the grant-funded project or service may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

Categories Requiring Private Sector Notification:

If you are applying for a grant for a project that falls under the categories listed below, you must notify the private sector and adhere to the requirements listed below. Failure to notify private industry service providers will result in immediate disqualification from this grant process.

X Source Reduction and Recycling

Citizens' Collection Stations and Small Registered Transfer Stations

Educational and Training Demonstration Projects (Any program or project funded with the intent of demonstrating the use of products made from recycled and/or reused materials that has as its primary purpose the education and training of residents, governmental officials, private entities, and others to encourage a market for using these materials.)

In accordance with grant requirements established by the TCEQ, a local government seeking funding for a project that is related to one of the above listed categories must adhere to the requirements listed below prior to submitting the application:

- Contact in person or in writing all known private service providers which, at the time of the application development, are providing services similar to this grant proposal within the geographic service area that the project intends to serve. A list of private service providers within the region is available from NCTCOG.
- Inform the private service providers of the basic details of the proposed project and consider any input and concerns from the private service providers about the project when completing the project proposal.
- Consider, where appropriate, meeting directly with private service providers that may have a concern about the proposed project to attempt to resolve any concerns.
- Complete applicable information on Forms 7a and 7b to provide documentation those private service providers were notified of the project.

Statement of Private Sector Notification:

I certify, as an authorized representative of the local government with regard to the public/private sector cooperation requirements as outlined in the Request for Applications, that this application:

- X comes under one of the categories listed above requiring private sector notification; however, I am unaware of any public or private entity which provides similar or related services within the proposed project area. *(The local government **must** attach a description of efforts to research and ascertain other existing services and demonstrate the reason why this option is selected. For example, a description of inquiries that were unsuccessful could be attached.)*

The City of Plano with the assistance of its consultant conducted a query of wood waste to packaged fuel feedstock processors in the region. The consultant has been engaged with various municipalities in promoting waste to energy technology. Of the date of this applicant, no processors were identified via an internet search, discussions with other municipalities and vendors, and by personal knowledge of the consultant.

- comes under one of the categories listed above requiring private sector notification; however no competitive advantage exists, therefore no private sector notification was necessary. *(The local government must explain.)*

J-18

_____ comes under one of the categories listed above requiring private sector notification; and, I have notified the private sector industry. *(The local government must complete Forms 7a and 7b on the following page.)*

Form 7a. List of Private Service Providers Notified

Private Service Providers Contacted	Name & Position	Response When Notified	Phone Number	Date Notified

Form 7b. Summaries of Discussions with Private Industry

Provide a brief summary below of any responses to your inquiries that expressed concerns regarding your project. Furnish information on any concerns voiced by the private service providers, including:

- (1) brief summaries of any meetings or discussions held between the local government and the private service providers;
- (2) an explanation of any changes made to the proposed project to address private service provider concerns; and,
- (3) an explanation of any remaining concerns that were not addressed and why the local government determined that the concerns are not valid under the statutory requirements.

Private Service Providers Contacted	Name & Position	Please Explain Any Concerns?

J-19

8. PROJECT BUDGET SUMMARY

(up to 25 points)

Provide a detailed explanation of the costs associated with the proposed project. Offer a breakdown of the total amount of funding being requested for the proposed project. The expenses must be consistent with the category expense standards provided in the Request for Applications. Complete any of the detailed budget forms which are applicable to your proposed budget.

Budget Category	Grant Funding Amount Sought
	<i>Please round costs to the nearest dollar.</i>
1. Personnel/Salaries	\$
2. Fringe Benefits	\$
3. Travel (Does not include registration)	\$
4. Supplies (<u>consumable</u> general office supplies)	\$
5. Equipment (unit cost of \$5,000 or more)	\$
6. Construction	\$
7. Contractual (other than construction costs)	\$68,000
8. Other (anything not itemized above)	\$
9. Total Direct Charges (<i>sum of 1-8</i>)	\$
10. Indirect Charges*	\$
11. Total (<i>sum of 9 - 10</i>)	\$68,000

12. Fringe Benefit Rate:	_____ %	
13. Indirect Cost Rate:	_____ %	

Identify, in detail, each budget category to which your indirect cost rate applies and explain any special conditions under which the rate will be applied:

-
-

*In accordance with the UGMS, indirect charges may be authorized if the Local government has a negotiated indirect cost rate agreement signed within the past 24 months by a federal cognizant agency or state single audit coordinating agency. Alternatively, the Local government may be authorized to recover up to 10% of direct salary and wage costs (excluding overtime, shift premiums, and fringe benefits) as indirect costs, subject to adequate documentation. If your local government has an approved cost allocation plan, please enclose documentation of your approved indirect rate.

Matching Funds Contributions: \$8,000
Local match through cash or in-kind services is encouraged.

Please explain in separate line items the detail of any matching funds or contributions to be provided by the local government. In-kind services should relate only to staff or services directly involved with your proposed project. Describe the relative importance or effort the local contribution will have in relationship to the entire project. **This information will be used in contracting with successful projects and will be tracked for proper payment.** City staff will provide up to \$8,000 of cash or in-kind services for the project. The in-kind services could include the collection and compilation of data, conducting telephonic surveys and responses to requests from consultant.

J-20

Complete any of the following detailed budget forms that are applicable to your budget.

Form 8a - Detailed Personnel/Fringe/Indirect Charges Budget: Total \$ _____

This budget information should be completed if any expenses are entered for Personnel (Line 1), Fringe Benefits (Line 2) and/or Indirect Charges (Line 10) of your Project Budget Summary. In the space below, list the names and titles of individuals whose salaries will be paid for, in all or in part, from project funds. Also, indicate if funds are for a new or existing employee (attach additional sheets if necessary).

Employee name _____
Title _____
Salary \$ _____

Employee name _____
Title _____
Salary \$ _____

Employee name _____
Title _____
Salary \$ _____

TOTAL PERSONNEL/FRINGE/INDIRECT CHARGES: \$ _____

If your budget lists fringe benefits (Line 2) and/or indirect costs (Line 10), please provide the following:

- Fringe benefit rate: _____ %
- Indirect charge rate*: _____ %

*In accordance with the UGMS, indirect charges may be authorized if the local government has a negotiated indirect cost rate agreement signed within the past 24 months by a federal cognizant agency or state single audit coordinating agency. The local government may be authorized to recover up to 10% of direct salary and wage costs (excluding overtime, shift premiums, and fringe benefits) as indirect costs, subject to adequate documentation. If you have an approved cost allocation plan, please enclose documentation of your approved indirect rate.

Form 8b - Detailed Travel Budget: Total \$ _____

This budget section should be completed if any expenses are entered for Travel (Line 3) of your Project Budget Summary. In-state travel expenses directly related to the conduct of the funded project may be authorized. Please describe below the types of travel expenses (state rate mileage, meals, airfare, hotel, etc.) expected, conference/workshop names if known, and purpose for travel. For Registration Fees, see "Other" Detailed Budget page.

Purpose of travel: _____
Cost: \$ _____

Purpose of travel: _____
Cost: \$ _____

TOTAL TRAVEL COSTS: \$ _____

J-21

Form 8c - Detailed Consumable General Office Supply Budget: Total \$ _____

This budget section should be completed if any expenses are entered for general office supplies (Line 4) of your Project Budget Summary. Supplies are consumable office items that generally have a useful life of less than one year and have a unit cost of less than \$1,000. Expenses for food and beverages are not allowable. Please describe below the general office supplies expenses you intend to purchase with project funding; attach additional sheets if necessary.

<u>General office supplies</u>	<u>Costs</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL SUPPLIES:	\$ _____

Form 8d - Detailed Equipment Budget: Total \$ _____

This budget section should be completed if any expenses are entered for Equipment (Line 5) of your Project Budget Summary. Equipment expenses include non-construction related, tangible, personal property having a unit acquisition cost of \$5,000 or more (including freight and set-up costs) with an estimated useful life over one year. Please describe below the equipment expenses you intend to purchase with project funding, providing as many details as possible at this time.

<u>Equipment (description, type, model, etc.)</u>	<u># of units</u>	<u>Costs</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
TOTAL EQUIPMENT:		\$ _____

Form 8e - Detailed Construction Budget: Total \$ _____
(All construction expenses must be pre-approved by NCTCOG.)

This budget section should be completed if any expenses are entered for Construction (Line 6) of your Project Budget Summary. Construction expenses include the cost of planning the project, materials and labor, cost of equipment attached to the permanent structure and any sub-contracts performed as part of the construction. All local government municipal laws and regulations including UGMS for bidding and contracting for services must be followed. Please itemize below the construction expenses associated with the proposed project, providing as many details as possible at this time.

<u>Construction (and related expenses)</u>	<u>Costs</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL CONSTRUCTION:	\$ _____

J-22

Form 8f - Detailed Contractual Budget:

Total \$68,000

(All contractual expenses must be pre-approved by NCTCOG.)

This budget section should be completed if any expenses are entered for Contractual (Line 7) of your Project Budget Summary. Expenses include the cost of professional services or tasks provided by firm or individual who is not employed by the project funds recipient, other than those related to construction. All local government municipal laws and regulations including UGMS for bidding and contracting for services must be followed. Please itemize below the contractual expenses associated with the proposed project, providing as many details as possible at this time.

Contractual

Costs

_____	\$68,000
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

TOTAL CONTRACTUAL: \$68,000

Form 8g - Detailed Other Expenses Budget:

Total \$ _____

This budget sheet should be completed if any expenses are entered under the Other (Line 8) of your Project Budget. "Other" expenses are those for items or services that do not readily fit into any of the previous budget categories in this application. If any of the expenses listed below are included in the calculation of your rate for indirect charges, do not list them on this sheet.

Other expenses

Costs

___ Postage/delivery	\$ _____
___ Telephone/FAX	\$ _____
___ Utilities	\$ _____
___ Printing/reproduction	\$ _____
___ Advertising, public notices	\$ _____
___ Signage	\$ _____
___ Training (registration fees)	\$ _____
___ Office space, equipment rentals	\$ _____
___ Basic office furnishings	\$ _____
___ Books and reference materials	\$ _____
___ Repair and maintenance	\$ _____
___ Computer Hardware	\$ _____
___ Computer Software	\$ _____

Miscellaneous ALL other expenses

(Separately itemize these expenses below:)

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

TOTAL OTHER: \$ _____

J-23

REQUIRED
ATTACHMENTS TO THE GRANT APPLICATION

1. The governing body of the local government **must** approve a resolution or court order authorizing the Grant Project Application as well as the acceptance of grant funds if the Application ranks high enough to be considered for funding.

This resolution or court order **must** be formally signed by the appropriate official and be notarized and signed (or stamped with the local government's seal) in addition to those signatures required in the Grant Project Application. **Please furnish information regarding when your government's document will be officially executed for the benefit of the individual scoring your proposal.**

This resolution or court order will be due to NCTCOG no later than Friday, October 30, 2009.

2. If indirect costs are included in the project budget, attach the local government's latest **indirect cost allocation plan**, including documentation of approval of the plan and the indirect cost rate by the local government's Federal Cognizant Agency or State Coordinating Agency.



**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: 10/26/09		Purchasing	ME 10/16/09
Department: Sustainability & Environmental Svcs		Budget	C.S. 10-16-09
Department Head: Nancy Nevil		Legal	ib 10-19-09
Dept Signature: <i>[Signature]</i>		Assistant City Manager	
		Deputy City Manager	RL 10-19-09
		City Manager	10/19/09
Agenda Coordinator (include phone #): Tiffany Stephens x4264			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS PROVIDING TERMS AND CONDITIONS FOR THE FUNDING OF A PLASTIC BAG REDUCTION CAMPAIGN; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, A DEPUTY CITY MANAGER 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	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	163,088	0	163,088
BALANCE	0	163,088	0	163,088

FUND(S): SUSTAINABILITY & ENVIRONMENTAL SERVICES GRANT FUND

COMMENTS: If approved, this grant will provide funding in the amount of \$163,088 for expenditures related to the development of a public awareness campaign regarding plastic bag usage reduction, increased usage of reusable plastic bags, and plastic bag recycling.

STRATEGIC PLAN GOAL: Grants to fund a Plastic Bag Reduction Campaign relate to the City's Goal of Great Neighborhood - 1st Choice to Live and Partnering for Community Benefit.

SUMMARY OF ITEM

Grant funding will cover market research and analysis identifying current plastic bag recycling practices by retailers, feelings toward ban of plastic bags, barriers to use of reusable bags, and development of a public awareness campaign aimed at changing consumer behavior to reduce use of plastic shopping bags; to increase use of reusable bags; and to increase recycling of already circulating plastic shopping bags

List of Supporting Documents: NCTCOG Grant Application	Other Departments, Boards, Commissions or Agencies
---	--

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS PROVIDING TERMS AND CONDITIONS FOR THE FUNDING OF A PLASTIC BAG REDUCTION CAMPAIGN; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, A DEPUTY CITY MANAGER AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas and the North Central Texas Council of Governments (NCTCOG), providing terms and conditions for a Plastic Bag Reduction Campaign to cover market research and analysis identifying current plastic bag recycling practices by retailers, feelings toward ban of plastic bags, barriers to use of reusable bags, and development of a public awareness campaign aimed at changing consumer behavior to reduce use of plastic shopping bags; to increase use of reusable bags; and to increase recycling of already circulating plastic shopping bags; a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, the City has qualified to receive grant funding for this Program from NCTCOG and is of the opinion that utilizing such funding will have a positive environmental impact and serve as a model for regional campaign; 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 in his absence, a Deputy City Manager, 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:

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, in his absence, a Deputy City Manager, 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.

K-2

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

PHIL DYER, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

K-3

**North Central Texas Council of Governments (NCTCOG)
 FY2010 SOLID WASTE IMPLEMENTATION PROJECT APPLICATION**

Application Directions:

Use Arial font size 11, copy on both sides of the page and staple all copies in upper left corner. Required submittal -- 34 double-sided copies plus a Microsoft Word formatted copy of your application on CD or diskette.

PLEASE DO NOT INCLUDE LETTERS OF SUPPORT, MAPS, PHOTOGRAPHS, PRODUCT SPECIFICATIONS, OR ANY OTHER DOCUMENTATION NOT REQUESTED. INCLUSION OF SUCH MATERIAL or NOT INCLUDING ALL SECTIONS OF THIS APPLICATION MAY RESULT IN REMOVAL OF YOUR REQUEST FROM COMPETITION. NOTE: Letters will be accepted that verify another local government, a private service provider and/or a non-profit agency is partnering with the local government seeking this grant funding.

FORM 1: LOCAL GOVERNMENT AND GRANT PROJECT INFORMATION (Forms 1 through 4: up to 10 points)

1. Project Local government Information

Local Government: City of Plano	Project Contact Name: Heather Merchant
Complete Mailing Address with zip code: City of Plano Sustainability & Environmental Services Department P.O. Box 860358 Plano, TX 75086-0358	Telephone Number: 972-769-4111
Fax Number: 972-769-4219	Email Address: heatherm@plano.gov

2. Project Title with a single sentence description of what the grant funding will cover:

Plastic Bag Reduction Campaign

Grant funding will cover market research and analysis identifying current plastic bag recycling practices by retailers, feelings toward ban of plastic bags, barriers to use of reusable bags, and development of a public awareness campaign aimed at changing consumer behavior to reduce use of plastic shopping bags; to increase use of reusable bags; and to increase recycling of already circulating plastic shopping bags.

3. Grant Project Information:

a. Please check only one goal of the three *Regional Solid Waste Management Plan Goals*, and identify the one specific Objective and one Action Recommendation from the *Regional Plan* that best applies to your project. This information can be found in the Request for Applications (RFA).

- Time to Recycle Goal
- Stop Illegal Dumping Goal
- Assuring Capacity for Trash Goal

Identify the one Objective to be undertaken (quote directly from the *Regional Plan*):

Objective 1F: Use outreach and education programs to facilitate long-term changes in attitudes about source reduction, reuse and recycling.

Action Recommendation (quote one Action Recommendation taken directly from the *Regional Plan*):

Develop new or expanded programs that promote public awareness of the benefits of recycling and waste reduction.

b. Amount of Grant Funding Requested (minimum \$10,000): **\$163,088**

K-4

4. Authorized Signature (signatory must have contract signing authority for the eligible local government entity listed above):

_____ Signature	Director, Sustainability & Environmental Services Title
Nancy Nevil Print name	10/6/09 Date

K-5

FORM 2: CERTIFICATIONS AND ASSURANCES

I. Certifications

In order to receive grant funds under this program, the proposed project must conform to the provisions of the Request for Applications. By signing this Application, the person acting on behalf of the local government agrees to the certifications listed below and to abide by the provisions of the RFA.

1. Authority to Sign Application

The person signing this Application hereby certifies that he/she has authority from the local government to sign the Application and that such authority will bind the local government in subsequent agreements.

2. Application Contains No False Statements

The local government certifies that this Application has no false statements and that the local government understands that signing this Application with a false statement is a material breach of contract and shall void the submitted Application and any resulting contracts. The local government understands that NCTCOG will not accept any amendment, revision, addition or alteration to this Application after the final date and time for submission.

4. Governmental Status

The local government certifies that it is located in the State of Texas and fits within one of the governmental classifications listed below, as determined under state law:

- a. City;
- b. County;
- c. Public school districts or independent school districts (not including Universities or post secondary educational institutions);
- d. Other general and special law district with the authority and responsibility for water quality protection or municipal solid waste management, including river authorities; and,
- e. Council of Governments.

5. Solid Waste Fee Payments

The local government certifies that it is not delinquent in payment of solid waste disposal fees owed to the State.

6. Conformance to Standards

The local government certifies to the best of their knowledge and ability that the proposed project, including all activities in the proposed Scope of Work and proposed expenditures, conforms to eligible category standards and allowable expense and funding standards as set forth in the Request for Applications.

7. Consideration of Private Industry

The following certification applies **only** if the project is under one of the following funding categories:

- Source Reduction and Recycling
- Citizens' Collection Stations and "Small" Registered Transfer Stations
- A demonstration project under the Educational and Training Projects category

The local government certifies that it has notified private service providers in accordance with the requirements set forth in the Request for Applications and the instructions provided with this application form. The local government further certifies to the best of their knowledge and ability that the proposed project **will promote cooperation** between public and private entities, is **not** otherwise readily available, and **will not** create a competitive advantage over a private industry that provides recycling or solid waste services.

8. Consistency with the *Regional Solid Waste Management Plan*

The local government certifies to the best of their knowledge and ability that the proposed project is consistent with applicable goals, objectives, and action recommendations of the *Regional Solid Waste Management Plan*.

10. Technical Feasibility

The local government certifies that it has carefully reviewed its Scope of Work and that to the best of their knowledge and ability all activities are technically feasible and can be satisfactorily completed within the grant period as set forth in the Request for Applications.

11. Costs Reasonable and Necessary

The local government certifies to the best of their knowledge and ability that the proposed project activities in the Scope of Work and the expenses outlined in the Budget are reasonable and necessary to accomplish the project objectives, and the proposed expenses are consistent with the costs of comparable goods and services.

12. Certification by Law Enforcement Programs

As provided by the General Appropriations Act (80th Leg. R.S.), funds may not be expended to any law enforcement agency regulated by Chapter 1701, Texas Occupations Code, unless: (a) the law enforcement agency is in compliance with all rules on Law Enforcement Standards and Education; or (b) the Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.

K-6

II. Assurances

If the Application is approved for funding, the grant funds will be awarded through an Interlocal Agreement contract between the local government and NCTCOG. This Agreement will contain a number of standards, requirements, and processes that must be complied with as a condition of receiving the funding. In order to ensure an understanding by the local government of some of the main conditions that will be included in the Interlocal Agreement, the local government is asked to review the following assurances. By signing this Application, the person acting on behalf of the local government indicates their understanding of these conditions and provides assurances that these and other conditions set forth in the Interlocal Agreement will be adhered to if funding is awarded.

1. **Compliance with Standard Pertaining to Real Property and Equipment**

Local government provides assurances that, if funded, the local government will comply with the contract provisions pertaining to title and to management of real property and equipment. The contract will contain obligations and conditions regarding the use of the equipment and/or facilities (the "property") acquired under the agreement. Included in the provisions are obligations to provide adequate maintenance and conduct physical property inventories; restrictions and conditions on the use, replacement, sale, or transfer of the property; as well as obligations to continue in the use or transfer of the property to adhere to the provisions that grant funds are not being used to create a competitive advantage over private industry.

2. **Participation in NCTCOG/TCEQ Recycling Surveys and Reporting**

Local government provides assurances that, if funded, the local government will respond to annual recycling program surveys and/or other requests from NCTCOG or the Texas Commission on Environmental Quality for information on municipal solid waste management activities.

3. **Compliance with Progress and Results Reporting Requirements**

Local government provides assurances that, if funded, the local government will comply with requirements for: reporting on the progress of the project tasks and deliverables; documenting the results of the project and providing those results to the NCTCOG on a schedule established by the NCTCOG, and to continue to document the results of the project activities for the life of the project, and to provide the NCTCOG with a follow-up results report approximately one year after the end of the grant term.

4. **Financial Management**

Local government provides assurances that, if funded, the local government will comply with contract provisions and requirements necessary to ensure that expenses are reasonable and necessary, and to adhere to financial administration and reimbursement procedures and provide financial reports on a schedule established by NCTCOG.

5. **Compliance with Americans with Disabilities Act**

Local government provides assurances that, if funded, the local government will comply with all the applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101-12213 (Pamph.1995).

6. **Compliance with the Single Audit Act**

Local government provides assurances that, if funded, the local government will comply with the Single Audit Act as defined by the Uniform Grant Management Standards (UGMS), January 1998.

7. **Compliance with Program and Fiscal Monitoring**

Local government provides assurances that, if funded, the local government will comply with program and fiscal monitoring provisions of the contract, including: providing additional reports or information as may be requested to adequately track the progress of the project, and allowing site visits to evaluate the progress of the project and to view any grant-funded equipment or facility.

Please sign the following if your local government agrees to comply with these Certifications and Assurances.

NOTE: Signatory must have contract signing authority for the eligible local government entity.

Signature: _____

Typed/Printed name: Nancy Nevil

Title: Director, Sustainability & Environmental Services

Local Government: City of Plano

FORM 3: AUTHORIZED REPRESENTATIVES

The local government hereby designates the individual(s) named below as the person/persons authorized to receive direction from NCTCOG, to manage the work being performed, and to act on behalf of the local government for the purposes shown:

- 1. Authorized Project Representative.** The following person is authorized to receive direction, manage work performed and sign required periodic status and statistical reports:

Signature:
Printed Name: Heather Merchant
Title: Environmental Education & Community Outreach Manager

- 2. Authorized Financial Representative.** The following person is authorized to act on behalf of this local government in all financial and fiscal matters including authorizing and signing reimbursement requests:

Signature:
Printed Name: Nancy Nevil
Title: Director, Sustainability & Environmental Services

FORM 4: RESOLUTIONS OR COURT ORDERS

The governing body of the local government **must** approve a resolution or court order authorizing the Project Application submittal as well as receipt of funding if the project is approved. An original of this resolution or court order **must** be submitted to NCTCOG by **Friday, October 30, 2009**.

EXAMPLE of a RESOLUTION or COUNTY COMMISSIONERS' COURT ORDER

RESOLUTION or COUNTY COMMISSIONERS' COURT ORDER OF (Name of local government entity) AUTHORIZING THE FILING OF A PROJECT APPLICATION WITH THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS FOR A REGIONAL SOLID WASTE PROGRAM LOCAL IMPLEMENTATION PROJECT; AUTHORIZING (Person and title) TO ACT ON BEHALF OF (Name of local government entity) IN ALL MATTERS RELATED TO THE APPLICATION; AND PLEDGING THAT IF FUNDING FOR THIS PROJECT IS RECEIVED (Name of local government entity) WILL COMPLY WITH ALL PROJECT REQUIREMENTS OF NCTCOG, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE STATE OF TEXAS.

WHEREAS, the North Central Texas Council of Governments is directed by the Texas Commission on Environmental Quality to administer solid waste project funds for the implementation of NCTCOG's adopted Regional Solid Waste Management Plan; and

WHEREAS, (Name of local government entity) in the State of Texas is qualified to apply for project funds under the Request for Project Applications.

NOW, THEREFORE, BE IT RESOLVED BY (Name of local government entity) IN (Location of office) TEXAS THAT;

1. (Name/title of individual) is authorized to request grant project funding under the North Central Texas Council of Governments' Request for Project Applications of the Regional Solid Waste Local Project Funding Program and act on behalf of (Name of local government entity) in all matters related to the grant project application and any subsequent project contract that may result.
2. If the grant project is funded, (Name of local government entity) will comply with the requirements of the North Central Texas Council of Governments, Texas Commission on Environmental Quality and the State of Texas.
3. The local government will allocate and expend the necessary moneys to support this grant project and then seek reimbursement from NCTCOG on a timely basis.
4. The grant project funds and any project-funded equipment or facilities will be used only for the purposes for which they are intended under the project.
5. The grant activities for this project will comply with and support the adopted regional (and local) solid waste management plans adopted for the geographical area in which the activities are performed.

PASSED AND APPROVED by (board or chief official as applicable) in (city and county), Texas, on this the (number/day) day of (month), (year).

(Signature of Authorized Official) Notary or City Secretary: _____ (Signature)

K-9

FORM 5. PROJECT DESCRIPTION

Plastic shopping bags are one of the most common and prolific consumer items in our world. While lightweight, cheap, waterproof and convenient, there are several problems with plastic bags that directly impact every community. The average resident uses 1,200+ bags per year. Though polyethylene plastic bags are recyclable, over 100 billion are discarded each year in U.S., only 6% being recycled. On average, a plastic bag is used for only 20 minutes before discarded. Many end up as litter and an eyesore in parking lots, streets, fields and waterways and hazardous to wildlife. **We need to reduce the number of plastics bags being newly distributed in Plano and encourage the recycling of plastic bags already circulating. This grant requests funds (\$163,088) to implement strategy to address these problems through the Plastic Bag Reduction Campaign (PBRC).**

The **goals** of the PBRC are to **change consumer behavior to reduce the use of plastic shopping bags; increase use of reusable bags; and increase recycling of already circulating plastic shopping bags.** Reusable shopping bags represent one of the most effective and timely strategies addressing plastic bag waste management. If every household in Plano (73,000) took just one less plastic bag each week, using reusable bag instead, 3,500,000 bags would be eliminated in a year. By emphasizing behavior change that embraces shopping with reusable bags and recycling plastic bags, the quantity of bags ending up as litter and trash will be greatly reduced. These outcomes will positively impact wildlife habitat and health, community beautification and perceived civic pride. Also, the impact on other environmental problems associated with plastic bag production and distribution will be reduced.

A KAB grant (\$10,000) allowed implementation of limited pilot PBRC program at only two grocery stores. Building on results of the pilot, this **expanded community wide campaign** will include **three major components: 1) Market Research and Analysis; 2) Public Awareness Campaign; 3) Educational Component.**

Market Research and Analysis Search of Community Based Social Marketing database and ListServ inquiry revealed no measurable results for behavior change and barriers associated with using reusable bags as a waste management strategy for consumers. Market research specific to Plano and DFW area will be extremely valuable in determining strategy for PBRC. Several measurement and evaluation techniques will be used to gather information regarding current plastic and reusable bag practices. Barriers and best practices will be identified through phone survey and focus group study. Evaluation measures tracking success of campaign include: # plastic bags purchased, pounds recycled, # reusable bags purchased, # shoppers using reusable bags each day, average # bags used per trip, # shoppers signing commitment pledges, and possibly, number of petition signatures supporting plastic bag elimination. **The measurable data and anecdotal information will be compiled into a report, including insights and recommendations for continuing and expanding the PBRC at DFW regional level with cooperation from other NCTCOG cities.**

Public Awareness Campaign Logo, tagline and informational messages will be developed to ensure consistency throughout all aspects of PBRC and delivered utilizing three distinct promotional means:

a) **Media blitz** will ensure message reaches as many people in community, using billboards; radio PSAs; Web banners, ads and postings; print media including newspaper and local magazine feature stories and ads; truck panels on refuse/recycling trucks; social media (Facebook, YouTube, Twitter) and distribution of reusable bag to every household with messaging about Reusable Bag Week.

b) **In-store promotion** with partnering stores is centered around one week designated as Reusable Bag Week in participating stores. Residents will be instructed to use reusable bags and be entered in drawing for \$100 shopping spree. They will receive reminder prompts to help establish bag use habit. In-store promotion will include store window and parking lot reminders, aprons and buttons with message worn by store employees, training store employees, messages over store PA systems, ads in grocer's weekly sales flyers, public pledge and photos posted to LGIP website, and prompts to help customers remember to use

reusable bags in future. Stores will be equipped with plastic bag recycling containers, and shoppers encouraged to recycle old bags.

c) **Live Green Expo activities:** Attendance at *LG Expo* has increased in last three years reaching 15,000. A special exhibit will be developed focusing on the issue of plastics bags and promotion of reusable bags. Other activities will include plastic bag exchange, reusable bag designers, opportunities for participants to pledge to use reusable bags, plastic bag collection, and a *BYOB – bring your own bag* – photo booth where attendees can tell the story of their favorite reusable shopping bag and what it says about them.

Educational Component Portable **pull-up exhibits** will be developed for use at *Expo*, and housed at Environmental Education Center (EEC) year round for programs with schools, corporate and community events. Exhibit messages will focus on manufacturing process, statistics on use, associated environmental problems, “Plastic Soup” issue, solutions being implemented worldwide and uses of recycled plastic. Accompanying **interactive computer lessons** will be developed and posted on the *LGIP* web site, as well as on computer kiosks at EEC. **Lesson plans for classroom instruction** and **PowerPoint presentation** for adult audiences will be developed. Training for partnering store employees will be developed, filmed and reproduced on DVDs for training new partners and new hires. Training will incorporate results from pilot pre-survey, and focus on communication and interaction skills with shoppers, reusable bag packing skills, and specific messages encouraging and promoting use of reusable shopping bags.

The project team will consist of two Educational Coordinators, Communications Coordinator, Manager, Volunteer Coordinator, Administrative Assistant, and contracted professional service consultants.

The \$163,088 represents \$.63 per capita and includes:

- Market research for focus group and phone survey (\$18,000)
- Design and production costs for media and outreach efforts (ads, radio spots, truck panels, door hangers, ubill inserts, banners, posters, signs) (\$42,782)
- *LG Expo*: tents, recycle bins, reusable bag designers, shipping (\$7,335)
- Prompts, reusable bags, vinyl clings, shopping pads, aprons, buttons, stencils, prizes (\$73,221)
- Educational Component costs including interactive web-based lesson, exhibits, video and DVDs, training, regional workshop, (\$21,750)

FORM 5a. PROJECT CONTINUATION

The Sustainability & Environmental Services (SES) department will continue to monitor progress of reusable bag usage as compared to plastic bags at the stores through monthly reports on reusable bag give-a-ways, purchase of reusable bags by customers and purchase of plastic bags for store use. Further employee training will be provided as needed. Plastic bag recycling bins will remain in stores for shoppers to utilize. PSAs, web site information and media attention will continue. Established partnerships with local stores ensure that the PBRC will reach shoppers in different areas of Plano representing diverse socio-economic and cultural backgrounds. SES staff will provide ongoing training for store employees, checkers and baggers. The stores will also benefit through their participation and partnership. They will decrease expenses associated with single-use bag purchases and establish their reputation as a "green" grocery store, thereby potentially increasing their shopper network.

At the end of the one week in-store promotion, SES coordinators will meet with store managers to review the successes and obstacles of the PBRC. Input from the stores and numerical data on bag usage will be discussed. Discussions will be held with store managers exploring strategies for moving towards elimination of plastic bags. Implementing a five cent charge per bag will be discussed and explored. **A report will be prepared with recommendations for expansion of the PBRC to other retailers in the community. This report will be shared with Recycling Coordinators at the NCTCOG Recycling Roundtable in hopes that Plano's city-wide campaign can be expanded to the regional level, through a multi-city grant written through the NCTCOG Recycling Roundtable for the next grant cycle.** Ordinances limiting the use of plastic bags in many cities in the DFW metroplex may become a reality as a result of funding this initial PBRC program and leveraging its outcomes towards a regional campaign supported and implemented by several cities simultaneously.

We are providing \$52,250 of in-kind services towards this project.

The SES has successfully managed numerous grants in previous years, always maximizing the value of award as shown by the following examples:

- 2006 Green Living in Plano Residential Education Campaign Grant – funds used to cover creative and production costs for the *Live Green in Plano* education campaign and development and implementation of the *Live Green in Plano Expo*. The SESD 2007-08 budget allocated additional funds totaling \$160,466 to support *Live Green in Plano*.
- 2006 Green Living Volunteer Corps Development Program Grant – funds used to hire Volunteer Coordinator to develop a resident's *Live Green in Plano* Volunteer Corp. This position was approved as a full-time position in the SESD 2007-08 budget.
- Regional Yard Trimmings Diversion program in NTMWD area (\$161,853) – funds used to educate all residents of the five member cities of the existing opportunity to divert yard trimmings from the landfill to regional composting facility, diverting 58,000 tons from the landfill annually, and creating beneficial soil amendment product.
- Household Hazardous Waste Program (\$31,163) – start-up cost for HHW Reuse Center. Program served as model for region.

K-12

FORM 6. PROJECT WORK PROGRAM AND TIMELINE

1. **Interlocal agreement approved** **December 2009**
 - **Execution of the Interlocal Agreement with NCTCOG** (Manager)

2. **Grant Management and Administrative Responsibilities with NCTCOG**
 - Submit Quarterly Report on status of grant project (Manager, Ed Coord, Admin. Assistant for all reports) March 2010
 - Submit Quarterly Report on status of grant project June 2010
 - Submit Quarterly Report on status of grant project September 2010
 - Submit Quarterly Report on status of grant project December 2010
 - Submit Quarterly Report on status of grant project March 2011
 - Submit Quarterly Report on status of grant project June 2011
 - **All expenditures and activities completed** **June 30, 2011**
 - Submit Final Report on grant project July 2011
 - **Final reporting, reimbursement request and Release of All Claims due to NCTCOG by 5 p.m.** **Friday, July 31, 2011**

2. **Market Research and Focus Groups** **February – June 2010**
 - Identify and hire research group to conduct phone survey (Manager) February 2010
 - Develop survey instrument (Manager and Project Team) February 2010
 - Administer survey (Research group) March 2010
 - Analyze and interpret survey results (Research group) March 2010
 - Identify and hire research group to conduct focus groups (Manager) May 2010
 - Develop focus group questions (Manager and Project Team) May 2010
 - Conduct focus groups (Research group) May 2010
 - Compile and interpret results of focus groups (Research group) June 2010

3. **Development of In-Store Promotion** **January – Sept. 2010**
 - Meet with store managers to share information, program parameters and identify partnering stores (Manager, Educ. Coord) January 2010
 - Develop agreement for manager (Educ. Coord) January 2010
 - Develop training module for stores (Manager, Educ. Coord) Jan/Feb 2010
 - Develop script for employees (Educ. Coord) February 2010
 - Develop checklists for employees (Educ. Coord) February 2010
 - Develop checklists for manager (Educ. Coord) January 2010
 - Develop guidelines and promote rules for cash award shopping spree for each store (Manager, Educ. Coord) March 2010
 - Identify incentives for store employees and get manager approval (Educ. Coord) March 2010
 - Arrange for filming of store training (Comm. Coord., Educ. Coord) March 2010
 - Conduct training (Educ. Coord) May 2010
 - Work with store managers to display promotional pieces in windows, etc. (Educ. Coord) April 2010
 - Conduct Reusable Bag Week (Project Team) May 2010
 - Meet with store managers to evaluate Reusable Bag Week (Manager, Educ. Coord) May 2010
 - Conduct re-training if needed (Educ. Coord) June 2010
 - Continue follow-up with prompts to shoppers (Educ. Coord) June – Sept 2010

4. **Identify and Purchase Items for In-store Campaign** **January – March 2010**
 - Meet with Purchasing department to put in orders for reusable bags, vinyl window clings,

stencils, shopping pads, collection bins magnets, aprons, buttons
(Manager and Educ. Coord.)

January 2010

5. Develop Marketing Campaign for In-store Promotion

March- May 2010

- Develop and produce promotional posters and signs for stores
(Comm. Coord, Educ. Coord) March 2010
- Distribute window clings, posters, signs, recycle bins and stencils to each store
(Educ. Coord) May 2010
- Recruit and work with volunteers to apply stencils to parking lots of participating stores
(Volunteer Coordinator) late April/early May 2010
- Have video edited and reproduced on DVDs (Comm. Coord., Educ. Coord) May/June 2010
- Distribute DVDs to participating stores (Educ. Coord) June/July 2010
- Arrange for place to turn in prize ticket for reusable bag incentive with each store
(Educ. Coord) May 2010
- Deliver collection bins and signs to stores before Reusable Bag Week (Educ Coord) May 2010
- Develop Utility bill insert promoting Reusable Bag Week (Comm Coord & Educ Coord) March 2010

6. Develop Community-wide PBR Campaign

January – May 2010

- Order truck panels and brackets through Purchasing department
(Manager and Educ. Coord.) January 2010
- Install truck panels before week of May 10-16, 2010 (Educ. Coord.) April/May 2010
- Write press release promoting Reusable Bag week (Comm. Coord.) May 2010
- Arrange to have one reusable bag delivered to every single-family household
in Plano before week of May 10th (Manager and Educ. Coord.) late April/early May
- Work with grocery stores to ensure message promoting Reusable Bag week is in
weekly sales flyer (Comm. Coord. and Educ. Coord.) April 2010

6. Identify and purchase features for 2010 LG Expo

January – March 2010

- Invite Green Bag ladies to Expo (Educ. Coord.) January 2010
- Make all travel arrangements for Reusable Bag Designers
(air, car, hotel, shipping) (Educ. Coord.) March 2010
- Work with Purchasing to hire creative talent for exhibit development (Manager) January 2010
- Develop concepts and work with designers on pull-up exhibit design
and production including text and visuals (Project team) January – March 2010
- Work with Purchasing to order all items needed for Expo including
Collection bins, tents, banners. (Educ. Coord.) January/February 2010
- Identify and hire Videographer for Expo (Educ. Coord.) Feb/March 2010

7. Marketing

February – April 2010

- Arrange for design and production of Billboards (Comm. Coord. and Educ. Coord.) Feb 2010 & 2011
- Write scripts for Radio PSAs (Comm. Coord. and Educ. Coord.) Feb 2010 & 2011
- Purchase Radio read slots (Comm. Coord.) Jan. 2010 & 2011
- Design and purchase Newspaper ads (Comm. Coord. and Educ. Coord.) April 2010
- Design and purchase Plano Profile Ad (Comm. Coord. and Educ. Coord.) Feb 2010
- Design and produce Utility Bill insert (Comm. Coord. and Educ. Coord.) Feb 2010
- Design and produce Door Hangers promoting PBRC (Comm. Coord. and Educ. Coord.) Feb 2010

8. Implementation of PBRC at 2010 Expo

April 2010

- Gather all materials, exhibits, promotional items for booth set-up (Educ. Coord.) April 2010
- Create attractive exhibit area for PBRC using banner, exhibits, Green Bag Ladies
(Educ. Coord.) April 2010
- Recruit volunteers to work at PBR booth at Expo (Vol. Coord) Feb – April 2010
- Set out plastic bag collection bins in parking lots of Expo and PBRC booth
(Educ. Coord.) April 2010

- Arrange for and set up BYOB Reusable bag video booth at Expo with videographer (Educ. Coord.) April 2010
- Arrange for videographer (Educ. Coord.) April 2010
- Set up area for pledging to use reusable bags (Educ. Coord.) April 2010

- 9. Plan and implement regional training workshop August- October 2010**
- Identify date and develop agenda (Manager and Educ. Coord.) August 2010
 - Develop invitation (Comm. Coord. and Educ. Coord.) September 2010
 - Secure location (Educ. Coord.) September 2010
 - Develop presentation sessions (Manager and Educ. Coord.) October 2010
 - Conduct workshop (Manager and Educ. Coord.) November 2010
 - Prepare report and recommendations for regional PBRC (Manager/Educ Coord) August-Oct 2010
- 10. Plan for 2011 Expo April 2011**
- Gather all materials, exhibits, promotional items for booth set-up (Educ. Coord.) April 2011
 - Create attractive exhibit area for PBRC using banner, exhibits, Green Bag Ladies (Educ. Coord.) April 2011
 - Recruit volunteers to work at PBR booth at Expo (Vol. Coord) Feb – April 2011
 - Set out plastic bag collection bins in parking lots of Expo and PBRC booth (Educ. Coord.) April 2011
 - Arrange for and set up BYOB Reusable bag photo booth at Expo with photographer (Educ. Coord.) April 2011
 - Arrange for photographer (Educ. Coord.) April 2011
 - Set up area for pledging to use reusable bags (Educ. Coord.) April 2011
- 11. Educational components**
- Identify consultant to develop interactive online lesson (Manager) January 2011
 - Identify concepts and outline lesson for consultant (Manager and Educ. Coord.) Jan/Feb 2011
 - Work with consult to develop online lesson (Manager and Educ. Coord) Feb/March 2011
 - Develop Powerpoint presentation on Plastic issues for adult audience (Educ. Coord) Feb/March 2011
 - Develop curriculum lessons on plastic issues for targeted grade levels (Educ. Coord) Feb/March 2011

FORM 7: EXPLANATION REGARDING PRIVATE INDUSTRY NOTIFICATION

According to state law (Section 361.014 (b) TX Health & Safety Code), a project or service funded under this program must promote cooperation between public and private entities, and the grant-funded project or service may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

Categories Requiring Private Sector Notification:

*If you are applying for a grant for a project that falls under the categories listed below, you **must** notify the private sector and adhere to the requirements listed below. **Failure to notify private industry service providers will result in immediate disqualification from this grant process.***

___ Source Reduction and Recycling

___ Citizens' Collection Stations and Small Registered Transfer Stations

___ **Educational and Training Demonstration Projects** (Any program or project funded with the intent of demonstrating the use of products made from recycled and/or reused materials that has as its primary purpose the education and training of residents, governmental officials, private entities, and others to encourage a market for using these materials.)

In accordance with grant requirements established by the TCEQ, a local government seeking funding for a project that is related to one of the above listed categories must adhere to the requirements listed below prior to submitting the application:

- Contact in person or in writing all known private service providers which, at the time of the application development, are providing services similar to this grant proposal within the geographic service area that the project intends to serve. A list of private service providers within the region is available from NCTCOG.
- Inform the private service providers of the basic details of the proposed project and consider any input and concerns from the private service providers about the project when completing the project proposal.
- Consider, where appropriate, meeting directly with private service providers that may have a concern about the proposed project to attempt to resolve any concerns.
- Complete applicable information on Forms 7a and 7b to provide documentation that private service providers were notified of the project.

Statement of Private Sector Notification:

I certify, as an authorized representative of the local government with regard to the public/private sector cooperation requirements as outlined in the Request for Applications, that this application:

- ___ comes under one of the categories listed above requiring private sector notification; however, I am unaware of any public or private entity which provides similar or related services within the proposed project area. *(The local government **must** attach a description of efforts to research and ascertain other existing services and demonstrate the reason why this option is selected. For example, a description of inquiries that were unsuccessful could be attached.)*
- ___ comes under one of the categories listed above requiring private sector notification; however no competitive advantage exists, therefore no private sector notification was necessary. *(The local government must explain.)*
- ___ comes under one of the categories listed above requiring private sector notification; and, I have notified the private sector industry. *(The local government must complete Forms 7a and 7b on the following page.)*

Form 7a. List of Private Service Providers Notified

Private Service Providers Contacted	Name & Position	Response When Notified	Phone Number	Date Notified

Form 7b. Summaries of Discussions with Private Industry

Provide a brief summary below of any responses to your inquiries that expressed concerns regarding your project. Furnish information on any concerns voiced by the private service providers, including:

- (1) brief summaries of any meetings or discussions held between the local government and the private service providers;
- (2) an explanation of any changes made to the proposed project to address private service provider concerns; and,
- (3) an explanation of any remaining concerns that were not addressed and why the local government determined that the concerns are not valid under the statutory requirements.

Private Service Providers Contacted	Name & Position	Please Explain Any Concerns?

8. PROJECT BUDGET SUMMARY

(up to 25 points)

Provide a detailed explanation of the costs associated with the proposed project. Offer a breakdown of the total amount of funding being requested for the proposed project. The expenses must be consistent with the category expense standards provided in the Request for Applications. Complete any of the detailed budget forms which are applicable to your proposed budget.

Budget Category	Grant Funding Amount Sought
	<i>Please round costs to the nearest dollar.</i>
1. Personnel/Salaries	\$
2. Fringe Benefits	\$
3. Travel (Does not include registration)	\$
4. Supplies (<u>consumable</u> general office supplies)	\$
5. Equipment (unit cost of \$5,000 or more)	\$
6. Construction	\$
7. Contractual (other than construction costs)	\$71,532
8. Other (anything not itemized above)	\$91,556
9. Total Direct Charges (sum of 1-8)	\$
10. Indirect Charges*	\$
11. Total (sum of 9 - 10)	\$163,088

12. Fringe Benefit Rate:	_____ %	
13. Indirect Cost Rate:	_____ %	

Identify, in detail, each budget category to which your indirect cost rate applies and explain any special conditions under which the rate will be applied:

-
-

*In accordance with the UGMS, indirect charges may be authorized if the Local government has a negotiated indirect cost rate agreement signed within the past 24 months by a federal cognizant agency or state single audit coordinating agency. Alternatively, the Local government may be authorized to recover up to 10% of direct salary and wage costs (excluding overtime, shift premiums, and fringe benefits) as indirect costs, subject to adequate documentation. If your local government has an approved cost allocation plan, please enclose documentation of your approved indirect rate.

K-18

Matching Funds/In-kind Service Contributions: \$ 52,250

Please explain in detail any matching funds or in-kind service contributions to be provided by the applicant.

Staff - \$27,600

- Administrative Assistant: 200 hrs @ \$14.00 = \$2,800
- 2 Education Coordinators: 640 hrs @ \$18.50 = \$11,840
- Video Producer: 80 hrs @ \$25 = \$2000
- Desktop publisher 40 hrs @ \$23.00 = \$ 920
- Communications Coordinator 120 hrs @ \$25 = \$3000
- Volunteer Coordinator 80 hrs @ \$22 = \$1760
- Manager 160 hrs @ \$33.00 = \$5280

Food and Beverage For volunteers at Expo \$250

Printing – for 2 Expo newsletters \$22,000

Signage - banners and signs for Expo \$2,400

Complete any of the following detailed budget forms that are applicable to your budget.

Form 8a - Detailed Personnel/Fringe/Indirect Charges Budget: Total \$ 0

This budget information should be completed if any expenses are entered for Personnel (Line 1), Fringe Benefits (Line 2) and/or Indirect Charges (Line 10) of your Project Budget Summary. In the space below, list the names and titles of individuals whose salaries will be paid for, in all or in part, from project funds. Also, indicate if funds are for a new or existing employee (attach additional sheets if necessary).

Employee name _____
Title _____
Salary \$ _____

Employee name _____
Title _____
Salary \$ _____

Employee name _____
Title _____
Salary \$ _____

TOTAL PERSONNEL/FRINGE/INDIRECT CHARGES: \$ _____

If your budget lists fringe benefits (Line 2) and/or indirect costs (Line 10), please provide the following:

- Fringe benefit rate: _____ %
- Indirect charge rate*: _____ %

*In accordance with the UGMS, indirect charges may be authorized if the local government has a negotiated indirect cost rate agreement signed within the past 24 months by a federal cognizant agency or state single audit coordinating agency. The local government may be authorized to recover up to 10% of direct salary and wage costs (excluding overtime, shift premiums, and fringe benefits) as indirect costs, subject to adequate documentation. If you have an approved cost allocation plan, please enclose documentation of your approved indirect rate.

Form 8b - Detailed Travel Budget:

Total \$ 0

This budget section should be completed if any expenses are entered for Travel (Line 3) of your Project Budget Summary. In-state travel expenses directly related to the conduct of the funded project may be authorized. Please describe below the types of travel expenses (state rate mileage, meals, airfare, hotel, etc.) expected, conference/workshop names if known, and purpose for travel. For Registration Fees, see "Other" Detailed Budget page.

Purpose of travel: _____
Cost: \$ _____

Purpose of travel: _____
Cost: \$ _____

TOTAL TRAVEL COSTS: \$ _____

Form 8c - Detailed Consumable General Office Supply Budget: Total \$ 0

This budget section should be completed if any expenses are entered for general office supplies (Line 4) of your Project Budget Summary. Supplies are consumable office items that generally have a useful life of less than one year and have a unit cost of less than \$1,000. Expenses for food and beverages are not allowable. Please describe below the general office supplies expenses you intend to purchase with project funding; attach additional sheets if necessary.

<u>General office supplies</u>	<u>Costs</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL SUPPLIES:	\$ _____

Form 8d - Detailed Equipment Budget: Total \$ 0

This budget section should be completed if any expenses are entered for Equipment (Line 5) of your Project Budget Summary. Equipment expenses include non-construction related, tangible, personal property having a unit acquisition cost of \$5,000 or more (including freight and set-up costs) with an estimated useful life over one year. Please describe below the equipment expenses you intend to purchase with project funding, providing as many details as possible at this time.

<u>Equipment (description, type, model, etc.)</u>	<u># of units</u>	<u>Costs</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
TOTAL EQUIPMENT:		\$ _____

Form 8e - Detailed Construction Budget: Total \$ 0
(All construction expenses must be pre-approved by NCTCOG.)

This budget section should be completed if any expenses are entered for Construction (Line 6) of your Project Budget Summary. Construction expenses include the cost of planning the project, materials and labor, cost of equipment attached to the permanent structure and any sub-contracts performed as part of the construction. All local government municipal laws and regulations including UGMS for bidding and contracting for services must be followed. Please itemize below the construction expenses associated with the proposed project, providing as many details as possible at this time.

<u>Construction (and related expenses)</u>	<u>Costs</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL CONSTRUCTION:	\$ _____

K-21

Form 8f - Detailed Contractual Budget:**Total \$71,532****(All contractual expenses must be pre-approved by NCTCOG.)**

This budget section should be completed if any expenses are entered for Contractual (Line 7) of your Project Budget Summary. Expenses include the cost of professional services or tasks provided by firm or individual who is not employed by the project funds recipient, other than those related to construction. All local government municipal laws and regulations including UGMS for bidding and contracting for services must be followed. Please itemize below the contractual expenses associated with the proposed project, providing as many details as possible at this time.

<u>Contractual</u>	<u>Costs</u>
Research Firm – Focus Group	\$ 6,000
Research Firm – Phone Survey	\$12,000
Exhibit Design – Pull-ups (\$4500)	\$ 4,500
Consultant - Online lesson development	\$13,000
Videographer	\$ 4,000
DVD Reproduction	\$ 250
Radio Reads	\$ 8,000
Truck Panels	\$12,782
Billboards	\$11,000

TOTAL CONTRACTUAL: \$71,532

K-22

Form 8g - Detailed Other Expenses Budget:

Total \$94,056

This budget sheet should be completed if any expenses are entered under the Other (Line 8) of your Project Budget. "Other" expenses are those for items or services that do not readily fit into any of the previous budget categories in this application. If any of the expenses listed below are included in the calculation of your rate for indirect charges, do not list them on this sheet.

Other expenses

Costs

___ Postage/delivery	\$ _____
___ Telephone/FAX	\$ _____
___ Utilities	\$ _____
___ Printing/reproduction	\$3,000
Door Hangers \$3000	
___ Advertising, public notices	\$6,500
Newspaper ads(6) - \$3,000	
Plano Profile Ad - \$1,500	
Utility Bill inserts (2) \$2,000	
___ Signage	\$1,500
Signs - \$500	
Banners - \$1,000	
___ Training (registration fees)	\$ _____
___ Office space, equipment rentals	\$ _____
___ Basic office furnishings	\$ _____
___ Books and reference materials	\$ _____
___ Repair and maintenance	\$ _____
___ Computer Hardware	\$ _____
___ Computer Software	\$ _____

Miscellaneous ALL other expenses

(Separately itemize these expenses below:)

Tents	\$700
Recycling Collection Bins	\$1880
Shipping costs	\$755
Reusable Bag Designers for two Expos \$4000	\$4,000
• Air - \$1200	
• Car \$200	
• Hotel- \$800	
• Shipping - \$600	
Reusable Bags – 73,000	\$54,020
Prompt/Reminder Items for PBRC	\$19,201
• Vinyl window clings – car - \$3,500	
• Vinyl window clings – store - \$75	
• Shopping pads - \$5,000	
• Aprons - \$3,500	
• Buttons - \$500	
• Prizes - \$3,500	
• Magnets - \$2,550	
• Concrete stencils - \$576	

TOTAL OTHER: \$ 91,556

REQUIRED
ATTACHMENTS TO THE GRANT APPLICATION

1. The governing body of the local government **must** approve a resolution or court order authorizing the Grant Project Application as well as the acceptance of grant funds if the Application ranks high enough to be considered for funding.

This resolution or court order **must** be formally signed by the appropriate official and be notarized and signed (or stamped with the local government's seal) in addition to those signatures required in the Grant Project Application. **Please furnish information regarding when your government's document will be officially executed for the benefit of the individual scoring your proposal.**

This resolution or court order will be due to NCTCOG no later than Friday, October 30, 2009.

2. If indirect costs are included in the project budget, attach the local government's latest **indirect cost allocation plan**, including documentation of approval of the plan and the indirect cost rate by the local government's Federal Cognizant Agency or State Coordinating Agency.



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: 10/26/09		Purchasing	<i>[Signature]</i> 10/26/09
Department: Planning		Budget	<i>[Signature]</i> 10/13/09
Department Head: P. Jarrell		Legal	<i>[Signature]</i> 10/16/09
Dept Signature: <i>P. Jarrell</i>		Assistant City Manager	
		Deputy City Manager	<i>[Signature]</i> 10/14/09
		City Manager	<i>[Signature]</i> 10/19/09
Agenda Coordinator (include phone #): T. Stuckey -- 7156			

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

CAPTION

An Ordinance of the City of Plano, Texas, amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 601 so as to allow the additional use of Public Storage/Mini-Warehouse on 3.1± acres of land being all of Lot 2 of Block A of Preston Park Village Addition, located on the west side of Preston Park Boulevard, 550± feet south of Park Boulevard, in the City of Plano, Collin County, Texas, presently zoned Planned Development-189-Retail/General Office; 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, and an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S):

COMMENTS:

SUMMARY OF ITEM

The City Council approved Zoning Case 2009-15 with Specific Use Permit for Mini-Warehouse/Public Storage at its October 12, 2009, meeting by a vote of 8-0. This ordinance finalizes the zoning and includes the stipulations approved by the Council for the proposed project.

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

ORDINANCE NO. _____
(Zoning Case 2009-15)

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, GRANTING SPECIFIC USE PERMIT NO. 601 SO AS TO ALLOW THE ADDITIONAL USE OF PUBLIC STORAGE/MINI-WAREHOUSE ON 3.1± ACRES OF LAND BEING ALL OF LOT 2 OF BLOCK A OF PRESTON PARK VILLAGE ADDITION, LOCATED ON THE WEST SIDE OF PRESTON PARK BOULEVARD, 550± FEET SOUTH OF PARK BOULEVARD, IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, PRESENTLY ZONED PLANNED DEVELOPMENT-189-RETAIL/GENERAL OFFICE; 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, 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 26th day of October, 2009 for the purpose of considering granting Specific Use Permit No. 601 for the additional use of Public Storage/Mini-Warehouse on 3.1± acres of land being all of Lot 2 of Block A of Preston Park Village Addition, located on the west side of Preston Park Boulevard, 550± feet south of Park Boulevard, in the City of Plano, County, Texas, presently zoned Planned Development-189-Retail/General Office; 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 26th day of October, 2009; and

WHEREAS, the City Council is of the opinion and finds that the granting of Specific Use Permit No. 601 for the additional use of Public Storage/Mini-Warehouse on 3.1± acres of land being all of Lot 2 of Block A of Preston Park Village Addition, located on the west side of Preston Park Boulevard, 550± feet south of Park Boulevard, in the City of Plano, Collin County, Texas, would not be detrimental or injurious to the public health, safety and general welfare, or otherwise offensive to the neighborhood; and



WHEREAS, the City Council is of the opinion and finds that such change 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 grant Specific Use Permit No. 601, allowing the additional use of Public Storage/Mini-Warehouse on 3.1± acres of land being all of Lot 2 of Block A of Preston Park Village Addition, located on the west side of Preston Park Boulevard, 550± feet south of Park Boulevard, in the City of Plano, Collin County, Texas, presently zoned Planned Development-189-Retail/General Office, said property being more fully described on the legal description in Exhibit "A" attached hereto.

Section II. The change granted in Section I is granted subject to:

1. No outside storage shall be allowed including storage of recreational vehicles;
2. All storage units shall be accessible only from the interior of the buildings, except one loading door entry may be accessible from the exterior of each building;
3. All exterior building facades shall be masonry, and the masonry material and building design shall be architecturally consistent with the adjacent retail shopping center;
4. Maximum height shall be two stories; and
5. Two points of pedestrian access from the property to the adjacent retail shopping center shall be provided.

Section III. 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 IV. 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 V. The repeal of any ordinance or part of ordinances affectuated 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 VI. 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 VII. 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 VIII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 26TH DAY OF OCTOBER, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

l-4

EXHIBIT "A"
LEGAL DESCRIPTION

BEING all that certain lot, tract or parcel of land situated in City of Plano, Collin County, Texas, and being all of Lot 2 of Block A of Preston Park Village Addition, an addition to the City of Plano, Collin County, Texas according to the plat thereof recorded in Cabinet "N", page 910 of the Land Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point in the west right-of-way line of said Preston Park Boulevard, same being the southeast corner of said Lot 2 of Preston Park Village Addition and the common northeast corner of Lot 1 of Block A of Bishop's Gate, an addition to the City of Plano, Collin County, Texas according to the plat thereof recorded in Cabinet "J", Page 410 of the Land Records of Collin County;

THENCE North 89° 27' 20" West and departing said west right-of-way line of Preston Park Boulevard and following along the south line of said Lot 2 of Preston Park Village Addition and the common north line of said Lot 1 of Block A of Bishop's Gate Addition, for a distance of 525.16 feet to a point for corner;

THENCE departing the north line of said Lot 1 of Block A of Bishop's Gate Addition and following along the common lines of said Lot 2 of Preston Park Village Addition and Lot 1R of Block A of Preston Park Village Addition, an addition to the City of Plano, Collin County, Texas according to the plat thereof recorded in Cabinet "N" Page 910 of the Land Records of Collin County, Texas, the following courses and distances:

North 00° 32' 40" East, for a distance of 36.77 feet to a point for corner;

South 89° 27' 20" East, for a distance of 14.50 feet to a point for corner;

North 00° 34' 47" East, for a distance of 228.52 feet to a point for corner;

South 89° 32' 36" East, for a distance of 98.86 feet to a point for corner;

South 00° 32' 43" West, for a distance of 3.14 feet to a point for corner;

South 89° 27' 18" East, for a distance of 102.60 feet to a point for corner;

South 00° 32' 41" West, for a distance of 3.61 feet to a point for corner;

South 89° 27' 18" East, for a distance of 237.22 feet to a point for corner;

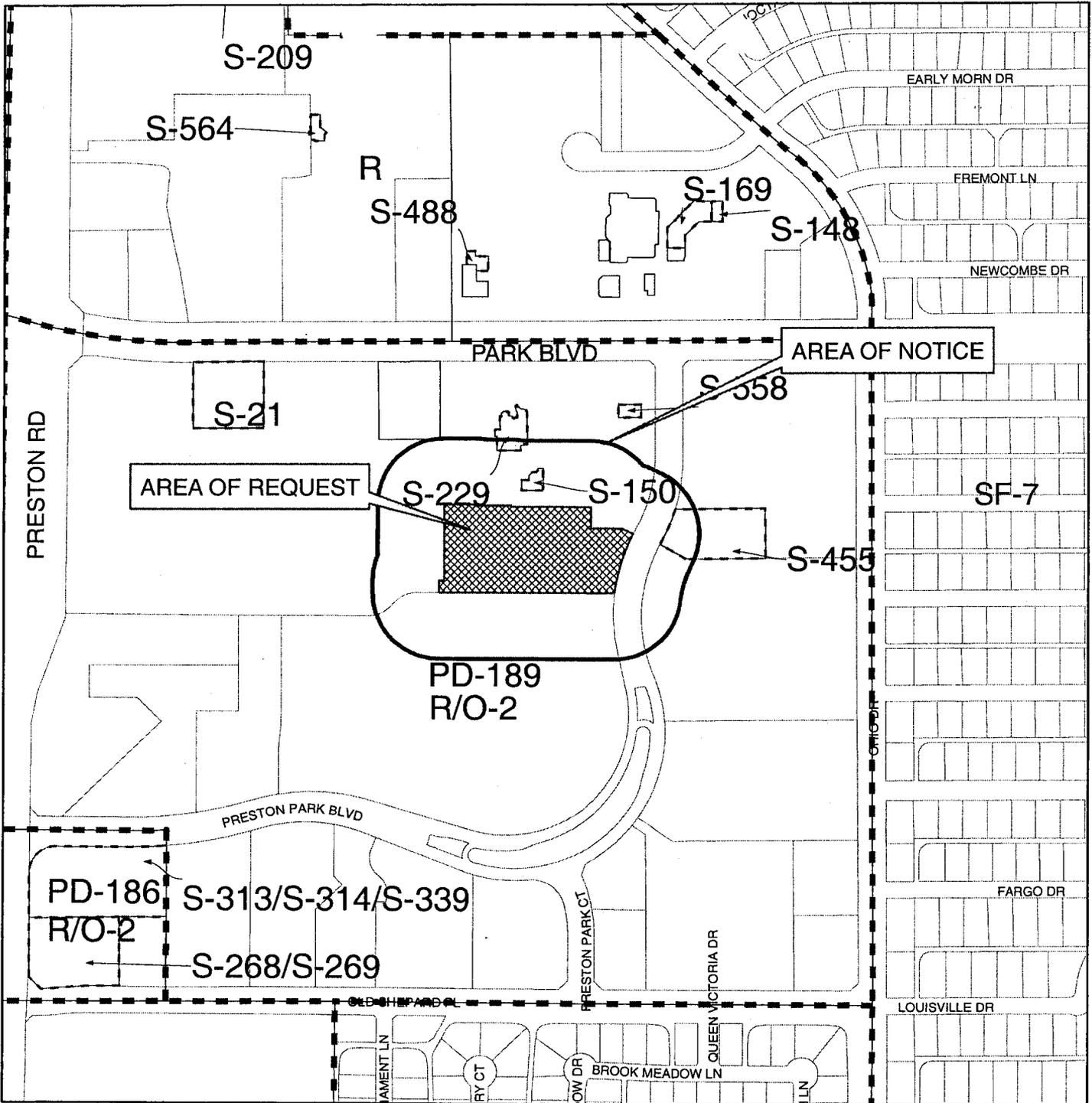
South 00° 32' 42" West, for a distance of 64.00 feet to a point for corner;

South 89° 27' 20" East, for a distance of 93.89 feet to a point for corner;

THENCE South 63°29' 53" East for a distance of 33.18 feet to a point for northeast corner of said Lot 2 of Preston Park Village Addition and the west right-of-way line of aforesaid Preston Park Boulevard, said point being in a curve to the left having a radius of 545.50 feet, a central angle of 19° 47' 26", a chord bearing of South 16° 36' 30" West at a distance of 187.49 feet;

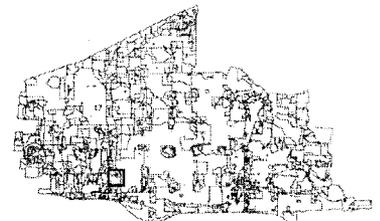
THENCE southwesterly along the west right-of-way line of said Preston Park Boulevard and said curve to the left for an arc distance of 188.42 feet to the POINT OF BEGINNING and CONTAINING 3.0587 acres of land, more or less.





Zoning Case #: 2009-15

Existing Zoning: PLANNED DEVELOPMENT-189-RETAIL/GENERAL OFFICE



l-7



○ 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	ML 10/16/09
Council Meeting Date: 10/26/09		Budget	C.S. 10-16-09
Department:	Sustainability & Environmental Services	Legal	JH 10-19-09
Department Head	Nancy Nevil	Assistant City Manager	
Dept Signature:		Deputy City Manager	RH 10-19-09
		City Manager	JH 10/19/09
Agenda Coordinator (include phone #): Tiffany Stephens x4264			

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

CAPTION

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING ORDINANCE NO. 2006-11-18 IN ITS ENTIRETY, WHICH WAS CODIFIED AS CHAPTER 21, ARTICLE II, DIVISION 4, DROUGHT CONTINGENCY PLAN, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; ADOPTING A NEW DROUGHT CONTINGENCY PLAN TO BE CODIFIED AS CHAPTER 21, ARTICLE II, DIVISION 4 OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; ESTABLISHING PROCEDURES AND CRITERIA FOR DECLARING A WATER EMERGENCY AND IMPLEMENTING AND TERMINATING DROUGHT RESPONSE STAGES; ESTABLISHING RESTRICTIONS ON CERTAIN WATER USES DURING DROUGHT RESPONSE STAGES; ESTABLISHING ADMINISTRATIVE REMEDIES AND CRIMINAL PENALTIES FOR VIOLATING THE RESTRICTIONS AND PROVISIONS FOR ENFORCEMENT OF THESE RESTRICTIONS; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE; AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

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

FUND(s): **SUSTAINABILITY & ENVIRONMENTAL SERVICES**

COMMENTS: This item has no fiscal impact.

STRATEGIC PLAN GOAL: Approval of the Drought Contingency Plan relates to the City's Goal of Partnering for Community Benefit.

SUMMARY OF ITEM

The North Texas Municipal Water District contracted with Freese & Nichols, Inc. to develop a model drought contingency plan that incorporated Texas Commission on Environmental Quality rules and considered other



**CITY OF PLANO
COUNCIL AGENDA ITEM**

plans in the Dallas/Ft. Worth region. Using this model as a guide, this drought contingency ordinance was developed with input from Public Works, Parks, Customer & Utility Services, Building Inspections, Planning, and Sustainability & Environmental Services. This ordinance will replace the existing drought contingency ordinance.

List of Supporting Documents:
Cover Memo

Other Departments, Boards, Commissions or Agencies

M-2



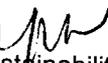
P.O. Box 860358
Plano, Texas 75086-0358
972-769-4264
Fax No. 972-769-4172



MEMORANDUM

DATE: October 9, 2009

TO: Thomas H. Muehlenbeck
City Manager

FROM: Nancy Nevil 
Director, Sustainability & Environmental Services

SUBJECT: **Drought Contingency Ordinance**

The North Texas Municipal Water District contracted with Freese & Nichols, Inc. to develop a model drought contingency plan that incorporated Texas Commission on Environmental Quality rules and considered other plans in the Dallas/Ft. Worth region. With input from Public Works, Customer & Utility Services, Parks Department, Planning, Building Inspections, and Sustainability & Environmental Services, and using NTMWD model as a guide, the attached ordinance was developed. This ordinance will replace the existing drought contingency ordinance.

Significant changes from the previous drought contingency ordinance include the following:

- Changing triggers from elevation levels to percent of total conservation pool capacity
- Adding Lake Tawakoni and/or Lake Fork and East Fork Raw Water Supply Project as water supply of NTMWD
- Revises specific percent water use reduction goals in each stage (Stage 1 (2%); Stage 2 (5%); Stage 3 (10%); and Stage 4 (whatever percent necessary)
- Revises actions to be implemented in each stage.
- Exempting government agencies watering athletic fields, high use areas or other heavily used public grounds from the watering schedules if using registered and properly functioning centrally controlled irrigation systems that can be programmed to meet overall water use reduction goals of the specified stage.

Of greatest interest are the proposed changes to the watering restrictions. In summary, the city's progression of watering restrictions is as follows:

1. City Conservation Plan (to be finalized after approval of drought contingency ordinance) will restrict irrigation from 10 am to 6 pm April 1 – October 31.
2. Stage 1: Emphasize city's water conservation policy. Emphasize limiting watering to maximum of two times per week. Ask public to follow weekly watering schedule included in ordinance.
3. Stage 2 (5% reduction): Limit to two days per week using watering schedule included in ordinance.
4. Stage 3 (10% reduction): Limit watering to once per week using weekly watering schedule included in ordinance. Between November 1 and March 31, limit watering to once every two weeks.
5. Stage 4: Prohibit landscape watering except for trees watered with hand-held or soaker hose.

Other changes made to actions implemented in each stage include:

- Adding following sections to Stage 1:

M-3

1. Prohibit watering areas that have been over seeded with cool season grasses (such as rye grass or other similar grasses) except for golf courses, erosion protection, public use areas related to public safety, and for locations using on-site well water or properly permitted on-site creek withdrawals.
 2. Prohibit use of poorly maintained irrigation systems that waste water.
- Adding following sections to Stage 2:
 1. Prohibit the use of treated water to fill or refill residential, amenity, and any other natural or manmade ponds. A pond is considered to be a still body of water with a surface area of five hundred (500) square feet or more.
 2. Limit landscape watering with sprinklers or irrigation systems to no more than two days per week, with certain exceptions (moved from Stage 3 to Stage 2).
 - Adding following sections to Stage 3:
 1. Prohibit operation of all ornamental fountains.
 2. Prohibit washing or rinsing of vehicles by hose except with a hose end cutoff nozzle.
 3. Prohibit hosing of paved areas, buildings or windows (moved from Stage 2 to 3)
 4. Limit landscape watering with sprinklers or irrigations systems to once a week with exceptions. central controlled irrigation system, and should not have to be penalized by having to follow public watering schedules
 5. Limit landscape watering with sprinklers or irrigation systems between November 1 and March 1 to once every two weeks.
 6. Prohibit hydro seeding, hydro mulching and sprigging.
 7. Consider a rate surcharge as requested by NTMWD.
 8. Initiate a rate surcharge for all water use over a certain level.
 9. If NTMWD has imposed a reduction in water available to Member Cities, impose the same percent reduction on wholesale customers.
 - Adding following sections to Stage 4:
 1. Prohibit irrigation of new landscaping using treated water.
 2. Prohibit washing of vehicles except as necessary for health, sanitation, or safety reasons.
 3. Prohibit permitting of private pools.
 4. Require all commercial water users to reduce water use by a percentage established by the City Manager.
 - The following changes were made to the section on administrative remedies for violations:
 1. Changed from administrative fee to administrative penalty
 2. Reduced the penalty from \$210 to \$150
 3. Eliminated option for keeping locking devices in place for third and fourth violations
 4. Eliminated increase in administrative fee when hearing is requested

Please let me know if you have any questions regarding this matter.

c: Rod Hogan, Deputy City Manager
 Mark Israelson, Assistant City Manager
 Alan Upchurch, Director of Public Works & Engineering
 Amy Fortenberry, Director of Parks & Recreation
 David Falls, Public Works Operations Manager
 Jim Fox, Parks Manager

M-4

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING ORDINANCE NO. 2006-11-18 IN ITS ENTIRETY, WHICH WAS CODIFIED AS CHAPTER 21, ARTICLE II, DIVISION 4, DROUGHT CONTINGENCY PLAN, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; ADOPTING A NEW DROUGHT CONTINGENCY PLAN TO BE CODIFIED AS CHAPTER 21, ARTICLE II, DIVISION 4 OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; ESTABLISHING PROCEDURES AND CRITERIA FOR DECLARING A WATER EMERGENCY AND IMPLEMENTING AND TERMINATING DROUGHT RESPONSE STAGES; ESTABLISHING RESTRICTIONS ON CERTAIN WATER USES DURING DROUGHT RESPONSE STAGES; ESTABLISHING ADMINISTRATIVE REMEDIES AND CRIMINAL PENALTIES FOR VIOLATING THE RESTRICTIONS AND PROVISIONS FOR ENFORCEMENT OF THESE RESTRICTIONS; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE; AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, in August, 2004, the North Texas Municipal Water District ("NTMWD") developed a model drought contingency plan in accordance with state law and has requested all member cities to adopt this plan; and

WHEREAS, a public hearing was conducted on May 22, 2006, to require input from the public on this drought ordinance plan; and

WHEREAS, on May 22, 2006, by Ordinance No. 2006-5-23, the City Council of the City of Plano adopted a Drought Contingency Plan to be implemented in the event of a water shortage, such Ordinance was codified as Division 4, Article II, Chapter 21 of the City of Plano Code of Ordinances; and

WHEREAS, NTMWD prepared a model drought contingency and water emergency response plan in March 2008, to address current Texas Commission on Environmental Quality ("TCEQ") requirements and to replace the plan dated August 2004, and revised in April 2006; and

WHEREAS, the City of Plano has reviewed the model plan and determined those elements and activities to be included in it plan;

WHEREAS, the City Council for the City of Plano, Texas ("City Council") has determined that the current drought contingency plan created by City Ordinance No. 2006-11-18 should be repealed in its entirety and replaced with this ordinance; and

M-5

WHEREAS, the City Council hereby finds and determines that the repeal of the previous drought contingency plan and the enactment of this drought contingency plan is in the best interest of the City of Plano and its citizens and should be adopted as set forth below.

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

Section I. Ordinance No. 2006-5-23 duly passed approved by the City Council of the City of Plano, Texas, on May 22, 2006, and Ordinance No. 2007-3-10 is hereby repealed in its entirety and replaced by this ordinance.

Section II. The Drought Contingency Plan which follows the NTMWD model and complies with the regulations and requirements of the Texas Water Code and TCEQ are hereby adopted and codified as Division 4, Drought Contingency Plan, of Article II, Water, of Chapter 21, Utilities of the Code of Ordinances of the City of Plano shall read as follows:

“DIVISION 4: DROUGHT CONTINGENCY PLAN”

Sec. 21-53. Purpose and Scope

(a) The North Texas Municipal Water District (NTMWD) supplies treated water to the City of Plano, as well as other member cities and customers. A model drought contingency plan was developed by NTMWD in accordance with the regulations and requirements of the Texas Administration Code ("TAC") and the Texas Commission on Environmental Quality ("TCEQ") and consultation with its member cities. The NTMWD model plan calls for member cities and customers to adopt similar criteria and procedures for declaring a water emergency and implementing drought or emergency response stages as used by NTMWD. Member cities and customers may also adopt more stringent drought stages than NTMWD if conditions warrant. The following ordinance is written in accordance with TAC and the NTMWD's model drought contingency plan.

(b) There is hereby established a City of Plano Drought Contingency Plan (in this division called "the Plan") to provide procedures for:

- (1) Conserving the available water supply in times of drought and emergency;
- (2) Maintaining supplies for domestic water use, sanitation, and fire protection;
- (3) Protecting and preserving public health, safety, and welfare;

M-6

- (4) Minimizing the adverse impacts of water supply shortages; and
 - (5) Minimizing the adverse impacts of emergency water supply conditions.
- (c) The plan applies to:
- (1) All persons and premises within the city using water from the city's water system ("the system");
 - (2) All wholesale contract customers; and
 - (3) All retail customers who live in unincorporated areas within the city's extraterritorial jurisdiction and are served by the system.

Sec. 21-54. Exemption

The governmental use of water for essential services such as police, fire, and emergency services which is necessary to preserve or protect the health, safety and welfare of the citizens of Plano are exempt from any and all restrictions or mandates set forth in the Plan.

Sec. 21-55. Definitions

The following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

'Customer' means a person, company or other entity connected to the City's water system and contracting with the City of Plano to receive potable water service.

'Low Flow Irrigation' means irrigation systems using devices and components that emit water at a low volume and may be designed for specific types of plant material. These irrigation devices or components limit the amount and location of water being applied. Examples include micro-irrigation (emitters and drip tubes), irrigation (bubbler and low flow spray) heads used for watering trees, soaker hoses, etc.

'Foundation' means area that includes first 24" of soil from foundation slab.

'General emergency' means a condition in which the existing or projected water supply available to the city is not anticipated to meet the normal water requirements of metered water users. This condition may be the result of factors including, but

M-7

not limited to, natural emergency conditions (i.e., drought, etc.) and/or a failure of the city's or its supplier's water distribution systems.

'*Landscape*' means natural plant materials around buildings or on grounds (i.e., trees, shrubbery, grasses and flowers) but excludes athletic fields and high use areas.

'*Landscape beds*' means plants and shrubs that are separated from turf.

'*North Texas Municipal Water District*' or "*NTMWD*" refers to the North Texas Municipal Water District.

'*Plan*' refers to the City of Plano Drought Contingency Plan.

'*Person*' means owner, occupant, or person in control of the premises or a person authorized by the owner, occupant, or person in control of the premises.

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

'*Public Health and Safety*' means such amount of water as necessary to sustain human life, reasonable standards of hygiene and sanitation, and fire suppression.

'*Putting Green*' means the ground that is specially prepared for putting. The putting green is typically defined by a fine bladed grass that requires an extremely high level of maintenance to provide a smooth surface for rolling the ball when putting.

'*System*' means the City of Plano water works system and shall include, but not be limited to, all reservoirs, storage tanks, elevated tanks, pipelines, pumps, hydrants, meters, valves, connections, engines, and all other property and machinery used in connection with the City's water works system.

'*Tee Box*' means the rectangular area considered the starting place for the hole to be played. The tee box is typically defined by a grass that requires a very high level of maintenance and mowed at a low height to provide a consistent surface to begin play on the hole.

'*Athletic Fields*' means turf or play surfaces that are provided by government agencies for public or non-profit sporting activities and events. The athletic field is typically defined by a grass that requires a very high level of maintenance and mowed at a low height to provide a consistent and safe play surface.

'High Use Areas' means publicly owned properties that have irrigated surfaces where there is a high volume of public use and there may be a significant increase in risk and liability if surfaces are not minimally irrigated to mitigate safety hazards to users caused by lack of water.

'Ornamental Fountains' means water features used for aesthetic or cosmetic purposes only that must use, or be refilled with, potable water. This shall not include pond aerifiers and other water recycling devices used to mitigate stagnant conditions in lakes, ponds, or other natural bodies of water.

'Central Controlled Irrigation Systems' means large scale, technically advanced systems used to water large or multiple sites from a central location. This "Smart" technology can monitor and adapt system operation and irrigation run times in response to conditions in the system or surrounding areas. (weather conditions, pipe breaks, etc.) These systems may also be easily programmed to reduce flow rates or the amount of water applied to meet required reduction percentages and provide historical data or reports.

Sec. 21-56. Presumption

For purposes of enforcement of administrative remedies and criminal penalties under this ordinance, it shall be presumed that the person in actual control of the watering or irrigation devices for a premise is responsible for any violations of this ordinance. The requirement of a culpable mental state is expressly waived for any administrative or criminal penalty or remedy.

Sec. 21-57. Authority to Declare Water Emergency

(a) The City Manager or the official designee may order the implementation of a drought or water emergency response stage when one or more of the trigger conditions for that stage are met. The following actions will be taken when a drought or water emergency response stage is initiated:

- (1) The public will be notified in accordance with Sec. 21.58.
- (2) NTMWD will be notified by e-mail with a follow-up letter or fax that provides details of the reasons for initiation of the drought/water emergency response stage.
- (3) If any mandatory provisions of the drought contingency and water emergency response plan are activated, the City of Plano will notify the Executive Director of the TCEQ and the Executive Director of the NTMWD within five (5) business days.

M-9

(b) Drought contingency/water emergency response stages imposed by NTMWD action may be initiated by the City of Plano. For trigger conditions internal to the City of Plano, the City Manager or official designee may decide not to order the implementation of a drought response stage or water emergency even though one or more of the trigger criteria for the stage are met. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, the anticipation of replenished water supplies, or the anticipation that additional facilities will become available to meet needs. The reason for this decision should be documented.

(c) In the event of a city-wide emergency, the order shall be made by public announcement in the City within twenty-four (24) hours of implementation. In the event of an emergency of limited geographically extent, door-to-door notification shall be made by door hangers and/or in person.

Sec. 21-58. Notification and Termination of Water Emergency

(a) Notification of Water Emergency – The City of Plano will inform and educate the public about the drought contingency and water emergency response plan by the following means:

- (1) Preparing a bulletin describing the plan and making it available at city hall and other appropriate locations.
- (2) Making the plan available to the public through the City's Web site.
- (3) Including information about the drought contingency and water emergency response plan on the City's Web site.
- (4) Notifying local organizations, schools, and civic groups that staff are available to make presentations on the drought contingency and water emergency response section of the Water Management Plan (usually in conjunction with presentations on water conservation programs).
- (5) At any time that the drought contingency and water emergency response plan is activated or the drought stage or water emergency response stage changes, the City of Plano will notify local media of the issues, the drought response stage or water emergency response stage (if applicable), and the specific actions required of the public. The information will also be publicized on the City's Web site. Utility Bill inserts and direct mail to each utility customer will also be used as appropriate.

(b) Violations Following Notification - No criminal citation or administrative fee for violating any of the water use restrictions set forth in Drought or Emergency Response Stages 2, 3 or 4 will be issued until the notice of a water emergency or notice of

drought response stage has been published in at least one issue of a newspaper in general circulation in the City of Plano.

Sec. 21-59. Initiation and Termination of Drought or Emergency Response Stages

A drought is defined as an extended period of time when an area receives insufficient amounts of rainfall to replenish the water supply, causing water supply sources, in this case reservoirs, to be depleted. In the absence of drought response measures, water demands tend to increase during a drought due to the need for additional outdoor irrigation. The severity of a drought depends on the degree of depletion of supplies and on the relationship of demand to available supplies. The NTMWD considers a drought to end when all of its supply reservoirs refill to the conservation storage pool.

(a) Initiation of a Drought or Emergency Response Stage – The City Manager or Deputy City Manager in his absence is authorized to initiate a drought or emergency response stage when one or more of the criteria applicable to that stage are triggered.

(b) Notification to Public – The following actions will be taken to notify the public when a drought emergency response stage is initiated or raised.

- (1) The public will be notified of the implementation or amendment of a drought or emergency response stage in the manner set forth in Sec. 21-58 above;
- (2) Wholesale customers and the NTMWD will be notified by telephone with a follow-up letter, e-mail or facsimile transmission;
- (3) If any mandatory provisions of the drought or emergency response contingency plan are activated, notification will be sent to the Executive Director of the TCEQ within five (5) business days:

(c) Drought or Emergency Response Stages Imposed by NTMWD – The City Manager or his authorized designee may elect not to implement a drought or emergency response stage depending on all relevant factors. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, the anticipation of replenished water supplies, or the anticipation that additional facilities will become available to meet needs. The reason for this decision should be documented.

(d) Termination of a Drought or Emergency Response Stage – The drought or emergency response stage shall remain in effect until the City Manager or Deputy City Manager in his absence determines that the conditions that triggered the drought response stage have been alleviated or no longer exist or lake levels established by NTMWD for termination are met.

M-11

(e) Notification of Public – The following actions will be taken to notify the public when a drought or emergency response stage is terminated or lowered:

- (1) The public will be notified of the termination or lowering of a drought or emergency response stage in the manner provided in Sec. 21-58 herein;
- (2) Wholesale customers and the NTMWD will be notified by telephone with a follow-up letter, e-mail, or facsimile transmission;
- (3) If any mandatory provisions of the drought response contingency plan are terminated, the Executive Director of the TCEQ will be notified within five (5) business days.

Sec. 21-59.1 Initiation and Termination Conditions for Stage 1

The NTMWD has initiated Stage 1, which may be initiated due to one or more of the following:

- (1) The NTMWD Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the declaration of Stage 1.
- (2) Water demand is projected to approach the limit of the permitted supply.
- (3) The storage in Lavon Lake is less than 65 percent of the total conservation pool capacity.
- (4) NTMWD's storage in Jim Chapman Lake is less than 65 percent of NTMWD's total conservation pool capacity.
- (5) The Sabine River Authority has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a mild drought.
- (6) NTMWD has concern that Lake Texoma, the East Fork Raw Water Supply Project, or some other NTMWD source may be limited in availability in the next six (6) months.
- (7) NTMWD water demand exceeds 90 percent of the amount that can be delivered to customers for three (3) consecutive days.
- (8) Water demand for all or part of NTMWD's delivery system approaches delivery capacity because delivery capacity is inadequate.

M-12

- (9) NTMWD's supply source becomes contaminated.
- (10) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- (11) Plano's water demand exceeds 90 percent of the amount that can be delivered to customers for three (3) consecutive days.
- (12) Plano's water demand for all or part of the delivery system approaches delivery capacity because delivery capacity is inadequate.
- (13) Plano's supply source becomes contaminated.
- (14) Plano's water supply system is unable to deliver water due to the failure or damage of major water system components.
- (15) Other criteria as determined by the City of Plano.

(b) Stage 1 may terminate when NTMWD terminates its Stage 1 condition or when the circumstances that caused the initiation of Stage 1 no longer prevail.

Sec. 21-59.2 Goals for Use Reduction and Actions Available Under Stage 1

(a) Stage 1 is intended to raise public awareness of potential drought or water emergency problems. The goal for water use reduction under Stage 1 is a **two (2) percent reduction** in the amount of water produced by NTMWD.

(b) The City Manager or official designee may order the implementation of any of the actions listed below, as deemed necessary:

- (1) Request voluntary reductions in water use by the public and by wholesale customers.
- (2) Emphasize City's water conservation policy of restricting landscape and lawn irrigation from 10 AM to 6 PM beginning April 1 through October 31.
- (3) Increase public education efforts on ways to reduce water use.
- (4) Review the problems that caused the initiation of Stage 1.
- (5) Intensify efforts on leak detection and repair.
- (6) Reduce non-essential city government water use. (Examples include street cleaning, vehicle washing, operation of ornamental fountains, etc.)

7M-13

- (7) Notify major water users and work with them to achieve voluntary water use reductions.
- (8) Reduce city government irrigation water use to meet or exceed reduction goal for the stage.
- (9) Prohibit watering areas that have been overseeded with cool season grasses (such as rye grass or other similar grasses) except for golf courses, athletic fields, erosion protection, public use areas related to public safety, and for locations using on-site well water or properly permitted on-site creek withdrawals.
- (10) Increase notification and enforcement measures to prohibit use of poorly maintained irrigation systems and correct fugitive water issues.

Sec. 21-59.3 Initiation and Termination Conditions for Stage 2

(a) The NTMWD has initiated Stage 2, which may be initiated due to one or more of the following:

- (1) The NTMWD Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the declaration of Stage 2.
- (2) Water demand is projected to approach the limit of the permitted supply.
- (3) The storage in Lavon Lake is less than 55 percent of the total conservation pool capacity.
- (4) NTMWD's storage in Jim Chapman Lake is less than 55 percent of NTMWD's total conservation pool capacity.
- (5) NTMWD has concern that Lake Texoma, the East Fork Raw Water Supply Project, or some other NTMWD source may be limited in availability in the next 3 months.
- (6) NTMWD water demand exceeds 95 percent of the amount that can be delivered to customers for three consecutive days.
- (7) NTMWD water demand for all or part of the delivery system equals delivery capacity because delivery capacity is inadequate.
- (8) NTMWD's supply source becomes contaminated.

M-14

- (9) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- (10) Plano's water demand exceeds 95 percent of the amount that can be delivered to customers for three consecutive days.
- (11) Plano's water demand for all or part of the delivery system equals delivery capacity because delivery capacity is inadequate.
- (12) Plano's supply source becomes contaminated.
- (13) Plano's water supply system is unable to deliver water due to the failure or damage of major water system components.
- (14) Other criteria as determined by the City of Plano.

(b) Stage 2 may terminate when NTMWD terminates its Stage 2 condition or when the circumstances that caused the initiation of Stage 2 no longer prevail.

Sec. 21-59.4 Goals for Use Reduction and Actions Available Under Stage 2

(a) The goal for water use reduction under Stage 2 is a **five (5) percent reduction** in the amount of water produced by NTMWD. If circumstances warrant or if required by NTMWD, the City Manager or official designee can set a goal for greater water use reduction.

(b) The City Manager or official designee may order the implementation of any of the actions listed below, as deemed necessary.

- (1) Continue or initiate any actions available under Stage 1.
- (2) Notify wholesale customers of actions being taken and request them to implement similar procedures.
- (3) Initiate engineering studies to evaluate alternatives should conditions worsen.
- (4) Further accelerate public education efforts on ways to reduce water use.
- (5) Further reduce non-essential city government water use. (Examples include street cleaning, vehicle washing, operation of ornamental fountains, etc.)

M-15

- (6) Encourage the public to wait until the current drought or emergency situation has passed before establishing new landscaping.
- (7) Prohibit the use of treated water to fill or refill residential, amenity, and any other natural or manmade ponds. A pond is considered to be a still body of water with a surface area of five hundred (500) square feet or more.

(c) The following measures impose mandatory requirements on customers. **The City of Plano must notify TCEQ and NTMWD within five (5) business days if these measures are implemented.**

- (1) Limit landscape watering with sprinklers or irrigation systems to no more than two (2) days per week. Exceptions are as follows:
 - (i) The exemption for new sodded grass areas shall not exceed thirty (30) consecutive days from the Certificate of Occupancy date, Temporary Certificate of Occupancy date, or Certificate of Completion date for new home or building construction and shall not exceed forty-five (45) consecutive days from the time of placement of newly seeded, hydro seeded, hydro mulched, or sprigged areas in open space, common areas, or right-of-ways. This exemption shall also apply to turf renovation at athletic fields and high use areas. This exemption does not waive the requirement for compliance with other water use restrictions in the Plan. Should an exemption need to extend past these time periods, the property owner must request a variance under Sec. 21-60.2.
 - (ii) Locations using on-site well water or properly permitted creek withdrawals.
 - (iii) Registered and properly functioning central controlled irrigation system and low flow irrigation systems. Government agencies watering athletic fields, high use areas, or any other public grounds that are heavily used by the public during evening or morning hours are exempt from this watering schedule; however, public irrigation systems will be programmed to meet overall water use reduction goals of the stage. Running government irrigation systems for maintenance, testing, and calibration purposes at any time is also exempt; provided there is a maintenance technician on-site while the system is running.
- (2) Landscape watering shall comply with the following mandatory watering schedule. Watering shall take place on the days indicated based upon the location of the service address as indicated on the Watering Zone Map attached hereto as "Exhibit A:"

M-16

Zone	Morning Watering Time 2:00 AM to 9:59 AM	Evening Watering Time 6:01 PM to 10:00 PM
1	Monday	Thursday
2	Friday	Tuesday
3	Saturday	Wednesday
4	Thursday	Monday
5	Tuesday	Friday
6	Wednesday	Saturday

Note: Landscape watering will be enforced as follows:

2:00 a.m. to 9:59 a.m. on assigned day watering is allowed;
10:00 a.m. to 5:59 p.m. – watering is not allowed;
6:00 p.m. to 9:59 p.m. on assigned day watering is allowed;
10:00 p.m. to 1:59 a.m. – watering is not allowed.

Except as otherwise provided herein, landscape watering is prohibited on Sunday.

- (3) Prohibit planting of cool season grasses (such as rye grass or other similar grasses) that intensify cool season water requirements.

Sec. 21-59.5 Initiation and Termination Conditions for Stage 3

(a) The NTMWD has initiated Stage 3, which may be initiated due to one or more of the following:

- (1) The NTMWD Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the declaration of Stage 3.
- (2) Water demand is projected to approach or exceed the limit of the permitted supply.
- (3) The storage in Lavon Lake is less than forty-five (45) percent of the total conservation pool capacity.
- (4) NTMWD's storage in Jim Chapman Lake is less than forty-five (45) percent of NTMWD's total conservation pool capacity.
- (5) The Sabine River Authority has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a Moderate drought. (Measures required by SRA under a

M-17

Moderate drought designation are similar to those under NTMWD's Stage 3).

- (6) The supply from Lake Texoma, the East Fork Raw Water Supply Project, or some other NTMWD source has become limited in availability.
- (7) NTMWD water demand exceeds ninety-eight (98) percent of the amount that can be delivered to customers for three (3) consecutive days.
- (8) NTMWD water demand for all or part of the delivery system exceeds delivery capacity because delivery capacity is inadequate.
- (9) NTMWD's supply source becomes contaminated.
- (10) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- (11) Plano's water demand exceeds ninety-eight (98) percent of the amount that can be delivered to customers for three (3) consecutive days.
- (12) Plano's water demand for all or part of the delivery system exceeds delivery capacity because delivery capacity is inadequate.
- (13) Plano's supply source becomes contaminated.
- (14) Plano's water supply system is unable to deliver water due to the failure or damage of major water system components.
- (15) Other criteria as determined by the City of Plano.

(b) Stage 3 may terminate when NTMWD terminates its Stage 3 condition or when the circumstances that caused the initiation of Stage 3 no longer prevail.

Sec. 21-59.6 Goals for Use Reduction and Actions Available Under Stage 3

(a) The goal for water use reduction under Stage 3 is a **ten (10) percent reduction** in the amount of water obtained from NTMWD. If circumstances warrant or if required by NTMWD, the City Manager or official designee can set a goal for a greater water use reduction.

(b) The City Manager or official designee must implement any action(s) required by NTMWD. In addition, the City Manager or official designee may order the implementation of any of the actions listed below, as deemed necessary.

M-18

- (1) Continue or initiate any actions available under Stages 1 and 2.
- (2) Notify wholesale customers of actions being taken and request them to implement similar procedures.
- (3) Implement viable alternative water supply strategies.

(c) The following measures impose mandatory requirements on customers. **The City of Plano must notify TCEQ and NTMWD within five (5) business days if these measures are implemented.**

- (1) Initiate mandatory water use restrictions as follows:
 - (i) Prohibit hosing of paved areas, buildings, or windows., (Pressure washing of impervious surfaces is allowed) except for outdoor public restrooms, pavilions and shelters, where public health, safety, and welfare may be compromised by unsanitary conditions if the facilities cannot be cleaned.
 - (ii) Prohibit operation of all ornamental fountains or other amenity impoundments to the extent they use treated water.
 - (iii) Prohibit washing or rinsing of vehicles by hose except with a hose end cutoff nozzle.
- (2) Limit landscape watering with sprinklers or irrigation systems at each service address to **once every seven (7) days**. Landscape watering shall comply with the following mandatory watering schedule. Watering shall take place on the day indicated based upon the location of the service address as indicated on the Watering Zone Map attached hereto as "Exhibit B."

Zone	Collection Day
1	Monday
2	Tuesday
3	Wednesday
4	Thursday
5	Friday
6	Saturday

All customers, residential and commercial, will be allowed to water as delineated by zones. Exceptions are as follows:

- (i) Foundations, new landscaping, new plantings (first year) of shrubs and trees may be watered within a ten (10) foot radius of their trunk for up to two (2) hours on any day by a hand-

MM 19

held hose, a soaker hose, or a dedicated zone using a low flow irrigation system.

- (ii) Prohibit watering of golf courses using treated water, except as needed to keep greens and tee boxes alive.
 - (iii) Government agencies watering athletic fields, high use areas, or any other public grounds that are heavily used by the public during evening or morning hours are exempt from this watering schedule; however, public irrigation systems will be programmed to meet overall water use reduction goals of the stage, and comply with watering schedules where feasible. Running government irrigation systems for maintenance, testing, and calibration purposes at any time is also exempt; provided there is a maintenance technician on-site while the system is running.
 - (iv) Locations using other sources of water supply for irrigation may irrigate without restrictions.
 - (v) Low flow irrigation systems may irrigate without restrictions.
- (3) Limit landscape watering with sprinklers or irrigation systems between November 1 and March 31 to once every two weeks. An exception is allowed for landscape associated with new construction as noted in (2)(i) above.
 - (4) Prohibit hydro seeding, hydro mulching, and sprigging.
 - (5) Existing swimming pools may not be drained and refilled (except to replace normal water loss).
 - (6) Consider a rate surcharge as requested by NTMWD.
 - (7) Initiate a rate surcharge for all water use over a certain level.
 - (8) If NTMWD has imposed a reduction in water available to Member Cities and Customers, impose the same percent reduction on wholesale customers.

Sec. 21-59.7 Initiation and Termination Conditions for Stage 4

(a) The NTMWD has initiated Stage 4, which may be initiated due to one or more of the following:

- (1) The NTMWD Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the declaration of Stage 4.

M-20

- (2) Water demand is projected to approach or exceed the limit of the permitted supply.
- (3) The storage in Lavon Lake is less than thirty-five (35) percent of the total conservation pool capacity.
- (4) NTMWD's storage in Jim Chapman Lake is less than thirty-five (35) percent of NTMWD's total conservation pool capacity.
- (5) The Sabine River Authority has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a severe drought or Emergency.
- (6) The supply from Lake Texoma, the East Fork Raw Water Supply Project, or some other NTMWD source has become severely limited in availability.
- (7) NTMWD water demand exceeds the amount that can be delivered to customers.
- (8) NTMWD water demand for all or part of the delivery system seriously exceeds delivery capacity because the delivery capacity is inadequate.
- (9) NTMWD's supply source becomes contaminated.
- (10) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- (11) Plano's water demand exceeds the amount that can be delivered to customers.
- (12) Plano's water demand for all or part of the delivery system seriously exceeds delivery capacity because the delivery capacity is inadequate.
- (13) Plano's supply source becomes contaminated.
- (14) Plano's water supply system is unable to deliver water due to the failure or damage of major water system components.
- (15) Plano is unable to recover water storage of one hundred (100) percent in all storage facilities within a twenty-four (24) hour period.
- (16) Plano's individual plan may be implemented if other criteria dictate.

M-21

(b) Stage 4 may terminate when NTMWD terminates its Stage 4 condition or when the circumstances that caused the initiation of Stage 4 no longer prevail.

Sec. 21-59.8 Goals for Use Reduction and Actions Available Under Stage 4

(a) The goal for water use reduction under Stage 4 is a **reduction of whatever amount is necessary** in the amount of water obtained from NTMWD. If circumstances warrant or if required by NTMWD, the City Manager or official designee can set a goal for a greater water use reduction.

(b) The City Manager or official designee must implement any action(s) required by NTMWD. In addition, the City Manager or official designee may order the implementation of any of the actions listed below, as deemed necessary.

- (1) Continue or initiate any actions available under Stages 1, 2, and 3.
- (2) Notify wholesale customers of actions being taken and require them to implement similar procedures.
- (3) Implement viable alternative water supply strategies.

(c) The following measures impose mandatory requirements on customers. **The City of Plano must notify TCEQ and NTMWD within five (5) business days if these measures are implemented.**

- (1) Prohibit the irrigation of new landscaping using treated water.
- (2) Prohibit washing of vehicles except as necessary for health, sanitation, or safety reasons.
- (3) Prohibit commercial and residential landscape watering, except that foundations and trees (within a ten foot radius of their trunk) may be watered for two (2) hours on any day with a hand-held hose, a soaker hose, or a dedicated zone using a low flow irrigation system. Central controlled irrigation systems and low flow irrigation systems are **not** exempt from this requirement. Water may not be trucked or otherwise transported into the City for irrigation purposes.
- (4) Prohibit the permitting of private pools. Pools already permitted may be completed and filled with water. Existing private and public pools may add water to maintain pool levels but may not be drained and refilled.
- (5) Require all commercial water users to reduce water use by a percentage established by the City Manager or official designee.
- (6) If NTMWD has imposed a reduction in water available to Member Cities and Customers, impose the same percent reduction on wholesale customers.

M-22

Sec. 21-60. Procedures for Granting Variances to the Plan

(a) The City Manager or official designee may grant temporary variances for existing water uses otherwise prohibited under this drought contingency and water emergency response plan if one or more of the following conditions are met:

- (1) Failure to grant such a variance would cause an emergency condition adversely affecting health, sanitation, or fire safety for the public or the person or entity requesting the variance.
- (2) Compliance with this plan cannot be accomplished due to technical or other limitations.
- (3) Alternative methods that achieve the same level of reduction in water use can be implemented.

(b) Variances shall be granted or denied at the discretion of the City Manager or official designee. All petitions for variances should be in writing and addressed to the Director of Public Works and Engineering. All petitions should include the following information:

- (1) Name and address of the petitioners
- (2) Purpose of water use
- (3) Specific provisions from which relief is requested
- (4) Detailed statement of the adverse effect of the provision from which relief is requested
- (5) Description of the relief requested
- (6) Period of time for which the variance is sought
- (7) Alternative measures that will be taken to reduce water use
- (8) Other pertinent information.

(c) Variances are considered temporary and must be submitted for reconsideration should the Drought and Emergency Response Stage elevate from the stage in which the temporary variance was approved to any higher stage of response.

Sec. 21-61. Criminal Penalty

Any person, firm or corporation who violates any term or provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. These criminal penalties may be imposed in addition to any Administrative or Civil Remedy listed herein. Each day a violation continues shall constitute a separate offense. The requirement of a culpable mental state is expressly waived for criminal prosecution purposes.

M-23

Sec. 21-62. Administrative Remedies for Violations

The following administrative remedies are available to the City in cases of noncompliance with the provisions of this ordinance. These administrative remedies may be assessed in addition to any criminal penalty assessed for a violation of this ordinance. Each day a violation continues shall constitute a separate violation for purposes of assessing administrative remedies. The requirement of a culpable mental state is expressly waived for administrative remedies.

In the event that any person violates the provisions of this ordinance, the Director of Public Works & Engineering or his designee, shall give notice to such person setting forth the evidence of noncompliance with the restrictions outlined in stages 2, 3 and 4.

(a) In-Ground Irrigation Systems Violations

(1) Notification of Violation

- (i) Placement of a notice flag on the premises to advise the person his double check device has been turned off and locked; and
- (ii) The City will install a locking device on the person's double check valve to the irrigation system; and
- (iii) Notice to be sent by letter delivered by United States Postal Service addressed to the person as recorded in the city's customer and utility billing records notifying that the irrigation system has been turned off and locked. The letter shall advise the person of the assessment of administrative remedies and fees. The letter shall advise the person the procedures for payment of the administrative fees and the procedure for requesting a hearing to contest the assessment of the administrative remedies.

(2) Remedy

- (i) The administrative penalty is one hundred fifty dollars (\$150) per occurrence when paid at Customer and Utility Services.

(b) Violations for Systems Without Double-Check Valves or In-Ground Irrigation Systems

(1) Violation Notification

- (i) Placement of a notice flag on the premises to advise the person he was in violation of watering restrictions.

M-24

- (ii) Notice shall be sent by letter delivered by United States Postal Service addressed to the person as recorded in the city's customer and utility billing records notifying the person of the violation. The letter shall advise the person of the assessment of administrative fees. The letter shall advise the person the procedures for payment of the administrative fees and the procedure for requesting a hearing to contest the assessment of the administrative remedies.

(2) Remedy

- (i) The administrative penalty is one hundred fifty dollars (\$ 150.00) per occurrence when paid at Customer & Utility Services.

(c) Procedures for Paying Administrative Penalties or Requesting a Hearing on the Fees

- (1) Personal appearance by the person listed on the city's Customer & Utility Services billing records is required to re-establish service to the irrigation system. The person's government issued photo identification must be provided at time of payment or upon request for a hearing.
- (2) A person may request a hearing to protest the assessment of any administrative penalty. To request a hearing, the owner must make the request in person to the City of Plano Public Works Department within fifteen (15) business days from the date on the written notice of violation.
- (3) The Public Works Operations Manager or his designee shall conduct the hearing. The Manager shall evaluate all information offered by the petitioner at the hearing. The person making the request for a hearing shall bear the burden of proof to show why, by a preponderance of the evidence, the administrative remedy should not be assessed. The Manager will provide a decision at the time of the hearing or within three (3) business days following the conclusion of the hearing.
- (4) Payment of any penalty assessed at the hearing must be made within seven (7) business days of the decision from the hearing. Any penalty not paid within this time limit shall be added to the person's next water billing cycle;

M-25

- (5) A person may appeal the decision from the hearing to the office of the Director of Public Works & Engineering or his designee. The Director or his designee shall hear the appeal;
 - (6) The request for an appeal must be filed in writing with the office of the Director of Public Works & Engineering within three (3) business days from the notice being given by the Manager.
 - (7) The Director or his designee shall render a decision at the time of the appeal or within three (3) business days from the conclusion of the appeal.
 - (8) A person may elect to pay the administrative penalty without requesting a hearing. Any penalty not paid within fifteen (15) business days from the date on the written notice shall be added to the person's next water billing cycle.
 - (9) Unpaid penalties related to the Drought Contingency Plan can result in the termination of the domestic water services in accordance with City of Plano Code Chapter 21, Article IV, Service Charges Generally, Section 21-131(d) and the established policies and procedures of the Customer and Utility Services Department.
- (d) Re-establishment of service to double checks that have been locked-off.
- (1) The administrative penalty is to be paid at City of Plano Customer & Utility Services. The locking device will be removed within three (3) working days after notice of payment is received from Customer & Utility Services.
 - (2) Request for same day service to unlock double check will require an additional fee of forty dollars (\$40) to be paid in advance at Customer & Utility Services.
- (e) It shall be unlawful for a person to remove through the use of any means or otherwise cause damage to a lock that has been placed on a backflow prevention device by the director or his designee pursuant to this section.
- (f) *Administrative remedy for customers outside city.* The Director of Public Works & Engineering shall advise wholesale water customers outside the city limits receiving water service from the city of actions taken under the plan by telephone and/or by letter. Noncompliance with any requirement in any stage may result in termination of service and removal of meter. Prior to such termination, the wholesale water customer shall be given notice of the city's intent to terminate service and shall have five (5)

M-26

business days from the mailing of such notice to appeal the decision to the Director. Notice shall be sufficient if sent by certified mail to the last known address of the customer. If service is terminated, customer shall be liable for all costs of reinstallation. Termination of service to a wholesale water customer under this provision is subject also to the terms of any written contract between the city and the customer.”

Section III. All wholesale water contracts entered into or renewed after adoption of this ordinance, including contract extensions, shall include a provision that requires all wholesale water customers of the City to comply with the provisions of this ordinance.

Section IV. This plan shall be coordinated with the Region C Water Planning Group and with North Texas Municipal Water District, as required by TCEQ, to insure consistency with the appropriate approved regional water plan.

Section V. All provisions of the ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed 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 VI. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

Section VII. The repeal of any ordinance or part of any 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 affecting any rights of the municipality under any section or provision of any ordinance at the time of passage this Ordinance.

Section VIII. This Ordinance shall become effective from and after its passage and publication as required by law.

7M-27

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, on this the _____ day of _____, 2009.

Phil Dyer, MAYOR

ATTESTED TO:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

M-28



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: 10/26/09		Purchasing	<i>Def</i> 10-19-09	
Department: Property Standards		Budget	<i>C.S.</i> 10-19-09	
Department Head: Cynthia O'Banner		Legal	<i>JD RF</i> 10-19-09	
Dept Signature: <i>Cynthia O'Banner</i>		Assistant City Manager		
		Deputy City Manager	<i>[Signature]</i> 10-19-09	
		City Manager	<i>[Signature]</i> 10/20/09	
Agenda Coordinator (include phone #): Gloria Carter (972) 941-5150				
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 FOR THE CITY OF PLANO, TEXAS, REPEALING DIVISION 5, GRAFFITI, SECTIONS 11-95 THROUGH 11-100, OF ARTICLE II, SIGNS, OF CHAPTER 11, LICENSES AND BUSINESS REGULATIONS, OF THE CITY OF PLANO CODE OF ORDINANCES AND REPLACING WITH SECTIONS 11-95 THROUGH 11-100.3 TO UPDATE DEFINITIONS, CLARIFY PROCEDURES, AND NOTICE FOR GRAFFITI REMOVAL THAT CONFORM TO STATE LAW; AND PROVIDING A PENALTY CLAUSE, A SEVERABILITY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A PUBLICATION CLAUSE, AND 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: 2009-2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	249,111	0	249,111
Encumbered/Expended Amount	0	-34,338	0	-34,338
This Item	0	-32,650	0	-32,650
BALANCE	0	182,123	0	182,123
FUND(S):				
COMMENTS: Funds are available in the 2009-10 Property Standards budget. This new unfunded state mandate, in the amount of \$32,650, will leave a current year balance of \$182,123 for other contractual professional services. STRATEGIC PLAN GOAL: Graffiti removal relates to the City's goal of Livable and Sustainable Community.				
SUMMARY OF ITEM				
To change and clarify definitions, include the free offer of removal by the City, amend the appeal and reimbursement timeframes and list exceptions for abatement in conformance with new state law effective 9/1/09.				
List of Supporting Documents: Memo		Other Departments, Boards, Commissions or Agencies		



MEMORANDUM

To: Tom Muehlenbeck, City Manager

Cc: Frank Turner, Deputy City Manager

From: Cynthia O'Banner, Property Standards Director 

Re: Graffiti Ordinance Amendment

Date: October 16, 2009

The City of Plano adopted Graffiti Ordinance No. 95-8-49 on August 28, 1995 which declared graffiti to be a public nuisance and required property owners to remove graffiti from their property within fifteen (15) calendar days after notification by the City. The graffiti ordinance provided for no cost graffiti abatement upon receipt of a written consent and a waiver of liability from property owners. As a matter of policy, graffiti was routinely removed at no cost from residential properties and non-profit commercial enterprises upon receipt of an executed consent and waiver. Other commercial businesses were notified to remove graffiti at their expense. During FY 2008-09 a total of 246 graffiti actions were generated of which 35 were resolved by other departments or public utilities, 143 notices were issued and 28 actual site abatements were performed by the City's graffiti abatement contractor (see attached map).

The attached copy of Sec. 29 of H.B. 2086 amended Chapter 250 of the Local Government Code by adding Section 250.006 which established statewide graffiti removal authority for municipalities. Sec. 250.006(b) asserts that municipalities may not issue a graffiti removal notice to a property owner unless the municipality has first offered to remove the graffiti from the owner's property at no cost and the property owner has refused the offer. This new legislation passed during the last 81st regular session of the Texas State Legislature and became effective September 1, 2009.

The legislation does not expressly obligate the City to remove graffiti from private properties however, it does stipulate a mandate establishing that the City cannot require the removal of graffiti from private properties unless the City has first offered to remove the graffiti at no cost and the property owner has refused the City's offer. Therefore, based on this newly adopted mandate, amendments to the City's graffiti ordinance are necessary. Supplementary graffiti abatement funding and further innovative ways to eliminate graffiti will also be required as part of the City's continuing efforts to eradicate graffiti vandalism from our community.

Please advise if further information or discussion is needed.

/Co'b

Attachments: H.B. 2086 (Sec. 29)
Graffiti Notices Map

7-2

follows:

Sec. 101.067. GRAFFITI REMOVAL. This chapter does not apply to a claim for property damage caused by the removal of graffiti under Section 250.006, Local Government Code.

SECTION 28. Section 485.018(a), Health and Safety Code, is amended to read as follows:

(a) A political subdivision or an agency of this state may not enact an ordinance or rule that requires a business establishment to display an abusable volatile chemical, other than aerosol paint, in a manner that makes the chemical accessible to patrons of the business only with the assistance of personnel of the business.

SECTION 29. Chapter 250, Local Government Code, is amended by adding Section 250.006 to read as follows:

* Sec. 250.006. GRAFFITI REMOVAL. (a) Except as provided by Subsection (h), a county by order or a municipality by ordinance may require the owner of property within the jurisdiction of the county or municipality to remove graffiti from the owner's property on receipt of notice from the county or municipality.

(b) The order or ordinance must provide that a county or municipality may not give notice to a property owner under Subsection (a) unless:

- (1) the county or municipality has offered to remove the graffiti from the owner's property free of charge; and
- (2) the property owner has refused the offer.

(c) The order or ordinance must require a property owner to remove the graffiti on or before the 15th day after the date the property owner receives notice under Subsection (a). If the property owner fails to remove the graffiti on or before the 15th day after the date of receipt of the notice, the county or municipality may remove the graffiti and charge the expenses of removal to the property owner in accordance with a fee schedule adopted by the county or municipality.

(d) The notice required by Subsection (a) must be given:

(1) personally to the owner in writing;

(2) by letter sent by certified mail, addressed to the property owner at the property owner's address as contained in the records of the appraisal district in which the property is located;
or

(3) if service cannot be obtained under Subdivision (1) or (2):

(A) by publication at least once in a newspaper of general circulation in the county or municipality;

(B) by posting the notice on or near the front door of each building on the property to which the notice relates; or

(C) by posting the notice on a placard attached to a stake driven into the ground on the property to which the notice relates.

(e) The county or municipality may assess expenses incurred under Subsection (c) against the property on which the work is

performed to remove the graffiti.

(f) To obtain a lien against the property for expenses incurred under Subsection (c), the governing body of the county or municipality must file a statement of expenses with the county clerk. The statement of expenses must contain:

- (1) the name of the property owner, if known;
- (2) the legal description of the property; and
- (3) the amount of expenses incurred under Subsection

(c).

(g) A lien described by Subsection (f) attaches to the property on the date on which the statement of expenses is filed in the real property records of the county in which the property is located and is subordinate to:

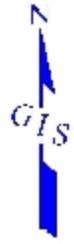
- (1) any previously recorded lien; and
- (2) the rights of a purchaser or lender for value who acquires an interest in the property subject to the lien before the statement of expenses is filed as described by Subsection (f).

(h) An order or ordinance described by this section must include an exception from the requirement that an owner of property remove graffiti from the owner's property if:

- (1) the graffiti is located on transportation infrastructure; and
- (2) the removal of the graffiti would create a hazard for the person performing the removal.

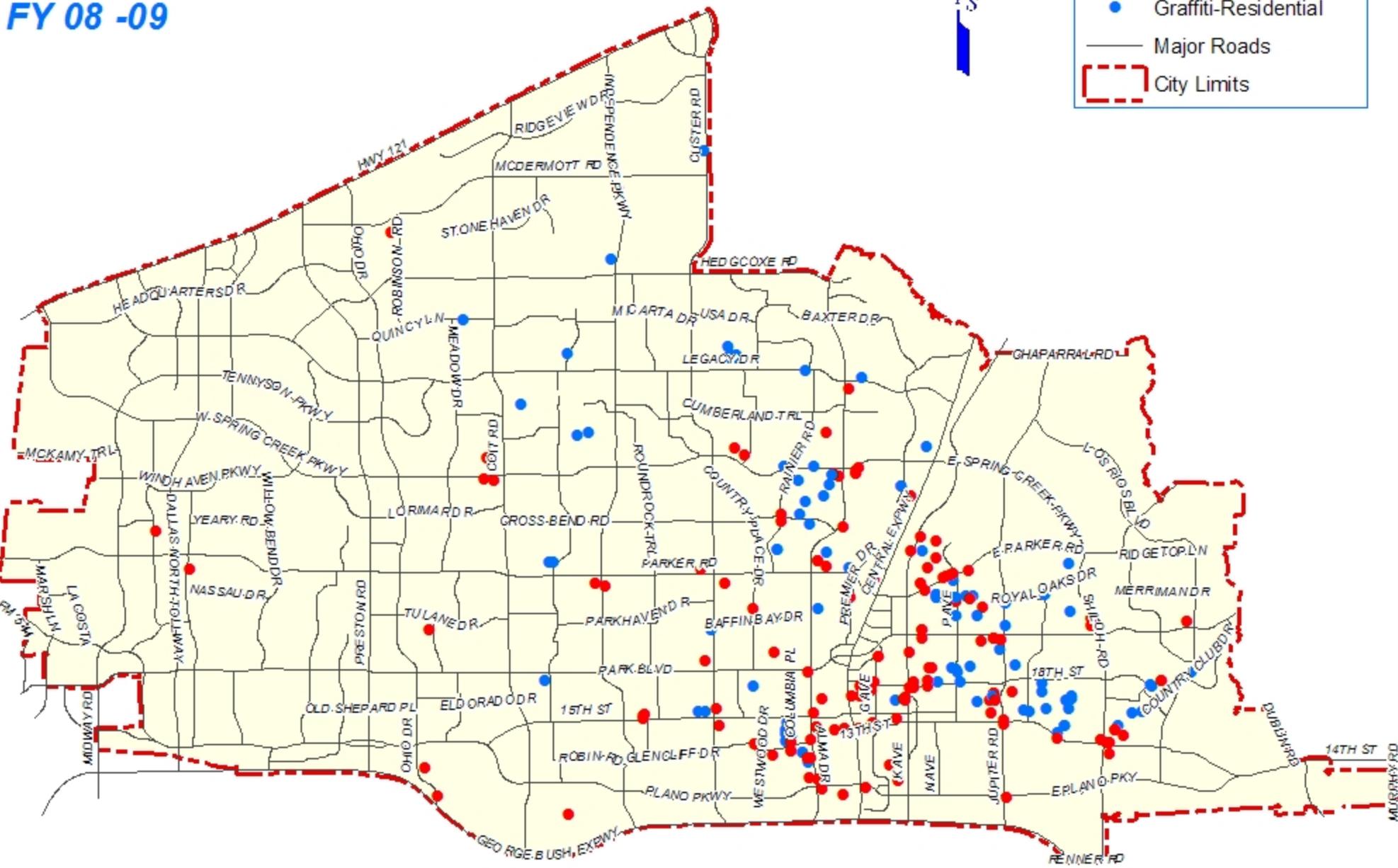
SECTION 30. Section 101.067, Civil Practice and Remedies

City of Plano Graffiti Violations FY 08 -09



Case Types

- Graffiti-Business
- Graffiti-Residential
- Major Roads
- City Limits



DIVISION 5. GRAFFITI*

***Editor's note:** Section II of Ord. No. 95-8-49, adopted Aug. 28, 1995, added Div. 5, Art. II, of this chapter. Sections 1--6 of § II of said ordinance have been included herein as §§ 11-95--11-100 at the editor's discretion.

Cross references: Offenses--Miscellaneous, Ch. 14.

Sec. 11-95. Definitions.

The following words, terms, and phrases, when used in this article shall have the meaning ascribed to them in this section, unless the context of their usage clearly indicates a different meaning:

~~*Building official.* Building official for the city.~~

Code Official. The official who is charged with the administration and enforcement of this code, or any City employee or employees designated by the City Manager to perform activities related to notification and abatement of graffiti.

~~*Designee(s).* City employee or employees designated by the city manager to perform activities related to notification and abatement of graffiti.~~

Graffiti. Visual blight or any unauthorized inscription, word, figure, painting, or other defacement by any graffiti implement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved, ~~form of painting, scratching, writing or inscription~~ including initials, slogans, symbols or drawings, regardless of the content or nature of the material that has been affixed or applied to any public or private property, including walls, buildings, fences, windows, signs or other structures or surfaces to the extent that the graffiti was not authorized in advance by the owner and/or occupant of the property or despite advance authorization is otherwise deemed a public nuisance and is visible from any public property or right-of-way or is visible from the private property of another person. "Graffiti" does not include any of the foregoing used for advertising purposes that is placed on any property in compliance with any applicable City ordinance, state or federal law.

Marker. Any indelible marker or similar implement with writing tip exceeding three-sixteenth inch (0.1875) in width that contains a solution that cannot be removed with water after it dries.

Minor. Any person under seventeen (17) years of age.

Owner. Any owner of record or other person who has contractual responsibility for the property.

Parent. A person who is a natural parent or adoptive parent of a minor. As used herein, "parent" shall also include a court-appointed guardian or other person twenty-one (21) years of age or older, authorized by the parent, by a court order, or by the court-appointed guardian to have the care and custody of the minor.

Unauthorized. Means without the consent of the owner or without authority of law, regulation or ordinance. Unless the owner proves otherwise, lack of consent will be presumed under circumstances tending to show (i) the absence of evidence of specific authorization by the owner, (ii) that the visual blight is inconsistent with the design and the use of the subject property, or (iii) that the person causing the visual blight was unknown to the owner.

~~(Ord. No. 95-8-49, § II(1), 8-28-95)~~

Sec. 11-96. Declaration of public nuisance.

Graffiti is declared to be a public nuisance. Whenever the existence of graffiti on any property within the city shall come to the attention of a ~~designee~~ Code Official, the ~~designee~~ Code Official shall offer free removal of the graffiti from the owner's property by the municipality. The ~~designee~~ Code Official may remove graffiti, at no cost to the owner, ~~any graffiti the director determines to be in violation of subsection (A)~~ upon receiving written consent and a waiver of liability from the property owner, occupant, or owner representative. The ~~director~~ Code Official may prepare and distribute forms for this purpose.

If the owner refuses the municipality's offer, the Code Official shall cause a written notice as provided in this article identifying the graffiti and direct its removal to the owner of the property.

In addition to the penalty provided in this division, the City shall have all remedies available at law and equity to abate such nuisance.

~~(Ord. No. 95-8-49, § II(2), 8-28-95)~~

Sec. 11-97. Pressurized paint containers and marker pens sale to minors.

It is unlawful for any person to knowingly sell, exchange, give, loan, or cause or permit to be sold, exchanged, given, or loaned, any marker or pressurized devices containing paint or marker to any minor person.

~~(Ord. No. 95-8-49, § II(3), 8-28-95)~~

Sec. 11-98. Possession by minors.

(a) It is unlawful for any minor to possess any marker, aerosol can, or any pressurized device containing paint (including clear lacquer) while upon private or public property.

(b) It shall be an affirmative defense to a violation of this section that at the time of possession:

(1) The minor was accompanied or supervised by a parent, guardian, or teacher in connection with a bona fide school project; or a supervisor during the minor's regular employment;

(2) The minor possessed the pressurized paint device or marker on the property on which he or she lives.

(3) The possession occurred as part of an organized event sponsored or supervised by a school, church or some other officially recognized entity; or

(4) The possession occurred during employment while the minor was supervised by his or her employer.

~~(Ord. No. 95-8-49, § II(4), 8-28-95)~~

Sec. 11-99. Responsibility of parent or guardian for graffiti created by minor.

A parent commits an offense if he or she knowingly permits, or by insufficient control allows, the minor to create graffiti on tangible property in the city.

~~(Ord. No. 95-8-49, § II(5), 8-28-95)~~

Sec. 11-100. Owner responsibility.

(a) An owner of property commits an offense if, after notification by the City, the owner fails to paint over or remove all graffiti from the owner's property that is visible from any public property or right-of-way or from any private property other than the property on

which the graffiti exists; unless the graffiti was created on the property with the ~~owner's consent~~ advanced authorization of the owner, is not otherwise deemed a public nuisance and does not violate applicable City ordinance, federal or state law.

(b) An owner maintains a public nuisance if the owner fails to remove graffiti or refuses to allow graffiti to be removed from their property after having been notified by the City or upon order by the Code Official in the event of appeal.

Sec. 11-101. Notice and Appeal Procedures

(a) ~~Before issuing a citation for a violation under subsection (a) of this section,~~ The ~~designee~~ Code Official shall serve the property owner with written notice to remove the graffiti within fifteen (15) calendar days from the date the notice was served. The notice shall contain:

- (1) The date and nature of the violation;
- (2) Physical location of the violation by street address, lot and block number;
- (3) Name of owner; and
- (4) If the condition is not corrected within fifteen (15) days of receipt of such

notice or the owner fails to file an appeal within ~~fifteen (15)~~ ten (10) days of receipt of notice to the ~~building~~ Code Official, the City may, without further notice, enter upon the property by it or its contractors, remove the graffiti and charge the costs incurred to the owner. If the graffiti is removed by the City, the cost may be charged to the property owner and a lien may be filed against the property.

(b) The ~~written~~ notice ~~may~~ shall be served by:

- (1) personal delivery in writing to the owner; ~~or by~~
- (2) ~~United States~~ certified mail, ~~return receipt requested~~ to the owner at the owner's ~~post office~~ address as ~~shown on the tax rolls~~ contained in the records of the appraisal district in which the property is located; or
- (3) ~~if the owner cannot be found or the notice is returned by the United States Postal Service as undeliverable, then the owner may be notified by:~~ if service cannot be obtained under Subdivision (1) or (2):
 - (4A) publication at least ~~twice within ten (10) consecutive days~~ once in a newspaper of general circulation in the municipality;
 - (2B) posting notice of the violation on or near the front door of each building on the property in violation; or
 - (3C) if the property contains no buildings, posting the notice of a violation on a placard attached to a stake driven into the ground on the property in violation.

(c) The owner of property subject to abatement under this article may appeal the decision of the ~~designee~~ Code Official by requesting a hearing ~~by notifying~~, in writing, to the ~~building~~ Code Official within ~~fifteen (15)~~ ten (10) days following the receipt of the notice. The hearing shall be conducted by the ~~building~~ Code Official for the purpose of determining whether the conditions constitute a public nuisance under the provisions of this article. The owner shall be provided written notice of the time and place of the hearing at least ten (10) days prior thereto. At the hearing, the owner and the ~~designee~~ Code Official may present any evidence relevant to the proceeding. The ~~building~~ Code Official's decision shall be final.

Sec. 11-102. Authority to Abate.

(a) If the owner fails to timely abate the graffiti or request a hearing, or if it is determined at the hearing that the graffiti constitutes a nuisance, the City shall be authorized to abate the nuisance, assess its expenses, and place a lien on the property.

(b) Prior to the filing of a lien, the **designee Code Official** shall mail the owner **an invoice** a notification of expenses incurred by the municipality for the costs of removal. In the event the **invoice is** incurred expenses are not paid within **fifteen (15) twenty (20)** days, a lien shall be filed **on** against the property.

~~(e) An owner maintains a public nuisance if he fails to remove graffiti or refuses to allow graffiti to be removed from his property after having been notified by the city or in the event of appeal, upon order by the building official.~~

~~(f) The designee may remove, at no cost to the owner, any graffiti the director determines to be in violation of subsection (A) upon receiving written consent and a waiver of liability from the property owner. The director may prepare and distribute forms for this purpose.~~

(c) Whenever public funds as authorized by this division are used for graffiti removal, such removal shall include only the painting or repair of the area where the graffiti is located **to the extent required to avoid aesthetic disfigurement to the neighborhood. ;** ~~except in the following circumstances:~~

~~(1) The designee determines that a more extensive area is required to be repaired or repainted in order to avoid aesthetic disfigurement to the neighborhood and provides prior written notice to the owner; or~~

~~(2) The owner agrees to pay the costs of repainting or repairing the more extensive area.~~

~~(Ord. No. 95-8-49, § II(6), 8-28-95)~~

Sec. 11-103. Exception.

(a) This article does not apply if:

(1) graffiti is located on transportation infrastructure; and

(2) the removal of the graffiti would create a hazard for the person performing the removal.

ORDINANCE NO. _____

AN ORDINANCE FOR THE CITY OF PLANO, TEXAS, REPEALING DIVISION 5, GRAFFITI, SECTIONS 11-95 THROUGH 11-100, OF ARTICLE II, SIGNS, OF CHAPTER 11, LICENSES AND BUSINESS REGULATIONS, OF THE CITY OF PLANO CODE OF ORDINANCES AND REPLACING WITH SECTIONS 11-95 THROUGH 11-100.3 TO UPDATE DEFINITIONS, CLARIFY PROCEDURES, AND NOTICE FOR GRAFFITI REMOVAL THAT CONFORM TO STATE LAW; AND PROVIDING A PENALTY CLAUSE, A SEVERABILITY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A PUBLICATION CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, Division 5, Graffiti, Sections 11-95 through 11-100, of Article II, Signs, of Chapter 11, License and Business Regulations, of the City of Plano Code of Ordinances, regulates procedures for notice and removal of graffiti; and

WHEREAS, graffiti abatement is an important element in eliminating the public nuisance and fighting related gang activity, therefore, regulations relating thereto promote the health, safety and welfare of the City; and

WHEREAS, the 81st Legislature of the State of Texas amended Section 250.006 of the Texas Local Government Code changing procedures for graffiti removal, effective September 1, 2009; and

WHEREAS, the City Council of the City of Plano finds it necessary to repeal Division 5, Graffiti, Sections 11-95 through 11-100 of Article II, Signs, of Chapter 11, License and Business Regulations, of the City of Plano Code of Ordinances for clarity and consistency with State law.

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

Section I. The City Council hereby repeals Ordinance No. 95-8-49 currently codified under, Article II, Signs, Division 5, Graffiti, Sections 11-95, through 11-100, of Chapter 11, Licenses and Business Regulations, and replaces Sections 11-95 through 11-100 with the following new language verbatim:

“DIVISION 5. GRAFFITI

Sec. 11-95. Definitions.

The following words, terms, and phrases, when used in this article shall have the meaning ascribed to them in this section, unless the context of their usage clearly indicates a different meaning:

71-11

City. City of Plano.

Code Official. The official who is charged with the administration and enforcement of this code, or any City employee or employees designated by the City Manager to perform activities related to notification and abatement of graffiti.

Graffiti. Visual blight or any unauthorized inscription, word, figure, painting, or other defacement by any graffiti implement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved, including initials, slogans, symbols or drawings, regardless of the content or nature of the material that has been affixed or applied to any public or private property, including walls, buildings, fences, windows, signs or other structures or surfaces to the extent that the graffiti was not authorized in advance by the owner and/or occupant of the property or despite advance authorization is otherwise deemed a public nuisance and is visible from any public property or right-of-way or is visible from the private property of another person. "Graffiti" does not include any of the foregoing used for advertising purposes that is placed on any property in compliance with any applicable City ordinance, state or federal law.

Marker. Any indelible marker or similar implement with writing tip exceeding three-sixteenth inch (0.1875) in width that contains a solution that cannot be removed with water after it dries.

Minor. Any person under seventeen (17) years of age.

Owner. Any owner of record or other person who has contractual responsibility for the property.

Parent. A person who is a natural parent or adoptive parent of a minor. As used herein, "parent" shall also include a court-appointed guardian or other person twenty-one (21) years of age or older, authorized by the parent, by a court order, or by the court-appointed guardian to have the care and custody of the minor.

Unauthorized. Means without the consent of the owner or without authority of law, regulation or ordinance. Unless the owner proves otherwise, lack of consent will be presumed under circumstances tending to show (i) the absence of evidence of specific authorization by the owner, (ii) that the visual blight is inconsistent with the design and the use of the subject property, or (iii) that the person causing the visual blight was unknown to the owner.

Sec. 11-96. Declaration of Public Nuisance.

Graffiti is declared to be a public nuisance. Whenever the existence of graffiti on any property within the City shall come to the attention of a Code Official, the Code Official shall offer free removal of the graffiti from the owner's property by the municipality. The Code Official may remove graffiti, at no cost to the owner, upon receiving written consent and a waiver of liability from the property owner, occupant, and/or the owner's representative. The Code Official may prepare and distribute forms for this purpose.

If the owner refuses the municipality's offer, the Code Official shall cause a written notice as provided in this article identifying the graffiti and direct its removal to the owner of the property.

In addition to the penalty provided in this division, the City shall have all remedies available at law and equity to abate such nuisance.

71-12

Sec. 11-97. Pressurized Paint Containers and Marker Pens Sale to Minors.

It is unlawful for any person to knowingly sell, exchange, give, loan, or cause or permit to be sold, exchanged, given, or loaned, any marker or pressurized devices containing paint or marker to any minor person.

Sec. 11-98. Possession by Minors.

(a) It is unlawful for any minor to possess any marker, aerosol can, or any pressurized device containing paint (including clear lacquer) while upon private or public property.

(b) It shall be an affirmative defense to a violation of this section that at the time of possession:

- (1) The minor was accompanied or supervised by a parent, guardian, or teacher in connection with a bona fide school project; or a supervisor during the minor's regular employment;
- (2) The minor possessed the pressurized paint device or marker on the property on which he or she lives.
- (3) The possession occurred as part of an organized event sponsored or supervised by a school, church or some other officially recognized entity; or
- (4) The possession occurred during employment while the minor was supervised by his or her employer.

Sec. 11-99. Responsibility of Parent or Guardian for Graffiti Created by Minor.

A parent commits an offense if he or she knowingly permits, or by insufficient control allows, the minor to create graffiti on tangible property in the City.

Sec. 11-100. Owner Responsibility.

(a) An owner of property commits an offense if, after notification by the City, the owner fails to paint over or remove all graffiti from the owner's property that is visible from any public property or right-of-way or from any private property other than the property on which the graffiti exists; unless the graffiti was created on the property with the advanced authorization of the owner, is not otherwise deemed a public nuisance and does not violate applicable City ordinance, federal or state law.

(b) An owner maintains a public nuisance if the owner fails to remove graffiti or refuses to allow graffiti to be removed from their property after having been notified by the City or upon order by the Code Official in the event of appeal.

Sec. 11-100.1. Notice and Appeal Procedures

(a) The Code Official shall serve the property owner with written notice to remove the graffiti within fifteen (15) calendar days from the date the notice was served. The notice shall contain:

- (1) The date and nature of the violation;
- (2) Physical location of the violation by street address, lot and block number;
- (3) Name of owner; and
- (4) If the condition is not corrected within fifteen (15) days of receipt of such notice or the owner fails to file an appeal within ten (10) days of receipt of notice to the

71-13

Code Official, the City may, without further notice, enter upon the property by it or its contractors, remove the graffiti and charge the costs incurred to the owner. If the graffiti is removed by the City, the cost may be charged to the property owner and a lien may be filed against the property.

(b) The written notice shall be served by:

- (1) personal delivery in writing to the owner;
- (2) certified mail to the owner at the owner's address as contained in the records of the appraisal district in which the property is located; or
- (3) if service cannot be obtained under Subdivision (1) or (2):
 - A) publication at least once in a newspaper of general circulation in the municipality;
 - B) posting notice of the violation on or near the front door of each building on the property in violation; or
 - C) if the property contains no buildings, posting the notice of violation on a placard attached to a stake driven into the ground on the property in violation.

(c) The owner of property subject to abatement under this article may appeal the decision of the Code Official by requesting a hearing, in writing, to the Code Official within ten (10) days following the receipt of the notice. The hearing shall be conducted by the Code Official for the purpose of determining whether the conditions constitute a public nuisance under the provisions of this article. The owner shall be provided written notice of the time and place of the hearing at least ten (10) days prior thereto. At the hearing, the owner and the Code Official may present any evidence relevant to the proceeding. The Code Official's decision shall be final.

Sec. 11-100.2. Authority to Abate.

- (a) If the owner fails to timely abate the graffiti or request a hearing, or if it is determined at the hearing that the graffiti constitutes a nuisance, the City shall be authorized to abate the nuisance, assess its expenses, and place a lien on the property.
- (b) Prior to the filing of a lien, the Code Official shall mail the owner a notification of expenses incurred by the municipality for the costs of removal. In the event the incurred expenses are not paid within twenty (20) days, a lien shall be filed against the property.
- (c) Whenever public funds as authorized by this division are used for graffiti removal, such removal shall include only the painting or repair of the area where the graffiti is located to the extent required to avoid aesthetic disfigurement to the neighborhood.

Sec. 11-100.3. Exception.

- (a) This article does not apply if:
 - (1) graffiti is located on transportation infrastructure; and
 - (2) the removal of the graffiti would create a hazard for the person performing the removal.”

Section II. 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 of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

71-14

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

Section 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, 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 V. 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 ordinances at the time of passage of this ordinance.

Section VII. This Ordinance shall become effective upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the 26th day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

71-15



**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>	10-19-09	
Council Meeting Date:	10/26/09	Budget	<i>KM</i>	10-19-09	
Department:	Budget	Legal	<i>HS</i>	10-19-09	
Department Head	Karen Rhodes	Assistant City Manager			
Dept Signature:	<i>Karen Rhodes</i>	Deputy City Manager			
		City Manager	<i>JM</i>	10/19/09	
Agenda Coordinator (include phone #): Casey Srader					
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, APPROVING THE CARRYING FORWARD OF CERTAIN FISCAL YEAR 2008-09 FUNDS TO FISCAL YEAR 2009-10; AND APPROVING AN EFFECTIVE DATE.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	3,016,957	0	3,016,957
BALANCE		0	3,016,957	0	3,016,957
FUND(S): GENERAL FUND, CATV FUND, WATER & SEWER FUND, SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND, AND MUNICIPAL DRAINAGE FUND					
COMMENTS: Funds are available from the FY 2008-09 approved budget in the listed funds as carry-forwards into FY 2009-10 for the completion of various projects and other purchases. STRATEGIC PLAN GOAL: Carrying forward of available funds for the completion of projects relates to the City's Goal of "Financially Strong City with Service Excellence."					
SUMMARY OF ITEM					
This ordinance approves the FY 2008-09 Carry Forward List to FY 2009-10 and sets the level of transfers for the various funds, as reviewed by the City Council.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
2008-09 Carry Forward Request Log					

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, APPROVING THE CARRYING FORWARD OF FISCAL YEAR 2008-2009 FUNDS TO FISCAL YEAR 2009-10; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 14, 2009, the City Council approved the budget for fiscal year 2009-2010 by passing Ordinance 2009-9-13; and

WHEREAS, State law provides that cities have the authority to carry forward funds from the previous fiscal year to the current fiscal year; and

WHEREAS, the City Council, upon full consideration of the matter, is of the opinion that it is in the best interest of the City and its citizens to carry forward remaining funds from fiscal year 2008-2009 to fiscal year 2009-2010.

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

Section I. Subject to the applicable provisions of State law and the City Charter, the City Council hereby approves carrying forward the funds listed below from the fiscal year budget 2008-2009 to the fiscal year budget 2009-2010:

A.	General Fund	\$2,771,074
B.	CATV Fund	\$50,847
C.	Water & Sewer Fund	\$88,578
C.	Sustainability & Environmental Services Fund	\$66,458
D.	Municipal Drainage Fund	\$40,000

Ordinance No. _____

Page 2

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

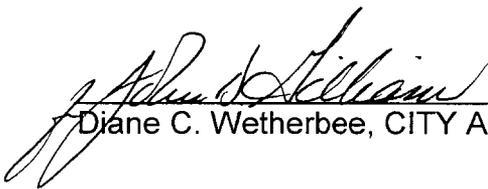
DULY PASSED AND APPROVED this the _____ day of _____, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

0-3

**CARRY FORWARD REQUESTS
2008-09 FUNDS TO 2009-10**

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes: From	To	Approval Amount
BUDGETED PROJECTS/ITEMS							
214	Municipal Court Admin.	Contracts-Professional Services	\$ 4,200	Covers final invoices from Municipal Services Bureau	214.6111	214.6312	\$ 4,200
215	Non-Departmental	Medicare Settlement	\$ 750,000	To cover special Medicare settlement	215.6127	215.6127	\$ 750,000
		DART Railway Studies	\$ 50,000	Consulting Engineer Contract for DART study.	215.6312	215.6312	\$ 50,000
		In-Kind Services	\$ 5,389	For Downtown @ Sundown Event	215.6499	215.6499	\$ 5,389
		In-Kind Services	\$ 2,000	For Plano International Festival	215.6499	215.6499	\$ 2,000
		Committee Activities	\$ 8,347	Additional cost of 2010 Complete Count	215.6499	215.6499	\$ 8,347
321	Records Management	Travel/Professional Development	\$ 3,200	Assoc. of Records Managers/Admin. (ARMA) '09/'10 Annual Conf. are in same budget year.	321.6307	321.6307	\$ 3,200
		Contracts/Prof. Services	\$ 4,372	Shredding of media and duplication of film rolls	321.6312	321.6312	\$ 4,372
		Maintenance Agreements	\$ 3,800	Transfer funds to Office Supplies for use in transferring C.S. records into Laserfiche.	321.6313	321.6201	\$ 3,800
352	Facilities Maintenance	Utility Gas Account Coverage	\$ 80,000	Lower budgeted natural gas and warmer than usual winter precipitated this coverage. Will use in anticipated increased gas prices next budget year.	352.6332	352.6332	\$ 80,000
534	PSC	Tower Security	\$ 241,385	Tower security camera system is currently out for CSP (competitive sealed proposal) bid.	534.8452	534.8452	\$ 241,385
552	Fire	Fire Station #12 completion	\$ 107,146	Supplemental funds required to complete Station 12 and Logistics Facility opening.	552.6201	552.6201	\$ 1,250
					552.6204	552.6204	\$ 600
					552.6208	552.6208	\$ 52,678
					552.6209	552.6209	\$ 500
					552.6211	552.6211	\$ 5,000
					552.6252	552.6252	\$ 6,400
					552.6301	552.6301	\$ 500
					552.6321	552.6321	\$ 4,025
					552.6322	552.6322	\$ 1,380
					552.6325	552.6325	\$ 3,795

0-4

CARRY FORWARD REQUESTS
2008-09 FUNDS TO 2009-10

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes: From	To	Approval Amount
552	Fire continued	Fire Station #12 completion con't			552.6327	552.6327	\$ 3,450
					552.8416	552.8416	\$ 16,568
					552.8441	552.8441	\$ 1,000
					552.8453	552.8453	\$ 10,000
552	Fire	Fire Logistics Warehouse	\$ 91,292	Supplemental funds required to complete Station 12 and Logistics Facility opening.	552.6208	552.6208	\$ 68,342
					552.6209	552.6209	\$ 300
					552.6321	552.6321	\$ 4,025
					552.6322	552.6322	\$ 1,380
					552.6325	552.6325	\$ 3,795
					552.6327	552.6327	\$ 3,450
552	Fire	Laptop	\$ 2,089	Dell Precision M4400 Laptop for Fire. Order has not been rec'd.	552.8453	552.8453	\$ 10,000
					552.6252	552.6252	\$ 2,089
					552.6312	552.6312	\$ 10,000
556	Emergency Management	HazMat Physicals	\$ 10,000	Contract for HazMat personnel medical oversight.	556.8411	556.8411	\$ 135,088
					556.8416	556.8416	\$ 472,500
					556.8453	556.8453	\$ 285,766
					556.6208	556.6208	\$ 16,018
		Promotional Supplies	\$ 5,410	Items given to those in need and/or giveaways at seminars, conferences, etc.	556.6219	556.6219	\$ 5,410
		E-Team Incident Management Software	\$ 18,200	Provide two (2) Train-the-Trainer classes for the E-Team incident management software.	556.6309	556.6309	\$ 18,200
		Laptop	\$ 1,876	New Dell Precision M4400 Laptop on order for Shane through Technology Services, laptop has not been received	556.6252	556.6252	\$ 1,876
619	Property Standards	Cellular Hardware	\$ 465	Three (3) mobile phone units not purchased in '08/'09 until field staff positions are filled.	619.6241	619.6241	\$ 465
		Three (3) desktop/three (3) laptop computers	\$ 8,100	For staff positions not filled in '08/'09, but will be filled in '09/'10.	619.6252	619.6252	\$ 8,100
		Contracts-Professional Services	\$ 17,500	To pay for outstanding Contract Work Orders that have not been invoiced yet.	619.6312	619.6312	\$ 17,500

**CARRY FORWARD REQUESTS
2008-09 FUNDS TO 2009-10**

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes: From	To	Approval Amount
619	Property Standards con't	Contracts-Other	\$ 17,250	To pay for outstanding Contract Work Orders that have not been invoiced yet.	619.6319	619.6319	\$ 17,250
		International Accreditation	\$ 18,570	Accreditation was placed on hold due to possible budget reduction, will pursue in '09/10	619.6446	619.6446	\$ 18,570
623	Rental Regist./Inspection	Cellular Hardware	\$ 465	Three (3) mobile phone units not purchased in '08/09 until field staff positions are filled.	623.6241	623.6241	\$ 465
		Two (2) wireless capable notepads	\$ 5,000	For staff positions not filled in '08/09, but will be filled in '09/10.	623.6252	623.6252	\$ 5,000
622	Planning	Contracts-Professional Services	\$ 75,000	To complete 2nd phase of consulting work on Zoning Ordinance.	622.6312	622.6312	\$ 75,000
		Contracts-Professional Services	\$ 8,000	ESRI/Laserfiche Search Tools, modifications to existing web interface and migration of existing documents.	622.6312	622.6312	\$ 8,000
632	Creative Arts	Monument Sign	\$ 20,000	Donation made for monument sign at Courtyard Theater/Cox Bldg. Playhouse.	001.2311	001.2311	\$ 20,000
		Professional Photographer	\$ 1,500	Share of fees for "Lifestyle Photography" project used to promote Plano.	632.6312	632.6312	\$ 1,500
634	Park Field Services	Median Maintenance	\$ 31,923	Amount received from Frisco to cover portion of joint median maintenance at Hwys 121/289.	634.6312	634.6312	\$ 30,448
648	Ground Maint. Svcs.#2	Water Utilities/landscape maintenance at Legacy	\$ 26,000	Invoice for landscaping maintenance/water at Legacy location for FY 2008-09 contract period from Hewlett Packard (EDS) has not been received by the City.	648.6333	648.6333	\$ 26,000
719	Neighborhood Maint.	Safe Street Program	\$ 214,698	Certain projects in the SSP have been identified but not yet installed. These funds are required to complete the projects in FY '09/10.	719.6202	719.6202	\$ 1,882
					719.6208	719.6208	\$ 178,515
					719.6312	719.6312	\$ 32,401
					719.6348	719.6348	\$ 1,900
721	Engineering	Contract-Professional Services	\$ 30,000	Use with funds from Municipal Drainage Funds to contract a consultant to evaluate proposed changes to Storm Water Mgmt. Program/ modification to ISWM procedures.	721.6312	721.6312	\$ 30,000
01	Subtotal General Fund		\$ 2,772,549				\$ 2,771,074

0-6

0-7

**CARRY FORWARD REQUESTS
2008-09 FUNDS TO 2009-10**

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount
					From	To	
181	PTN	2 Major systems replacement projects	\$ 30,847	Project has been moving slowly since approved. Beginning phases of two (2) major	181.6208	181.6208	\$ 4,348
					181.6222	181.6222	\$ 5,390
					181.6229	181.6229	\$ 5,117
					181.6251	181.6251	\$ 3,992
					181.6252	181.6252	\$ 7,000
					181.6309	181.6309	\$ 3,000
					181.6346	181.6346	\$ 2,000
281	Website Services	Web Service Design	\$ 20,000	Integration of Ektron 400 CMS tool with existing SharePoint infrastructure.	281.6312	281.6312	\$ 20,000
18	Subtotal CATV		\$ 50,847				\$ 50,847
765	Meter Services	CHGOUT of Water Meters	\$ 38,500	Replacement of broken, dead or foggy meters	765.6272	765.6272	\$ 38,500
		NEWSET Water Meters	\$ 50,078	Meters for new construction	765.6272	765.6272	\$ 50,078
41	Subtotal Water & Sewer		\$ 88,578				\$ 88,578
712	Environ. Education	Texas AgriLife Research	\$ 10,400	Research for Water Conservation Rainwater Harvesting Workshops	712.6203	712.6203	\$ 10,360
		Countertops for Environmental Education Center (EEC)	\$ 6,300	Recycled content countertops for demo. purposes & LEED design/certification.	712.6314	712.6314	\$ 5,300
				Countertops made from recycled content countertops for demo. purposes & LEED design/certification.	712.6313	712.6313	\$ 1,000
		Water Education Program	\$ 14,000	Items for the development of water education models, exhibits and campaigns.	712.6312	712.6312	\$ 14,000
		Sustainability Training	\$ 11,840	Training workshops contracted for sustainable topics.	712.6312	712.6312	\$ 11,214
		On-line Registration Program	\$ 5,000	Registration program for education/outreach programs offered.	712.6319	712.6319	\$ 5,000
714	Compost Marketing/Ops	Radio Funds	\$ 4,184	Purchase call box, antennae and radio for new 121 site.	714.6234	714.6234	\$ 4,184
		Rental Equipment	\$ 10,000	Two (2) months rental of Trammell Screen to build up stockpile of compost ready-for-sale.	714.6346	714.6346	\$ 10,000

CARRY FORWARD REQUESTS
2008-09 FUNDS TO 2009-10

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes: From	To	Approval Amount
751	Special Waste	Median Litter Receptacles	\$ 5,400	Replacement of bases, lids and bodies that are damaged or are beyond-life condition.	751.6208	751.6208	\$ 5,400
45	Subtotal Sustainability & Environmental Services		\$ 67,124				\$ 66,458
472	Municipal Drainage Admin	Contract-Professional Services	\$ 40,000	Use with Engineering Funds to contract a consultant to evaluate proposed changes to Storm Water Mgmt. Program/ modification to iSWM procedures.	472.6312	472.6312	\$ 40,000
47	Subtotal Municipal Drainage Fund		\$ 40,000				\$ 40,000
GRAND TOTAL CARRY FORWARDS REQUESTED			\$ 3,019,098	GRAND TOTAL CARRY FORWARDS APPROVED			\$ 3,016,957
			\$ 3,019,098				\$ 3,016,957

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0-9

**CARRY FORWARD REQUESTS
2008-09 FUNDS TO 2009-10**

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes: From	To	Approval Amount
PROTECTED CARRY FORWARD FUNDS							
PROTECTED CARRY FORWARD FUNDS							
01-532	Police: LEOSE Funds	State LEOSE (Law Enforcement Officer Standards and Education) funds	\$ 140,171	State LEOSE (Law Enforcement Officer Standards and Education) funds are used for training, as authorized by Chief of Police, and mandated by state law. LEOSE regulations and this sub account started in 1997. At the end of each fiscal year the remaining	01.532.6309.LEOSE	01.532.6309.LEOSE	\$ 140,171
01-532	Police: TICKET Funds	Major Criminal Investigation Expense Funds are protected by State Law	\$ 25,000	Funds in this sub account are used for expenses of major criminal investigations. The balance of this sub account is carried forward at the end of each fiscal year to sub account 01.532.6312.TICKET.	532.6312.TICKET	532.6312.TICKET	\$ 25,000
14-131	911 Wireline Fees	Funds are protected by State Law	\$ 120,000	911 System upgrade, Supplement #131002, waiting on vendor/RFP Depot	131.8416	131.8416	Fund Balance
19-233	Teen Court Program Fund		Fund Balance				Fund Balance
20-234	Municipal Court. Tech Fund		Fund Balance				Fund Balance
20-234	Municipal Court. Tech Fund	Software	\$ 15,000	Courthouse 2000 Software on backup server and UPG of Prod Svr. CO requested by Tech. Svcs. since orders have not been rec'd.	234.8452	234.8451	\$ 15,000
55-232	Courts Building Security Fund		Fund Balance				Fund Balance
71-226	Economic Development	Advertising	\$ 20,000	To fund existing Collin County Coalition commitments/elements to organization's new website.	226.6306	226.6306	\$ 20,000
71-231	Economic Development Incentive Fund	Incentive Fund	\$ 1,708,021	Carry forward remaining fund balance for future projects	231.6319	231.6319	Fund Balance
86-276	Juvenile Case Manager Fund		Fund Balance				Fund Balance



**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: 10/26/09		Purchasing	<i>DF</i> 10-15-09
Department: Public Works & Engineering		Budget	<i>C.S.</i> 10-15-09
Department Head: Alan Upchurch		Legal <i>SW</i>	10/15/09
Dept Signature: <i>Alan Upchurch</i>		Assistant City Manager	
		Deputy City Manager <i>[Signature]</i>	10/15/09
		City Manager <i>[Signature]</i>	10/16/09
Agenda Coordinator (include phone #): I. Pegues - 7152 <i>[Signature]</i>			

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

CAPTION

An ordinance of the City of Plano, Texas, amending Section 12-74(b) of Chapter 12 (Traffic Code) of the Code of Ordinances to establish prima facie maximum speed limits for motor vehicles operating upon Windhaven Parkway between Spring Creek Parkway and Dallas Parkway, and amend the prima facie maximum speed limits for motor vehicles operating upon Premier Drive between Parker Road and Spring Creek Parkway within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S):

COMMENTS: Any revenue received via fines as a result of this Ordinance is undeterminable at this time.

SUMMARY OF ITEM

The City of Plano Transportation Engineering Division received a request to review the speed limits on Windhaven Parkway and Premier Drive. The Transportation Engineering Division performed engineering and traffic investigations and determined that Windhaven Parkway between Spring Creek Parkway and Dallas Parkway and Premier Drive between Parker Road and Spring Creek Parkway should both be speed zoned from 35 miles per hour to 40 miles per hour. The Transportation Engineering Division supports speed zoning Windhaven Parkway and Premier Drive each at 40 miles per hour.

List of Supporting Documents: Maps	Other Departments, Boards, Commissions or Agencies
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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING SECTION 12-74(b) OF CHAPTER 12 (TRAFFIC CODE) OF THE CODE OF ORDINANCES TO ESTABLISH PRIMA FACIE MAXIMUM SPEED LIMITS FOR MOTOR VEHICLES OPERATING UPON WINDHAVEN PARKWAY BETWEEN SPRING CREEK PARKWAY AND DALLAS PARKWAY, AND AMEND THE PRIMA FACIE MAXIMUM SPEED LIMITS FOR MOTOR VEHICLES OPERATING UPON PREMIER DRIVE BETWEEN PARKER ROAD AND SPRING CREEK PARKWAY WITHIN THE CORPORATE LIMITS OF THE CITY OF PLANO; PROVIDING A FINE FOR CRIMINAL PENALTIES NOT TO EXCEED \$200.00 FOR EACH OFFENSE; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, A PUBLICATION CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, 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, traffic and engineering studies of Windhaven Parkway and Premier Drive have been completed, and the City Council is of the opinion that the speed limits applicable to certain portions of this roadway should be altered.

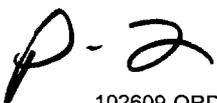
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

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 corporate limits of the City of Plano in excess of the speeds now set forth.

Section II. Section 12-74(b) of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances is hereby amended by the addition of a new Subsection entitled "Windhaven Parkway" to read as follows:

"(1) Forty (40) miles per hour along and upon Windhaven Parkway from Spring Creek Parkway to Dallas Parkway."

Section III. Section 12-74(b) of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances is hereby amended by the repeal of the following Subsection:



Premier Drive:

- (1) Thirty-five (35) miles per hour along and upon Premier Drive between Parker Road and Spring Creek Parkway.

Section IV. Subsection Premier Drive, Section 12-74(b) of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances is hereby amended by the addition of a new paragraph (1) to read as follows:

“(1) Forty (40) miles per hour along and upon Premier Drive between Parker Road and Spring Creek Parkway.”

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

Section VI. 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 VII. 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 Ordinance shall not affect the validity of any other portion of this Ordinance.

Section VIII. 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 IX. The repeal of any ordinance or part of any 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 X. This Ordinance shall become effective immediately from and after its passage and publication as required by law.

DULY PASSED AND APPROVED this 26th day of October, 2009.

Phil Dyer, MAYOR

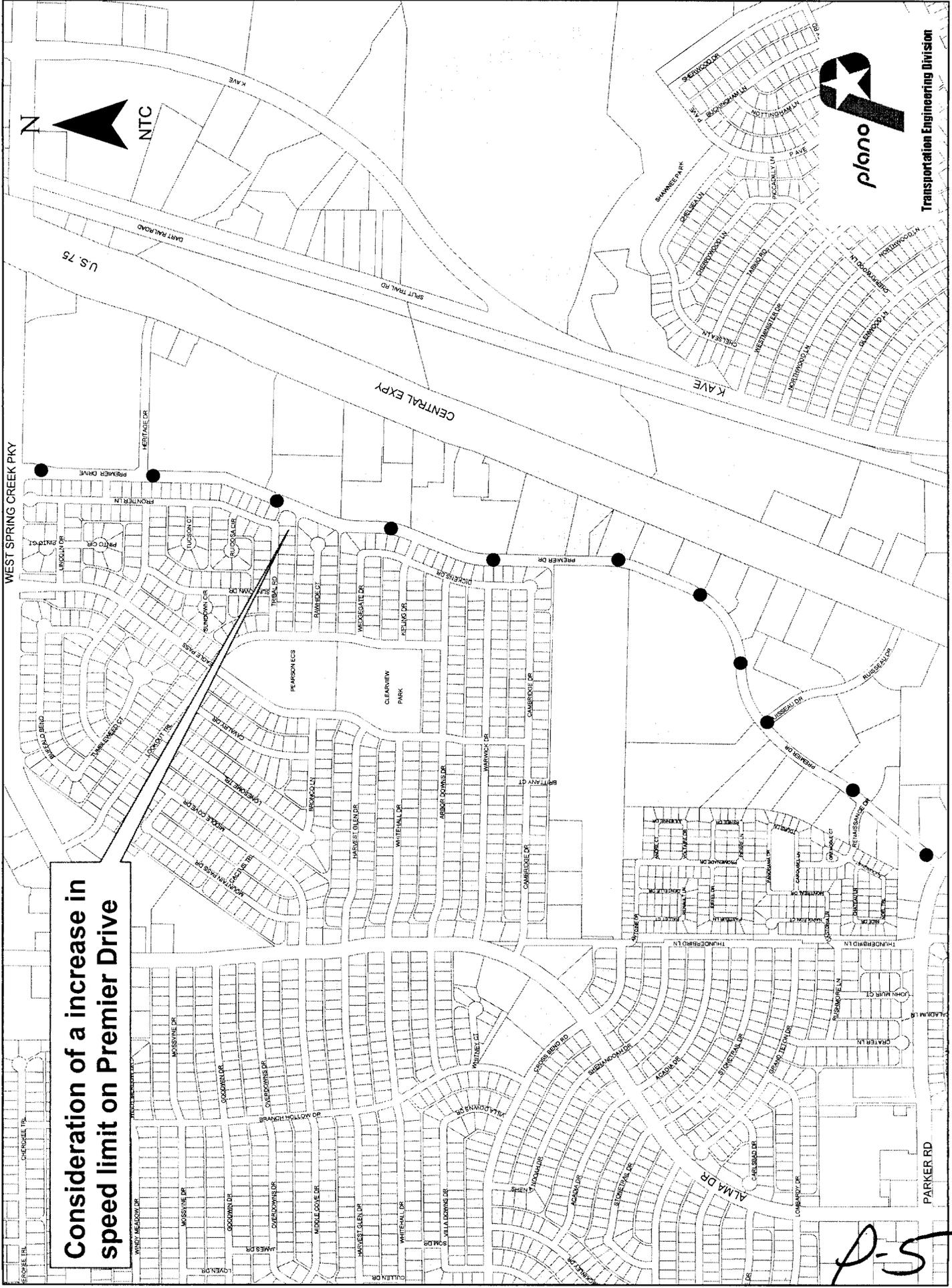
ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

P-4



Transportation Engineering Division

Consideration of an increase in speed limit on Premier Drive

P-5

1 inch = 831.613127 feet



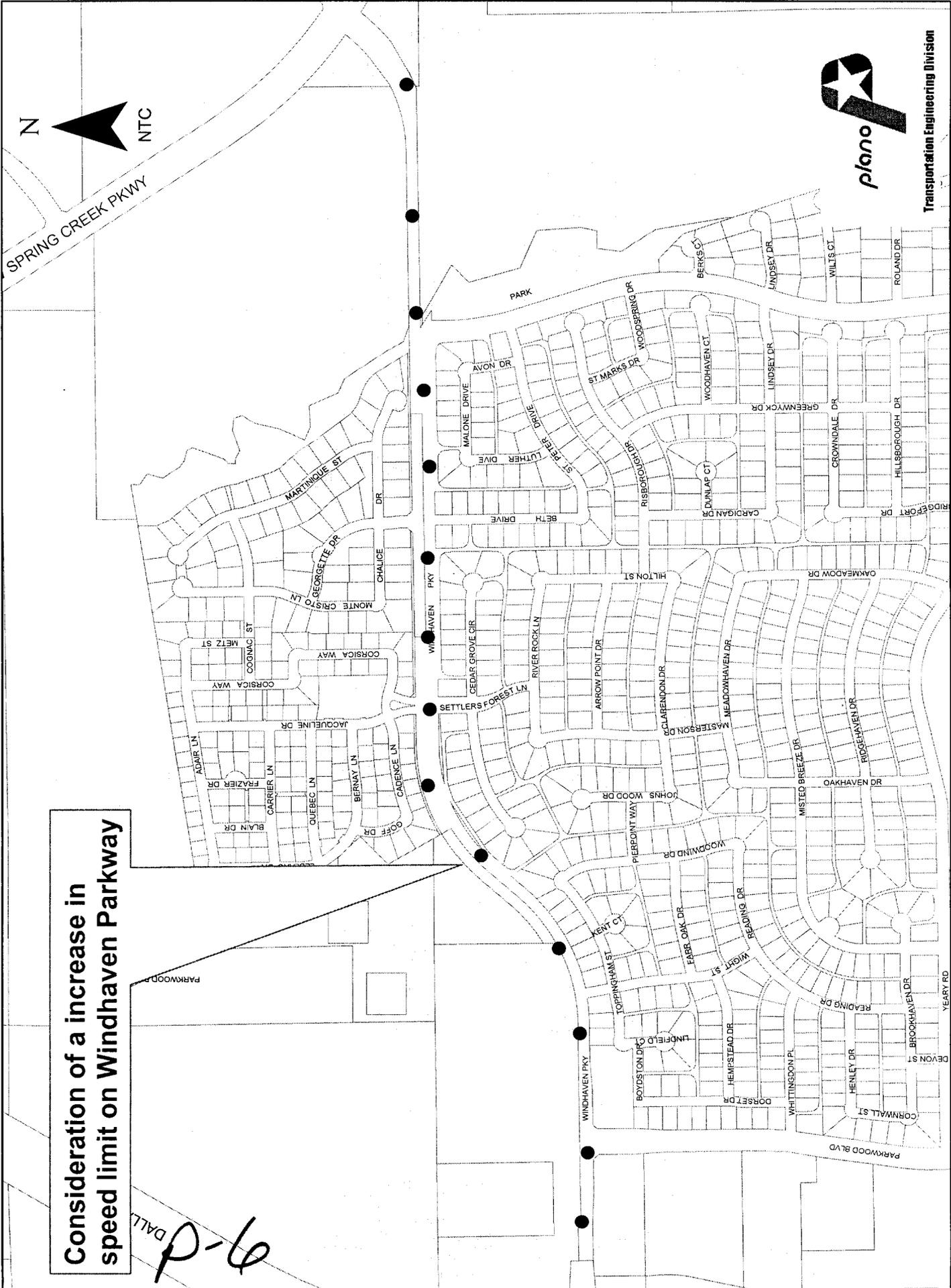
SPRING CREEK PKWY



Transportation Engineering Division

Consideration of a increase in speed limit on Windhaven Parkway

P-6



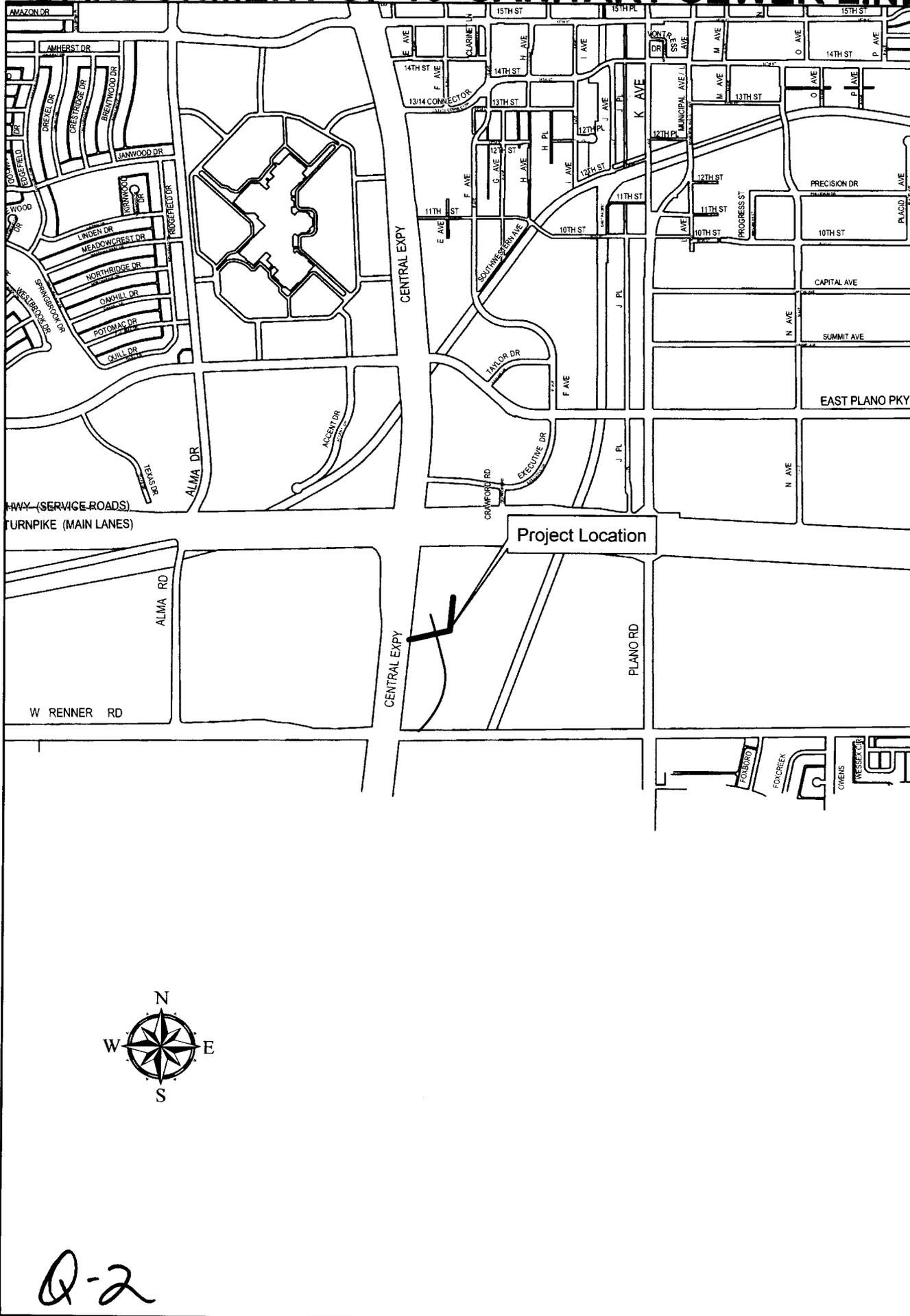
1 inch = 605.634334 feet



**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>JP</i>	10-19-09
Council Meeting Date:	10/26/09	Budget	<i>C.S.</i>	10-19-09
Department:	Public Works & Engineering	Legal	<i>JAO</i>	10/19/09
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>RA</i>	10-20-09
		City Manager	<i>JAO</i>	10/20/09
Agenda Coordinator (include phone #): Irene Pegues (7198) <i>J for JP</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, abandoning all right, title and interest of the City, in and to a portion of that certain 15' Sanitary Sewer Easement recorded in Volume 578, Page 437 of the Deed Records of Collin County, Texas, being situated in the James G. Vance Survey, Abstract No. 938, which is located within the City limits of Richardson, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, W. W. Caruth Jr. Foundation, to the extent of its interest; authorizing the City Manager or his authorized designee to execute any documents deemed necessary; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget				
Encumbered/Expended Amount				
This Item				
BALANCE				
FUND(S):				
COMMENTS: This item has no fiscal impact.				
SUMMARY OF ITEM				
The existing 15' Sanitary Sewer Easement served an old lift station site located east of Central Expressway and south of President George Bush Highway in the City of Richardson.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map		N/A		

ABANDONMENT OF 15' SANITARY SEWER LINE



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, ABANDONING ALL RIGHT, TITLE AND INTEREST OF THE CITY, IN AND TO A PORTION OF THAT CERTAIN 15' SANITARY SEWER EASEMENT RECORDED IN VOLUME 578, PAGE 437 OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS, BEING SITUATED IN THE JAMES G. VANCE SURVEY, ABSTRACT NO. 938, WHICH IS LOCATED WITHIN THE CITY LIMITS OF RICHARDSON, COLLIN COUNTY, TEXAS; QUITCLAIMING ALL RIGHT, TITLE AND INTEREST OF THE CITY IN SUCH EASEMENT TO THE ABUTTING PROPERTY OWNER, W. W. CARUTH JR. FOUNDATION, TO THE EXTENT OF ITS INTEREST; AUTHORIZING THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE TO EXECUTE ANY DOCUMENTS DEEMED NECESSARY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano has been requested to abandon all right, title and interest of the City in and to a portion of that certain 15' Sanitary Sewer Easement (hereinafter called "Easement") recorded in Volume 578, Page 437 of the Deed Records of Collin County, Texas being situated in the James G. Vance Survey, Abstract No. 938, which is located within the City limits of Richardson, Collin County, Texas, and which is more particularly described in Exhibit "A-1" attached hereto and incorporated herein by reference; and

WHEREAS, the Property Owner has filed with the City a Petition for Abandonment, a copy of which is attached hereto as Exhibit "B" and made a part hereof by reference; and

WHEREAS, the Public Works & Engineering Department has determined that there will be no detrimental effect on the City if the Easement is abandoned and quitclaimed to the abutting Property Owner; and has advised that the Easement should be abandoned.

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

Section I. All the right, title and interest of the City of Plano, Texas, in and to a portion of the Easement is hereby abandoned, and all right, title and interest of the City in and to a portion of the Easement is hereby quitclaimed to the abutting Property Owner in accordance with its respective interests. A certified copy of this Ordinance may be recorded in the Collin County Land Records to reflect this abandonment and quitclaim. The City Manager or his authorized designee is hereby authorized to execute on behalf of the City of Plano, Texas, any instruments necessary to complete the abandonment and quitclaim of the Easement by the City of Plano.

Section II. The abandonment and quitclaim is without prejudice to any and all improvements, facilities, equipment or lines of any public utility, municipal or otherwise, if any, which are presently located within any portion of the Easement. Any such utility

shall have the continued right to locate, maintain, repair, reconstruct, preserve or relocate improvements, facilities, equipment or lines in such portion of the Easement.

Section III. The City Council hereby finds and determines that the abandonment of the Easement is in the public interest of the City of Plano, Texas, and its citizens, and will inure to the benefit of the public generally.

Section IV. This Ordinance shall become effective immediately upon its passage as set forth below.

DULY PASSED AND APPROVED this the 26th day of October, 2009.

Phil Dyer, MAYOR

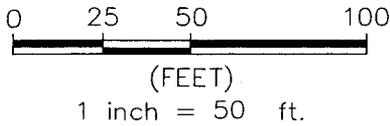
ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Q-4



**CENTRAL EXPRESSWAY
(U.S. HIGHWAY NO. 75)**
(VARIABLE WIDTH RIGHT-OF-WAY)

**E. PRESIDENT GEORGE BUSH HWY.
(ST. HWY. 190)**
(VARIABLE WIDTH RIGHT-OF-WAY)

W.W. CARUTH
FOUNDATION
VOL. 2722,
PG. 090

CITY OF
PLANO
VOL. 578,
PG. 463
DRECT

POINT OF
BEGINNING

15' SANITARY SEWER
ABANDONMENT
TRACT NO. 1
VOL. 578, PG. 437
7,944 SQ. FT.,
0.1824 ACRES

W.W. CARUTH JR.
FOUNDATION
C.C.# 92-0068038



G. RICHARD BUSBY R.P.L.S. NO. 4111
10-19-2009

N06°48'30"E
15.68'

N79°55'00"E

S79°55'00"W

278.11'
295.16'

EXHIBIT "A-1"
ABANDONMENT

ALL OF TRACT NO. 1

15' SANITARY SEWER EASEMENT

**JAMES G. VANCE SURVEY, ABSTRACT NO.938
CITY OF RICHARDSON, COLLIN COUNTY, TEXAS**

SHEET 2 OF 2

RAYMOND L. GOODSON, JR., INC.
5445 LA SIERRA
SUITE 300 L.B.17
DALLAS, TX. 75231-4138
214-739-8100
rlg@rlginc.com

SCALE	1" = 50'	DATE	04/21/2008		
JOB NO.	08323	E-FILE	08323-4	DWG NO.	24,762X

Q-6

EXHIBIT "A-1"
ABANDONMENT
TRACT NO. 1
15' SANITARY SEWER EASEMENT
JAMES G. VANCE SURVEY, ABSTRACT NO. 938
CITY OF RICHARDSON, COLLIN COUNTY, TEXAS

Being a 7,944 square foot tract of land situated in the James G. Vance Survey, Abstract No. 938, City of Richardson, Collin County, Texas, and being all of Tract No. 1, a 15' Sanitary Sewer Easement as recorded in Volume 578, Page 437 Deed Records, Collin County, Texas, and being a part of that tract of land conveyed to W. W. Caruth Foundation by Deed recorded in Volume 2722, Page 090, Deed Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point for corner at the southeast corner of a tract of land conveyed to The City of Plano by Deed recorded in Volume 578, Page 463, Deed Records, Collin County, Texas, said point being a common corner with said W. W. Caruth Foundation tract of land and being in the west line of a tract of land conveyed to the W. W. Caruth Jr. Foundation by Special Warranty Deed recorded in County Clerk Number 92-0068038;

THENCE South 00° 19' 00" West along the east line of said 15' Sanitary Sewer Easement a distance of 249.25 feet to a point for corner;

THENCE South 79° 55' 00" West along a southerly line of said 15' Sanitary Sewer Easement a distance of 295.16 feet to a point for corner in the east right-of-way line of U.S. Highway No. 75 as it existed in February, 1961 (100 feet wide);

THENCE North 06° 48' 30" East along a westerly line of said 15' Sanitary Sewer Easement and the east right-of-way line of said U.S. Highway No. 75 a distance of 15.68 feet to a point for corner;

THENCE North 79° 55' 00" East along a northerly line of said 15' Sanitary Sewer Easement a distance of 278.11 feet to a point for corner;

THENCE North 00° 19' 00" East along a westerly line of said 15' Sanitary Sewer Easement a distance of 236.75 feet to a point for corner in the south line of said City of Plano tract;

THENCE South 89° 41' 00" East along the south line of said City of Plano tract a distance of 15.00 feet to the **POINT OF BEGINNING**, containing 7,944square feet or 0.1824 acres, more or less.



G. Richard Busby R.P.L.S. No. 4111
10-19-2009

BASIS OF BEARINGS:
THE NORTHERY LINE OF A TRACT OF LAND
CONVEYED TO W. W. CARUTH JR. FOUNDATION
(SOUTH 75° 01' 00" EAST) ACCORDING TO DEED
RECORDED IN COUNTY CLERK NUMBER 92-
0068038, DEED RECORDS, COLLIN COUNTY, TEXAS.



Sheet 1 of 2
24,762X

Q-5

EXHIBIT "B"

PETITION FOR ABANDONMENT

[For Easement Abandonment]

We, the undersigned, (hereinafter "Owners"), being all of the owners of real property abutting a 15' Sanitary Sewer Easement (Volume 578, Page 437, DRCCT) on the east side of US Highway 75 approximately 800 feet south of State Highway 190 _____ [description and location of Easement] (hereinafter called "Easement"), more particularly described by metes and bounds in the field note description attached hereto and incorporated herein as **Exhibit "A-1"** do hereby request that the City of Plano, Texas (called "City") abandon the Easement.

- 1. The Owners are requesting the abandonment of the Easement for the following reasons:

THE EASEMENT IS NO LONGER BEING USED BY THE CITY. IT IS AN ENCUMBRANCE TO THE DEVELOPMENT OF OUR PROPERTY.

- 2. The following public interest will be served as a result of the abandonment:

THE PROPERTY CAN BE MORE FULLY DEVELOPED.

- 3. Unless the City determines that this abandonment is exempt from payment of fair market value, the Owners agree to pay to the City the fair market value of the Easement as determined by an appraisal obtained by the City (called "Price"). The appraisal shall be conclusive as to the fair market value. The Owners shall reimburse the City for the cost of the appraisal and other costs incident to the abandonment (called "Costs"). The Price and Costs shall be paid to the City prior to the abandonment. Should the Plano City Council decide not to abandon the Easement, the Price shall be returned to the Owners, but the Costs shall be retained by the City. Each Owner's share of the Price and Costs shall be in the same proportion as their abutting ownership as hereinafter defined.

- 4. If the Owners are providing a replacement easement for the Easement requested to be abandoned herein, Owners will attach a metes and bounds description or plat identifying the replacement easement and attach same to this Petition as **Exhibit "B-1"**.

Q-7

EXHIBIT "B"

5. The Owners hereby represent and affirm to the City that no other property owner, lessee, tenant or easement or license holder uses the Easement to access or to serve their property.
6. **The Owners further agree to release, defend, indemnify and hold the City, its officers, agents and employees harmless from and against any and all claims, losses, demands, suits, judgments and costs, including reasonable and necessary attorney's fees and expenses, arising out of, related to or resulting from the abandonment of the Easement by City.**
7. The Owners understand and agree that the abandonment is in the sole discretion of the Plano City Council. The Owners also understand and agree that the Easement will be abandoned to them in proportion to their abutting ownership. The abutting ownership will be determined by the number of linear feet of frontage adjacent to the Easement owned by each property owner. Based on the foregoing, the Owners hereby represent and affirm that they have searched the public land records and determined that the abutting ownership is in the following proportions:
100% CARUTH TRUST

8. Owners shall also prepare a map or drawing showing the Easement to be abandoned along with a designation of all abutting property owners. This map or drawing shall be attached hereto and incorporated herein as **Exhibit "C-1"**.
9. Owners shall also prepare a separate field note description for each portion of the Easement to be released to each abutting property owner. This description shall be attached hereto and incorporated herein as **Exhibit "D-1"**.

[Remainder of page blank]

Q-8

EXHIBIT "B"

- 10. The undersigned officers and/or agents of the Owners hereby represent and affirm that they have the necessary authority to execute this Petition for Abandonment on behalf of the Owners.

BANK OF AMERICA, N. A. TRUSTEE OF THE
 W.W. CARUTH JR. FOUNDATION

Typed Name of Owner

901 MAIN STREET, 16TH FLOOR

Address

DALLAS, TEXAS 75201

City, State and Zip

Dated: 9/16/09

[Handwritten Signature]

Signature of Owner

PAMELA A SPADARO VICE PRESIDENT

Contact Person for Property Owners:

Name: PAUL MOSER

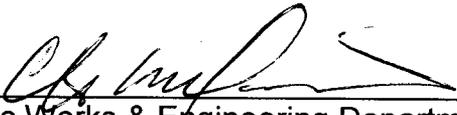
Phone No: 214-691-6541

Q-9

FOR DEPARTMENTAL USE ONLY

The Easement to be abandoned is to one or more abutting property owners and is exempt from the requirement that fair market value be paid for the following reason(s):

- The Easement consists of narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development code ordinances;
- The Easement consists of streets or alleys, owned in fee or used by easement;
- The Easement consists of land or a real property interest originally acquired for streets, rights-of-way, or easements that the City of Plano has decided to exchange with Owner for other land to be dedicated and used for streets, rights of way, easements, or other public purposes, including transactions partly for cash;
- The Easement contains land that the City wants to have developed by an independent foundation;
- The Easement is located within a reinvestment zone designated by law that the City desires to have developed under a project plan adopted by the municipality for the zone.



 Public Works & Engineering Department
 City of Plano, Texas

Q-10



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>DF</i>	10-19-09
Council Meeting Date:	10/26/09	Budget	<i>C.S.</i>	10-19-09
Department:	Public Works & Engineering	Legal	<i>JW</i>	10/19/09
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>RA</i>	10-20-09
		City Manager	<i>RA</i>	10/20/09
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>LS for IP</i>		

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

CAPTION

An ordinance of the City of Plano, Texas, abandoning all right, title and interest of the City, in and to that certain 20' Sanitary Sewer Easement recorded in Judgment No. 71-134-199 in the 199th Judicial District Court of Collin County, Texas, being situated in the James G. Vance Survey, Abstract No. 938, which is located within the City limits of Richardson, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, W. W. Caruth Jr. Foundation, to the extent of its interest; authorizing the City Manager or his authorized designee to execute any documents deemed necessary; 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	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	8,000	0	8,000
BALANCE	0	8,000	0	8,000

FUND(S): SEWER CIP

COMMENTS: This item allows the City to abandon all rights, title and interest to a 20' Sanitary Sewer Easement. If this item is approved, the City of Plano will receive \$8,000 from the property owner as reimbursement for the fair market value of this easement.

STRATEGIC PLAN GOAL: Abandoning this sewer easement relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

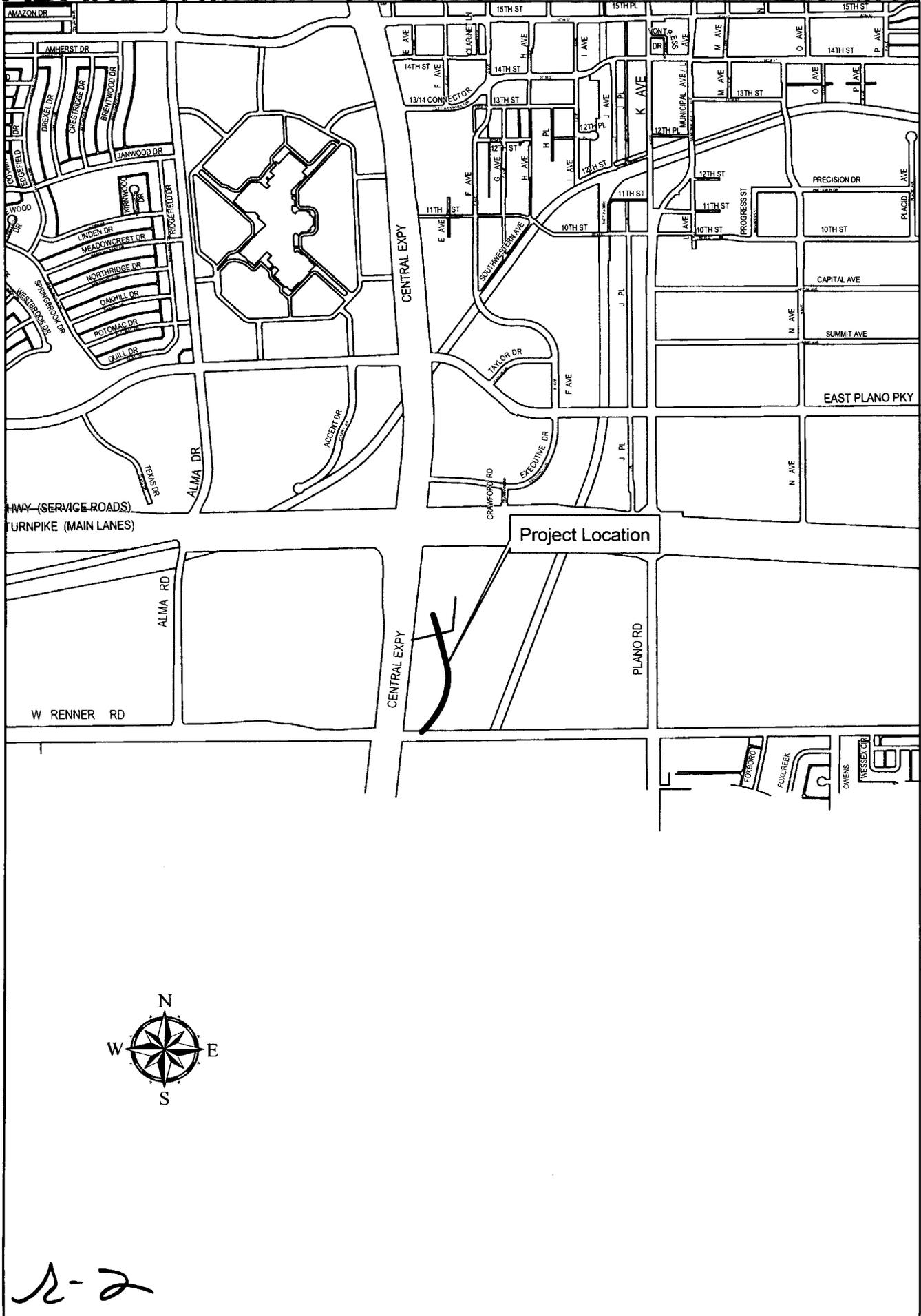
The existing 20' Sanitary Sewer Easement served an old lift station site located east of Central Expressway and south of President George Bush Highway in the City of Richardson. The easement was acquired through condemnation and the City is being reimbursed fair market value of \$8,000.

List of Supporting Documents:
Location Map

Other Departments, Boards, Commissions or Agencies
N/A

12-1

ABANDONMENT OF 20' SANITARY SEWER LINE



1-2

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, ABANDONING ALL RIGHT, TITLE AND INTEREST OF THE CITY, IN AND TO THAT CERTAIN 20' SANITARY SEWER EASEMENT RECORDED IN JUDGMENT NO. 71-134-199 IN THE 199TH JUDICIAL DISTRICT COURT OF COLLIN COUNTY, TEXAS, BEING SITUATED IN THE JAMES G. VANCE SURVEY, ABSTRACT NO. 938, WHICH IS LOCATED WITHIN THE CITY LIMITS OF RICHARDSON, COLLIN COUNTY, TEXAS; QUITCLAIMING ALL RIGHT, TITLE AND INTEREST OF THE CITY IN SUCH EASEMENT TO THE ABUTTING PROPERTY OWNER, W. W. CARUTH JR. FOUNDATION, TO THE EXTENT OF ITS INTEREST; AUTHORIZING THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE TO EXECUTE ANY DOCUMENTS DEEMED NECESSARY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano has been requested to abandon all right, title and interest of the City in and to that certain 20' Sanitary Sewer Easement (hereinafter called "Easement") recorded in Judgment No. 71-134-199 in the 199th Judicial District Court of Collin County, Texas being situated in the James G. Vance Survey, Abstract No. 938, which is located within the City Limits of Richardson, Collin County, Texas, and which is more particularly described in Exhibit "A-1" attached hereto and incorporated herein by reference; and

WHEREAS, the Property Owner has filed with the City a Petition for Abandonment, a copy of which is attached hereto as Exhibit "B" and made a part hereof by reference; and

WHEREAS, the Public Works & Engineering Department has determined that there will be no detrimental effect on the City if the Easement is abandoned and quitclaimed to the abutting Property Owner; and has advised that the Easement should be abandoned.

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

Section I. All the right, title and interest of the City of Plano, Texas, in and to the Easement is hereby abandoned, and all right, title and interest of the City in and to the Easement is hereby quitclaimed to the abutting Property Owner in accordance with its respective interests. A certified copy of this Ordinance may be recorded in the Collin County Land Records to reflect this abandonment and quitclaim. The City Manager or his authorized designee is hereby authorized to execute on behalf of the City of Plano, Texas, any instruments necessary to complete the abandonment and quitclaim of the Easement by the City of Plano.

Section II. The abandonment and quitclaim is without prejudice to any and all improvements, facilities, equipment or lines of any public utility, municipal or otherwise, if any, which are presently located within any portion of the Easement. Any such utility

shall have the continued right to locate, maintain, repair, reconstruct, preserve or relocate improvements, facilities, equipment or lines in such portion of the Easement.

Section III. The City Council hereby finds and determines that the abandonment of the Easement is in the public interest of the City of Plano, Texas, and its citizens, and will inure to the benefit of the public generally.

Section IV. This Ordinance shall become effective immediately upon its passage as set forth below.

DULY PASSED AND APPROVED this the 26th day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A-1"
20' SANITARY SEWER EASEMENT
TO BE ABANDONED IN
ITS ENTIRETY

THE CITY OF PLANO

VS.

W. W. CARUTH, JR.

CONDEMNATION PROCEEDINGS

IN THE 199TH JUDICIAL DISTRICT

COURT OF COLLIN COUNTY, TEXAS

No. 71-134-199

JUDGMENT

On this the 25th day of February, 1972, came on to be considered the above styled and numbered cause in which the City of Plano, Texas, is Plaintiff and W. W. Caruth, Jr. is Defendant, and both parties appearing by their attorneys announced ready for trial;

and, it appearing to the Court that in pursuance of Plaintiff's statement filed in the County Court of Collin County, Texas, on the 22nd day of June, 1970, wherein it prayed for the acquisition through proceedings in eminent domain of an easement and right-of-way in and to the hereinafter described land, and that the judge of said Court appointed three disinterested free-holders of Collin County, Texas, as Special Commissioners, who subsequently met, took their oath of office, set a date for the Hearing Before Commissioners, and caused notice thereof to be duly served as prescribed by law; and that at said hearing, all parties appeared, either in person or by their attorneys; and that after such hearing, the said Special Commissioners rendered their decision in writing, awarding the Defendant the sum of Two Thousand Eight Hundred Dollars (\$2,800.00) as damages for the taking of said easement and right-of-way, in and to the hereinafter described land and their Written Award Of Commissioners was filed with the judge of said Court, of which, all recitations and findings stated therein are in and by this judgment found to be correct and true.

And it further appearing to the Court that W. W. Caruth, Jr. filed objections to such Award Of Commissioners within the time prescribed by law and caused the City of Plano, Texas, to be cited accordingly; and that Plaintiff deposited on the 14th day of July, 1970, in the registry of the Court, subject to the order of Defendant herein, the sum of said award, to wit: Two Thousand Eight Hundred Dollars (\$2,800.00), said award having heretofore been withdrawn by

350

1-5

EXHIBIT "A-1"
 20' SANITARY SEWER EASEMENT
 TO BE ABANDONED IN
 ITS ENTIRETY

Defendant.

Whereupon, on this date, after a jury composed of twelve good and lawful jurors heard the pleadings and a portion of the evidence, the parties hereto, both Plaintiff and Defendant, announced to the Court that they had reached a mutually agreeable settlement in this cause.

And it further appearing to the Court from the evidence that the City Council of the City of Plano, Texas, has heretofore duly determined the public necessity for the taking of an easement and right-of-way in and to the hereinafter described land as evidenced by an order entered in its minutes and that all legal prerequisites for the trial of this cause have been duly complied with;

It is, therefore, ORDERED, ADJUDGED AND DECREED that the City of Plano, Texas, Plaintiff, do have and recover from the Defendant, W. W. Caruth, Jr., an easement and right-of-way in and to the following described land, situated in the City of Plano, Collin County, Texas, to wit:

BEING a 0.67 acre tract of land in the James G. Vance Survey, Abstract No. 938, a part of a tract conveyed by deed to W. W. Caruth as recorded in Volume 426, Page 121, Deed Records of Collin County, Texas, said tract being more particularly described by metes and bounds as follows:

BEGINNING at a point in the North right-of-way line of Renner Road, said point being located 436 feet Easterly from a right-of-way marker at the intersection of Renner Road and U. S. Highway 75 service road;

THENCE N. 0°22' 30" E. 45.04 feet;

THENCE S. 89° 37' 30" E. 10.0 feet to a point of curve to the left, said curve having a central angle of 72° 30' and a radius of 140 feet;

THENCE Northeasterly 177.15 feet to end of said curve;

THENCE N. 17° 52' 30" E. 158.52 feet to a point of curve to the left, said curve having a central angle of 18° 00' and a radius of 190 feet;

THENCE Northerly 59.69 feet to end of said curve;

THENCE N. 0° 07' 30" W. 293.82 feet to a point of curve to the left, said curve having a central angle of 70° 00' and a radius of 140 feet;

THENCE Northwesterly 171.04 feet to end of said curve;

THENCE N. 70° 07' 30" W. 155.12 feet;

THENCE ^N 33° 07' 30" W. 135.6 feet;

THENCE N. 2° 52' 30" E. 141.21 feet to a point of curve to the left, said curve having a central angle of 38° 24' 29" and a radius of 190 feet;

2-6

EXHIBIT "A-1"
 20' SANITARY SEWER EASEMENT
 TO BE ABANDONED IN
 ITS ENTIRETY

THENCE Northwesterly 127.37 feet around a curve to a point in the South boundary of an existing lift station site, said point being located 8.6 feet East of the Southwest corner of said site;

THENCE S. 88° 55' 30" E. 24.29 feet along said South boundary;

THENCE Southeasterly 134.16 feet around a curve to the right, said curve having a central angle of 349° 27' 09" and a radius of 210 feet;

THENCE S. 2° 52' 30" W. 134.71 feet;

THENCE S. 33° 07' 30" E. 122.4 feet;

THENCE S. 70° 07' 30" E. 148.42 feet to a point of curve to the right, said curve having a central angle of 70° 00' and a radius of 160 feet;

THENCE Southeasterly 195.48 feet around said curve;

THENCE S. 0° 07' 30" E. 293.82 feet to a point of curve to the right, said curve having a central angle of 180° 00' and a radius of 210 feet;

THENCE Southerly 65.97 feet to end of said curve;

THENCE S. 17° 52' 30" W. 158.52 feet to a point of curve to the right, said curve having a central angle of 68° 55' and a radius of 160 feet;

THENCE Southwesterly 192.45 feet around said curve;

THENCE S. 0° 22' 30" W. 25.15 feet to the North right-of-way line of Renner Road;

THENCE N. 89° 00' W. 20 feet along said North line to the Point of Beginning and CONTAINING 0.67 acres of land.

And that the same be, and is hereby vested in the City of Plano, Texas.

It is further ORDERED, ADJUDGED AND DECREED that W. W. Caruth, Jr., Defendant, do have and recover of the City of Plano, Texas, Plaintiff, the sum of One Thousand Six Hundred and Eighty Dollars (\$1,680.00) as damages for the taking of the hereinabove described land, such sum of One Thousand Six Hundred and Eighty Dollars (\$1,680.00) being the amount by which the agreed settlement exceeds the sum of Two Thousand Eight Hundred Dollars (\$2,800.00) heretofore deposited into the registry of this Court; and that the Defendant shall further recover interest on the said sum of One Thousand Six Hundred and Eighty Dollars (\$1,680.00) at the rate of six (6%) percent per annum from and after the 14th day of July, 1970, and until the payment of the said One Thousand Six Hundred and Eighty Dollars (\$1,680.00), to the clerk of this Court, as hereinafter provided.

EXHIBIT "A-1"
20' SANITARY SEWER EASEMENT
TO BE ABANDONED IN
ITS ENTIRETY

It is further ORDERED, ADJUDGED AND DECREED by the Court that payment of the money judgment by the City of Plano, Texas, and to the hands of the clerk of this Court shall constitute full satisfaction thereof. The court clerk is directed and ordered to pay the amount of this judgment to Defendant, W. W. Caruth, Jr..

And, it is further ORDERED, ADJUDGED AND DECREED that all costs herein are assessed against the City of Plano, Texas, for which let execution issue, and that the City of Plano, Texas, may have its Writ of Possession.

Entered this 10th day of August 1972.

Ron Ryan

JUDGE OF THE 19TH JUDICIAL DISTRICT
COURT OF COLLIN COUNTY, TEXAS

APPROVED AS TO FORM:

Wm. J. Roberts

WM. J. ROBERTS - ATTORNEY FOR PETITIONER

Roland Boyd

ROLAND BOYD - ATTORNEY FOR DEFENDANT

1-8

EXHIBIT "A-1"
20' SANITARY SEWER EASEMENT
TO BE ABANDONED IN
ITS ENTIRETY

CITY OF PLANO | IN THE 199TH JUDICIAL DISTRICT
VS. | OF
W. W. CARRUTH | COLLIN COUNTY, TEXAS

July 31, 1972 Received of the City of Plano the sum of \$1,885.80.

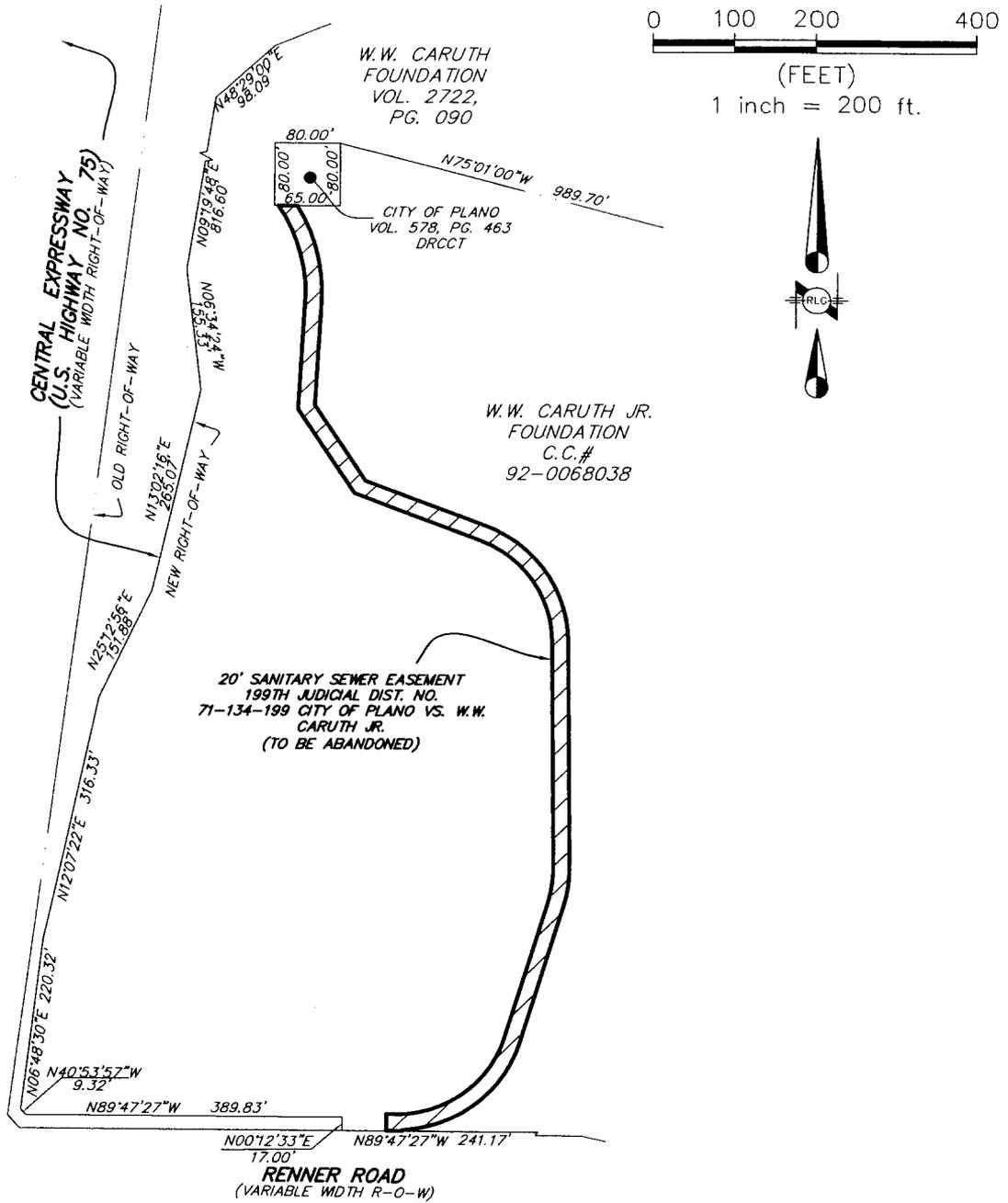
[Signature]
District Clerk

August 11, 1972 Received of the District Clerk the sum of \$1,885.80.

[Signature]
Roland Boyd, Trustee for
W. W. Carruth

354

12-9



BASIS OF BEARINGS: THE NORTHERLY LINE OF A TRACT OF LAND CONVEYED TO W. W. CARUTH JR. (SOUTH 75° 01' 00" EAST) ACCORDING TO DEED RECORDED IN COUNTY CLERK NUMBER 92-0068038, DEED RECORDS, COLLIN COUNTY, TEXAS.

RAYMOND L. GOODSON, JR., INC.
 5445 LA SIERRA
 SUITE 300 L.B.17
 DALLAS, TX. 75231-4138
 214-739-8100
 rlg@rlginc.com

EXHIBIT "A-1"
ABANDONMENT

ALL OF A

20' SANITARY SEWER EASEMENT
JAMES G. VANCE SURVEY, ABSTRACT NO.938
CITY OF RICHARDSON, COLLIN COUNTY, TEXAS

SCALE	1" = 200'	DATE	10/13/2009
JOB NO.	08323	E-FILE	08323-5
DWG NO.	24,764X		

A-10

EXHIBIT "B"

PETITION FOR ABANDONMENT
[For Easement Abandonment]

We, the undersigned, (hereinafter "Owners"), being all of the owners of real property abutting 20' Sanitary Sewer Easement (Judgment no. 71-134-199) on the east side of US Highway 75 approximately 800 feet south of State Highway 190 _____ [description and location of Easement] (hereinafter called "Easement"), more particularly described by metes and bounds in the field note description attached hereto and incorporated herein as **Exhibit "A-1"** do hereby request that the City of Plano, Texas (called "City") abandon the Easement.

- 1. The Owners are requesting the abandonment of the Easement for the following reasons:
THE EASEMENT IS NO LONGER BING USED BY THE CITY. IT IS AN ENCUMBRANCE TO THE DEVELOPMENT OF OUR PROPERTY.

- 2. The following public interest will be served as a result of the abandonment:
THE CITY WILL RECEIVE COMPENSATION FOR THIS UNUSED EASEMENT.

- 3. Unless the City determines that this abandonment is exempt from payment of fair market value, the Owners agree to pay to the City the fair market value of the Easement as determined by an appraisal obtained by the City (called "Price"). The appraisal shall be conclusive as to the fair market value. The Owners shall reimburse the City for the cost of the appraisal and other costs incident to the abandonment (called "Costs"). The Price and Costs shall be paid to the City prior to the abandonment. Should the Plano City Council decide not to abandon the Easement, the Price shall be returned to the Owners, but the Costs shall be retained by the City. Each Owner's share of the Price and Costs shall be in the same proportion as their abutting ownership as hereinafter defined.

- 4. If the Owners are providing a replacement easement for the Easement requested to be abandoned herein, Owners will attach a metes and bounds description or plat identifying the replacement easement and attach same to this Petition as **Exhibit "B-1"**.

A-11

EXHIBIT "B"

5. The Owners hereby represent and affirm to the City that no other property owner, lessee, tenant or easement or license holder uses the Easement to access or to serve their property.
6. **The Owners further agree to release, defend, indemnify and hold the City, its officers, agents and employees harmless from and against any and all claims, losses, demands, suits, judgments and costs, including reasonable and necessary attorney's fees and expenses, arising out of, related to or resulting from the abandonment of the Easement by City.**
7. The Owners understand and agree that the abandonment is in the sole discretion of the Plano City Council. The Owners also understand and agree that the Easement will be abandoned to them in proportion to their abutting ownership. The abutting ownership will be determined by the number of linear feet of frontage adjacent to the Easement owned by each property owner. Based on the foregoing, the Owners hereby represent and affirm that they have searched the public land records and determined that the abutting ownership is in the following proportions:
100% CARUTH TRUST

8. Owners shall also prepare a map or drawing showing the Easement to be abandoned along with a designation of all abutting property owners. This map or drawing shall be attached hereto and incorporated herein as **Exhibit "C-1"**.
9. Owners shall also prepare a separate field note description for each portion of the Easement to be released to each abutting property owner. This description shall be attached hereto and incorporated herein as **Exhibit "D-1"**.

[Remainder of page blank]

12-12

EXHIBIT "B"

- 10. The undersigned officers and/or agents of the Owners hereby represent and affirm that they have the necessary authority to execute this Petition for Abandonment on behalf of the Owners.

BANK OF AMERICA, N.A. TRUSTEE OF THE
WW. CARUTH JR. FOUNDATION

Typed Name of Owner
901 MAIN STREET, 16TH FLOOR

Address
DALLAS, TEXAS 75201

City, State and Zip

Dated: 9/16/09

Signature of Owner
PAMELA A. SPADARO VICE PRESIDENT

Contact Person for Property Owners:

Name: PAUL MOSER

Phone No: 214-691-6541

2-13



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: 10/26/09		Purchasing	<i>MC</i> 10/16/09	
Department: Finance		Budget	<i>MC</i> 10/16/09	
Department Head: Denise Tacke		Legal	<i>MC</i> 10/16/09	
Dept Signature: <i>Denise Tacke</i>		Assistant City Manager	<i>MC</i> 10-16-09	
		Deputy City Manager	<i>MC</i> 10-16-09	
		City Manager	<i>MC</i> 10/19/09	
Agenda Coordinator (include phone #): Katherine Crumbley - x7479 <i>KTC</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, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND CRUMB CORPS, LLC., A DELAWARE LIMITED LIABILITY COMPANY; 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:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		12,391,869	0	12,391,869
Encumbered/Expended Amount		-2,609,173	-3,513,077	-6,122,250
This Item	0	-50,675	0	-50,675
BALANCE	0	9,732,021	-3,513,077	6,218,944
FUND(s):				
COMMENTS: STRATEGIC PLAN GOAL: PROVIDING ECONOMIC DEVELOPMENT INCENTIVES RELATES TO THE CITY'S GOAL OF DIVERSE BUSINESS CENTER				
SUMMARY OF ITEM				
A request from Crumb Corps, LLC for an Economic Development incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Crumb Corps agrees to occupy not less than a total 20,270 square feet of office space and agrees to retain, transfer or create 49 full time jobs on or before 12/31/09.				
List of Supporting Documents: Economic Development Incentive Agreement		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND CRUMB CORPS, LLC., A DELAWARE LIMITED LIABILITY COMPANY; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement By and Between the City of Plano, Texas and Crumb Corps, LLC, a Delaware limited liability company, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

DULY PASSED AND APPROVED this the 26th day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City"), and Crumb Corps, LLC, a Delaware Limited Liability Company, acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Crumb Corps, LLC, (hereinafter referred to as the "Company") is a manufacturer of gourmet cookie products; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to maintain and expand its business and commercial activities in the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company agrees to occupy at least 20,270 square feet in facilities located at 1865 Summit Avenue, #605 and #603, in Plano, Texas or at such other locations in the City of Plano as may be agreed upon by the parties, (hereafter referred to collectively as the "Property"), and to retain, transfer and create 49 Job Equivalents (as hereafter defined) on the Property; and

WHEREAS, the retention, creation or transfer of 49 Job Equivalents on the Property will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

**Article I
Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Commencement Date" shall mean the earlier of the date of occupancy of the Property or November 1, 2009 whichever occurs first.

"Effective Date" shall mean the last date on which all of the parties hereto have executed this Agreement.

"Event of Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

"Job Equivalent" shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours (inclusive of holidays, vacation and sick leave) annually.

**Article II
Term**

The term of this Agreement shall begin on the Commencement Date and continue until March 31, 2019, unless sooner terminated as provided herein.

**Article III
Obligations of Company**

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- (a) Occupy a commercial space on the Property of not less than 20,270 square feet , on or before November 1, 2009, and to maintain this occupancy for the full term of this Agreement;
- (b) Retain, transfer or create 49 Job Equivalents on the Property by December 31, 2009;
- (c) Maintain all Job Equivalents set forth above on the Property for the full term of this Agreement; and

1-4

- (d) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV
Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a one-time cash grant of Fifty Thousand Six Hundred and Seventy-Five Dollars (\$50,675.00) for the occupancy of 20,270 square feet of commercial space at the Property and the retention, transfer or creation of 49 Job Equivalents on the Property as set forth in Article III above by December 31, 2009. The Company agrees to occupy and maintain all Job Equivalents throughout the term of this Agreement as provided in Section 4.03 below.

4.02 **Grant Payments.** Except as otherwise indicated, payment by the City under this Agreement shall be made within thirty (30) days after the Company verifies to the City on the Initial Certification attached hereto as Exhibit "A" that the Company has met its initial obligations as set forth in Article III (a) and (b) above. Company's initial certification verifying compliance with Article III (a) and (b) above must be filed with the City no later than March 31, 2010.

4.03 **Refunds.**

(a) In the event the Company allows Job Equivalents at the Property to fall below 49 Job Equivalents and remains below that number for 180 consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to One Thousand Thirty-Four Dollars (\$1,034.00) for each lost Job Equivalent. For the purposes of determining whether the City is due a refund under this section, a Company officer shall certify to the City by January 31, 2011 and by January 31 of each year thereafter during the term of this agreement the actual number of Job Equivalents at the Properties for the preceding calendar year using the Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30 days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

1-5

**Article V
Termination**

- 5.01 This Agreement terminates upon any one or more of the following:
- (a) By mutual written agreement of the parties;
 - (b) Upon expiration of the term of this Agreement;
 - (c) Company's failure to timely file its initial certification verifying compliance with Article III (a) and (b);
 - (d) By either party upon written notice to the other, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and
 - (e) By either party upon written notice to the other if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (e).

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above in this Section 5.02 shall survive the termination of this Agreement.

**Article VI
Miscellaneous**

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

1-6

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
Crumb Corps, LLC
Attn: Jack Long, Executive Vice President
1865 Summit Avenue, Suite 605
Plano, Texas 75074

With cc to: General Counsel

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

1-7

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this 16th day of October, 2009.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

1-8

ATTEST:

Crumb Corps, LLC, a Delaware Limited
Liability Company

By: _____

Name:

Title:

1-9

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE*

I hereby certify that CRUMB CORPS, INC., has occupied not less than 20,270 square feet of commercial space at 1865 Summit Avenue, Plano, Texas, and has retained, transferred or added 49 Job Equivalent positions to the Property in accordance with the agreement. CRUMB CORPS, INC., is in compliance with subsections (a) and (b) of Article III of the Agreement as of _____, and is entitled to receive payment under the terms of that Agreement.

ATTEST:

CRUMB CORPS, LLC, a Delaware Limited Liability Company

By:

Name:

Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

1-10

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that CRUMB CORPS, LLC, is in compliance with each applicable term as set forth in Article III of the Agreement as of _____. The term of the Agreement is November 1, 2009 through March 31, 2019. "The number of new, transferred or retained Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below 49 for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance." If the number herein reported is below the number required to be maintained pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

ATTEST:

CRUMB CORPS, LLC, a Delaware
Limited Liability Company

By: _____
Name:
Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

1-11



**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>DR</i>	10-14-09
Council Meeting Date:	10/26/2009	Budget	C.S.	10-14-09
Department:	Customer and Utility Services	Legal	<i>MSJ RL</i>	10-14-09
Department Head	Mark D. Israelson	Assistant City Manager	<i>MSJ</i>	10/14/2009
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	<i>[Signature]</i>	10-15-09
		City Manager	<i>[Signature]</i>	10/15/09
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				

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

CAPTION

A PUBLIC HEARING BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE PERTAINING TO THE USE OR TAKING OF A PORTION OF A CITY OF PLANO PARK AND KNOWN AS THE BLUEBONNET SITE FOR A COMMUNICATIONS FACILITIES LICENSE AGREEMENT FOR CELLULAR EQUIPMENT ATTACHED TO AND AT THE BASE OF THE EXISTING ONCOR ELECTRIC TRANSMISSION TOWER.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S):

COMMENTS:

SUMMARY OF ITEM

Because of a mistake in the public hearing notice, City Council cannot take action on this 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	<i>AK</i>	10/14/09
Council Meeting Date:	10/26/2009	Budget	C.S.	10-14-09
Department:	Customer and Utility Services	Legal	<i>MS</i>	10.14.09
Department Head	Mark D. Israelson	Assistant City Manager	<i>[Signature]</i>	10/14/09
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	<i>[Signature]</i>	10/16/09
		City Manager	<i>[Signature]</i>	10/16/09
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				
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				
A PUBLIC HEARING BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE PERTAINING TO THE USE OR TAKING OF A PORTION OF A CITY OF PLANO PARK AND KNOWN AS THE JACK CARTER SITE FOR A COMMUNICATIONS FACILITIES LICENSE AGREEMENT FOR CELLULAR EQUIPMENT ATTACHED TO AND AT THE BASE OF THE EXISTING ONCOR ELECTRIC TRANSMISSION TOWER.				
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				
Dallas MTA, L.P. d/b/a Verizon Wireless, a Delaware limited partnership, has requested that the City approve their cellular communications facilities attached to and at the base of Oncor Electric transmission towers, as depicted in drawing included with this agenda item. Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing for any use or taking of park land. To permit the use or taking of park land, the City Council must find the following:				
<ol style="list-style-type: none"> 1. There is no feasible and prudent alternative to the use and taking of the park land as proposed by the project exists, and 2. The Project includes all reasonable planning to minimize harm to the park land resulting from the use or the taking. 				
Witnesses will present at the public hearing on these issues.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

NOTICE OF PUBLIC HEARING

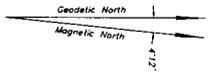
The City Council of the City of Plano, Texas will hold a public hearing on the 26th day of October, 2009 at 7:00 o'clock p.m. in the City Council Chambers, City of Plano Municipal Building, located at 1520 Avenue K, Plano, Texas. The purpose of the public hearing is to determine whether or not a portion of the Jack Carter site within the City of Plano, Texas, should be utilized for the following described project:

Communications Facilities License Agreement with Dallas MTA, L.P. d/b/a Verizon Wireless for the Jack Carter Site.

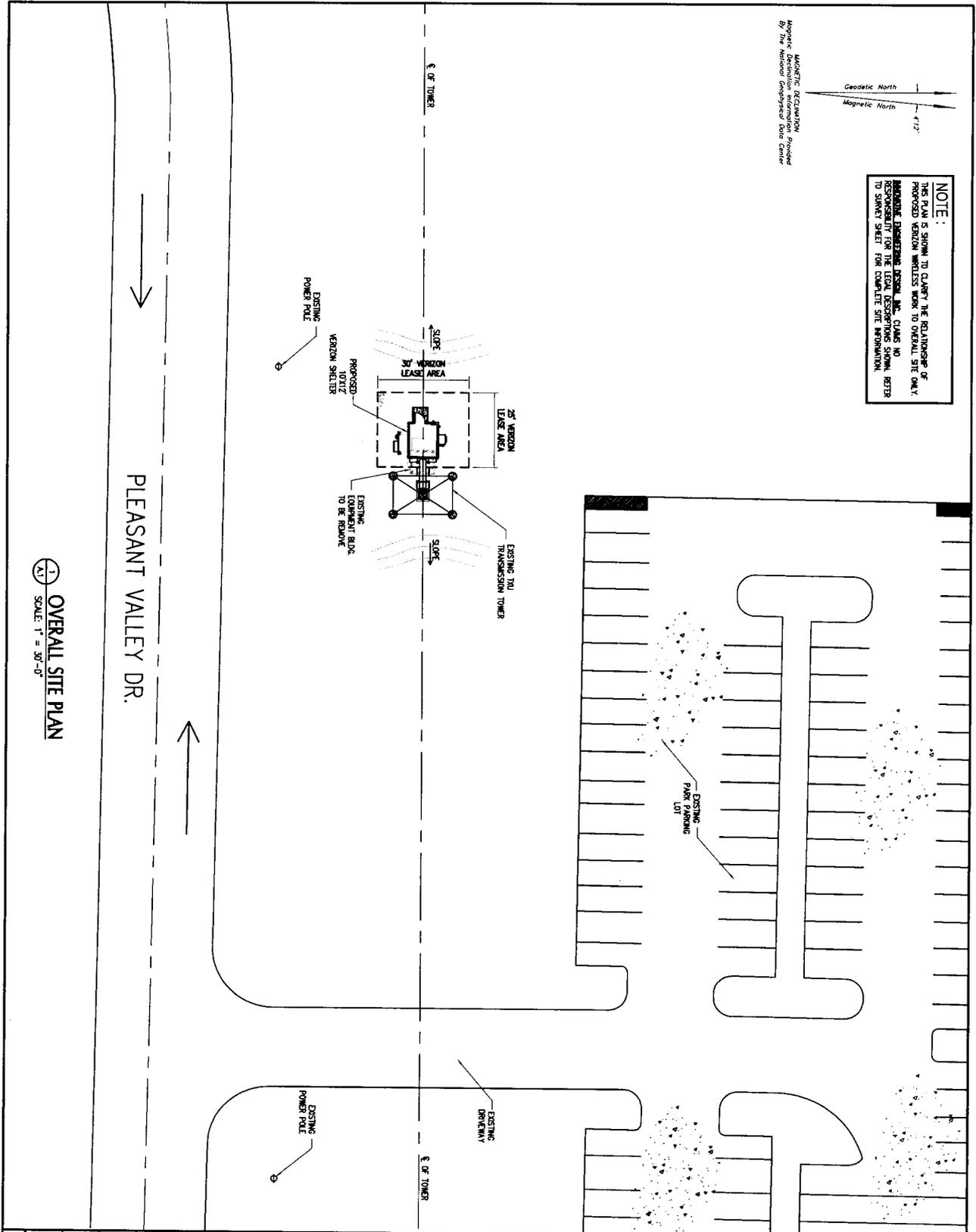
A drawing of the park location and proposed communications facility can be viewed in the office of Mark Israelson, Customer and Utilities Services Office at 1520 Avenue K, Suite 120, Plano, Texas 75074.

All interested persons are invited to attend and testify at the public hearing.

MAGNETIC DECLINATION
Magnetic Declination Information Provided
by the National Geophysical Data Center



NOTE:
THIS PLAN IS SHOWN TO CLARIFY THE RELATIONSHIP OF
PROPOSED VERIZON WIRELESS WORK TO OVERALL SITE PLAN.
RENDERING ENGINEERING DESIGN, INC. CLAIMS NO
RESPONSIBILITY FOR THE LEGAL DESCRIPTIONS SHOWN, REFER
TO SURVEY SHEET FOR COMPLETE SITE INFORMATION.

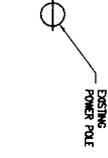
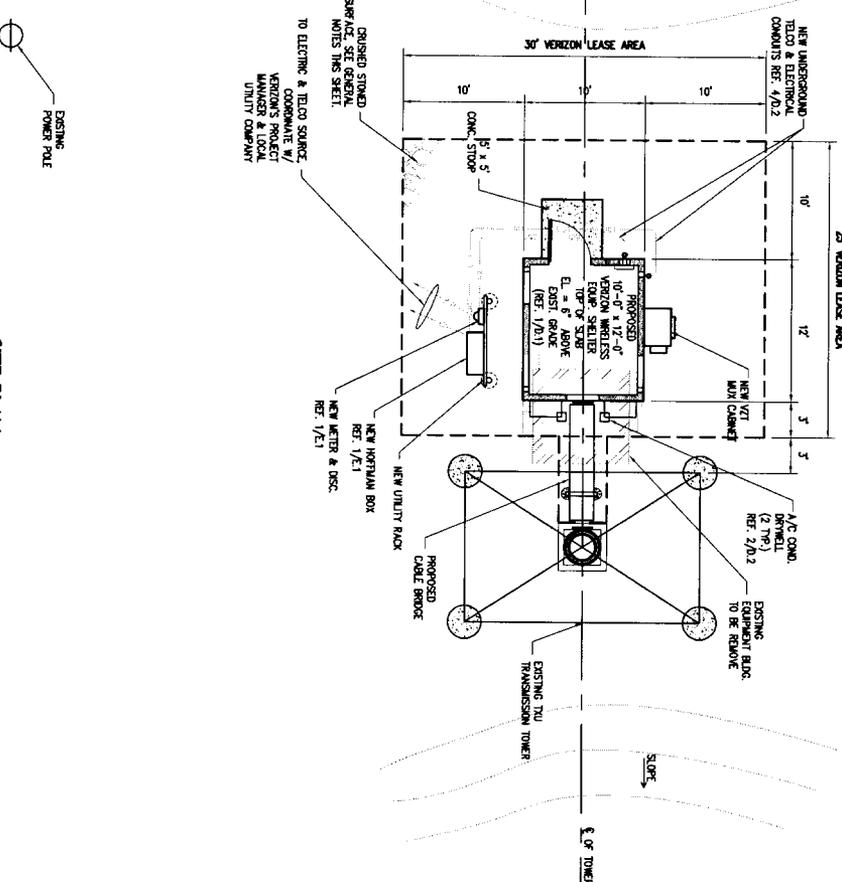
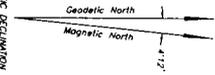


OVERALL SITE PLAN
SCALE: 1" = 30'-0"

2807 PLEASANT VALLEY DR PLANO, TX 75023 A.1		Mason Creek Industrial Park 21732 Provincial Blvd, Suite 130 K099, Jensen 77450 Tel : (281) 356-7888 Fax : (281) 356-7885	
PRINTED DATE: 05/22/09 DRAWN BY: R.F.E. CHECKED BY: J.S.A. OVERALL SITE PLAN SITE NO: 160800 SITE NAME: JACK CARTER	VERIZON WIRELESS	REF / DATE: _____ DESCRIPTION: _____	ADDRESS: 2807 PLEASANT VALLEY DR PLANO, TX 75023 A.1

3-3

MAGNETIC DECLINATION Provided By The National Geospatial Data Center



1 SITE PLAN
SCALE: 1" = 10'-0"

GENERAL NOTES:

- THE FOLLOWING GENERAL NOTES CONSTITUTE A MAJOR PART OF THESE CONTRACT DOCUMENTS. STRICT COMPLIANCE WITH THESE NOTES IS ESSENTIAL TO THE PROCESS OF WORK AT SITE.
- CONTRACTOR SHALL BE RESPONSIBLE TO LOCATE ALL EXISTING UNDERGROUND OBSTRUCTIONS, UTILITIES AND/OR OBSTACLES BEFORE WORKING OR DRILLING ON THE SITE.
- CONTRACTOR SHALL BE RESPONSIBLE TO PROTECT THE SITE AND THE SURROUNDING AREA FROM THE HAZARD DURING ALL OPERATIONS. ADEQUATE EQUIPMENT, PERSONNEL AND SIGNAGE SHALL BE PROVIDED TO PROTECT LIFE IN AND SURROUNDING THE CONSTRUCTION SITE.
- ALL EXCAVATIONS SHALL BE BACKFILLED FOR PERSONAL PROTECTION.
- VERIFY REQUIREMENTS OF OTHER TRACES PRIOR TO PROCEEDING WITH FABRICATION OR INSTALLATION OF MATERIALS.
- COMPLETE SHOP DRAWINGS SHALL BE PROVIDED FOR ALL FABRICATED ITEMS FOR REVIEW PRIOR TO FABRICATION. STRUCTURAL DRAWINGS SHALL NOT BE REPRODUCED FOR SHOP DRAWINGS.
- ALL WORK SHALL BE ACCOMPANIED WITH ALL APPLICABLE STATE, LOCAL, AND NATIONAL CODES OF THE CURRENT ACCEPTED EDITIONS. THESE CODES INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING:
 - INTERNATIONAL BUILDING CODE - IBC
 - THE AMERICAN ASSOCIATION OF STEEL CONSTRUCTION
 - THE AMERICAN ASSOCIATION OF STEEL CONSTRUCTION
 - FOR THE DESIGN, FABRICATION, AND ERECTION OF STRUCTURAL STEEL FOR BUILDINGS
 - THE AMERICAN CONCRETE INSTITUTE - BUILDING CODE REQUIREMENTS OF REINFORCED CONCRETE
 - THE AMERICAN WELDING SOCIETY - STRUCTURAL WELDING CODE - STEEL TOWER DESIGN - STANDARD PER D1/VIA - 222 - F SPECIFICATIONS
- VERIFY ALL EXISTING SITE CONDITIONS, QUANTITIES AND DIMENSIONS BEFORE BEGINNING WORK. NOTIFY THE CONSTRUCTION MANAGER OF ANY DISCREPANCIES OR INCONSISTENCIES BEFORE PROCEEDING WITH THE WORK.
- ALL BIDDERS SHALL VISIT THE SITE BEFORE BIDDING TO FAMILIARIZE THEMSELVES WITH EXISTING CONDITIONS.
- THE BUILDER/SUBCONTRACTOR SHALL BE RESPONSIBLE WITH NO ADDITIONAL COSTS TO THE OWNER/LESSOR/PROTECTOR UNLESS OTHERWISE STATED THAT ANY AND ALL SUCH CHARGES ARE PAID BY THE RESPECTIVE SUBCONTRACTORS ASSOCIATED WITH THIS PROJECT.
- THE BUILDER/SUBCONTRACTOR SHALL BE RESPONSIBLE FOR THE REPAIR OF ANY DAMAGE TO EXISTING FACILITIES AND SHALL REPLACE OR REPAIR TO THE ORIGINAL CONDITION AS DETERMINED BY THE PROJECT MANAGER.
- ALL UTILITIES SHALL BE MAINTAINED AND PROTECTED AT ALL TIMES. ANY DAMAGE TO UTILITIES SHALL BE REPAIRED BY THE PROJECT MANAGER AT THE OWNER'S DISCRETION FOR SAFETY AND SECURITY AT ALL TIMES.
- NOT AND MATCH ANY AREAS WHERE REQUIRED BY THE SCOPE OF THIS PROJECT. MATCH EXISTING WORK AND MATERIALS FROM A MATCH WORK FALLS OUTSIDE OF THE LIMITS OF THIS CONTRACT.
- THE OWNER OF THE SITE RESERVES TO SALVAGE RIGHTS TO ALL MATERIALS AND EQUIPMENT OF THE PROJECT. THE CONTRACTOR SHALL ASSUME COMPLETE RESPONSIBILITY FOR THE REMOVAL AND APPROPRIATE DISPOSAL THEREOF.
- DIMENSIONS NOTED AS "V" OR "VERT" ARE BASED ON MATING/EXISTING DIMENSIONS. DIMENSIONS NOTED AS "H" OR "HORIZ" ARE BASED ON MATING/EXISTING DIMENSIONS. DIMENSIONS NOTED AS "S" OR "SLOPE" ARE SHOWN UNLESS OTHERWISE NOTED BY THE PROJECT MANAGER. DIMENSIONS ARE SHOWN UNLESS OTHERWISE NOTED BY THE PROJECT MANAGER.
- DEMOLITION AND CONSTRUCTION ACTIVITIES SHALL BE ACCOMPANIED IN SUCH A MANNER THAT NO OBSTRUCTION OF EXISTING FACILITY OPERATIONS WILL OCCUR.
- THE NATURE OF THE SITE RELATED ACTIVITIES REQUIRES THAT ACCESS TO THE SITE BE MAINTAINED AT ALL TIMES DURING PERIODS OF OPERATION AND WHEN THE SITE IS ABANDONED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR SAFETY AND SECURITY AT ALL TIMES.

PAVING NOTES:

- SITE PREPARATION SHALL CONSIST OF STRIPPING THE GROUND OF ALL VEGETATION AND DEBRIS. THE EXPOSED SURFACE SHALL BE PROTECTED TO PREVENT SOIL EROSION AND TO PREVENT THE GROUND FROM BEING CONTAMINATED. THE CONTRACTOR SHALL FILL ANY AREAS OF UNDESIRABLE SOILS AND ANY STRUCTURAL FILL SHALL BE COMPACTED TO A MINIMUM OF 95% OF THE MAXIMUM STANDARD DENSITY (ASTM D-1557) AT A MOISTURE CONTENT WITHIN 2% OF OPTIMUM.
- PROVIDE 4" COMPACTED AGGREGATE OVER GEOTEXTILE FABRIC AND PREPARED SURFACE IN THE LEASE AREA.
- LOCATION OF UTILITIES IS BASED UPON BEST AVAILABLE INFORMATION. THE CONTRACTOR SHALL VERIFY THE ACTUAL LOCATION IN THE FIELD. THE CONTRACTOR SHALL NOTIFY THE UNDERGROUND UTILITIES COORDINATING COMMITTEE 48 HOURS PRIOR TO COMMENCING WORK ON THE SITE. 1-800-245-4545.

	<p>INNOVATIVE ENGINEERING DESIGN</p> <p>Mason Creek Industrial Park 27132 Provincial Blvd, Suite 130 Katy, Texas 77450 Tel : (281) 388-7888 Fax : (281) 388-7886</p>
	<p>REV / DATE</p> <p>DESCRIPTION</p>
<p>PRINTED DATE: 05/27/09</p> <p>DRAWN BY: R.T.</p> <p>CHECKED BY: J.S.A.</p> <p>ENLARGED SITE PLAN</p> <p>SHEET NO: 160800</p> <p>SITE NAME: JACK CARTIER</p> <p>ADDRESS: 2801 PLEASANT VALLEY DR PLANO, TX 75023</p> <p>A.2</p> <p>VERIZON WIRELESS</p>	<p>3.4</p>



**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>J.P.</i>	10-15-09
Council Meeting Date:	10/26/2009	Budget	C.S.	10-15-09
Department:	Customer and Utility Services	Legal	<i>W.L.</i>	10-16-09
Department Head	Mark D. Israelson	Assistant City Manager	<i>[Signature]</i>	10/19/09
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	<i>[Signature]</i>	10/18/09
		City Manager	<i>[Signature]</i>	10/16/09
Agenda Coordinator (include phone #): Nancy Rodriguez, X7510				
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, APPROVING THE USE AND TAKING BY DALLAS MTA, L.P. D/B/A VERIZON WIRELESS, A DELAWARE LIMITED PARTNERSHIP, OF A PORTION OF CITY OF PLANO PUBLIC PARK LAND KNOWN AS JACK CARTER PARK (PLEASANT VALLEY DRIVE AND ROUNDROCK TRAIL); FINDING AND DETERMINING THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO THE PROPOSED USE OR TAKING OF THE PARK LAND AND THAT THE PROPOSED PROJECT INCLUDES ALL REASONABLE PLANNING TO MINIMIZE HARM TO THE LAND, THE PARK AND THE RECREATION AREA; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
This item is related to the previous public hearing item authorizing Dallas MTA, L.P. d/b/a Verizon Wireless, a Delaware limited partnership, to locate, place, attach, install, and operate telecommunications ground equipment in certain specific portions of the public rights of way near Jack Carter Park identified as the Jack Carter site.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, APPROVING THE USE AND TAKING BY DALLAS MTA, L.P. D/B/A VERIZON WIRELESS, A DELAWARE LIMITED PARTNERSHIP, OF A PORTION OF CITY OF PLANO PUBLIC PARK LAND KNOWN AS JACK CARTER PARK (PLEASANT VALLEY DRIVE AND ROUNDROCK TRAIL); FINDING AND DETERMINING THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO THE PROPOSED USE OR TAKING OF THE PARK LAND AND THAT THE PROPOSED PROJECT INCLUDES ALL REASONABLE PLANNING TO MINIMIZE HARM TO THE LAND, THE PARK AND THE RECREATION AREA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has requested approval of a project to allow cellular equipment to be attached to and at the base of an existing TXU Electric transmission tower for Dallas MTA, L.P. d/b/a Verizon Wireless, a Delaware limited partnership, as depicted on the drawing attached hereto as Exhibit "A" (called "Project") which requires the use or taking of a portion of City of Plano public park land known as Jack Carter Park at Pleasant Valley Drive and Roundrock Trail, (called "Park Land"); and

WHEREAS, Chapter 26 of the TEXAS PARKS AND WILDLIFE CODE (called "Code") requires a public hearing to determine whether or not the Project's proposed use of a portion of the Park Land should be approved in accordance with certain criteria contained within the Code; and

WHEREAS, Notices of the Public Hearing were duly served and published in conformity with the Code; and

WHEREAS, a public hearing was held by the City Council on October 26, 2009, during which all interested persons were given the opportunity to testify and present other relevant evidence before the City Council;

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

4-2

Section I. After hearing and reviewing all of the testimony and evidence at the Public Hearing as well as other matters and information relevant and pertinent to a determination, the City Council hereby finds and determines that:

- (a) There is no feasible and prudent alternative to the use or taking of the Park Land as proposed by the Project; and
- (b) The Project includes all reasonable planning to minimize harm to the Park Land, resulting from the use or the taking.

Section II. The City Council further finds that the determination made in Section I is in the public interest generally, and in the best interest of the citizens of the City of Plano, Texas.

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

DULY PASSED AND APPROVED this the 26th day of October, 2009.

Phil Dyer, MAYOR

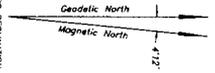
ATTEST:

Diane Zucco, City Secretary

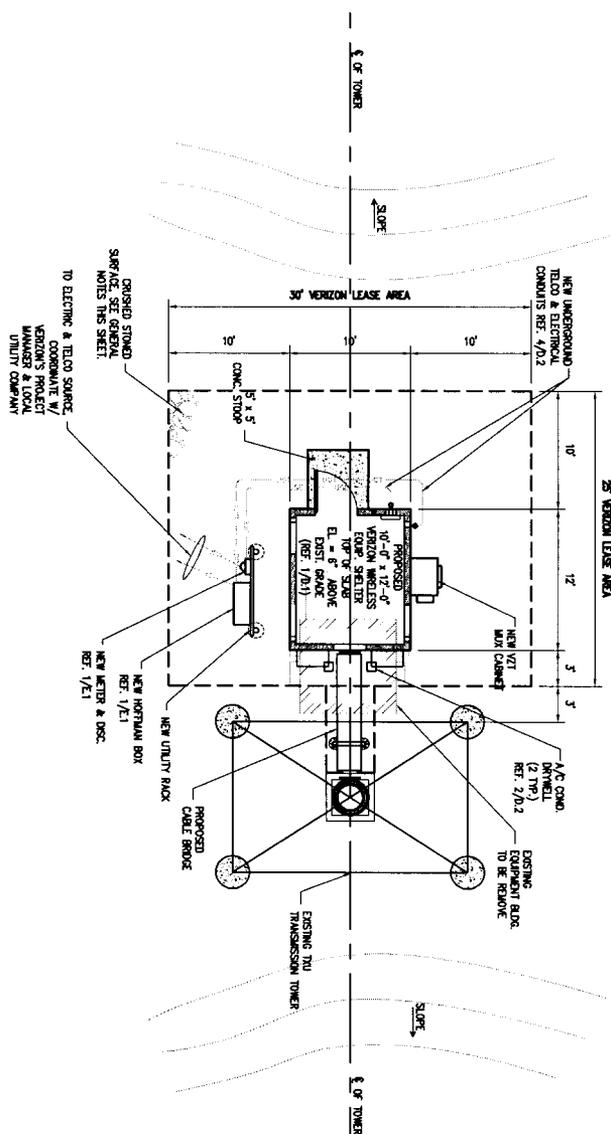
APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

MAGNETIC DECLINATION
Magnetic Declination Information Provided
By the National Geospatial Data Center



1 SITE PLAN
SCALE: 1" = 10'-0"



GENERAL NOTES:

- THE FOLLOWING GENERAL NOTES CONSTITUTE A MAJOR PART OF THESE CONTRACT DOCUMENTS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.
- CARE SHALL BE TAKEN TO LOCATE ALL EXISTING UNDERGROUND OBSTRUCTIONS, UTILITIES AND/OR EXISTENTS BEFORE DIGGING OR DRILLING ON THE SITE.
- CARE SHALL BE TAKEN TO PROTECT THE SITE AND THE SURROUNDING AREA FROM THE HAZARD OF COLLAPSE OF EXISTING FOUNDATIONS, STRUCTURES, PIPELINES AND OTHER EXISTING UTILITIES. PROTECTIVE MEASURES SHALL BE PROVIDED TO PROTECT LIFE AND PROPERTY IN THE VICINITY OF THE CONSTRUCTION SITE.
- ALL EXCAVATIONS SHALL BE BARRICADED FOR PERSONAL PROTECTION.
- VERIFY REQUIREMENTS OF OTHER TRADES PRIOR TO PROCEEDING WITH FABRICATION OR INSTALLATION OF MATERIALS.
- COMPLETE SHOP DRAWINGS SHALL BE PROVIDED FOR ALL FABRICATED ITEMS FOR REVIEW AND APPROVAL BY THE ARCHITECT. STRUCTURAL DRAWINGS SHALL NOT BE REQUIRED FOR SHOP DRAWINGS.
- ALL WORK SHALL BE ACCORDING WITH ALL APPLICABLE STATE, LOCAL AND NATIONAL CODES OF THE CURRENT ACCEPTED EDITIONS. THESE CODES INCLUDE THE AMERICAN INSTITUTE OF STEEL CONSTRUCTION - SPECIFICATION FOR THE BUILDING CODE (OR LOCAL ACCEPTED CODE), THE AMERICAN ASSOCIATION OF STEEL CONSTRUCTION - SPECIFICATION FOR THE DESIGN, FABRICATION, AND ERECTION OF STRUCTURAL STEEL FOR BUILDINGS, THE AMERICAN CONCRETE INSTITUTE - BUILDING CODE REQUIREMENTS OF REINFORCED CONCRETE, THE AMERICAN WELDING SOCIETY - STRUCTURAL WELDING CODE - STEEL TOWER DESIGN - STANDARD PER D1/7/A - 222 - F SPECIFICATIONS FOR CONCRETE REINFORCING BARS AND WIRE FABRIC.
- VERIFY ALL EXISTING SITE CONDITIONS, QUANTITIES AND DIMENSIONS BEFORE BEGINNING CONSTRUCTION. VERIFY ALL DIMENSIONS AND LOCATIONS OF EXISTING UTILITIES AND STRUCTURES BEFORE PROCEEDING WITH THE WORK.
- ALL BIDDERS SHALL VISIT THE SITE BEFORE BIDDING TO FAMILIARIZE THEMSELVES WITH EXISTING CONDITIONS.
- THE BUILDER/SUBCONTRACTOR SHALL BE RESPONSIBLE WITH NO ADDITIONAL COSTS TO THE OWNER/LESSOR/PROJECT MANAGER TEAM FOR ALL FEES, PERMITS, INSPECTION FEES RELATED TO THIS PROJECT OR SEE THAT ANY AND ALL SUCH CHARGES ARE PAID BY THE RESPECTIVE SUBCONTRACTORS ASSOCIATED WITH THIS PROJECT.
- THE BUILDER/SUBCONTRACTOR SHALL BE RESPONSIBLE FOR THE REPAIR OF ANY DAMAGE TO EXISTING FACILITIES AND SHALL REPLACE OR REPAIR TO THE ORIGINAL CONDITION AS DETERMINED BY THE PROJECT MANAGER.
- CUT AND PATCH ANY AREAS WHERE REQUIRED BY THE SCOPE OF THE PROJECT WITHIN THE LIMITS OF THIS CONTRACT.
- THE OWNER OF THE SITE RETAINS TO SAVE AND RIGHTS TO ALL MATERIALS AND EQUIPMENT ON THE SITE. THE BUILDER/SUBCONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL AND APPROPRIATE DISPOSAL THEREOF.
- DIMENSIONS NOTED AS "X" OF "Y" ARE BASED ON MATERIALS EXISTING AT THE TIME OF THE SURVEY. THE BUILDER/SUBCONTRACTOR SHALL VERIFY THE DIMENSIONS AND CONSTRUCTION ACTIVITIES SHALL BE ACCOMPLISHED IN SUCH A MANNER THAT NO DISRUPTION OF EXISTING FACILITY OPERATIONS WILL OCCUR.
- DEMOLITION AND CONSTRUCTION ACTIVITIES SHALL BE ACCOMPLISHED IN SUCH A MANNER THAT NO DISRUPTION OF EXISTING FACILITY OPERATIONS WILL OCCUR.
- THE NATURE OF THE SITE RELATED ACTIVITIES REQUIRES THAT ACCESS TO THE SITE BE MAINTAINED AT ALL TIMES. THE BUILDER/SUBCONTRACTOR SHALL MAINTAIN THE SITE'S SWATHED WORK WITH THE OWNER'S REPRESENTATIVE FOR SAFETY AND SECURITY AT ALL TIMES.

PAVING NOTES:

- SITE PREPARATION SHALL CONSIST OF STRIPPING THE GRASS AND ALL WEEDS AND BRUSH FROM THE ENTIRE SITE. THE STRIPPED MATERIAL SHALL BE STOCK PILED IN ONE AREA OF APPROXIMATELY 10' x 10' IN THE CONC. SLAB AREA. STRIPPED SOILS AND ANY STRUCTURAL FILL SHALL BE COMPACTED TO A MINIMUM OF 95% OF THE MAXIMUM STANDARD DENSITY (ASTM D-1557-79) AT A MOISTURE CONTENT WITHIN 2% OF OPTIMUM.
- PROVIDE 4" COMPACTED ASPHALT OVER EXISTING PAVING AND PREPARED SUBGRADE IN THE LEASE AREA.
- LOCATION OF UTILITIES IS BASED UPON BEST AVAILABLE INFORMATION. THE CONTRACTOR SHALL VERIFY THE ACTUAL LOCATIONS IN THE FIELD. THE DEPTH OF WHICH SHALL BE BY TELEPHONING THE UNDERGROUND UTILITIES COORDINATING COMMITTEE 48 HOURS PRIOR TO COMMENCEMENT ON SITE 1-800-265-6265.

INNOVATIVE ENGINEERING DESIGN

Mason Creek Industrial Park,
 21732 Provincial Blvd., Suite 130
 Ft. Collins, CO 80504
 Tel : (970) 994-7888
 Fax : (970) 398-7888

REV / DATE	DESCRIPTION

PRINTED DATE:	05/22/09
DRAWN BY:	R.F.
CHECKED BY:	L.S.A.
ENLARGED SITE PLAN	
SHEET NO.:	160800
SHEET NAME:	JACK CARTER
ADDRESS:	2801 PLEASANT VALLEY DR PLANO, TX 75023
A.2	
VERIZON WIRELESS	

4-5



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>NR</i>	10/14/09	
Council Meeting Date:	10/26/2009	Budget	C.S.	10-14-09	
Department:	Customer and Utility Services	Legal	<i>JA</i>	10-16-09	
Department Head	Mark D. Israelson	Assistant City Manager	<i>MD</i>	11/4/09	
Dept Signature:	<i>MD</i>	Deputy City Manager	<i>MD</i>	10/16/09	
		City Manager	<i>JRW</i>	10/16/09	
Agenda Coordinator (include phone #): Nancy Rodriguez X7510					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, TO AMEND A COMMUNICATION FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND DALLAS MTA, L.P., D/B/A/ VERIZON WIRELESS, A DELAWARE LIMITED PARTNERSHIP, TO INSTALL, AND OPERATE TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF CITY OF PLANO PUBLIC PARKLAND, KNOWN AS THE JACK CARTER SITE; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, HIS DESIGNEE, AND PROVIDING AN EFFECTIVE DATE.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2009-10, 10-11, 11-12, 12-13, 13-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	11,246	48,462	59,708
BALANCE		0	11,246	48,462	59,708
FUND(s): GENERAL FUND, NON-DEPARTMENTAL (215.4438)					
COMMENTS: Approval of this item will provide a five-year ground lease agreement with \$11,246 annual revenue beginning FY 2009-10, and includes an annual lease fee escalator of 3%. STRATEGIC PLAN GOAL: Communication Facilities License Agreements for the use of City Park Land relate to the City's Goal of "Service Excellence."					
This Resolution approves an Amendment to Communications Facilities License Agreement with Dallas MTA, L.P., d/b/a Verizon Wireless, a Delaware limited partnership, for communications facilities in City of Plano public park land known as the Jack Carter site.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, TO AMEND A COMMUNICATION FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND DALLAS MTA, L.P., D/B/A/ VERIZON WIRELESS, A DELAWARE LIMITED PARTNERSHIP, TO INSTALL, AND OPERATE TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF CITY OF PLANO PUBLIC PARKLAND, KNOWN AS THE JACK CARTER SITE; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, HIS DESIGNEE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano and Dallas MTA, L.P. d/b/a Verizon Wireless, a Delaware limited partnership, entered into a Communications Facilities License approved by the City Council on November 28, 2005, by Resolution No. 2005-11-29(R), and

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

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

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

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

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

DULY PASSED AND APPROVED on this the 26 day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

5-3

AMENDMENT NO. 1 TO COMMUNICATIONS FACILITIES LICENSE

WHEREAS, pursuant to a Communications Facilities License ("License") dated November 29, 2005, between Dallas MTA, L.P. d/b/a Verizon Wireless ("Licensee") and the City of Plano, Texas, a home rule municipal corporation ("Licensor") covering lease property ("Property") located at 2607 Pleasant Valley Drive, City of Plano, County of Collin, State of Texas 75023.

WHEREAS, Licensor and Licensee now desire to amend the License as herein set forth;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to the following:

1. Appendix "A" (Site Plan) dated December 14, 1998 is hereby replaced in its entirety with Appendix "A-1" (Site Plan) dated May 22, 2009, attached hereto and made a part hereof. Licensee shall have the right to replace its existing equipment at the Property with the equipment shown on Appendix "A-1".
2. Effective January 1, 2010, Licensee's Rent Payment shall be increased to Eleven Thousand Two Hundred Forty-Six and 40/100 Dollars (\$11,246.40) per annum for the remaining term of this Agreement, subject to annual adjustments set forth in Section 4.2 of the License.

Except as hereby amended, all other provisions of said License will remain in full force and effect as originally written and is hereby confirmed as to all provisions contained therein. In the event of any conflict between the terms of this Amendment No. 1 and the terms of the License, this Amendment No. 1 shall control.

[SIGNATURE PAGE TO FOLLOW]

5-4

IN WITNESS WHEREOF, the parties hereto executed this Amendment No. 1 to the License as of the _____ day of _____, 2009.

LICENSEE:

Dallas MTA, L.P. d/b/a Verizon Wireless
by Verizon Wireless Texas, LLC, its general
partner

BY: _____

Hans F. Leutenegger
Area Vice-President Network

Date: _____

LICENSOR:

City of Plano, Texas, a home rule municipal
Corporation

BY: _____

Thomas H. Muehlenbeck
City Manager

Date: _____

5.5



**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>DR</i>	10-15-09
Council Meeting Date:	10/26/2009	Budget	<i>C.S.</i>	10-15-09
Department:	Customer and Utility Services	Legal	<i>DR</i>	10-16-09
Department Head	Mark D. Israelson	Assistant City Manager	<i>MDI</i>	10/15/09
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	<i>RS</i>	10-19-09
		City Manager	<i>[Signature]</i>	10/19/09
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				
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				
A PUBLIC HEARING BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE PERTAINING TO THE USE OR TAKING OF A PORTION OF A CITY OF PLANO PARK AND KNOWN AS THE PRESTON RIDGE SITE FOR A COMMUNICATIONS FACILITIES LICENSE AGREEMENT FOR CELLULAR EQUIPMENT ATTACHED TO AND AT THE BASE OF THE EXISTING ONCOR ELECTRIC TRANSMISSION TOWER.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
<p>T-Mobile West Corporation, a Delaware Corporation, has requested that the City approve their cellular communications facilities attached to and at the base of Oncor Electric transmission towers, as depicted in drawing included with this agenda item. Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing for any use or taking of park land. To permit the use or taking of park land, the City Council must find the following:</p> <ol style="list-style-type: none"> 1. There is no feasible and prudent alternative to the use and taking of the park land as proposed by the project exists, and 2. The Project includes all reasonable planning to minimize harm to the park land resulting from the use or the taking. <p>Witnesses will present at the public hearing on these issues.</p>				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

NOTICE OF PUBLIC HEARING

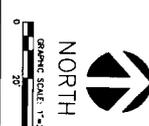
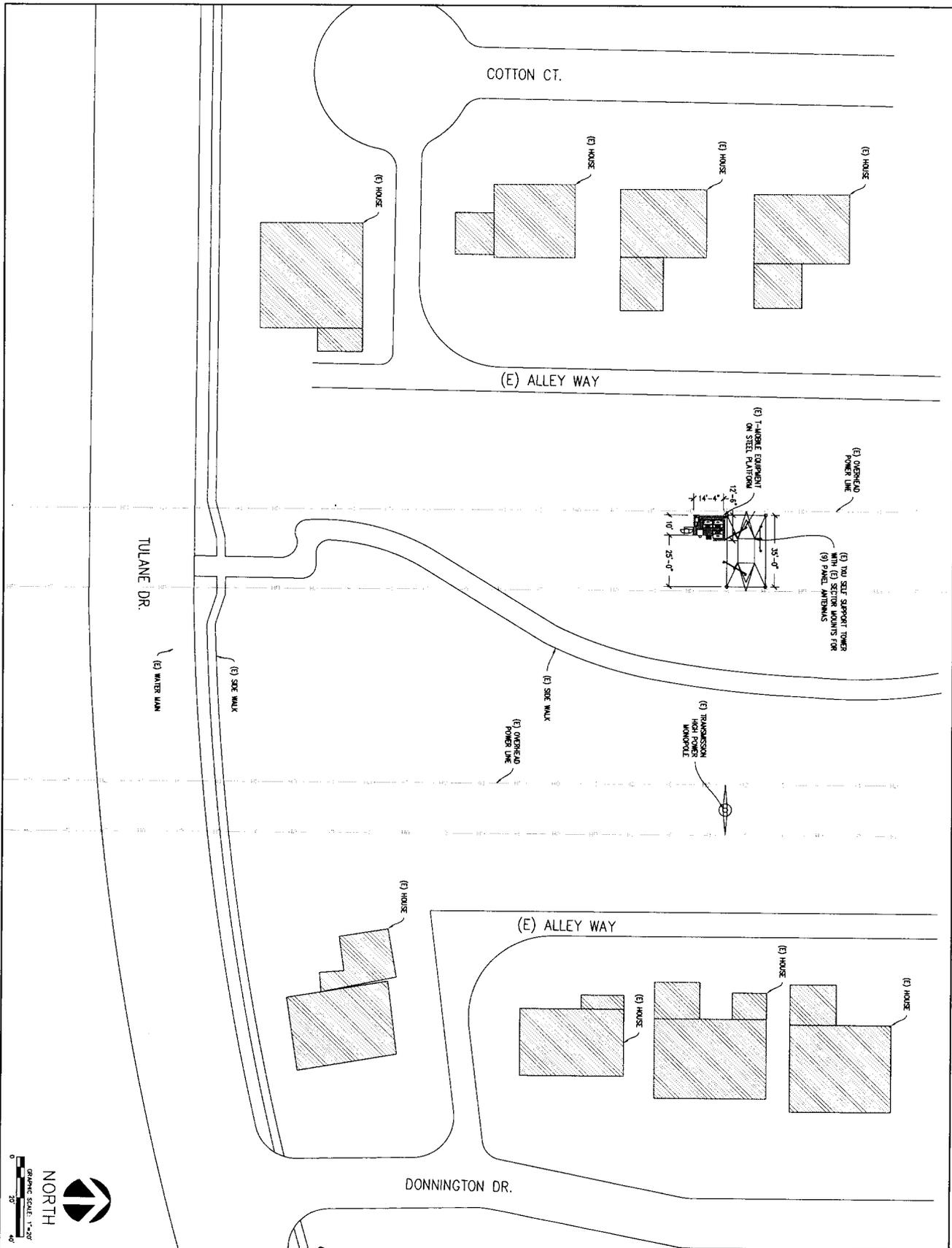
The City Council of the City of Plano, Texas will hold a public hearing on the 26th day of October, 2009 at 7:00 o'clock p.m. in the City Council Chambers, City of Plano Municipal Building, located at 1520 Avenue K, Plano, Texas. The purpose of the public hearing is to determine whether or not a portion of the Preston Ridge Trail within the City of Plano, Texas, should be utilized for the following described project:

Communications Facilities License Agreement with T-Mobile Texas, LP for the Tulane & Downington Drive Communications Site

A drawing of the park location and proposed communications facility can be viewed in the office of Mark Israelson, Customer and Utilities Services Office at 1520 Avenue K, Suite 120, Plano, Texas 75074.

All interested persons are invited to attend and testify at the public hearing.

6-2



<p>F. Mobile DAK RICHES GROUP PROJECT MANAGER OFFICE: 9771 WALKER</p>	<p>PROJECT NO. DA1232C DRAWN BY: CG/CEC/DL CHECKED BY: JMG</p>	<p>DATE REVISION - REVISION NUMBER 11/01/10 FINAL - REV 12/01/10 FINAL - REV 01/04/11 FINAL 01/07/11 PRELIMINARY</p>	<p>ALLPRO CONSULTING GROUP, INC. 2221 Lyndon B. Johnson Freeway Suite 704 Dallas, TX 75245 Tel: 972.384.4375 Fax: 972.384.4375 www.allpro.com</p>	<p>REGISTERED PROFESSIONAL ENGINEER STATE OF TEXAS JOEL MONTAGAL GEORGE LICENSE NO. 91733 NOT VALID WITHOUT P.E. STAMP & SIGNATURE</p>	<p>DA1232C PLANO TXU 4335 TULANE DRIVE PLANO, TEXAS 75093</p>	<p>SHEET TITLE OVERALL SITE PLAN SHEET NUMBER C-1</p>
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6-3



**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]	10-15-09
Council Meeting Date: 10/26/2009		Budget	C.S.	10-15-09
Department: Customer and Utility Services		Legal	[Signature]	10-16-09
Department Head: Mark D. Israelson		Assistant City Manager	[Signature]	10/15/09
Dept Signature: [Signature]		Deputy City Manager	[Signature]	10-19-09
		City Manager	[Signature]	10/19/09
Agenda Coordinator (include phone #): Nancy Rodriguez, X7510				
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, APPROVING THE USE AND TAKING BY T-MOBILE WEST CORPORATION, A DELAWARE CORPORATION, OF A PORTION OF CITY OF PLANO PUBLIC PARK LAND KNOWN AS PRESTON RIDGE TRAIL PARK (TULANE AND DOWNINGTON DRIVE); FINDING AND DETERMINING THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO THE PROPOSED USE OR TAKING OF THE PARK LAND AND THAT THE PROPOSED PROJECT INCLUDES ALL REASONABLE PLANNING TO MINIMIZE HARM TO THE LAND, THE PARK AND THE RECREATION AREA; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
This item is related to the previous public hearing item authorizing T-Mobile West Corporation, a Delaware Corporation, to locate, place, attach, install, and operate telecommunications ground equipment in certain specific portions of the public rights of way near Preston Ridge Trail identified as the Preston Ridge Trail Park site.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, APPROVING THE USE AND TAKING BY T-MOBILE WEST CORPORATION, A DELAWARE CORPORATION, OF A PORTION OF CITY OF PLANO PUBLIC PARK LAND KNOWN AS PRESTON RIDGE TRAIL PARK (TULANE AND DOWNINGTON DRIVE); FINDING AND DETERMINING THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO THE PROPOSED USE OR TAKING OF THE PARK LAND AND THAT THE PROPOSED PROJECT INCLUDES ALL REASONABLE PLANNING TO MINIMIZE HARM TO THE LAND, THE PARK AND THE RECREATION AREA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has requested approval of a project to allow cellular equipment to be attached to and at the base of an existing TXU Electric transmission tower for T-Mobile West Corporation, a Delaware corporation, as depicted on the drawing attached hereto as Exhibit "A" (called "Project") which requires the use or taking of a portion of City of Plano public park land known as Preston Ridge Trail Park at Coit and McDermott, (called "Park Land"); and

WHEREAS, Chapter 26 of the TEXAS PARKS AND WILDLIFE CODE (called "Code") requires a public hearing to determine whether or not the Project's proposed use of a portion of the Park Land should be approved in accordance with certain criteria contained within the Code; and

WHEREAS, Notices of the Public Hearing were duly served and published in conformity with the Code; and

WHEREAS, a public hearing was held by the City Council on October 26, 2009, during which all interested persons were given the opportunity to testify and present other relevant evidence before the City Council;

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

Section I. After hearing and reviewing all of the testimony and evidence at the Public Hearing as well as other matters and information relevant and pertinent to a determination, the City Council hereby finds and determines that:

7-2

- (a) There is no feasible and prudent alternative to the use or taking of the Park Land as proposed by the Project; and
- (b) The Project includes all reasonable planning to minimize harm to the Park Land, resulting from the use or the taking.

Section II. The City Council further finds that the determination made in Section I is in the public interest generally, and in the best interest of the citizens of the City of Plano, Texas.

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

DULY PASSED AND APPROVED this the 26th day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

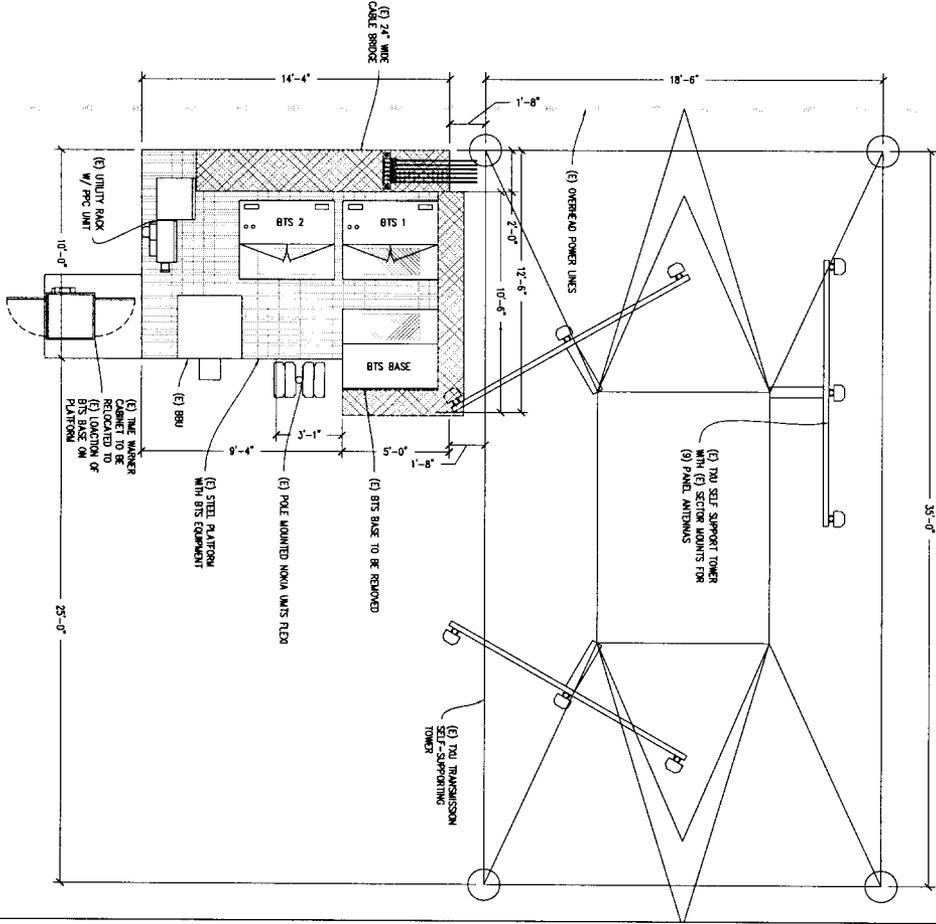
Diane Zucco, City Secretary

APPROVED AS TO FORM:

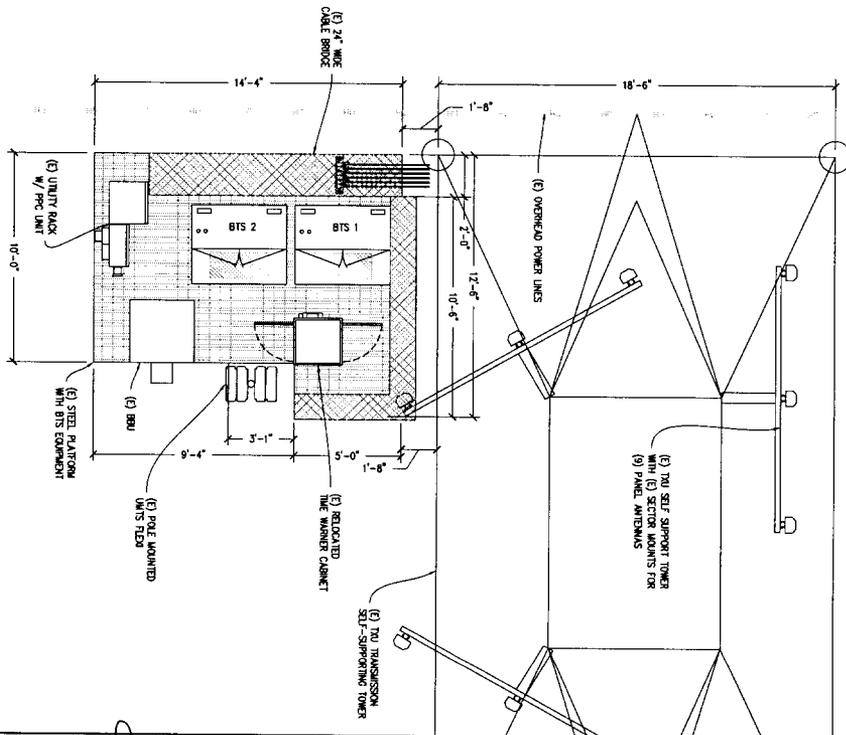
Diane C. Wetherbee, City Attorney

7-3

(E) ENLARGED LAYOUT



PROPOSED ENLARGED LAYOUT



	PROJECT NO: DA1232C DESIGN BY: CG/CEC/DL CHECKED BY: JMG	3. B/L/1/1/1/1/1 - REV 2. B/L/1/1/1/1/1 - REV 1. B/L/1/1/1/1/1 - REV 0. B/L/1/1/1/1/1 - REV	08/17/09 ALLPRO CONSULTING GROUP, INC. 5221 Lynden B Johnson Freeway Suite 104 Dallas, TX 75243 Fax: 972-444-4315 www.allprogroup.com	STATE OF TEXAS JOLI MOTTACHAL GEORGE LICENSE NO. 91783 PROFESSIONAL ENGINEER	NOT VALID WITHOUT P.E. STAMP & SIGNATURE DA1232C PLAND TXU 4235 TEJANNE DRIVE FORT WORTH, TEXAS 76103	SHEET TITLE ENLARGED SITE PLAN SHEET NUMBER C-11A
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7-5



**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>DR</i>	10-15-09
Council Meeting Date:	10/26/2009	Budget	<i>C.S.</i>	10-15-09
Department:	Customer and Utility Services	Legal	<i>[Signature]</i>	10-16-09
Department Head	Mark D. Israelson	Assistant City Manager	<i>[Signature]</i>	10/19/09
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	<i>[Signature]</i>	10-19-09
		City Manager	<i>[Signature]</i>	10/19/09
Agenda Coordinator (include phone #):		Nancy Rodriguez X7510		

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND T-MOBILE WEST CORPORATION, A DELAWARE CORPORATION, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF CITY OF PLANO PUBLIC PARK LAND KNOWN AS THE PRESTON RIDGE SITE; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2009-10, 10-11, 11-12, 12-13, 13-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	77,000	30,164	107,164
BALANCE	0	77,000	30,164	107,164

FUND(S): GENERAL FUND, NON-DEPARTMENTAL (215.4438)

COMMENTS: Approval of this item will provide a five-year ground lease agreement with \$7,000 annual revenue beginning FY 2009-10, and includes a minimum annual lease fee escalator of 3%, plus a lump sum payment of \$70,000 for the licensee's use of the premises prior to execution of this agreement.

STRATEGIC PLAN GOAL: Communication Facilities License Agreements for the use of City Park land relate to the City's Goal of "Service Excellence."

SUMMARY OF ITEM

This Resolution approves a Communications Facilities License Agreement with T-Mobile West Corporation, a Delaware Corporation, for communications facilities in City of Plano public park land known as the Preston Ridge site.

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

8-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND T-MOBILE WEST CORPORATION, A DELAWARE CORPORATION, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF CITY OF PLANO PUBLIC PARK LAND KNOWN AS THE PRESTON RIDGE SITE; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a Communications Facilities License Agreement by and between the City of Plano, Texas and T-Mobile West Corporation, a Delaware Corporation (hereinafter called "Agreement"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; 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, in his absence, his authorized designee, should be authorized to execute the Agreement on behalf of the City of Plano.

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

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

Section II. The City Manager or, in his absence, 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 on this the 26th day of October, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

8-3

STATE OF TEXAS

§

COMMUNICATIONS FACILITIES

COUNTY OF COLLIN

§

LICENSE

§

KNOW ALL BY THESE PRESENTS:

This non-exclusive License for Communications Facilities ("Agreement") is made by and between the **CITY OF PLANO, TEXAS**, a home rule municipal corporation (hereinafter referred to as the "CITY") and **T-MOBILE WEST CORPORATION**, a Delaware corporation, (hereinafter referred to as "LICENSEE"), for the use of certain premises and/or facilities according to the following terms and conditions:

WITNESSETH:

WHEREAS, CITY desires to provide LICENSEE with facilities for housing and operating certain communications equipment, including the installation of antennas or antenna systems and the space required to run cable between the equipment and the antenna or antenna systems; and

WHEREAS, LICENSEE is a communications services company duly authorized to provide certain telecommunications services and desires to lease certain property owned by CITY for installation and operation of IMPROVEMENTS, as defined herein, to operate a communications facility and all related purposes; and

WHEREAS, CITY owns the premises and facilities described below and desires to allow LICENSEE to enter and utilize designated areas of the facilities and premises.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. Location

1.1 The premises and facilities (hereinafter referred to as the "PREMISES") provided by CITY are described in the SITE PLAN attached hereto and incorporated herein as **Appendix "A"**. Included upon the PREMISES shall be an existing transmission tower (the "Tower"), LICENSEE's Equipment Compound, the Antenna Facilities, as defined herein, and the cabling run between the Antenna Facilities and the Equipment Compound (hereinafter referred to as "IMPROVEMENTS"). As a part of the SITE PLAN, LICENSEE shall provide to CITY a map that identifies all of LICENSEE's cell sites within the City of Plano and within a one-mile radius of the

8-4

boundaries of the City of Plano. As used herein, the term "Equipment Compound" means all equipment, shelters and similar structures located on the PREMISES and identified on **Appendix "A"**. The license authorized under the terms of this Agreement shall be a license for the use of that portion of the PREMISES designated for use by LICENSEE on the SITE PLAN.

1.2 **Site Plan.** The SITE PLAN must be approved by CITY prior to the execution of this Agreement, CITY shall complete review of the SITE PLAN within 90 days of its submittal by LICENSEE. The SITE PLAN shall describe and illustrate the location of the IMPROVEMENTS under this Agreement. The SITE PLAN shall include a scale drawing and inventory analysis of the proposed installations, as well as an elevation of the PREMISES with the proposed installations. Performance under this Agreement shall be in strict compliance with the SITE PLAN. If LICENSEE's installation, maintenance and operation of the IMPROVEMENTS fail to comply with the approved SITE PLAN, at any time, as reasonably determined by CITY, then CITY shall have the right to terminate this Agreement upon notice to LICENSEE, who has an opportunity to cure as provided under Section 5 herein. Any proposed material modifications to LICENSEE's SITE PLAN must be approved in writing by CITY before LICENSEE may make any changes to its SITE PLAN as originally approved by CITY.

1.3 LICENSEE has inspected, examined and investigated the status of the title and condition of the PREMISES to the extent that LICENSEE has deemed necessary, and LICENSEE understands, acknowledges and agrees that it is entering into this Agreement to acquire a leasehold interest in the PREMISES "AS IS" in reliance solely upon the results of any inspection, examination and investigation of the status of title and condition of the PREMISES that LICENSEE has conducted and not as a result of any representation, warranty, assurance, guaranty or promise of CITY or any person purporting to act on behalf of CITY, other than those which may be expressly set forth in this Agreement.

1.4 LICENSEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF THE CITY, HAS MADE ANY, AND THE CITY EXPRESSLY DISCLAIMS EVERY, REPRESENTATION, WARRANTY (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND HABITABILITY), ASSURANCE, GUARANTY OR PROMISE, EXPRESS OR IMPLIED, CONCERNING THE STATUS OF THE TITLE OR CONDITION OF THE PREMISES WHICH ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AND THAT NO AGENT OR EMPLOYEE OF THE CITY OR OTHER PERSON HAS ANY AUTHORITY TO MAKE OR DELIVER ANY REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY OR PROMISE WHICH IS NOT SET FORTH IN THIS AGREEMENT.

2. Use of Premises

2.1 Permitted Use. CITY agrees to allow installment of LICENSEE's IMPROVEMENTS, in accordance with the terms of this Agreement. LICENSEE's use shall be non-exclusive and shall be for the purpose of the installation, operation, and maintenance of its IMPROVEMENTS, for the transmission, reception, and operation of a communications facility and all related purposes thereto. LICENSEE shall obtain the written approval of the City prior to installation of any IMPROVEMENTS on the PREMISES, which approval shall not be unreasonably withheld, conditioned or delayed. LICENSEE understands, acknowledges and agrees that the use of the PREMISES by LICENSEE in conjunction with the terms of this Agreement is to be for the installation, operation and maintenance of communications equipment, in strict compliance with the Agreement and the attached SITE PLAN. LICENSEE shall not use the PREMISES for any other purpose whatsoever, including the storage or placement of debris, storage of replacement IMPROVEMENTS, or any other item, without first obtaining the prior written consent of CITY, which may be given or withheld for any reason or for no reason, in the CITY'S sole, absolute and unrestricted discretion.

2.2 Prohibited Use. LICENSEE shall not use the PREMISES in any manner that constitutes waste or nuisance, or that violates any applicable law, ordinance or governmental regulation in any respect. LICENSEE shall neither do nor permit to be done anything that would violate any certificate of occupancy applicable to the PREMISES or would render void or uncollectible any insurance then in force with respect to the PREMISES, or that would in any way increase the premiums payable by CITY for fire, liability or any other insurance coverage on the PREMISES or the contents of any improvements thereon.

2.3 Subletting of Use Premises or Improvements. LICENSEE may not sublet to or license others to use the PREMISES or LICENSEE's IMPROVEMENTS without the prior written consent of CITY. Any such attempt by LICENSEE shall be without effect and may at CITY's option result in the termination of this Agreement.

2.4 Maintenance, Repair or Replacement of Improvements. LICENSEE may update, maintain, repair, or replace the IMPROVEMENTS located upon the PREMISES from time to time without CITY's approval, provided that the total of all IMPROVEMENTS do not require more space than the existing IMPROVEMENTS. Any change in the location of improvements on the PREMISES must be satisfactory to CITY, such approval not to be unreasonably withheld, conditioned or delayed. LICENSEE shall submit to CITY for approval, a detailed proposal for any substantial replacement of IMPROVEMENTS and any supplemental materials for CITY's evaluation and written approval, such approval not to be unreasonably withheld, conditioned or delayed. As used herein, substantial replacement shall mean any replacement that (i) involves the parking of a "semi" truck on the premises, or (ii) involves a material change-out or alteration of Licensee's equipment. Notwithstanding the foregoing and any other provision herein to the contrary and further notwithstanding the frequencies set forth elsewhere herein, Licensee shall have the right, at any time

during the term of this Agreement as the same might be extended, to change or add additional frequencies without the consent of CITY; provided, however that Licensee shall provide CITY with advance written notice of any such change or addition and provided further that Licensee agrees to comply with the terms and provisions of Section 9 herein with respect to interference in connection with such change or addition of frequencies. A current and accurate SITE PLAN must be submitted to CITY by LICENSEE and maintained on file with CITY for the entire term of this Agreement and all renewals thereof.

3. Term

3.1 This Agreement shall be for an initial term of five (5) years, commencing on the Effective Date. The Effective Date shall be the date LICENSEE executes this Agreement.

3.2 LICENSEE is granted the option to renew this license for four (4) additional five (5) year terms, after the initial term expires. Unless LICENSEE gives written notice of its decision not to exercise the renewal option within 90 days prior to the expiration of the current term or period, this Agreement will automatically renew for each said renewal term as long as LICENSEE remains in full compliance with all other provisions of this Agreement. All the terms and covenants of this Agreement apply to all extension periods, subject to amendment by the mutual agreement of the Parties, in writing and signed by both Parties. If LICENSEE continues to possess the PREMISES following the expiration of all of the extension periods provided herein, and this Agreement has not been renewed or superseded, this Agreement (1) shall be deemed to be a holdover tenancy at will but shall not itself constitute a renewal or extension of any term, (2) shall continue from month to month under the terms and conditions set forth herein and (3) may be terminated by either party upon at least thirty (30) days written notice to the other party. All the terms and covenants of this Agreement apply to all holdover tenancy periods.

4. Payment Terms and Conditions

4.1 **Rent Payment.** In consideration for providing the PREMISES for use by LICENSEE, the LICENSEE shall pay rent to CITY annually, with the first payment being due within thirty (30) days following the Effective Date of this Agreement. Thereafter payment shall be due annually on the anniversary of the Effective Date throughout the initial term and all renewal terms hereof and prorated for any partial term. LICENSEE shall pay rent to CITY annually in advance, without prior notice or demand, without any abatement, setoff, reduction, deduction, counterclaim or recoupment whatsoever, in the amount of Seven Thousand No/100 Dollars (\$7,000.00) per annum per site for the term of this Agreement ("**Rent Payment**"). Interest on late payments shall accrue at the then prime interest rate. If this Agreement is terminated at a time other than the last day of the calendar year of the term for any reason other

than a default by LICENSEE, all Rent Payments shall be prorated as of the date of termination and all prepaid Rent Payments shall be refunded to LICENSEE.

4.2 Rent Adjustment. The Rent Payment shall be increased by three percent (3%) at the beginning of each Lease Year (as herein defined) following the first Lease Year of the Lease Term or the first Lease Year. For purposes of this Lease Agreement, the term "**Lease Year**" shall mean the twelve-month period which commences on the first day of the calendar month in which the Effective Date occurs (if the Effective Date occurs on the first day of a calendar month) or on the first day of the calendar month following the calendar month in which the Effective Date occurs (if the Effective Date occurs on a day other than the first day of a calendar month). The dollar increase in the Rent Payment shall be determined by multiplying the Rent Payment (as previously adjusted) payable during the preceding Lease Year by three percent (3%). The sum of the dollar increase required by this multiplication plus the Rent Payment (as previously adjusted) payable for and on account of the preceding Lease Year (i.e., one hundred three percent (103%) of the prior Lease Year's Rent shall be the Rent Payment for the Lease Year of the adjustment.

4.3 Holdover Rent. The Rent Payment, as defined in Subsection (a) above, due during any holdover period shall be equal to one hundred fifty percent (150%) of the Rent Payment due during the immediately preceding Initial term or any renewal term.

4.4 Additional Fees. CITY may assess, in addition to the Rent Payment, additional payments by LICENSEE to cover CITY's additional costs ("**Additional Fees**"), which include but are not limited to: (i) costs of utilities associated with the day-to-day operation and maintenance of the Premises; (ii) costs incurred by CITY for providing access to the Premises outside of normal business hours; and (iii) applicable taxes, including property taxes, or business taxes levied on the PREMISES. CITY shall notify LICENSEE of amounts due in Additional Fees in writing, and LICENSEE shall pay Additional Fees simultaneously with the next monthly Rent Payment due on the Premises, or, if notice of Additional Fees occurs within ten (10) days of the due date of the next monthly Rent Payment, simultaneous with the Rent Payment due for the next month. The foregoing shall be subject to the provisions of Section 16 herein.

4.5 Payment Address. Rent Payments and Additional Fees shall be made payable to City of Plano, C/O Mark Israelson, Customer & Utility Services Department, PO Box 861990, Plano, Texas 75086-1990.

4.6 Lawful Currency. Rent Payments and Additional Fees shall be made according to paragraph 4.1 above in lawful money of the United States of America without any abatement, setoff, reduction, deduction, counterclaim or other recoupment whatsoever. Rent Payments shall be free and clear of any business license tax or fee which is measured upon the size of the PREMISES. In no event will LICENSEE be obligated to pay any general income taxes measured upon the income of the City. In

the event any federal, state, county, municipal or other governmental authority hereafter imposes or levies any such business license tax or fee, LICENSEE shall pay to CITY an amount equal to any and all amounts so imposed or levied as a component of Additional Fees. This Section does not preclude the assessment of lawful fees pursuant to a franchise or other agreement that the City may have with Licensee or its parent or any subsidiary or affiliate.

4.7 Dishonored Checks. Any dishonored check shall incur a service charge of ten percent (10%) of its face amount. Subsequent to the first dishonored check received by CITY for any payment, all subsequent payments, including Rent Payments and Additional Fees, shall be made by cashier's check.

4.8 Consideration for Rent in Prior Periods. As compensation to City for LICENSEE'S use of the Premises prior to execution of this Agreement, LICENSEE agrees to pay to City a lump sum total of Seventy Thousand and No/100 (\$70,000).

5. Termination

5.1 Termination by CITY. Upon the occurrence of any one or more of the events listed below (hereinafter referred to as "Event of Default"), or as provided elsewhere in this Agreement, CITY may, without penalty, at its option and without prejudice to any other remedy to which it may be entitled at law or equity, or otherwise under this Agreement, terminate use or occupancy under this Agreement at any time, either in whole or in part, by giving at least sixty (60) days prior written notice thereof to LICENSEE with the understanding that all use of the PREMISES being terminated shall cease upon the date specified on such notice. LICENSEE shall equitably compensate CITY in accordance with the terms of this Agreement for the use of the PREMISES prior to the date specified in such notice, following inspection and acceptance of same by CITY. LICENSEE shall not, however, be entitled to any damages, including but not limited to, lost or anticipated profits should CITY choose to exercise its option to terminate.

5.2 Event of Default. Any of the following occurrences, conditions, or acts shall be deemed an "Event of Default" under this Agreement:

- (a) if LICENSEE fails to pay amounts due under this Agreement within fifteen (15) days of receipt of written notice that such payments are overdue;
- (b) if either party fails to observe or perform its obligations under this Agreement other than as provided in Section 5.2(a) above and does not cure such failure within thirty (30) days from the party's receipt of written notice of breach or such longer period as may be mutually reasonably agreed upon by the Parties to complete a cure commenced within the 30 day period.

5.3 Termination by LICENSEE. This Agreement may be terminated by LICENSEE, without penalty or further liability, as follows:

(a) upon written notice, if LICENSEE is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by LICENSEE; or if LICENSEE determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(b) on one hundred eighty (180) days written notice for any reason, other than 5.2(a) or (b) above, so long as LICENSEE pays CITY a termination fee equal to the rent remaining in the current term.

5.4 Notice and Opportunity to Cure. Upon the occurrence of an Event of Default, CITY shall deliver to LICENSEE a Notice of Intent to Terminate that identifies in detail the Event of Default. If the Event of Default remains uncured for thirty (30) calendar days after delivery of such notice, CITY may terminate this Agreement and the license granted herein by delivering to the LICENSEE a Notice of Termination that identifies the effective date of the termination, which date shall not be less than sixty (60) days after the date of delivery of the Notice of Intent to Terminate; provided, however, that the time periods for notice of termination specified in this Section shall not apply to a default pursuant to Section 5.2(b).

5.5 Primary Function of PREMISES. The parties understand and agree that the primary function of the PREMISES is to serve as a public park for the City of Plano and that the interests of LICENSEE are superseded by the public health, safety, and welfare of the citizens of Plano served by the public park. In the event that the Plano City Council or the Plano City Manager declares a public emergency or if there exists a threat to the public park facilities that would detrimentally impact public health, safety and welfare such that immediate action is necessary, LICENSEE shall, within thirty (30) days following receipt of written notice of such emergency and need to relocate and/or remove its IMPROVEMENTS from the PREMISES. In the event that LICENSEE is not able to timely respond, CITY may remove LICENSEE's IMPROVEMENTS without incurring any liability for damages of any type. Costs of removal and reattachment of IMPROVEMENTS shall be borne by LICENSEE.

5.6 Removal of Improvements. If LICENSEE's IMPROVEMENTS must be removed, whether or not such removal is done pursuant to Section 5.5 above, LICENSEE shall have the right to set up a portable mounted antenna, a cell on wheels (COW), and/or some other similar temporary structure approved by CITY, such approval not to be unreasonably withheld, conditioned or delayed, on CITY premises to allow LICENSEE to continue to provide communications services and all related purposes. LICENSEE may maintain its COW for a period of thirty (30) days past the date of removal of IMPROVEMENTS. To maintain the temporary antenna, COW, or

other temporary structure for a period in excess of thirty (30) days, LICENSEE must obtain written approval from CITY, such approval not to be unreasonably withheld, conditioned or delayed. If the PREMISES are not in such condition as to be utilized by LICENSEE at the end of the initial thirty (30) day period, CITY shall provide as many additional thirty (30) day extensions for such temporary structures as are necessary to allow LICENSEE to continue its operations as authorized by this Agreement.

6. City's Right of Entry Onto Premises

6.1 CITY and CITY's agents, employees or contractors may enter upon the PREMISES, except LICENSEE's secured areas, for the purpose of performing repairs and maintenance work to the PREMISES. If maintenance work is required, CITY agrees to provide LICENSEE with reasonable notice prior to commencing such work to allow LICENSEE to remove the affected IMPROVEMENTS. Decisions as to the extent to which LICENSEE will be required to remove such IMPROVEMENTS shall be within the reasonable discretion of CITY. If, however, in the reasonable discretion of CITY, repair or maintenance requires immediate action on the part of CITY, CITY will take reasonable efforts to notify LICENSEE, but may enter the PREMISES, except LICENSEE's secured areas, and take such action as is required, except any action to remove any or all IMPROVEMENTS made by LICENSEE. In no event shall CITY be liable for any expenses associated with LICENSEE's removal of IMPROVEMENTS or for lost or anticipated profits. LICENSEE, at its expense and exclusive use, may use any and all reasonable and appropriate means of restricting access to the LICENSEE's equipment shelter, as identified in the SITE PLAN.

7. Access

7.1 LICENSEE shall have the non-exclusive right to access the aforementioned PREMISES at any time, by contacting and providing notice to CITY. LICENSEE must be accompanied by CITY personnel at all times when accessing the PREMISES. If CITY is contacted by LICENSEE after the normal business hours of CITY for the purpose of accessing the aforementioned location, LICENSEE agrees to reimburse CITY for the actual cost of any CITY staff involvement necessary for this access.

7.2 LICENSEE's right of access is a contractual right for the benefit of LICENSEE only and nothing contained in this Agreement shall be construed to constitute a dedication or an easement. However, in the event this Agreement is assigned in accordance and in compliance with Section 22.9 herein, such right of access shall inure to the benefit of LICENSEE's assignee.

8. Damages to Property

8.1 **Damage and Restoration of Property.** LICENSEE shall immediately notify CITY of any and all damages resulting from, arising out of, or caused to, the

PREMISES and CITY property surrounding the PREMISES, including but not limited to structural damages, electrical damages, damages to fencing, irrigation systems or landscaping by LICENSEE's operations, by LICENSEE, its officers, agents, employees and invitees. LICENSEE shall be solely responsible for the costs and the repair of all such damages and such repairs and/or replacements shall be completed within thirty (30) calendar days and shall be completed in a manner reasonably acceptable to CITY.

8.2 Failure to Restore Property. If LICENSEE does not make or perform any required maintenance or repairs to the PREMISES within the time period provided in Section 8.1, CITY shall have the right, but not the obligation, to make such repairs and to perform such maintenance, in which event LICENSEE shall pay CITY the cost thereof, plus an administrative fee of ten percent (10%) of the cost of the repairs, within thirty (30) calendar days of demand. Within thirty (30) days following the expiration or earlier termination of this Agreement, LICENSEE shall restore the PREMISES to the condition in which the PREMISES existed on the Effective Date of this Agreement, ordinary wear and tear and loss due to other casualty beyond LICENSEE's control excepted.

9. Electrical, Radio and Intermodulation Interference

9.1 LICENSEE shall operate its IMPROVEMENTS in a manner that will not cause radio frequency interference to the CITY or other licensees of the SITE in their use of any equipment or their conduct of any activity on the SITE pursuant to agreements which pre-date the installation and operation of LICENSEE's IMPROVEMENTS. LICENSEE's installation and operation of the IMPROVEMENTS shall be in compliance with all FCC requirements.

9.2 Prior to installation of any IMPROVEMENTS on the PREMISES, LICENSEE shall conduct bandwidth testing of its IMPROVEMENTS and CITY equipment to check bandwidth conflict between CITY's monitoring control system and LICENSEE's system. If such conflict occurs, LICENSEE shall take all steps necessary to resolve the conflict to the reasonable satisfaction of CITY. If the conflict cannot be remedied to the reasonable satisfaction of CITY, CITY may terminate this Agreement upon thirty (30) days written notice to LICENSEE.

9.3 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY or to any other licensee who is using the PREMISES prior to or at the time of LICENSEE's installation of its IMPROVEMENTS. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while such interference problems are studied and a means to eliminate the problem is determined. Any such method for correction of an interference problem must be reasonably acceptable to

both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.4 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY at anytime during or after installation or operation of LICENSEE's IMPROVEMENTS. Moreover, LICENSEE's use will not in any material way adversely affect or interfere with CITY's signal operation or its communication system. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while the interference problems are studied and a means to eliminate the problem is found. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.5 CITY will not grant a license to any other party for the use of CITY's PREMISES without including in that license a provision stating that the party's use will not in any way adversely affect or interfere with LICENSEE's signal operation or its communication system. Such provision shall be similar to the provisions required of LICENSEE herein. Furthermore, license agreements with third parties will state that prior to installation of improvements, such third parties shall be required to conduct bandwidth testing of its equipment and the equipment of LICENSEE to check bandwidth conflict between third-party equipment and LICENSEE's equipment. If such conflict occurs, CITY shall take all steps necessary to resolve the conflict caused by such third-party to the reasonable satisfaction of LICENSEE. If the conflict cannot be remedied to the reasonable satisfaction of LICENSEE, CITY shall terminate such third-party's license upon thirty (30) days written notice to such third-party. LICENSEE shall have the right to terminate this Agreement upon ten (10) days written notice to CITY if another user of the PREMISES causes interference with LICENSEE's operations, and such interference is not corrected within thirty (30) days following the notice to such third party user causing the interference. In the event that LICENSEE experiences interference caused by a third-party licensee, LICENSEE agrees that it shall seek recourse solely from such third party. No compensation shall be due from CITY for damages, including, but not limited to, lost or anticipated profits.

9.6 LICENSEE shall have the sole burden of, and be responsible for all costs associated with, alleging and proving that another user of the PREMISES is causing significant interference. CITY shall not be responsible for the costs associated with the resolution of any dispute between users of the PREMISES, but shall be responsible for

the enforcement of any of LICENSEE's rights provided by Section 9.5 of this Agreement.

9.7 Upon report to LICENSEE, and all other third parties with communications equipment on that CITY-owned property, of interference with any CITY-owned/operated radio emergency system, LICENSEE shall, within six (6) hours after such notification, perform an assessment of the source of the interference. In the event such interference results from LICENSEE's operations, LICENSEE agrees, within twelve (12) hours of first notification, to propose a plan of action to eliminate such interference. CITY and LICENSEE agree to provide a technician or other qualified representative to assist in testing, formulating and coordination of a plan for resolution.

9.8 If such interference results from LICENSEE's operations, LICENSEE must correct such interference within twenty-four (24) hours of CITY's original notification to LICENSEE or shall discontinue all use of LICENSEE's IMPROVEMENTS upon the PREMISES. LICENSEE's IMPROVEMENTS cannot be reactivated until LICENSEE can demonstrate that the cause of such interference has been eliminated.

9.9 Each party agrees to provide the other with a telephone number through which that party can contact a representative of the other on a 24-hour per day, 7 days a week basis for the purpose of implementing the requirements of this paragraph.

10. Condition of Premises

10.1 CITY shall maintain the PREMISES in compliance with all applicable statutes, ordinances, regulations and rules required for CITY uses of the PREMISES and surrounding property, and in a manner which will not interfere with LICENSEE's reasonable use of the PREMISES. Upon expiration, cancellation, or termination of this Agreement, LICENSEE will have the right to remove its IMPROVEMENTS from the PREMISES at LICENSEE's cost and expense. Title to all remaining improvements shall belong to CITY. However, upon vacation of the PREMISES, LICENSEE shall surrender the PREMISES in substantially the same condition as received, except for ordinary wear and tear and loss due to other casualty beyond LICENSEE's control, as determined by CITY. If, as determined by CITY, the PREMISES are not surrendered in satisfactory condition, the LICENSEE shall pay CITY within thirty (30) business days of demand an amount equal to the actual cost to restore the PREMISES to substantially the same condition as received plus an administrative fee of ten percent (10%) of the restoration costs..

10.2 LICENSEE shall have sole responsibility for the maintenance, repair, and security of its IMPROVEMENTS, and shall keep same in good repair and condition during the term and all renewals and holdover tenancies of this Agreement.

10.3 LICENSEE shall keep the PREMISES free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or interference.

10.4 In the event CITY or any other licensee undertakes painting, construction, or other alterations on the PREMISES, LICENSEE shall take reasonable measures at LICENSEE's cost to cover all of LICENSEE's IMPROVEMENTS and protect such from paint and debris fallout which may occur during the painting, construction, or alteration process. CITY shall not be responsible for any damages or costs incurred by LICENSEE due to the actions or omissions of any third-party licensees upon the PREMISES. CITY shall provide thirty (30) business days written notice to all licensees upon the PREMISES prior to CITY undertaking such painting, construction, or other alterations.

10.5 By taking possession of the PREMISES, LICENSEE accepts the PREMISES in the condition existing as of the Effective Date. CITY makes no representation or warranty with respect to the condition of the PREMISES and CITY shall not be liable for any latent or patent defect in the PREMISES. CITY agrees to notify LICENSEE of the existence of any latent defects of which the CITY has knowledge.

11. Construction, Installation and Operation

11.1 **Construction, Installation and Operation.** LICENSEE may, at its sole cost and expense, construct, install, operate, maintain, monitor, reconfigure and repair its IMPROVEMENTS. Not less than thirty (30) days prior to the date on which LICENSEE intends to commence construction of its IMPROVEMENTS, LICENSEE shall provide to the CITY for its approval, such approval not to be unreasonably withheld, conditioned or delayed, a proposal containing: (i) a written notice and plan describing in reasonable detail, the steps necessary to complete LICENSEE's construction and installation; (ii) a list and description of all IMPROVEMENTS to be installed on the PREMISES; (iii) a list of all contractors, subcontractors and other entities that will perform LICENSEE's construction and installation work; and (iv) copies, certificates or other proof that LICENSEE or LICENSEE's contractors and subcontractors have obtained all necessary permits and licenses for the performance of LICENSEE's work. CITY's failure to respond in writing to LICENSEE's proposal within twenty (20) days of CITY's receipt of the proposal shall constitute CITY's rejection of the proposal, and LICENSEE shall not commence LICENSEE's work. CITY's grant of approval under this Section shall not be construed as an assumption of liability or indemnification; nor shall such approval replace or constitute any approval that LICENSEE is required to obtain from any duly authorized local authorities for any construction, installation or other element of LICENSEE's work.

11.2 **Marking and Lighting Requirements.** LICENSEE acknowledges that it shall be responsible for compliance with all tower or building marker and lighting

requirements which may be required by the Federal Aviation Administration or the Federal Communication Commission in conjunction with LICENSEE's installation and maintenance of IMPROVEMENTS under this Agreement, as well as any expenses, fees or fines associated with the compliance or the non-compliance of LICENSEE's installation or maintenance of IMPROVEMENTS under this Agreement. If the LICENSEE does not cure a condition of noncompliance within the time-frame allowed by the citing agency, CITY may thereafter terminate this Agreement upon thirty (30) days written notice to LICENSEE.

11.3 Inspection and Tests. Upon the Effective Date and for the term of this Agreement, LICENSEE shall have reasonable access as provided in Section 7 above to the SITE and PREMISES as are necessary and approved by CITY for the purpose of inspection and planning. LICENSEE shall retain, or shall cause to be retained, at its sole cost and expense, certified and insured structural engineers to perform such an inspection and provide a structural report as to the structural integrity of the PREMISES, its maximum load capacity, and other aspects of the PREMISES, as appropriate. LICENSEE shall provide to CITY a copy of the report. LICENSEE shall not conduct construction, installation, operation, maintenance or repair of IMPROVEMENTS in a manner inconsistent with the structural report.

11.4 Payment, No Mechanics Liens. LICENSEE shall make full and prompt payment of all sums necessary to pay the costs of all installation, repairs and alterations, improvements, changes and other work done by LICENSEE in or to the PREMISES. Title to the IMPROVEMENTS shall be held by LICENSEE. CITY shall not be responsible for or with respect to the performance of LICENSEE's Work. LICENSEE shall pay or cause to be paid all costs associated with LICENSEE's work. LICENSEE shall not suffer or permit to be enforced against any portion of the SITE or PREMISES any (i) mechanic's, materialman's, contractor, subcontractor or other lien or claim arising from or in any way related to LICENSEE's work, or (ii) any other claim, mortgage, security interest, encumbrance, lien or other charge. Within thirty (30) days after recordation of any lien, encumbrance, judgment or similar item which affects the SITE or PREMISES in any way, LICENSEE shall obtain the complete discharge and release thereof at LICENSEE's sole expense or expenditure (without any cost being imposed upon CITY.) However, LICENSEE shall have the right to contest, in good faith, any mechanic's or materialman's lien upon the condition that LICENSEE provides a bond or other form of security reasonably acceptable to CITY in an amount sufficient to hold CITY fully and completely harmless from any and all liability therefor or on account thereof.

11.5 Improvements to Premises; Removal. All IMPROVEMENTS constructed, installed and operated by or on behalf of LICENSEE shall remain LICENSEE's personal property and are not fixtures. LICENSEE shall remove all IMPROVEMENTS at its sole expense within thirty (30) days following the expiration or earlier termination of this Agreement, and LICENSEE shall repair any damage to the PREMISES or SITE caused by such removal and fully restore the PREMISES or SITE

to the same condition as existed prior to such damage at its sole cost and expense. LICENSEE shall provide to CITY in writing, by not later than the end of the prescribed thirty (30)-day period, notice that all IMPROVEMENTS have been removed in accordance with this Section. Failure of LICENSEE to remove any or all IMPROVEMENTS from the PREMISES and SITE within the prescribed thirty (30) days shall be construed as holdover pursuant to this Section, and all obligations and requirements, including payment of Rent Payments, shall continue to apply unless and until LICENSEE removes all IMPROVEMENTS and so notifies CITY.

11.6 Liability for Damage/Outages. LICENSEE shall be solely responsible for any damage caused by LICENSEE, its agents and/or contractors on or to the PREMISES or SITE that causes an interruption or outage in the services, operations or utilities of another licensee, and shall indemnify and hold harmless CITY, Signal Sites, Inc., and all of their respective partners, employees, agents, successors and assigns from all claims or actions for damages, including actual, incidental and consequential damages, brought by another licensee as a result of LICENSEE's, or its employees', contractors', agents', assigns' or licensees', willful, reckless or gross negligence or other conduct.

12. Communication Tower

12.1 This provision shall be implemented only in the instances where LICENSEE will be leasing ground space from the CITY and constructing a suitable support structure ("Communication Tower") upon which LICENSEE will install, operate, maintain, and repair LICENSEE's IMPROVEMENTS.

12.2 The LICENSEE shall have the right to construct a suitable support structure to be structurally capable of supporting up to three (3) wireless communications carriers. Structural design shall be provided to CITY for review and shall be in compliance with approved Site Plan reference para. 1.2. Possession of the Communication Tower remains that of LICENSEE. LICENSEE agrees to receive and reasonably negotiate requests of other wireless communications carriers ("COLLOCATEES"), according to then current Master Lease Agreement ("MLA") between LICENSEE and the COLLOCATEE, if applicable, to collocate their communications equipment at the PREMISES, but LICENSEE retains the sole right of approval for said COLLOCATEES, including but not limited to, type and placement of antennas and ancillary coax cable runs. and will not unreasonably withhold, condition or delay approval of COLLOCATEES. LICENSEE agrees to pay the CITY forty percent (40%) of any compensation received by LICENSEE from all such COLLOCATEES. LICENSEE shall not allow any carrier to use space designated by LICENSEE for LICENSEE's own use. In the event CITY leases ground space to any COLLOCATEE, CITY shall retain one hundred percent (100%) of the rental compensation derived therefrom.

12.3 LICENSEE shall have the right to perform necessary tests including, but not limited to, Radio Frequency tests, and a structural analysis on such Communication Tower. Such costs shall be paid by the COLLOCATEE. A copy of any such structural analysis shall be provided to CITY.

12.4 CITY will provide notice to LICENSEE at least thirty (30) days prior to the commencement of co-location construction. LICENSEE shall not unreasonably withhold or obstruct access to such Communication Tower for the purposes of co-location.

13. Compliance with Laws

13.1 **By LICENSEE** LICENSEE, its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees, shall comply in all respects and at all times with all applicable local, state and federal laws, statutes, ordinances, regulations, rulings, requirements, conditions, orders, licenses, permits, covenants, restrictions, approvals and consents pertaining to LICENSEE's services, LICENSEE's construction, installation and operation work, IMPROVEMENTS and LICENSEE's use of the PREMISES. Without limiting the generality of the preceding sentence, LICENSEE shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety, including standard industry equipment safety regulations (e.g., NEBs, IEEE, Federal Communications Commission ("FCC") and BellCore standards) and shall not use the PREMISES or operate the IMPROVEMENTS in any manner which is inconsistent therewith. LICENSEE shall, at LICENSEE's sole cost and expense, promptly apply for and use its best efforts to obtain and maintain all necessary licenses, permits, approvals and consents required or necessary for the construction and operation of the IMPROVEMENTS. In the event LICENSEE fails to obtain any required license, permit, approval or consent to construct and operate the IMPROVEMENTS, through no fault of LICENSEE, LICENSEE shall have the right to terminate this Agreement in accordance with Section 5 of this Agreement.

13.2 **By CITY.** CITY shall comply in all material respects, and shall exercise commercially reasonable efforts to cause its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees to comply in all material respects with all laws, ordinances, orders, rules and regulations of all governmental or judicial authorities having jurisdiction thereof, whether state, federal or local, relating to CITY's leasehold interest in the SITE.

14. Complaint Resolution

If either LICENSEE or CITY receives a written complaint regarding LICENSEE's operations and such complaint, if reasonably determined by the City to be valid and if the cause of such complaint would cause LICENSEE to be in default of this Agreement, LICENSEE shall respond within twenty-four (24) hours of receipt of such

8-18

written complaint. LICENSEE shall respond with a written explanation to each such complaint with detail of its investigation into the incident upon which the complaint was based (the "Incident") and the actions that LICENSEE has taken to resolve the Incident including, when necessary, all future actions LICENSEE will take to fully resolve the Incident or prevent a recurrence of the Incident. If the Incident cannot be resolved to the reasonable satisfaction of the complainant within fifteen (15) days, LICENSEE shall provide a schedule for completion of its plan to resolve or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If future action is necessary, LICENSEE shall include a schedule for completion of its plan to correct or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If CITY must step in and resolve a complaint regarding LICENSEE's operations, LICENSEE shall reimburse CITY for all reasonable expenses incurred. If CITY imposes upon LICENSEE a resolution to an Incident that does not involve a breach of the Agreement by LICENSEE, the breach by LICENSEE of any federal, state, or local law or ordinance or the commission by LICENSEE of any negligent or intentional act or omission to a person that causes bodily injury or property damage and LICENSEE does not wish to resolve the Incident in the manner directed by CITY, LICENSEE may terminate this Agreement upon thirty (30) days notice without penalty.

15. Utility Easements and Utility Cost

15.1 LICENSEE shall pay directly to all public utility service companies, before delinquency, all charges for the electricity, water and other utility services that LICENSEE consumes in connection with the installation and operation of LICENSEE's IMPROVEMENTS and which are separately metered and charged to LICENSEE by any public utility service company, without any expense therefor being imposed upon CITY.

15.2 If LICENSEE first obtains CITY's written consent, which may be given or withheld for any reason or no reason in the CITY's sole discretion, LICENSEE shall have the right to obtain electricity and other public utility services from the existing outlets available at the PREMISES. Absent such consent, LICENSEE shall obtain separate public utility services from any company that will provide such services to the PREMISES (which services may include an approved battery-powered or diesel standby power generator located on the PREMISES for LICENSEE's exclusive use).

15.3 LICENSEE shall not permit any charges for public utility services to accumulate or become a lien on the SITE. If LICENSEE fails to pay any such charge required to be paid by LICENSEE pursuant to this Section, CITY may, but shall not be required to, pay such charge on LICENSEE's behalf. If CITY pays any such charge on behalf of LICENSEE or incurs any cost with respect to any grant of any public utility service easement for the benefit of LICENSEE pursuant to this Section, LICENSEE shall reimburse and pay to CITY an amount equal to all such charges so paid and all

such easement costs so incurred, within thirty (30) days after receipt of CITY's demand, as Additional Fees.

15.4 Additional Utility/Power Equipment. In the event that LICENSEE is required to or otherwise decides to install, operate and use additional equipment to provide electricity or other utility services required for the operations of LICENSEE's IMPROVEMENTS, such installation, operation and use shall comply in all respects with the terms and conditions set forth in this Agreement.

16. Taxes

16.1 LICENSEE agrees to timely reimburse CITY for all taxes that are assessed against CITY, if any, due to the real property taxes attributable to LICENSEE's IMPROVEMENTS or use of the PREMISES and IMPROVEMENTS constructed or maintained by LICENSEE on or about the PREMISES; provided, however, CITY shall use its best efforts to provide prior notification of any taxes for which LICENSEE is to be charged, so LICENSEE will have the opportunity to appear before the taxing authority and contest any assessment.

16.2 If LICENSEE fails to pay any such taxes after such contest of any assessment and for which LICENSEE is obligated, CITY may, but shall not be required to, pay such taxes on LICENSEE's behalf. If CITY pays any such taxes on behalf of LICENSEE pursuant to the preceding sentence, LICENSEE shall reimburse and pay to CITY an amount equal to any such taxes so paid, plus an administrative fee of ten percent (10%) of the taxes, within thirty (30) days after demand as Additional Rent.

17. Liability and Indemnification

17.1 LICENSEE SHALL AT ALL TIMES COMPLY WITH ALL LAWS AND ORDINANCES AND ALL APPLICABLE RULES AND REGULATIONS OF MUNICIPAL, STATE AND FEDERAL GOVERNMENT AUTHORITIES RELATING TO THE INSTALLATION, MAINTENANCE, HEIGHT, LOCATION, USE, OPERATION, AND REMOVAL OF THE IMPROVEMENTS, AUTHORIZED HEREIN, AND, EXCEPT FOR THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES, SHALL FULLY RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES AGAINST ANY AND ALL CLAIMS, DAMAGES, LAWSUITS, LOSSES, COSTS, OR EXPENSES WHICH MAY BE SUSTAINED OR INCURRED BY CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES AS A RESULT OF LICENSEE'S INSTALLATION, OPERATION, OR REMOVAL OF SUCH IMPROVEMENTS.

17.2 LICENSEE UNDERTAKES AND ASSUMES FOR ITS OFFICERS, AGENTS, EMPLOYEES, SERVANTS, AFFILIATES, CONTRACTORS AND SUBCONTRACTORS, ALL RISK OF DANGEROUS CONDITIONS, IF ANY ON OR ABOUT THE PREMISES, AND, EXCEPT FOR THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES, LICENSEE HEREBY AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS AND EMPLOYEES AGAINST AND FROM ANY CLAIM ASSERTED OR LIABILITY

8-20

IMPOSED UPON CITY, ITS OFFICERS, OFFICIALS, AGENTS, SERVANTS, AND EMPLOYEES FOR PERSONAL INJURY OR PROPERTY DAMAGE TO ANY PERSON ARISING OUT OF LICENSEE'S INSTALLATION, OPERATION, MAINTENANCE, CONDITION OR USE OF THE PREMISES OR LICENSEE'S IMPROVEMENTS OR LICENSEE'S FAILURE TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL STATUTE, ORDINANCE OR REGULATION.

17.3 LICENSEE represents and warrants that its use of the PREMISES herein will not generate any hazardous substance, and it will not store or dispose on the PREMISES nor transport to or over the PREMISES any hazardous substance. The storage of acid storage batteries on the Premises as necessary for use in the event of a power outage, and the installation on the premises of a diesel or propane generator for emergency use to provide electricity in the event of a power outage shall not be a violation of this Section 17. LICENSEE further agrees to release, defend, indemnify, and hold CITY, its officers, officials, agents, servants and employees, harmless from and against any damage, loss, or expense or liability resulting from the generating, transporting, storage or disposal of such hazardous substances including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any applicable federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease, including diesel and propane fuel.

18. Insurance

18.1 LICENSEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at LICENSEE's sole expense, liability insurance and workers' compensation insurance, and a certificate of insurance shall be submitted to and approved by CITY prior to the Effective Date of this Agreement. LICENSEE must provide insurance in compliance with **Appendix "B"**, attached hereto and incorporated herein for all purposes. At the time of an extension or renewal of this license agreement, LICENSEE shall provide a certificate of insurance for the added term that shows LICENSEE meets all insurance requirements under Appendix "B".

18.2 In the event that LICENSEE uses third-party contractors or subcontractors to provide services or to perform work upon the PREMISES, LICENSEE shall include in all contracts, subcontracts, and bid documents with such third parties, the requirement that: (a) each such third party shall provide CITY with separate certificates of insurance or such other documentation as is reasonably required by CITY to evidence that each such third party obtains and maintains insurance coverage consistent with the insurance requirements of this Agreement throughout the term of its contract with LICENSEE; and (b) such third party shall

execute the Contractor Agreement, a copy of which is attached hereto and incorporated herein as **Appendix "B-1"**,. All such insurance certificates and other documents evidencing coverage shall contain an affirmative statement of the contractor, subcontractor, or other third party that such third party shall notify the City of Plano in the event that the policy lapses or is canceled for any reason.

19 Notice

19.1. Any notice or demand required or desired to be given to any Party pursuant to this Agreement shall be in writing, shall be delivered to the address set forth below and shall be deemed validly served, given, delivered or made only if (i) personally delivered (including delivery by a commercially-recognized courier which provides service between the point-of-origin and the point-of-destination); or (ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. Service by United States mail shall be deemed made on the date actually received.

CITY

City of Plano, Texas
c/o Mark Israelson
Customer & Utility
Services Department
PO Box 860277
Plano, Texas 75086

LICENSEE

T-Mobile West Corporation
7668 Warren Pkwy
Frisco, TX 75034
Attn: Lease Administrator

With a copy to: Legal Dept.

CITY or LICENSEE may from time to time designate any other address for this purpose by written notice to the other party.

20. Remedies

20.1 LICENSEE's failure to timely remit payments due hereunder three times within a 12-month period shall be a breach of this Agreement for which LICENSEE shall be given fifteen (15) days from receipt of written notice from CITY (that such payment is overdue for the third time within such 12-month period) to cure. If LICENSEE fails to make payment as required; if LICENSEE abandons or vacates the PREMISES; or if LICENSEE becomes insolvent; and has not filed for bankruptcy, CITY shall have the right, at its option, in addition to and not exclusive of any other remedy CITY may have hereunder or by operation of law, with fifteen (15) days notice, require LICENSEE to re-enter the PREMISES and remove the IMPROVEMENTS therefrom. Under no circumstances shall CITY or anyone acting on CITY's behalf attempt to remove LICENSEE's communications equipment, except as provide for in Section 5.5 herein. Upon such occurrence, CITY may either (a) declare this Agreement and license granted herein at an end, in which event LICENSEE shall immediately

pay CITY a sum of money equal to the total of (i) the amount of Rental Fees accrued through the date of termination; (ii) the amount by which the Rental Fees reserved for the balance of the term exceeds the amount of such rental loss that the LICENSEE proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other reasonable amounts necessary to compensate CITY for all detriment proximately caused by LICENSEE's failure to perform its obligations under this Agreement, or (b) without terminating this Agreement, relet the PREMISES, or any part thereof, for the account of LICENSEE upon such terms and conditions as CITY may deem advisable, and any moneys received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid; and, thereafter, toward payment of all sums due or to become due to CITY hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, LICENSEE shall pay CITY any deficiency monthly, notwithstanding that CITY may have received Rental Fees in excess of the Rental Fees stipulated in this Agreement in previous or subsequent months, and CITY may bring an action therefore as such monthly deficiency shall arise.

20.2 No re-entry and taking of possession of the PREMISES by CITY shall be construed as an election on CITY's part to terminate this Agreement, regardless of the extent of renovations and alterations by CITY, unless a written notice of such intention is given to LICENSEE by CITY.

21. Force Majeure

21.1 Notwithstanding any other provision in this Agreement to the contrary, neither Party will have any liability to the other with respect to its failure to perform its obligations under this Agreement, except for the payment of amounts due, if such failure is due to any of the following events (each a "Force Majeure" event): (i) the failure of any equipment or software under the control of a person, firm or entity not affiliated with such Party; (ii) fire, flood, earthquake, law or government regulation; or (iii) any other cause beyond the reasonable control of such Party. In any such case, the Parties' time for performance under this Agreement and the term hereof, to the extent affected by any of the foregoing, shall be correspondingly extended; provided, however, that if such condition shall continue in effect for more than 180 days, either Party shall have the right to terminate this Agreement upon thirty (30) days notice.

22. Miscellaneous Provisions

22.1 **Modifications.** LICENSEE's operations and all CITY approved modifications to the PREMISES must at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.

22.2 Entire Agreement. This Agreement, together with all Appendices attached hereto and incorporated herein constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

22.3 Capacity. Both LICENSEE and CITY represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

22.4 Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be **in a court with jurisdiction over** Collin County, Texas.

22.5 Amendment. This Agreement may only be amended by the mutual written agreement signed by the parties hereto.

22.6 Legal Construction; Severability. In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

22.7 Nonwaiver. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or conditions of this Agreement may be waived without consent of the Parties. It is further agreed that one (1) or more instances of forbearance by a Party in the exercise of its rights herein shall in no way constitute a waiver thereof.

22.8 Independent Contractor. LICENSEE covenants and agrees that LICENSEE is an independent contractor and not an officer, agent, servant or employee of CITY; that LICENSEE 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 LICENSEE, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and LICENSEE.

22.9 Successors and Assigns.

- (a) CITY and LICENSEE each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither CITY nor LICENSEE will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of CITY. LICENSEE shall not assign, sublet, subcontract, transfer or allow the use of any interest in the PREMISES or any use of LICENSEE's IMPROVEMENTS, including but not limited to equipment, lines, channels or frequencies, on the PREMISES without the prior written consent of CITY. CITY's consent may be conditioned upon LICENSEE successfully obtaining contracts from such third parties wherein those parties agree to directly compensate CITY for all benefits incurred by the use of the PREMISES.
- (b) Notwithstanding anything in Section 22.9(a) to the contrary, LICENSEE may assign this Agreement to any parent, subsidiary or affiliate, or any entity that acquires all or substantially all of LICENSEE's assets in the market where the Premises are located without CITY'S consent. Notwithstanding any assignment permitted under this Section or otherwise under this Agreement, LICENSEE shall remain absolutely and unconditionally primarily liable to pay and perform each and all of the obligations set forth in this Agreement prior to said assignment and shall be relieved of all future performance, liability and obligations after said assignment.
- (c) If CITY shall, at any time, relinquish its ownership or otherwise dispose of the PREMISES, CITY shall be automatically released from all obligations under and pursuant to this Agreement that accrue after such disposition; provided, however, that such relinquishment of ownership or disposition of the PREMISES shall be subject to LICENSEE's rights under this Agreement. If the PREMISES are so disposed of, LICENSEE shall not disavow any of LICENSEE's obligations pursuant to this Agreement but shall attend to the purchaser or transferee thereof for the performance of CITY's obligations under this Agreement.

22.10 Applicable Laws. This Agreement is entered into subject to the charter and ordinances of CITY as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws.

22.11 **Subordination to Mortgage.** As to any mortgage now or subsequently placed upon any property of which the PREMISES are a part, of which CITY shall notify LICENSEE in writing, shall be deemed to be prior in time and senior to the rights of the LICENSEE under this Agreement. LICENSEE subordinates all of its interest in the Premises created by this Agreement to the lien of any such mortgage. CITY and LICENSEE shall, at the other Party's request, execute any additional documents necessary to indicate this subordination, provided that such mortgage shall not disturb possession of LICENSEE hereunder.

22.12 **Contract Interpretation.** Both parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

EXECUTED on the _____ day of _____, 2009.

T-MOBILE WEST CORPORATION, a Delaware corporation

By: _____
Name: Jeff Hooper
Title: Area Director of Engineering and Operations

CITY OF PLANO, TEXAS, a home rule municipal corporation

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

Resolution No. _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY
CITY'S TAX ID#: 75-6000640

8-26

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me this _____ day of _____, 2009, by Jeff Hooper, Area Director of Engineering and Operations of **T-MOBILE WEST CORPORATION**, a Delaware 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 corporation.

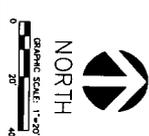
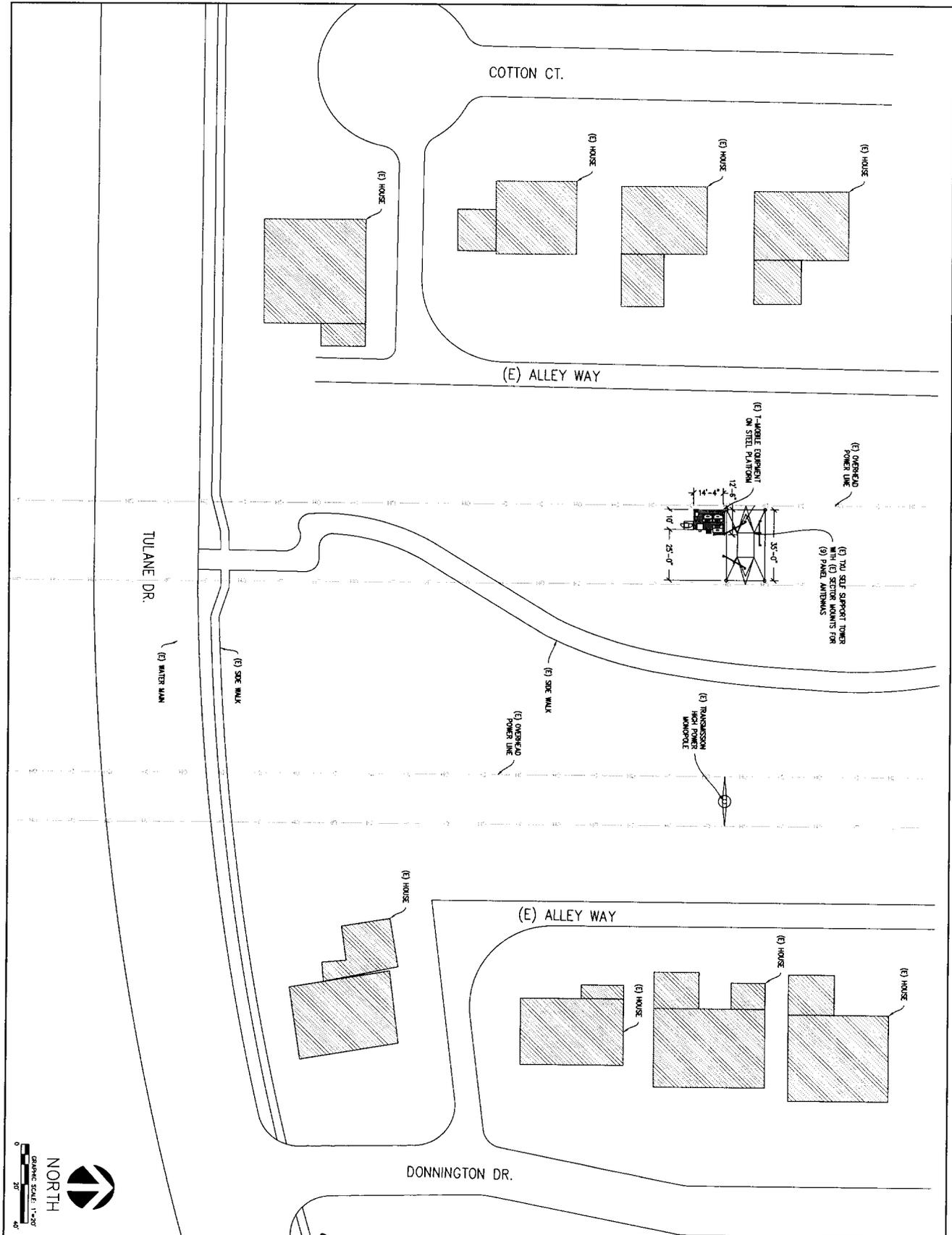
Notary Public, State of Texas

8-27

APPENDIX "A"

(See Attached)

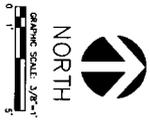
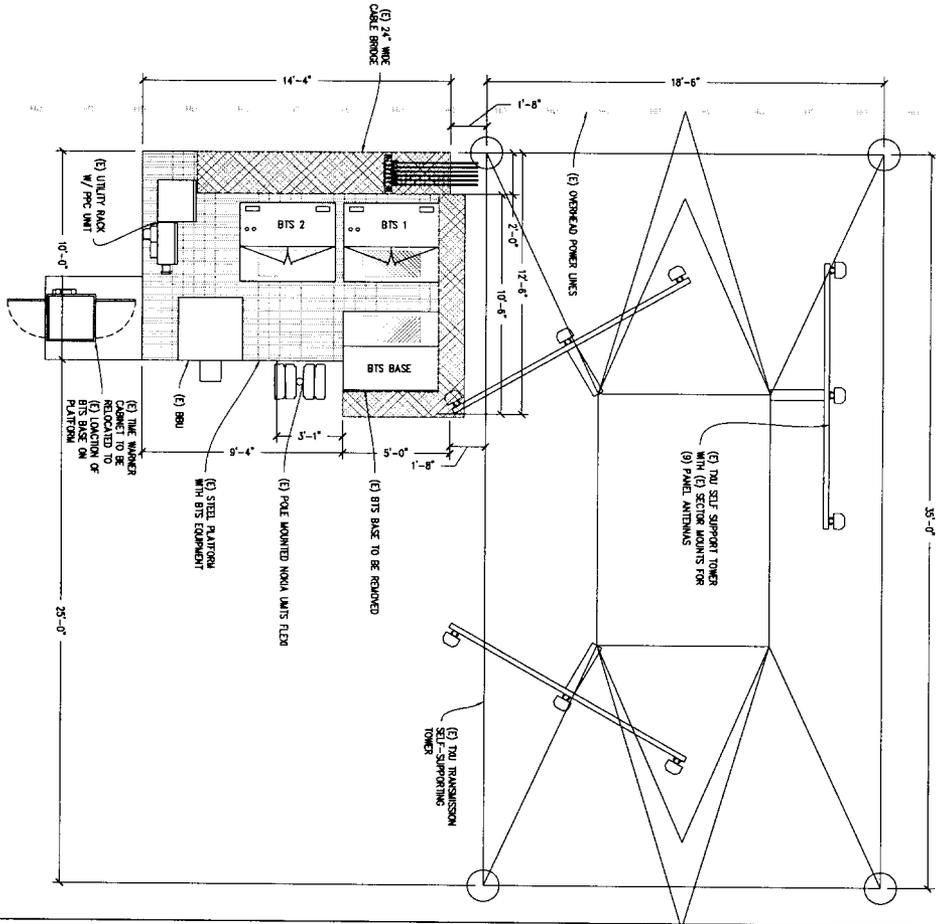
8-28



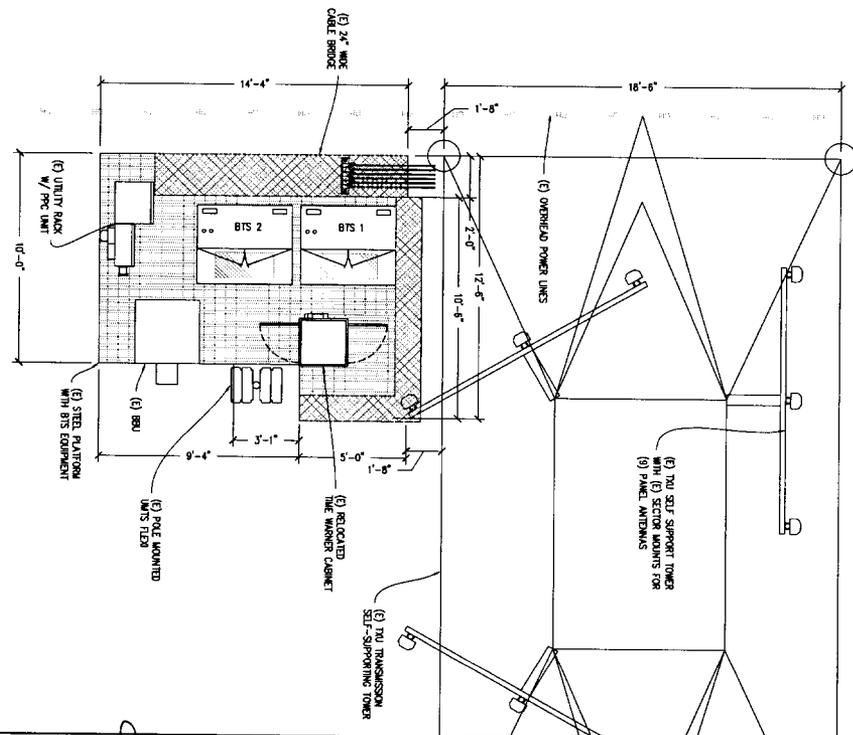
<p>THE MOBILE COMMUNICATIONS COMPANY A DIVISION OF SBC COMMUNICATIONS INC. OFFICE: 512-788-8800</p>	<p>PROJECT NO. DA122C DRAWN BY: CS/SEC/2/L CHECKED BY: JMC</p>	<p>DATE: 08/27/08 BY: JMC REVISIONS: 1. 08/27/08 - REVISED LINES 2. 08/27/08 - REV 3. 08/27/08 - REV 4. 08/27/08 - REV 5. 08/27/08 - REV 6. 08/27/08 - REV 7. 08/27/08 - REV 8. 08/27/08 - REV 9. 08/27/08 - REV 10. 08/27/08 - REV 11. 08/27/08 - REV 12. 08/27/08 - REV 13. 08/27/08 - REV 14. 08/27/08 - REV 15. 08/27/08 - REV 16. 08/27/08 - REV 17. 08/27/08 - REV 18. 08/27/08 - REV 19. 08/27/08 - REV 20. 08/27/08 - REV 21. 08/27/08 - REV 22. 08/27/08 - REV 23. 08/27/08 - REV 24. 08/27/08 - REV 25. 08/27/08 - REV 26. 08/27/08 - REV 27. 08/27/08 - REV 28. 08/27/08 - REV 29. 08/27/08 - REV 30. 08/27/08 - REV 31. 08/27/08 - REV 32. 08/27/08 - REV 33. 08/27/08 - REV 34. 08/27/08 - REV 35. 08/27/08 - REV 36. 08/27/08 - REV 37. 08/27/08 - REV 38. 08/27/08 - REV 39. 08/27/08 - REV 40. 08/27/08 - REV 41. 08/27/08 - REV 42. 08/27/08 - REV 43. 08/27/08 - REV 44. 08/27/08 - REV 45. 08/27/08 - REV 46. 08/27/08 - REV 47. 08/27/08 - REV 48. 08/27/08 - REV 49. 08/27/08 - REV 50. 08/27/08 - REV 51. 08/27/08 - REV 52. 08/27/08 - REV 53. 08/27/08 - REV 54. 08/27/08 - REV 55. 08/27/08 - REV 56. 08/27/08 - REV 57. 08/27/08 - REV 58. 08/27/08 - REV 59. 08/27/08 - REV 60. 08/27/08 - REV 61. 08/27/08 - REV 62. 08/27/08 - REV 63. 08/27/08 - REV 64. 08/27/08 - REV 65. 08/27/08 - REV 66. 08/27/08 - REV 67. 08/27/08 - REV 68. 08/27/08 - REV 69. 08/27/08 - REV 70. 08/27/08 - REV 71. 08/27/08 - REV 72. 08/27/08 - REV 73. 08/27/08 - REV 74. 08/27/08 - REV 75. 08/27/08 - REV 76. 08/27/08 - REV 77. 08/27/08 - REV 78. 08/27/08 - REV 79. 08/27/08 - REV 80. 08/27/08 - REV 81. 08/27/08 - REV 82. 08/27/08 - REV 83. 08/27/08 - REV 84. 08/27/08 - REV 85. 08/27/08 - REV 86. 08/27/08 - REV 87. 08/27/08 - REV 88. 08/27/08 - REV 89. 08/27/08 - REV 90. 08/27/08 - REV 91. 08/27/08 - REV 92. 08/27/08 - REV 93. 08/27/08 - REV 94. 08/27/08 - REV 95. 08/27/08 - REV 96. 08/27/08 - REV 97. 08/27/08 - REV 98. 08/27/08 - REV 99. 08/27/08 - REV 100. 08/27/08 - REV</p>	<p>ALPRO CONSULTING GROUP, INC. 2271 Lyndon B Johnson Freeway Suite 204, Dallas, TX 75243 Phone: 972-271-8883 www.alprogroup.com</p>	<p>08/27/08 STATE OF TEXAS COUNTY OF DALLAS PROFESSIONAL ENGINEER NO. 91783 D. J. MORTON NOT VALID WITHOUT P.E. STAMP & SIGNATURE</p>	<p>DA122C PLANO TXU 4355 TULANE DRIVE PLANO, TEXAS 75093</p>	<p>SHEET TITLE OVERALL SITE PLAN</p>	<p>SHEET NUMBER C-1</p>
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8-29

(E) ENLARGED LAYOUT



PROPOSED ENLARGED LAYOUT



E-Mobile
 THE MOBILE COMMUNICATIONS GROUP
 1000 WEST WINDYBROOK DRIVE
 SUITE 200 WILSONVILLE, OR 97150

PROJECT NO: DA1232C
 DESIGN BY: CS/CEG/DL
 CHECKED BY: JAC

1	3	3	3
2	2	2	2
1	1	1	1
0	0	0	0

ALLPRO
 CONSULTING GROUP, INC.
 3221 Lyndon B Johnson Freeway
 Suite 204 Dallas, TX 75243
 Phone: 972.323.2843
 Fax: 972.323.2844
 www.allproinc.com

08/12/09
 NOT VALID WITHOUT
 P.E. STAMP & SIGNATURE
 PROFESSIONAL ENGINEER
 917793
 OIL MOTTACKAL GEORGE

DA1232C
 PLANO TXU
 425 TULANE DRIVE
 PLANO TEXAS 75093

SHEET NUMBER
C-11A

8-30

**APPENDIX "B"
INSURANCE**

Licensee shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Licensee, Licensee's agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. ISO Form Number GL 0002 (Ed 1/72) or equivalent forms 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). "Claims made" form is unacceptable except for professional liability.
2. Automobile liability shall include all owned, hired and non-owned vehicles.
3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.

B. Minimum Limits of Insurance

Licensee shall maintain limits not less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. \$10,000,000 Aggregate Policy will include coverage for (a) Premises-Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage, Fire Damage, Medical Expense.
2. Automobile liability: \$1,000,000 combined single limit per accident, for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.

C. Deductibles and Self-Insured Retentions

N/A

D. Other Insurance Provisions

The policies are to contain, or be generic endorsements with standard certificates for general and automobile liability coverage to contain the following provisions:

1. General Liability and Automobile Liability Coverage

- (a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is Insured" automatically provides liability coverage in favor of the City as an additional insured.
- (b) The Licensee's insurance coverage shall be primary insurance as respects Licensee's operations. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it in this respect.
- (c) [INTENTIONALLY DELETED]
- (d) The Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Licensee for the City.

3. All Coverages

Each insurance program required by this clause shall be directed to state that coverage shall not be suspended, voided, canceled or non-renewed, reduced in coverage or in limits, except after ten (10) days prior written notice by mail has been given to the City.

E. Acceptability of Insurers

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on standard insurance certificate forms and are to be received and approved by the City before work commences.

APPENDIX "B-1"

**CONTRACT BY, BETWEEN AND AMONG
T-MOBILE WEST CORPORATION
CHAPMAN CONSTRUCTION COMPANY, LP,
AND
CITY OF PLANO, TEXAS**

THIS CONTRACT is made and entered by, between and among T-Mobile Texas, LP, hereinafter referred to as "Licensee," and Chapman Construction Company, LP, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, hereinafter referred to as "City," to be effective subsequent to execution by the Plano City Manager or his 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 WORK**

Contractor shall provide all supervision, labor, materials and equipment necessary for the performance of all obligations required under the terms of the contract between Licensee and Chapman Construction Company, LP dated January 1, 2007.

**II.
THIRD PARTY INTEREST**

It is agreed by and between the parties that the City has an interest in the proper performance of this Contract, and that the City may bring suit for failure to comply with the specifications.

Contractor acknowledges that Licensee has no property interest in the premises provided by the City, and agrees that Contractor will not file any Lien against the City's premises should a dispute arise between Licensee and Contractor.

Contractor agrees that it shall not provide any work or services of any nature unless Contractor has obtained the insurance coverage as specified herein.

8-34

III. 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.

IV. 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.

V. INSURANCE AND CERTIFICATES OF INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance as set forth below.

Licensee shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Licensee, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. 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). "Claims made" form is unacceptable except for professional liability.
2. Automobile liability shall include all owned, hired and non-owned vehicles.

3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
4. Professional Liability (when applicable).

B. Minimum Limits of Insurance

Licensee shall maintain limits not less than:

1. Commercial General Liability: \$500,000 per occurrence for bodily injury, personal injury and property damage. \$1,000,000 Aggregate Policy will include coverage for (a) Premises - Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage (when applicable), Fire Damage, Medical Expense. NOTE: The aggregate loss limit applies to each project.
2. Automobile liability: \$500,000 combined single limit per accident, for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.
4. Professional Liability.

C. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the City.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages
 - (a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy

under "Who is an Insured" automatically provides liability coverage in favor of the City.

- (b) The Licensee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.
- (d) The Licensee's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. **Workers' Compensation and Employer's Liability Coverage**
The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Licensee for the City.

3. **All Coverages**
Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after ten (10) days prior written notice by certified mail, return receipt requested, has been given to the City..

E. **Acceptability of Insurers**
The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. **Verification of Coverage**
Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the City and are to

be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**VI.
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 "A".

**VII.
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.

**VIII.
ENTIRE AGREEMENT**

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

**IX.
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.

**X.
SUCCESSORS AND ASSIGNS**

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

**XI.
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.

**XII.
THIRD PARTY BENEFIT**

The parties to this Contract agree that Contractor will obtain and maintain insurance coverage as specified herein until completion of all work and services by Contractor for Licensee. Contractor shall release, defend, indemnify and hold harmless City from all damages, attorneys' fees and costs of any kind incurred by City due to Contractor's breach of its obligations hereunder. The parties further agree that this Contract is intended to benefit the City of Plano, its officials, officers, employees, agents, successors and assigns, each of which may enforce its terms in a court of competent jurisdiction either individually or collectively.

IN WITNESS WHEREOF, the parties have executed this Contract by signing below. The effective date of this Contract shall be the date of City Council approval.

LICENSEE: T-MOBILE WEST CORPORATION

BY: _____

Name: Jeff Hooper

Title: Area Director of Engineering and Operations

CONTRACTOR: CHAPMAN CONSTRUCTION COMPANY, LP

By: CHAPMAN CONSTRUCTION MANAGEMENT COMPANY, INC., General Partner

BY: _____

Name: _____

Title: _____

CITY OF PLANO, TEXAS

Date: _____

BY: _____

Name: Thomas H. Muehlenbeck

Title: City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

8-40

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me this _____ day of _____, 2009, by Jeff Hooper, Area Director of Engineering and Operations of **T-MOBILE WEST CORPORATION** a Delaware Corporation, on behalf of said Corporation.

Notary Public, State of Texas

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2009, by _____, _____, of _____, a _____, on behalf of said _____.

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 corporation.

Notary Public, State of Texas

8-41

EXHIBIT "A"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of Chapman Construction Company, LP (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 _____

8-42