

**PLANO CITY COUNCIL**

**WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON OCTOBER 13, 2008, 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  |                         |         |
|     | B. Regarding City participation in a long term power supply contract for its City facilities and services | W. Christopher Schaeper | 60 min. |
| II. | Personnel   | Council                 | 15 min. |
|     | A. Evaluation of Council Appointees   |                         |         |
|     | B. Re-Appointments/Appointments to Boards and Commissions   |                         |         |
|     | Heritage Commission   |                         |         |
|     | Planning and Zoning Commission  |                         |         |
|     | Plano Housing Authority   |                         |         |
|     | Retirement Security Plan Committee  |                         |         |

**PRELIMINARY OPEN MEETING**

- |    |   |         |        |
|----|---|---------|--------|
| I. | Consideration and action resulting from Executive Session discussion:<br>Personnel: | Council | 5 min. |
|    | A. Re-appointments/Appointments to Boards and Commissions                           |         |        |
|    | Heritage Commission   |         |        |
|    | Planning and Zoning Commission  |         |        |
|    | Plano Housing Authority   |         |        |
|    | Retirement Security Plan Committee  |         |        |

II.	Personnel	Council	15 min.
	A. Re-Appointments/Appointments to Boards and Commissions		
	Parks and Recreation Planning Board		
	Library Advisory Board		
	Community Relations Commission		
	Cultural Affairs Commission		
	Animal Shelter Advisory Committee		
	Public Arts Committee		
	Self Sufficiency Committee		
	Senior Citizens Advisory Board		
	TIF Zone No.1 Board		
III.	Discussion re Chisholm Trail South Master Plan	Zimmerman	10 min.
IV.	Discussion re Valet Parking	Turner	10 min.
V.	Council items for discussion/action on future agendas	Council	5 min.
VI.	Consent and Regular Agenda	Council	5 min.

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

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



# CITY COUNCIL

1520 AVENUE K

DATE: October 13, 2008

CALL TO ORDER: 7:00 p.m.

INVOCATION: Imam Yaseen Shaikh  
Islamic Association of Collin County

PLEDGE OF ALLEGIANCE: Brownie Troop 1522  
Shepard Elementary

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><b><u>PROCLAMATIONS &amp; SPECIAL RECOGNITION</u></b></p> <p>Presentation: To the City of Plano from The Friends of the Plano Public Library System</p> <p><b><u>COMMENTS OF PUBLIC INTEREST</u></b></p> <p><b><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></b></p> <p><b><u>CONSENT AGENDA</u></b></p> <p><b><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></b></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	<p><b><u>Approval of Minutes</u></b></p> <p>September 22, 2008</p> <p><b><u>Approval of Expenditures</u></b></p> <p><b>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</b></p>	
(b)	<p><b>Bid No. 2008-182-C</b> for Ammunition for the Police Department with an annual fixed price contract in the estimated annual total amount of \$154,744 to Precision Delta Corporation, GT Distributors, Baileys House of Guns and The Hunting Shack. This will establish a one year contract with three City optional one year renewals.</p>	
(c)	<p><b>Bid No. 2008-223-C</b> for Consulting Services to aid the City of Plano in reviewing existing market conditions for the possible development of a new Convention Hotel and Conference Center to HVS Convention, Sports &amp; Entertainment Facilities Consulting in the amount of \$81,000.</p>	
(d)	<p><b>Bid No. 2008-210-B</b> for the materials, construction and installation of end panels for Davis and Schimelpfenig Libraries to Libra-Tech in the amount of \$167,737.</p>	
(e)	<p><b>Bid No. 2008-197-B</b> for Portable Communication Tower to be used with the new wireless infrastructure to Scientel in the amount of \$201,555.</p>	
(f)	<p><b>Bid No. 2008-212-B</b> for the Alma Drive Widening – Spicewood Drive to Hedgcoxe Road to RKM Utility Services, Inc. in the amount of \$998,717 for the base bid (dry kiln cement). The project consists of widening Alma Drive from 4 lanes to 6 lanes from Spicewood Drive to Hedgcoxe Road and widening the northbound side in the City of Allen from Hedgcoxe Road to Tatum Drive.</p>	
(g)	<p><b>Bid No. 2008-224-B</b> for Custer Ground Storage Tank Repairs Project to Natgun Corporation in the amount of \$2,143,500. This project consists of the removal of two 2.5 million gallon steel ground storage tanks and the construction of a 3.75 million gallon concrete storage tank.</p>	
(h)	<p><b>Bid No. 2008-198-B</b> for 2008 Trail Repairs to Cole Construction, Inc. in the amount of \$937,226. The base bid is for removing and replacing concrete trails at various locations throughout the City of Plano.</p>	
	<p><b>Purchase from an Existing Contract</b></p>	
(i)	<p>To authorize the purchase of the Resurfacing of the Bay Floors at Fleet Services in the amount of \$73,678 from Gomez Floor Covering, Inc. through the BuyBoard Cooperative Purchasing Contract and authorizing the City Manager to execute all necessary documents. (BuyBoard Contract No. 241-06)</p>	
(j)	<p>To approve the purchase of ten 3M Selfcheck™ machines in the amount of \$198,205 from Alpha Data Corporation for the Plano Public Library System (PPLS) through an existing contract/agreement with Texas State Contract #TXMAS 6-70030 and authorizing the City Manager to execute all necessary documents</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(k)	To approve the purchase of library materials for the Plano Public Library System (PPLS) in the amount of \$540,000 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.	
(l)	To approve the purchase of library materials for the Plano Public Library System (PPLS) in the amount of \$150,000 from Ingram Library Services through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; authorizing the City Manager to execute all necessary documents.	
(m)	To approve the purchase of library materials for the Plano Public Library System (PPLS) in the amount of \$250,000 from Brodart through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; authorizing the City Manager to execute all necessary documents.	
(n)	To approve the purchase of library materials for the Plano Public Library System (PPLS) in the amount of \$140,000 from Midwest Tapes through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; authorizing the City Manager to execute all necessary documents.	
	<p><b>Renewal of Contract</b></p>	
(o)	To approve renewals for Library Periodicals and related subscription services between EBSCO Information Services and the City of Plano for two years for a sum of \$75,113 each year subject to the availability and appropriation of funds; and authorizing its execution by the City Manager and providing an effective date. (2007-16-C – Approved 11/27/06)	
	<p><b>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</b></p>	
(p)	To approve an Engineering Services Contract by and between the City of Plano and Birkhoff, Hendricks & Conway, L.L.P., in the amount of \$99,895 for Custer Ground Storage Tank Repairs and authorizing the City Manager to execute all necessary documents.	
(q)	To approve a Landscape Architectural Professional Services Agreement by and between the City of Plano and JBI Partners in the amount of \$67,500 for Jack Carter Park Service Center Yard Renovation and authorizing the City Manager to execute all necessary documents. These improvements are needed to move the maintenance yard away from the flood plain, provide additional storage space and improve circulation.	
(r)	To approve a Contract by and between the City of Plano and Plano Economic Development Board in the amount of \$858,361 to initiate, promote, monitor and perform activities related to economic development; and authorizing the City Manager to execute any and all documents in connection therewith.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(s)	<p><b>Approval of Agreement</b></p> <p>To approve an Agreement between the City of Plano, Texas, and RecycleBank LLC to implement an incentive based recycling program to municipality residents; in the amount of \$36,000 for the initial six-month trial term; funding will be provided for the initial six-month term from a grant from NCTCOG; and authorizing the City Manager to execute all necessary documents; and providing an effective date.</p>	
(t)	<p><b>Amendment to Professional Services Agreement</b></p> <p>To authorize an amendment to a Professional Services Agreement between the City of Plano and RCC Consultants, Inc. in the additional amount of \$63,685 through an existing contract/agreement (2008-157-I) for Police and Fire Data System Replacement and Upgrade Project; authorizing the City Manager to execute all necessary documents.</p>	
(u)	<p><b>Subdivision Improvement Agreement</b></p> <p>To ratify the terms and conditions of a Subdivision Improvement Agreement by and between the City of Plano, Texas and UDR Developers, Inc., for oversize participation in Ridgeview Drive both east and west of Coit Road. The Agreement authorizes the City to reimburse UDR Developers, Inc. for the oversize off-site paving improvements from Coit Road west 200' upon acceptance of the improvements and also provides for the typical oversize reimbursement abutting the developer's frontage east of Coit Road in accordance with the Subdivision Ordinance.</p>	
(v)	<p><b>Reimbursement of Oversize Participation</b></p> <p>To approve and authorize reimbursement to UDR Developers, Inc. for oversize participation for paving improvements in Ridgeview Drive associated with construction of Coit/Ridgeview Apartments in the amount of \$99,116.</p>	
(w)	<p><b><u>Adoption of Resolutions</u></b></p> <p>To approve 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 \$78,250 from Collin County; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the Agreement herein; and providing an effective date.</p>	
(x)	<p>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 \$11,200 from Denton County; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the Agreement herein; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(y)	To approve the terms and conditions of Agreements between the City of Plano, Texas, and various Heritage Preservation organizations which render services that are beneficial to the public and serve a valid public purpose in the total amount of \$682,710; authorizing the City Manager to execute such Agreements with these organizations for the provision of support of Heritage Preservation; and providing an effective date.	
(z)	To approve the City of Plano's participation in "TEXPOOL," a public funds investment pool; designating authorized representatives and investment officers; and providing an effective date.	
(aa)	To approve and grant two electric easements to Oncor Electric Service Company on City property located on the north side of 15 <sup>th</sup> Street, 127.53' west of Dallas Area Rapid Transit and the southwest corner of 15 <sup>th</sup> Street and "H" Avenue, authorizing its execution by the City Manager and providing an effective date.	
(bb)	To approve an Easement and Right-of-Way Agreement between the City of Plano and Oncor Electric Delivery Company LLC providing for electric service to the Plano Sports Authority recreation facility at Enfield Park; and authorizing its execution by the City Manager; and providing an effective date.	
<b><u>Adoption of Ordinances</u></b>		
(cc)	To adopt and enact Supplement Number 83 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date.	
(dd)	To approve the terms and conditions of a Boundary Adjustment Agreement between the City of Plano, Texas and the City of Frisco, Texas; authorizing the City Manager to execute the Agreement on behalf of the City of Plano; and providing an effective date.	
(ee)	To approve the carrying forward of Fiscal Year 2007-2008 funds to Fiscal Year 2008-2009; and providing an effective date.	
<b><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></b>		
<b><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></b>		
<b><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></b>		

ITEM NO.	EXPLANATION	ACTION TAKEN
(1)	<p><b>A Resolution</b> to amend Resolution No. 2007-6-9(R) and Resolution No. 2008-4-25(R) to extend the date in the Capital Funding Agreements approved by those resolutions to October 1, 2010 for the Cities to receive credit for advancing capital funds for the proposed project upon the Cities entering into a Contribution Agreement for an approved project; authorizing the City Manager to execute all documents in connection therewith; and providing an effective date.</p>	
(2)	<p><b>Public Hearing and an Ordinance as requested in Zoning Case 2008-66</b> to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit 596 so as to allow the additional use of Gymnastics/Dance Studio on 1.2± acres located on the north side of Summit Avenue, 500± feet east of Jupiter Road, in the City of Plano, Collin County, Texas, presently zoned Light Industrial-1; 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. Applicant: Mike Epperson</p>	
(3)	<p><b>A Resolution</b> to approve the terms and conditions of a Development Agreement by and between Tenth Street Plano, L.P. and the City of Plano, Texas for renovation of existing improvements located at 910 10<sup>th</sup> Street, Plano, Texas; authorizing its execution by the City Manager; and providing an effective date.</p>	
(4)	<p><b>Presentation and Discussion</b> of a Long Term Electric Power Agreement with Cities Aggregation Power Project.</p> <p><u><b>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.</b></u></p>	



**Pat Evans**  
Mayor

**Jean Callison**  
Mayor Pro Tem

**Harry LaRosiliere**  
Deputy Mayor Pro Tem

**Pat Miner**  
Place 1

**Scott Johnson**  
Place 2

**Mabrie Jackson**  
Place 3

**Sally Magnuson**  
Place 4

**Lee Dunlap**  
Place 8

**Thomas H. Muehlenbeck**  
City Manager

October 9, 2008

Mayor Pat Evans  
City Council Members  
City of Plano  
Plano, TX 75074

Honorable Mayor and City Council:

We will begin our meeting on Monday with Executive Session where we will receive legal advice from the City Attorney. We will also hear a 60 minute legal presentation regarding the City's participation in a long term power supply contract. Under Item II, Personnel, you will begin with the evaluation of the Municipal Court Judge. Thereafter, you are asked to consider reappointments and appointments to several boards and commissions.

The Preliminary Open Meeting will begin with consideration and action regarding reappointments and appointments discussed in Executive Session. Thereafter, you will discuss further reappointments and appointments to boards and commissions. At Item III, Jeff Zimmerman will discuss the Chisholm Trail South Master Plan. In conclusion of the preliminary meeting, Frank Turner will make a presentation regarding valet parking services.

I look forward to seeing you on Monday.

Sincerely yours,

Thomas H. Muehlenbeck

# MEMO

**DATE:** October 9, 2008

**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 reappointments/appointments will be considered at the October 13, 2008 Council Meeting.

<b><u>Executive Session</u></b>	<b><u>Worksession Meeting</u></b>
<b><u>Reappointments/Appointments:</u></b> Heritage Commission + Chair Planning and Zoning Commission + Chair Plano Housing Authority Retirement Security Plan Committee (Chair Only)	<b><u>Reappointments/Appointments:</u></b> Parks and Recreation Planning Board + Chair Library Advisory Board + Chair Community Relations Commission + Chair Cultural Affairs Commission + Chair Animal Shelter Advisory Committee + Chair Public Arts Committee + Chair Self Sufficiency Committee + Chair Senior Citizens Advisory Board + Chair TIF Zone No. 1 Board

## MEMORANDUM

**DATE:** September 12, 2008

**TO:** Thomas H. Muehlenbeck, City Manager

**FROM:** Jeff Zimmerman, Long Range Planning Manager

**SUBJECT:** Chisholm Trail South Master Plan

Several months ago, the City Council asked staff for a report on the possibilities related to improving and upgrading that portion of Chisholm Trail extending south from Park Boulevard through Harrington Park, and Collin Creek Mall, to the city limits line and eventually connecting with Richardson's trail system. The planning effort was considered a high priority because of its potential impacts on City-owned facilities and the development area anchored by Collin Creek Mall. It was also part of the Council's 2007 Strategic Plan.

Attached is a report assembled from documents and graphics prepared by a consultant hired by the Parks and Recreation Department. The report covers the area bounded by Park Boulevard, U.S. Highway 75, the Bush Turnpike, and Alma Drive. This area was identified as a possible location for future urban mixed use development in the Urban Centers Study adopted by the City Council in 2006. Although interrelated, there are definitely elements of this plan that could be subdivided and phased over time.

### **Key elements for this plan include:**

- 1. Harrington Park/Senior Center Improvements** – The plan provides for the eventual extension of Chisholm Trail along both sides of Spring Creek from Park Boulevard to 15<sup>th</sup> Street. The trail is in place on the east side of the creek, but does not exist on the west side between Park Boulevard and 16<sup>th</sup> Street. The plan shows a major expansion of the Senior Center to include more space for the Gerontology Center, fitness facilities, and classrooms. The plan also proposes the acquisition of the tributaries of Spring Creek and the old swim club north of the existing park boundaries. On the west, the acquisition of a minimum of 50 feet of land beyond the high bank of the creek would accommodate the trail and preserve a significant amount of tree cover.
- 2. Creek Stabilization** – In the early 1990's, the trail and associated landscaping was added on both sides of the creek between 15<sup>th</sup> and 16<sup>th</sup> Streets. The landscaped areas, primarily turf sloping towards the creek, are now experiencing shifting and sinking of the soil. It will be necessary to improve the bank conditions with both hardscape and softscape treatments before the trail is affected and more costly improvements will be required. It is also necessary to prevent potentially hazardous conditions. The area north of 16<sup>th</sup> Street will eventually require the removal of large debris like concrete slab materials, and some efforts to prevent further loss of major trees along the banks.
- 3. Future Urban Center Development** – The extension of trail along the west creek bank, the future addition of pedestrian bridges, and the creation of a zoning plan to allow greater density and height for residential and nonresidential uses could combine to enhance opportunities for urban center development. The introduction of mid- to high-rise buildings overlooking the park area could increase the viability and success of the development. One

of the drawings in the attached report provides an example of how a dense, mixed-use development could be accommodated in this area. The zoning could be incentive-based and provide for density bonuses if common courtyards, plazas, and open space areas are provided to accommodate festive gatherings.

4. **Mall Area Improvements** – The Parks and Recreation Department is using currently available bond funds to extend the existing trail west of the creek under the 15<sup>th</sup> Street bridge and bring it back to grade near the ring road of Collin Creek Mall. Construction is expected to begin in 2009. The approximate cost is \$0.75 million. There is also a graphic in the report depicting an at-grade continuation of the trail through the mall without major modifications to the mall's current layout. It will be necessary to adjust fire lanes and reconfigure some of the parking areas. At the south end of the mall, the trail could be lowered again to go under Plano Parkway and extend south to the city limits.

Depending on the availability of resources and the level of participation by property owners, the basic elements of this plan would create a major focal point and gathering place for the community that could be linked by trolley or bus to Downtown Plano. If implemented effectively, this plan could have significant positive impacts on both the private and public sectors. Land acquisition, creek stabilization, and zoning amendments would have the highest priority from an economic development standpoint. The proposed Senior Center expansion is intended to increase the City's ability to effectively serve the needs of Plano's growing senior population.

The total cost of the Items 1 and 3 identified above, is estimated at \$17.5 to \$20 million. These improvements could be included in bond programs approved over the next 10 years. This estimate does not include the following:

- ♦ Creek stabilization improvements (Item 2) which could be paid for through the Municipal Drainage Fund. These improvements will be necessary whether or not the other elements of this program take place. A cost estimate for this work would require additional study and analysis.
- ♦ The minimum estimate for an at-grade extension of the trail through the mall (Item 4) is \$4.2 million. This includes the trail plus lighting, trees, turf, and benches. This figure could increase substantially if some or all of the special features shown in the attachment are included. The possibility for property owner participation is not known at this time.

It is also anticipated that additional improvements and upgrades may be necessary in the following 10 years. Zoning changes, particularly for the area west of Spring Creek between 16<sup>th</sup> Street and Park Boulevard, should be undertaken in the near future before additional development occurs that is inconsistent with the described concept.

If you require further information or assistance, please let me know.

#### **Attachment**

xc: Rod Hogan, Executive Director for Public Services  
Frank Turner, Executive Director for Development  
Don Wendell, Director of Parks and Recreation  
Phyllis Jarrell, Director of Planning  
Alan Upchurch, City Engineer  
Robin Reeves, Chief Park Planner

# Chisholm Trail South Master Plan Summary

## Park Boulevard to President George Bush Turnpike (Includes Collin Creek Corridor Improvements)

### INTRODUCTION AND BACKGROUND

The Urban Centers Study was adopted by the City Council in June of 2006 to help define and guide the role of Urban Center development in Plano's future. An area bounded by Park Boulevard, US 75, President George Bush Turnpike, and Alma Drive and given the name of the "Collin Creek Corridor" was identified as one of three (3) areas within the City that had the most potential to develop as an urban center.

In response to this recommendation in the study, the desire to maintain and enhance the viability of Collin Creek Mall, and to provide for upstream improvements to the trail, an effort was initiated in the fall of 2006 to develop a master plan for near- and long-term improvements to Chisholm Trail from its beginning point at Independence Parkway and Legacy Drive to its ultimate terminus at the President George Bush Turnpike. Some of the upstream improvements resulting from plan have already been initiated.

Instead of the Collin Creek Corridor, this study refers to area as Chisholm Trail South which includes that portion of the trail and surrounding property beginning at Park Boulevard and extending to the southern city limits at the Bush Turnpike. In addition to Collin Creek Mall, it currently contains a mixture of uses including office, strip retail along the US 75 service road, multi-family uses along 16<sup>th</sup> Street and south of Plano Parkway along Alma, and larger retail uses along 15<sup>th</sup> Street and adjacent to the mall. There is considerable vacant land north of 16<sup>th</sup> Street, west of Spring Creek. There is some existing development at the northern end near Park Boulevard. At the southern end, there is an older apartment complex and an electrical substation.

The Urban Centers Study examined this area more closely as a "case study" and concluded that Chisholm Trail, the City's 5.5 mile multi-use trail running northward from 15<sup>th</sup> Street to Legacy Drive, was a key component of the corridor's redevelopment. The report also recommended the following:

*Prepare a master plan for enhancements to the Chisholm Trail greenbelt that currently ends at 15<sup>th</sup> Street. The master plan should include proposals to make the greenbelt a more "user friendly" attraction that contributes to the economic vitality of the area.*

*Consideration should be given to extending the trail in some form through the mall and to the area south of Plano Parkway. The property owners and other stakeholders should be involved in the development of the master plan.*

## **MAJOR OBJECTIVES OF THE CHISHOLM TRAIL SOUTH MASTER PLAN**

In the beginning of the planning effort, the staff and consultants established the following goals: Support the long term economic viability of Collin Creek Corridor.

- Provide for the future needs of the Plano Senior Center and Harrington Park.
- Create a major community gathering place and focal point.
- Extend the trail through the mall to the southern City boundary for linkage with Richardson's trail system.
- Eliminate the existing barriers at 15<sup>th</sup> Street, and Plano Parkway.
- Preserve and enhance key natural features wherever possible.

## **DEVELOPMENT CONCEPTS**

The Chisholm Trail Master Plan provides for the following key components:

- Grade separated connections beneath 15<sup>th</sup> Street and Plano Parkway to allow trail users continuous use of the trail without the conflict of street level traffic. Street grade level connections will remain in place to allow for trail access.
- An at-grade trail and greenbelt connection through Collin Creek Mall has been provided that has minimal impact on the mall's current layout. The recommended configuration helps facilitate pedestrian movement through the mall site while providing a safe and aesthetically pleasing connection into the mall itself.
- Extension of the trail south of the mall using the grade separated connection at Plano Parkway, and continuing southward along the creek and westward to Alma Drive. At Alma Drive the trail would link up with a trail in the City of Richardson.
- Acquisition of the swim club, and creek tributary north of Harrington Park and tree covered locations on the west side of the creek to provide to accommodate future expansion of the Plano Senior Center and construction of the trail on the west side of Spring Creek.
- Illustration of how common areas between 16<sup>th</sup> Street and Park Boulevard could blend with natural features of the creek and surrounding tree cover. One or more pedestrian bridges could link Harrington Park and the Senior Center with the trail and common areas on the west side of the creek. These bridges could also become visually attractive centerpieces for the area.

- Depiction of a how the area west of creek might be transformed into a mid- to high-density urban center directly west and across the creek from the existing Senior Center. As the area redevelops, uses should open to the trail and greenbelt between 15<sup>th</sup> Street and the mall. .
- Retention of areas adjacent to U.S. Highway 75 for commercial development to expand the tax base and complement the mall and other activities in the area.
- Redevelopment of the area south of Plano Parkway as residential, office, and commercial uses that are commensurate with the level of access and visibility provided by Plano Parkway and Alma Drive as opposed to U.S. 75. Pedestrian connections have been provided under Plano Parkway and across the creek to link the two sides together. Retail, commercial, office and residential uses should redevelop with a strong orientation to the greenbelt and Chisholm Trail.

This plan and the exhibits that follow are intended to create an image of what the area could become and how public and private improvements, development, and redevelopment could strengthen and benefit the long term success of the Chisholm Trail South area.

### **Credits**

- Karl Von Bieberstein, FASLA and the firm of Newman, Jackson, Bieberstein, Inc.

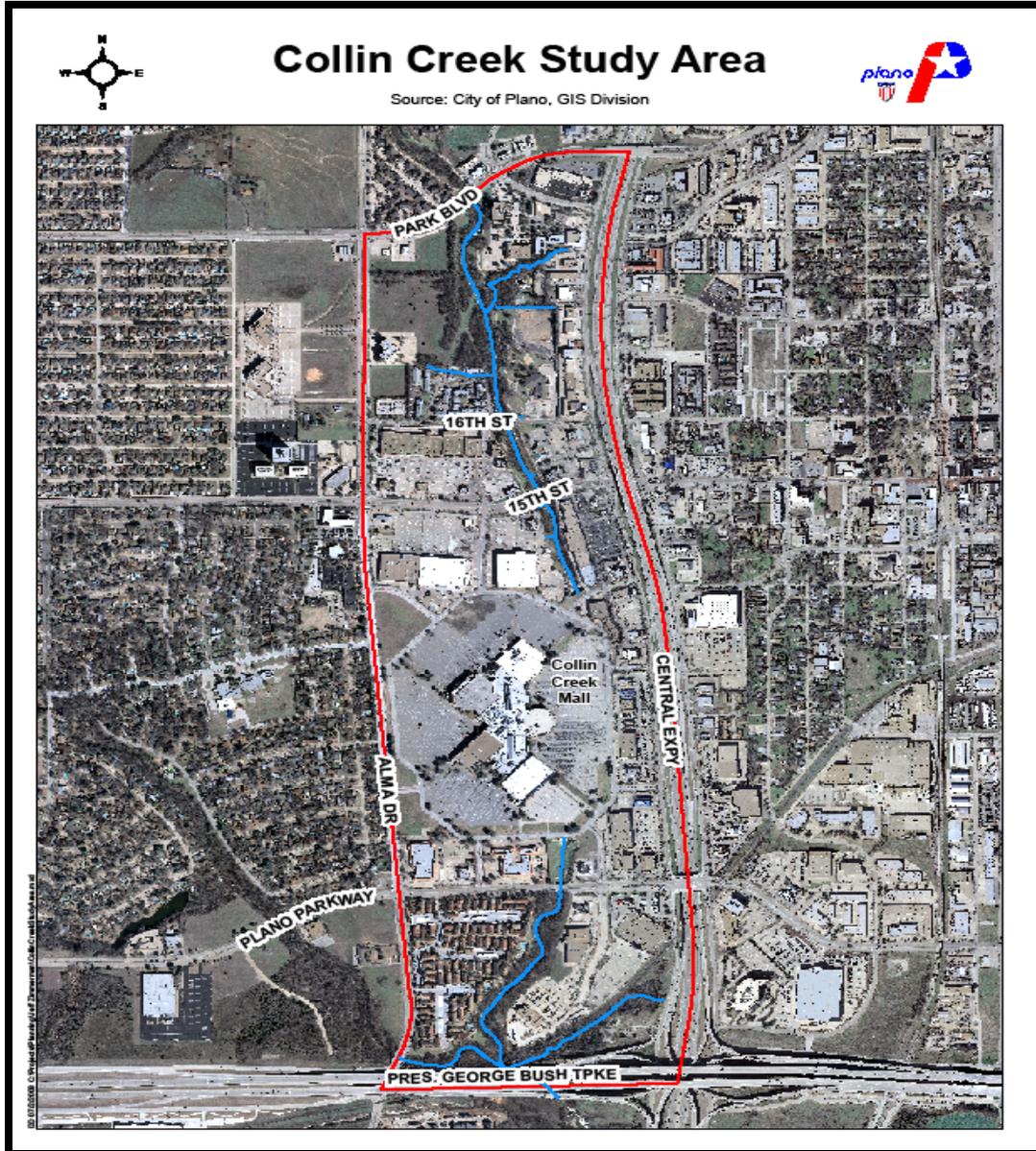
### **Exhibits**

**Starting with Page 4 is a series of exhibits consisting of maps and drawings intended to enhance visualization of the recommendations.**

## Exhibit 1

### Existing Aerial Map of the Primary Study Area

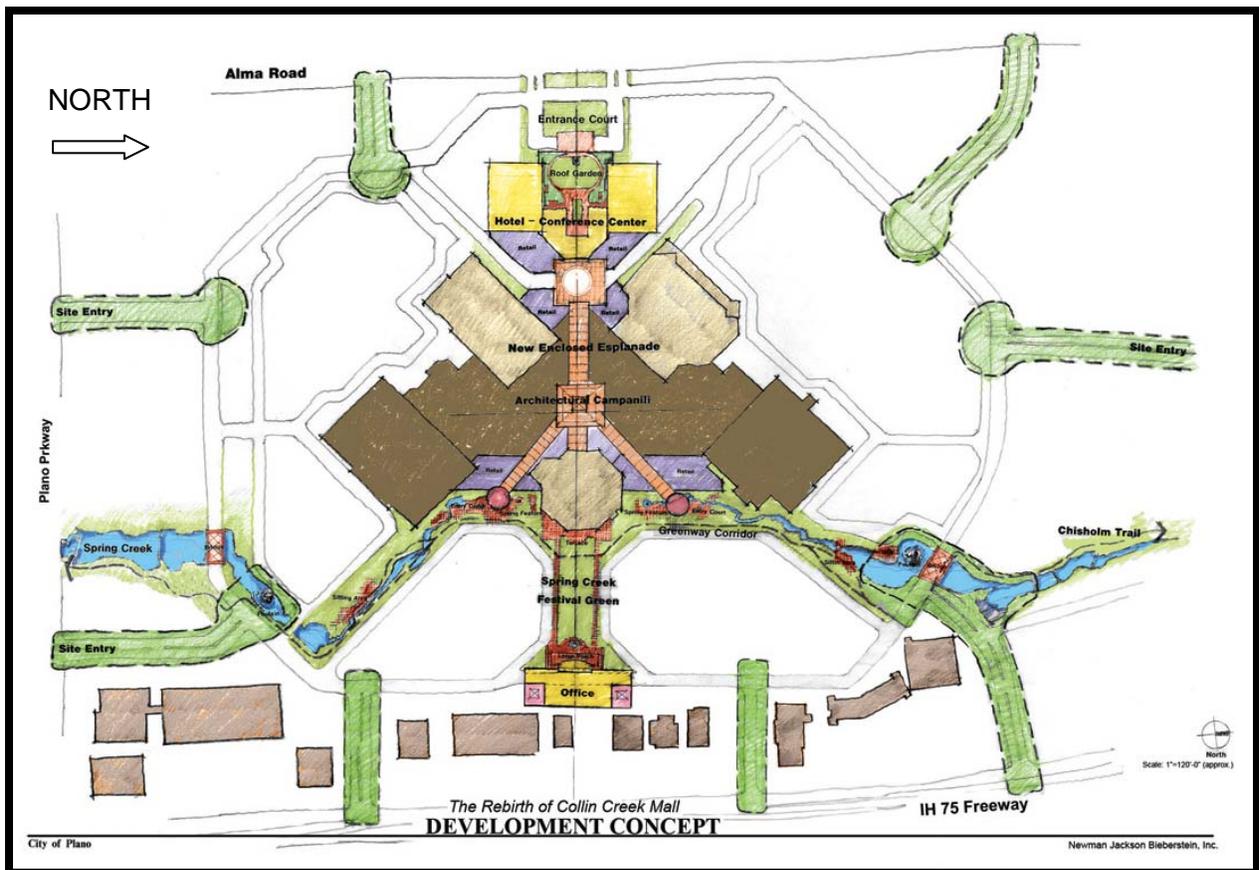
This aerial photograph displays the U.S. Highway 75 Corridor from just north of Park Boulevard south to the President George Bush Turnpike. Spring Creek is highlighted as are other key elements of the study area. The area bounded in red represents the Chisholm Trail South study area. Spring Creek is shown in blue.



## Exhibit 2

### Concept for Extending Trail through Collin Creek Mall

This represents an example of how Chisholm Trail could be extended south past 15<sup>th</sup> Street with minimal disruption of the existing mall layout and operations. (This portion of the proposal is currently in the design stage.) It provides for extending the trail under the 15<sup>th</sup> Street Bridge and gradually sloping it to the surface near the mall's "ring road." It could eventually be part of a widened landscape area along the building. The trail could slope downward from the southern end of the "ring road", and follow the existing open channel under Plano Parkway. The drawing shows the possibility to create a linear landscaped area extending from the main mall entrance to the eastern end of the "ring road" where new office building might be added. A plaza connection to the west and a future hotel/conference center is also shown for illustration purposes only.

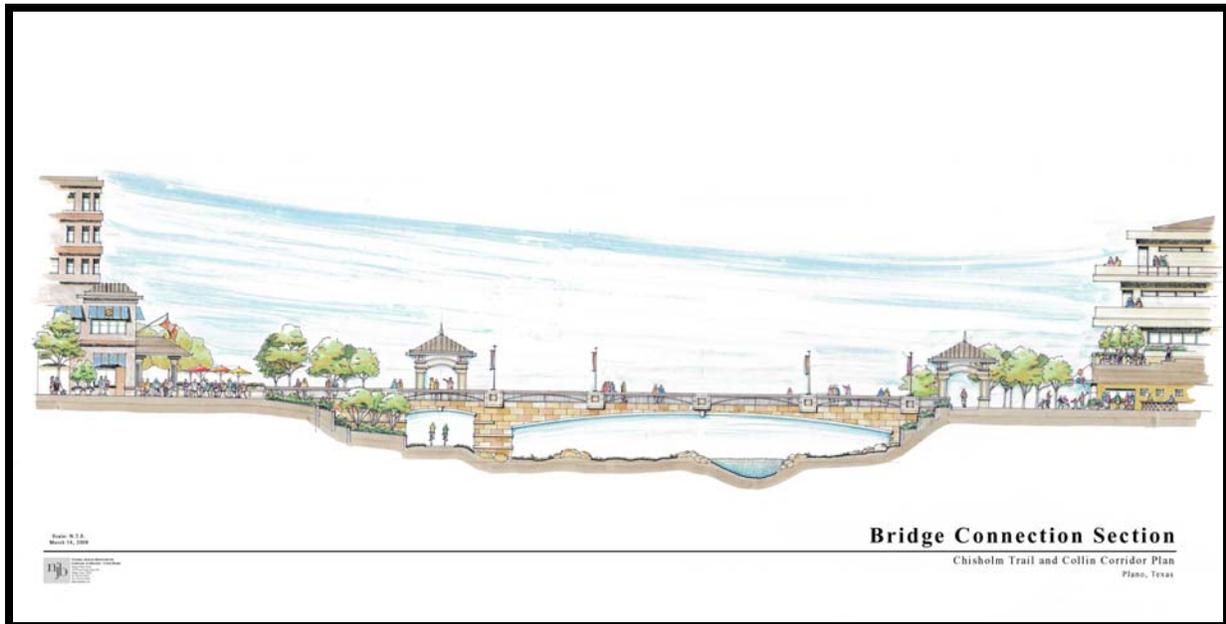




## **Exhibit 4**

### **Example of Pedestrian Bridge Crossing Spring Creek**

Bridges could become more than connections from east to west, but could be appealing features within the overall development of public and private facilities, particularly in the area between 15<sup>th</sup> Street and Park Boulevard.



## **Exhibit 5**

### **Example of Festival Park**

A multiple-use common area could become a gathering place for persons living in new residential development, patronizing new and existing commercial development, Senior Center participants, and persons traveling from miles away via Chisholm Trail.





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## **MEMORANDUM**

DATE: October 8, 2008

TO: Thomas H. Muehlenbeck, City Manager

FROM: Frank F. Turner, Executive Director 

SUBJECT: Valet Parking

During the last few months, staff has been studying valet parking operations that use public right-of-way and public parking. This matter came to staff's attention when a restaurant in downtown Plano began offering valet parking. Some of the downtown property owners and businesses initially voiced concerns that the valet operation might interfere with the parking needs of their customers and it could increase traffic congestion. Two meetings were held with the downtown merchants and they agreed that properly regulated valet parking could benefit downtown.

The only other area in Plano where valet parking relies on public right-of-way and parking is the Shops at Legacy. Valet operations there are provided by some of the restaurants and the Center's management exercises oversight and control of the operations through the lease restrictions. While the Shops at Legacy was not the initial focus of staff's study, similar concerns exist about the use of public property and the potential for valet operations to complicate traffic flow.

With input from property owners and businesses in both areas, staff has prepared a draft ordinance regulating valet parking operations that use right-of-way and parking. The ordinance would not apply to valet parking operations located entirely on private property, such as a shopping center, mall or country club.

In general, the proposed regulations are intended to accomplish the following:

- Require a license agreement for the use of public right-of-way and parking for valet operations.
- Require a plan specifying the location and operation on the valet stand and remote parking.
- Provide standards for the location and size of a valet stand and the number of spaces used for dropping off and picking up of vehicles.
- Provide that any valet operation must be non-exclusive and provide service to any person irrespective of their business destination or purpose.
- Provide that valet operators may not charge a direct fee from the public for the service, but may accept gratuities.
- Provide that the valet operators may not use on-street public parking for parking of vehicles.
- Provide for the periodic renewal of license agreements, while retaining the city's ability to temporarily or permanently terminate valet operations.

The proposed ordinance limits the issuance of licenses to businesses with the consent of the property owner. Notice of the application for a valet license must be posted on the property and sent to the owners of property within 200 feet of the business where the valet stand will be located. Applications meeting the terms of the ordinance may be approved by staff; however, the action of staff may be appealed to the City Council for further consideration. Termination of license by staff may be also appealed to Council.

The draft ordinance does not license or permit valet service companies. It is the responsibility of the license holder to provide or secure the valet service and to manage its operation as specified by the license agreement. Presumably the license holder will pay a fee to secure the services of an independent valet service. The draft does not regulate this contractual relationship or address multiple businesses sharing the cost of providing valet parking.

It is important to note that some of the license agreement requirements conflict with current practices for valet parking at Legacy Town Center such as charging for valet parking, restriction on location from intersections/traffic devices, and use of on-street parking spaces for vehicles parked by the valet. Furthermore, it will be difficult to criminally enforce the ordinance against business owners as they most likely will not actually operate the valet operation. However, we will have the remedy of revoking the license if they violate any provisions of the ordinance or agreement.

Staff is seeking Council's direction on proceeding with completing a valet parking ordinance for their consideration and action.

---

**Discussion/Action Items for Future Council Agendas**

**2008**

**October 27**

Mobility Report  
DART Report  
Comprehensive Monthly Financial Report

Board and Commission Certificates of Appreciation  
Board and Commission Oath of Office

**Public Hearing:** Zoning Case 2008-65 - Request to rezone 119.9± acres located at the northeast corner of State Highway 190 and Renner Road from Research/Technology Center to Planned Development-Retail. Zoned Research/Technology Center.

***October 29 – 31 – TML Annual Conference, San Antonio***

**November 10**

***November 11 – 15 – NLC Congress of Cities, Orlando, FL***

***November 20 – District 2 Roundtable, Tom Muehlenbeck Center, 7 p.m.***

**November 24 – Council Core Businesses Worksession, 8 a.m. – 5 p.m.**

Mobility Report  
DART Report  
Comprehensive Monthly Financial Report

***November 27 & 28 – Thanksgiving Holidays***

**December 8**

***December 18 – Employee Holiday Luncheon, Plano Centre, 11 a – 1 p***

**December 22**

Mobility Report  
DART Report  
Comprehensive Monthly Financial Report

***December 25 & 26 – Christmas & Winter Holidays***



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>			Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:		<b>10/13/08</b>	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	City Manager's Office			Initials	Date
Department Head	Tom Muehlenbeck		Executive Director		
Dept Signature:			City Manager	<i>[Signature]</i>	9/11/08
Agenda Coordinator (include phone #): <b>Sharon Wright ext. 7107</b>					
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					
<b>CAPTION</b>					
Presentation: To the City of Plano From The Friends of the Plano Public Library System					
<b>FINANCIAL SUMMARY</b>					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>	
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:					
<b>SUMMARY OF ITEM</b>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		

**PLANO CITY COUNCIL  
PRELIMINARY OPEN MEETING  
September 22, 2008**

**COUNCIL MEMBERS**

Pat Evans, Mayor  
Jean Callison, Mayor Pro Tem  
Harry LaRosiliere, Deputy Mayor Pro Tem  
Pat Miner  
Scott Johnson  
Mabrie Jackson  
Sally Magnuson  
Lee Dunlap

**STAFF**

Thomas H. Muehlenbeck, City Manager  
Frank Turner, Executive Director  
Bruce Glasscock, Executive Director  
Rod Hogan, Executive Director  
Diane C. Wetherbee, City Attorney  
Diane Zucco, City Secretary

Mayor Evans called the meeting to order at 5:10 p.m., Monday, September 22, 2008, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Council Member Jackson. Mayor Pro Tem Callison arrived at 5:12 p.m. Mayor Evans then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice, Section 551.071, discuss Personnel, Section 551.074 and also discuss 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 Evans reconvened the meeting back into the Preliminary Open Meeting at 6:11 p.m. in the Council Chambers where the following matters were discussed:

**Consideration and Action Resulting from Executive Session Discussion:  
Personnel Reappointments**

No items were brought forward.

**City Council Liaisons to Boards and Commissions**

Mayor Evans read the following list of liaisons into the record:

- Animal Shelter Advisory Committee – Mabrie Jackson and Pat Miner
- Arts of Collin County Commission Board of Directors – Sally Magnuson and Mabrie Jackson
- Building Review Functions – Scott Johnson and Lee Dunlap
- Civil Service Commission - City Manager Thomas Muehlenbeck
- Collin County Appraisal District Board – Sally Magnuson

- Community Relations Commission/Cultural Affairs Commission – Mayor Pro Tem Jean Callison, Deputy Mayor Pro Tem Harry LaRosiliere and Sally Magnuson
- DART Board of Directors – Loretta Ellerbe
- Heritage Commission – Sally Magnuson and Lee Dunlap
- Library Advisory Board - Deputy Mayor Pro Tem Harry LaRosiliere and Lee Dunlap
- North Texas Municipal Water District Board – Scott Johnson and Mabrie Jackson
- Parks and Recreation Planning Board – Lee Dunlap and Pat Miner
- Planning and Zoning Commission – Deputy Mayor Pro Tem Harry LaRosiliere and Scott Johnson
- Plano Housing Authority – Mayor Pro Tem Jean Callison and Pat Miner
- Public Art Committee – Deputy Mayor Pro Tem Harry LaRosiliere and Sally Magnuson
- Retirement Security Plan Committee – City Manager Thomas Muehlenbeck
- Self Sufficiency Committee – Lee Dunlap and Mabrie Jackson
- Senior Citizens Advisory Board – Mayor Pro Tem Jean Callison and Scott Johnson
- Tax Increment Financing Reinvestment Zone No. 1 Board – Scott Johnson
- Tax Increment Financing Reinvestment Zone No. 2 Board – Deputy Mayor Pro Tem Harry LaRosiliere
- Youth Advisory Commission – Mayor Pro Tem Jean Callison and Mabrie Jackson
- North Texas Housing Coalition – Pat Miner
- Multi-Cultural Outreach Roundtable – Deputy Mayor Pro Tem Harry LaRosiliere, Scott Johnson and Pat Miner

### **Consideration of 2009 City Council Meeting Dates**

The Council rescheduled the February 9, 2009 meeting to Tuesday, February 17; the May 25, 2009 meeting to Tuesday, May 26; the April 13, 2009 meeting to Tuesday, April 14; and the December 28, 2009 meeting to Tuesday, December 22.

### **Comprehensive Monthly Financial Report**

Finance Director Tacke advised regarding the August report stating that General Fund revenues are up 1.5% based on an increase in sales tax and that the Water and Sewer Fund is up due to increased consumption. She spoke to the decline in General Fund expenditures, a slight rise in unemployment, and a decline in single-family housing starts with absorption staying nearly the same. Ms. Tacke spoke to continued investment in the treasury pool with a short-term maturity schedule and the City's investments resulting in a yield higher than benchmarks.

### **Mobility Report**

Transportation Engineer Neal spoke to a revamping of the intersection of U.S. 75 and Parker Road with the project expected to take two years. He spoke to the increase in activity in the Safe Streets Program and advised regarding an ongoing program addressing signal timing. Mr. Neal spoke to working with DART regarding senior travel vouchers and a November meeting scheduled at the Senior Center to discuss improvement of services.

## **DART Report**

Faye Moses Wilkins spoke to the design approved for parking at the Parker Road station with 577 new spaces expected to be complete by spring 2009 and parking expansion at the George Bush station with 386 new spaces expected to be complete by summer 2009. She spoke regarding the Northwest Park and Ride with discussion of funding and participation by Plano, Collin County, COG and DART. Ms. Wilkins spoke to the splitting of Route 451 to provide service at Parker Road/Independence Parkway and expansion into the Legacy area. She spoke to expansion of Route 347 to operate on a daily schedule and additional egress points added to the HOV lanes on U.S. 75. Mayor Evans spoke to coordinating information between those in the Legacy area with DART. Ms. Wilkins responded to Mayor Evans that she will bring information forward on anticipated services in the Legacy area and to Council Member Johnson advising she will bring information forward regarding benches/shelters at bus stops.

## **Discussion Regarding Pay Day Loan/Check Cashing/Car Title Loan Businesses**

Senior Planner Perry spoke to Planning and Zoning Commission exploration of payday loan establishments and possible land use regulations. She spoke to the growth of these locations which distribute small, short-term, high interest loans intended to bridge a gap between pay periods and which are typically secured by access to an individual's checking account. Ms. Perry advised that interest rates and fees in Texas range from \$20-\$25 per \$100 borrowed, spoke to their regulation by states and Texas' limited restrictions on their operation. She spoke to concerns of municipalities that they affect property values and increase crime and efforts to regulate via spacing requirements, limitation on districts where they might be located, and buffering from major roadways. Ms. Perry advised that in the City of Plano they are categorized as banks/savings and loans and are allowed in all non-residential zoning districts by right with the exception of Neighborhood Office where a specific use permit is required. She reviewed current locations within the City and spoke to caution recommended by the American Planning Association since research does not indicate a clear link between payday loan establishments and declining values or crime; elimination possibly leading to higher levels of bankruptcy; and efforts to limit clustering which may lead to higher lending rates and fees due to limited competition. She further spoke to other considerations because the operations are regulated by the state, check-cashing services being provided at other locations, issues of creating a non-conforming use and whether or not the City would be effectively treating the situation.

Ms. Perry advised that the Commission recommended continuing to monitor the issue, waiting for more conclusive information and observing the practices of other municipalities in regulation to which the Council concurred.

## **Discussion Regarding 2010 Census Complete Count Committee**

Long Range Planning Manager Zimmerman spoke to the establishment of a committee during the 2000 census and the City's 80% response rate to the survey. He advised that the committee provided local promotion, stressed the need for an accurate count, reached historically undercounted groups, and utilized local leader's knowledge of the community.

Mr. Zimmerman spoke to the need for accurate figures in determining representation of the City and distribution of federal funding and advised that the 2010 census will be comprised only of the short form. He spoke to the American Community Survey which provides more detailed information and which is administered on an annual basis.

Mr. Zimmerman spoke to initial collection and evaluation of information by several Council Members, discussion of the pros/cons with previous committee members, development of a preliminary budget and determination of affordability and cost effectiveness with a recommendation to be brought to Council in 30-45 days. He advised that \$13,000 was spent during the 2000 Census. Mayor Evans requested Mayor Pro Tem Callison and Council Member Miner develop a recommendation regarding the formation of this committee.

#### **Council items for discussion/action on future agendas**

No items were discussed.

#### **Consent and Regular Agenda**

No items were discussed.

#### **Council Reports**

Council Member Dunlap spoke regarding Plano hosting the ITC – Information, Technology, and Communications NLC Steering Committee and their attendance at the Balloon Festival, visits to the nature preserve and recreation center and the positive impressions they received of the investment citizens make in our community. Mayor Evans spoke to Staff's efforts in hosting the EENR – Energy, Environment, and Natural Resources NLC Steering Committee and the committee's positive reactions to Plano's overall recycling program, citizen involvement, and paint/pesticide re-use efforts.

Council Member Johnson spoke regarding the rededication of Meadows School and the input received from those in attendance expressing appreciation for the cooperation between the school district and the City.

Nothing further was discussed. Mayor Evans adjourned the Preliminary Meeting at 6:56 p.m.

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**Pat Evans, Mayor**

ATTEST

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**Diane Zucco, City Secretary**

**PLANO CITY COUNCIL**  
**September 22, 2008**

**COUNCIL MEMBERS**

Pat Evans, Mayor  
Jean Callison, Mayor Pro Tem  
Harry LaRosiliere, Deputy Mayor Pro Tem  
Pat Miner  
Scott Johnson  
Mabrie Jackson  
Sally Magnuson  
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Frank Turner, Executive Director  
Bruce Glasscock, Executive Director  
Rod Hogan, Executive Director  
Diane C. Wetherbee, City Attorney  
Diane Zucco, City Secretary

Mayor Evans convened the Council into the Regular Session on Monday, September 22, 2008 at 7:10 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Council Member Jackson.

The invocation was led by Mayor Pro Tem Callison

The Pledge of Allegiance was led by Plano Police Law Enforcement Explorer Post 911.

**PROCLAMATIONS AND SPECIAL RECOGNITION**

Mayor Pro Tem Callison presented a proclamation recognizing Disability Employment Awareness Month and Deputy Mayor Pro Tem LaRosiliere presented a proclamation recognizing Technology Day. Ms. Callison made a presentation of the Food Service Sanitation Excellence Awards.

**COMMENTS OF PUBLIC INTEREST**

No one appeared to speak.

## **CONSENT AGENDA**

Upon a motion made by Council Member Magnuson and seconded by Council Member Johnson, the Council voted 7-0 to approve and adopt all items on the Consent Agenda as recommended and as follows:

### **Approval of Minutes** [Consent Agenda Item (A)]

September 8, 2008  
September 15, 2008

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

**Bid No. 2008-195-B** for Jupiter Elevated Storage Tank Repaint Project to Tank Pro, Inc. in the amount of \$1,034,553. This project consists of the repaint of the interior and exterior of the Jupiter Elevated Storage Tank and the interior of the White Rock Elevated Storage Tank. [Consent Agenda Item (B)] (See Exhibit "A")

### **Approval of Expenditures**

To approve the purchase of materials testing services for Oak Point Park and Nature Preserve in the amount of \$52,647 from GME Consulting Services, Inc. through an existing contract/agreement (2008-16-D) and authorizing the City Manager to execute all necessary documents. [Consent Agenda Item (C)]

### **Purchase from an Existing Contract**

To authorize the purchase of Data Domain Restorer Software for disaster recovery capability in the amount of \$155,980 from CDW Government, Inc., through The Cooperative Purchasing Network (TCPN) contract, and authorizing the City Manager to execute all necessary documents. (TCPN Contract No. R4713) [Consent Agenda Item (D)]

### **Approval of Change Order**

To Jerusalem Corporation increasing the contract by \$72,126 for the 2007-2008 Residential Concrete Pavement Rehabilitation Project, Zone L7, Project No. 5900. Change Order No. 1, Bid No. 2008-137-B. These additional repairs are due to the drought/wet conditions and shrinkage/swelling of the base soil under the street and alley pavement. [Consent Agenda Item (E)]

**Adoption of Resolutions**

**Resolution No. 2008-9-19(R):** To authorize the City of Plano to participate in and receive funding through the Texas Highway Traffic Safety Program for an Intersection Traffic Control Project, PIN 17560006409000, targeting intersections regulated by means of a signal light; authorizing the City Manager to execute the Grant Agreement and any other documents necessary to effectuate the action taken; and providing an effective date. [Consent Agenda Item (F)]

**Resolution No. 2008-9-20(R):** To approve the terms and conditions of an Agreement by and between the City of Plano, Texas and the East Texas Medical Center for the East Texas Medical Center's use of the Trunked Radio System owned by the cities of Allen, Frisco and Plano; authorizing execution of the Agreement by the City Manager; and providing an effective date. [Consent Agenda Item (G)]

**Resolution No. 2008-9-21(R):** To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the Plano Independent School District for the Plano Independent School District's use of the Trunked Radio System owned by the cities of Allen, Frisco and Plano; authorizing execution of the Agreement by the City Manager; and providing an effective date. [Consent Agenda Item (H)]

**Resolution No. 2008-9-22(R):** To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the Town of Prosper, Texas for the Town of Prosper's use of the Trunked Radio System owned by the cities of Allen, Frisco and Plano; authorizing execution of the Agreement by the City Manager; and providing an effective date. [Consent Agenda Item (I)]

**Resolution No. 2008-9-23(R):** To approve the assignment of the Cable Franchise Agreement from C-Native Exchange III, L.P. to Time Warner NY Cable LLC; and providing for the transfer of control over Time Warner NY Cable LLC; and providing an effective date. [Consent Agenda Item (J)]

**Resolution No. 2008-9-24(R):** To amend the existing Building Inspections Department Fee Schedule to provide for additional City services and programs; repealing all previous fee schedules and charges for services listed in the new Building Inspections Department Fee Schedule; and providing a repealer clause, a severability clause, and an effective date. [Consent Agenda Item (K)]

**Resolution No. 2008-9-25(R):** To repeal Resolution No. 2004-8-4 and create a Fire Department Fee Schedule for Fire Inspections, Fire Plan Reviews, and Hazardous Occupancies Permits; and providing a repealer clause, a severability clause, and an effective date. [Consent Agenda Item (L)]

**Resolution No. 2008-9-26(R):** To amend the Recreation Membership Fees, Recreation Daily Fees, Recreation Room Rental Fees, Swimming Pool Rental Fees, Tennis Court Fees, and Tennis Court Annual Passes and providing an effective date. [Consent Agenda Item (M)]

**Resolution No. 2008-9-27(R):** To approve the terms and conditions of Agreements between the City of Plano and various community organizations for the expenditure of Buffington Community Services Funds in the amount of \$524,600 for the provision of various community services; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (N)]

**Resolution No. 2008-9-28(R):** To approve and authorize the refunds of Property Tax Overpayments; and providing an effective date. [Consent Agenda Item (O)]

**Resolution No. 2008-9-29(R):** To approve the dedication of a 1.178 acre tract of land owned by the City of Plano, Texas designated as park property but not yet utilized as a park for dedication as a public right-of-way for Bright Star Way, said parcel being situated in the J.O. Straughan Survey, Abstract No. 825, in the City of Plano, Collin County, Texas, and providing an effective date. [Consent Agenda Item (P)]

**Resolution No. 2008-9-30(R):** To authorize the purchase of Street Light Standards and associated equipment for Tennyson Parkway from Spring Creek Parkway to Preston Road; Parkwood Boulevard from Spring Creek Parkway to SH 121; Hedgcoxe Road from Legacy Drive to Preston Road; Willow Bend Drive from Linmore Lane to Woodsprings Drive, from Oncor Electric Delivery, who is the selected provider of electric service and the selected provider of such equipment; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase in an amount not to exceed \$190,610; and providing an effective date. [Consent Agenda Item (Q)]

#### **Adoption of Ordinances**

**Ordinance No. 2008-9-31:** To repeal Ordinance No. 2008-7-12; establishing the number of certain classifications within the Police and Fire Departments for Fiscal Year 2008-09; establishing the authorized number and effective dates of such positions for each classification effective October 1, 2008; establishing a new salary plan for the Police and Fire Departments effective October 1, 2008; and providing a repealer clause, a severability clause and an effective date. [Consent Agenda Item (R)]

**Ordinance No. 2008-9-32:** To amend Section 11-222(d)(1) of Article VI. Alarm Systems of Chapter 11. Licenses and Business Regulations of the Code of Ordinances of the City of Plano to increase the fee for Residential and Commercial Alarm Permits; providing a repealer clause, a savings clause, a severability clause; and providing an effective date. [Consent Agenda Item (S)]

**Ordinance No. 2008-9-33:** To revise Section 8-3 of Chapter 8, Fire Prevention and Protection, of the Code of Ordinances of the City; establishing a policy of responding only to emergency ambulance service requests; providing for the collection of such fees, and for crediting thereof upon receipt; ordaining other matters on the subject; and providing a severability clause and an effective date. [Consent Agenda Item (T)]

**Ordinance No. 2008-9-34:** To repeal only those portions of Ordinance No. 2006-10-23, codified as Sections 18-31 and 18-32 of Article II, Collection Charges, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas; and enacting new versions of Sections 18-31 and 18-32, and adding Section 18-35 of Article II, Collection Charges, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas; establishing a revised schedule of rates and charges for solid waste disposal and collection applicable to residential and commercial accounts; and adding a section establishing a construction and demolition deposit and rebate fee structure and providing a repealer clause, a severability clause, and an effective date. [Consent Agenda Item (U)]

**Ordinance No. 2008-9-35:** To repeal Ordinance No. 2003-9-43 in its entirety, codified as Article I of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano; providing revised definitions, regulations and policies for the collection and transportation of solid waste, landscape waste, household hazardous waste and recyclable materials; adding a section establishing a deposit and rebate fee structure to encourage construction and demolition recycling; establishing fees for certain household chemical collections; changing the name of the Solid Waste Division to the Sustainability & Environmental Services Department; providing a repealer clause, severability clause, savings clause, penalty clause, and an effective date. [Consent Agenda Item (V)]

### **END OF CONSENT**

**Public Hearing and adoption of Ordinance No. 2008-9-36:** To designate a certain area within the City of Plano as Reinvestment Zone No. 119 or a Tax Abatement consisting of a 13.030 acre tract of land located at the northeast corner of Plano Parkway and Dallas North Tollway, in the City of Plano, Texas establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date. [Regular Agenda Item (1)]

Finance Director Tacke spoke to the requirement for a Public Hearing and establishment of a reinvestment zone prior to entering into a tax abatement agreement with Cigna Corporation. She stated that the tax abatement is for ten years at fifty percent for both real and business property and will result in approximately 1,064 jobs and a value of \$38 million in real property and \$13.4 million in business personal property.

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

**Ordinance No. 2008-9-36 (cont'd)**

Upon a motion made by Deputy Mayor Pro Tem LaRosiliere and seconded by Council Member Dunlap, the Council voted 7-0 to designate a certain area within the City of Plano as Reinvestment Zone No. 119 or a Tax Abatement consisting of a 13.030 acre tract of land located at the northeast corner of Plano Parkway and Dallas North Tollway, in the City of Plano, Texas establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date; and further to adopt Ordinance No. 2008-9-36.

**Resolution No. 2008-9-37(R):** To approve the terms and conditions of an Agreement by and between the City of Plano, Texas, the County of Collin, Texas, and Cigna Corporation, a Delaware corporation, and providing for a Real and Business Personal Property Tax Abatement, and authorizing its execution by the City Manager; and providing an effective date. [Regular Agenda Item (2)]

Finance Director Tacke restated the term will be for ten years at fifty percent for both real and personal property.

Upon a motion made by Council Member Johnson and seconded by Council Member Dunlap, the Council voted 7-0 to approve the terms and conditions of an Agreement by and between the City of Plano, Texas, the County of Collin, Texas, and Cigna Corporation, a Delaware corporation, and providing for a Real and Business Personal Property Tax Abatement, and authorizing its execution by the City Manager; and providing an effective date; and further to adopt Resolution No. 2008-9-37(R).

**Resolution No. 2008-9-38(R):** To approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Cigna Corporation, a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date. [Regular Agenda Item (3)]

Finance Director Tacke summarized the agreement requirements and grant fund allocation in relation to the employment requirements from Cigna Corporation.

Upon a motion made by Council Member Magnuson and seconded by Council Member Dunlap, the Council voted 7-0 to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Cigna Corporation, a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date; and further to adopt Resolution No. 2008-9-38(R).

**Discussion and Direction** not to renew the Community Health Charity Interlocal Agreement and to discontinue the City of Plano Charitable Giving Campaign. [Regular Agenda Item (4)]

Linda Burton of Community Health Charities advised that the organization would provide a part-time person to manage the campaign, spoke to the added value of a wellness program, and requested the program be continued. Pat Lopez of Community Health Charities spoke to her work in the human resources sector and to tapping into the needs of employees. She spoke to offering choice and the value of the program along with wellness improvements. David M. Smith, representing Earth Share of Texas, stated concern that a discontinuation of the program would result in decreased funding for charities in the community and cited the efficiency of payroll deduction in getting funds to organizations. He spoke to moving forward successfully with proper management and there being a viable plan supported by Staff.

Executive Director Glasscock spoke to Staff recommendations following meetings with representatives, stated concerns related to management of the program, and the lack of employee interest in participation. He spoke regarding opportunities to donate to charities through other avenues and the current Wellness Program offered to employees. Mr. Glasscock advised that the participation level is 8% and Human Resources Director Ross spoke to the decline in participation.

Upon a motion made by Deputy Mayor Pro Tem LaRosiliere and seconded by Council Member Miner, the Council voted 7-0 not to renew the Community Health Charity Interlocal Agreement and to discontinue the City of Plano Charitable Giving Campaign.

There being no further discussion, Mayor Evans adjourned the meeting at 7:42 p.m.

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**Pat Evans, MAYOR**

ATTEST:

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**Diane Zucco, City Secretary**



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>9/22/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Engineering		Initials	Date	
Department Head	Alan L. Upchurch		Executive Director	<i>[Signature]</i> 09/15/08	
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i> 9/15/08	
Agenda Coordinator (include phone #):		Irene Pegues (7198)	Project No. 5853		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT					
<input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					

**CAPTION**

Award of Proposal for Bid No. 2008-195-B for Jupiter Elevated Storage Tank Repaint Project to Tank Pro, Inc., in the amount of \$1,034,553.

**FINANCIAL SUMMARY**

NOT APPLICABLE     OPERATING EXPENSE     REVENUE     CIP

FISCAL YEAR: 2007-08	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	65,000	1,000,000	1,065,000
Encumbered/Expended Amount	0	-29,600	0	-29,600
This Item	0	-1,034,553	0	-1,034,553
BALANCE	0	-999,153	1,000,000	847

FUND(S): WATER CIP

COMMENTS: Funds are included in the 2007-08 Re-Estimated Water CIP for the Jupiter & White Rock Creek Elevated Repaint project. This item, in the amount of \$1,034,553, will be encumbered in the current fiscal year and carry forward into the cash allocations of FY 2008-09.

STRATEGIC PLAN GOAL: Elevated storage tank repainting relates to the City's Goals of Livable and Sustainable Community.

**SUMMARY OF ITEM**

Staff recommends the competitive sealed proposal of Tank Pro, Inc., in the amount of \$1,034,553.00, be accepted as the best value to the City conditioned upon timely execution of any necessary contract documents.

The second vendor being recommended is J R Stelzer Company in the amount of \$1,113,417.00.

Engineer's estimate was \$1,200,000.00.

The project consists of the repaint of the interior and exterior of the Jupiter Elevated Storage Tank and the interior of the White Rock Elevated Storage Tank. Also, the alternate bids for a more intensive blasting of the interior of the Jupiter Tank and repainting of the White Rock Tank logo are being awarded. These items will be used if necessary.

List of Supporting Documents: Recommendation Memorandum Evaluation Summary Location Map	Other Departments, Boards, Commissions or Agencies N/A
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## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Council Meeting Date:	<b>10/13/2008</b>	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Purchasing	Initials	Date		
Department Head	Mike Ryan	Executive Director			
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	<i>10/12/08</i>	
Agenda Coordinator (include phone #): <b>Karen P. Neal-Core Ext. 7074</b>					
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					
<b>CAPTION</b>					
Award, rejection of Bids/Proposals for Bid No. 2008-182-C for an annual fixed price contract for Ammunition for Police Department.					
<b>FINANCIAL SUMMARY</b>					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	08/09, 09/10, 10/11	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
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): GENERAL FUND (01-532)					
COMMENTS: This item approves price quotes. Expenditures will be made in the Police Department within the approved budget appropriations each fiscal year. The estimated annual amount is \$154,744. STRATEGIC PLAN GOAL: Ammunition purchasing contracts relate to the City's Goal of "Service Excellence".					
<b>SUMMARY OF ITEM</b>					
ANNUAL CONTRACT WITH RENEWALS					
Staff recommends bid of Bid No. 2008-182-C for annual fixed price contract for Ammunition for the Police Department to Precision Delta Corporation, GT Distributors, Baileys House of Guns, and The Hunting Shack in the estimated annual total amount of \$154,744. This contract shall be awarded as the lowest responsive and responsible bid for each item as determined by the City of Plano. This will establish a one (1) year contract with three (3) City optional one (1) year renewals for ammunition. All orders will be ordered on an "as needed basis" for the duration of the contract.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Recommendation Memo; Recap					



P.O. Box 860358  
Plano, Texas 75086-0358  
972-941-7000  
Fax. No. 972-941-0099  
<http://www.ci.plano.tx.us>

## **MEMORANDUM**

**DATE:** August 19, 2008

**TO:** Karen Neal-Core, Purchasing Department

**FROM:** Lt. Steve Copling, Plano Police Department – Support Services Div.  
Sgt. Stan Roady, Plano Police Department – Training Division

**SUBJECT:** 2008-182-C Ammunition Contract -- Recommendations

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The Police Department Ammunition Committee has evaluated the bids for #2008-182-C – Ammunition, an annual fixed-price contract for the Police Department. The committee evaluated the bids from each vendor for their ability to meet the specifications and low bid requirements for each of the 15 items listed in our specifications.

**FINDINGS:** The Police Department wishes to purchase ammunition on an as-needed basis from the vendor with the lowest, most responsible bid for each individual item, using an annual contract with two City-optional renewals. No single vendor meets all the specifications for the 15 items, nor did one single vendor submit the lowest responsive and responsible bid for all items.

**RECOMMENDATIONS:** The Police Department is making its recommendations for award for contract #2008-182-C Ammunition as follows:

- Items #1, 6, 7, 9, and 13                      Precision Delta.
- Items #2, 3, 4, 10, 14 and 15              GT Distributors
- Items #5, 8 and 12                              Baileys House of Guns
- Item #11    The Hunting Shack

Details of the Police Department's evaluation and our comments are attached in a spreadsheet. A financial worksheet will be forwarded to you separately. If you have any questions, please contact Sgt. Roady at X-2701, or me at X-2290.

enclosures



**BID No. 2008-182-C  
2008 POLICE DEPARTMENT AMMUNITION**

**RECAP**

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**Opening Date/Time:** July 23, 2008 @ 3:30 PM (CDT)

**Number of Vendors Notified:** 630

**Vendors Submitting "No Response":** 1

**Vendors Submitting Proposals:** 7

Precision Ammunition  
Precision Delta Corp  
GT Distributors, Inc.  
Baileys House of Guns, Inc.  
The Hunting Shack, Inc.  
Scottsdale Gun Club  
Botach Tactical

**Recommended Vendors:**

Precision Delta Corp {Line items #1, 6, 7, 9, and 13}  
GT Distributors {Line items #2, 3, 4, 10, 14, and 15}  
Baileys House of Guns {Line items #5, 8, and 12}  
The Hunting Shack {Line item #11}

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*Karen P. Neal-Core*  
Karen P. Neal-Core, Buyer  
Purchasing Division

*September 22, 2008*  
Date



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/2008</b>	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Purchasing		Initials	Date
Department Head	Mike Ryan	Executive Director		
Dept Signature:		City Manager		10/12/08
Agenda Coordinator (include phone #):		<b>Karen P. Neal-Core Ext. 7074</b>		
<b>ACTION REQUESTED:</b> <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				
<b>CAPTION</b>				
Award, rejection of Bids/Proposals for Bid No. 2008-223-C for Consulting Services to aid the City of Plano in reviewing existing market conditions for the possible development of a new Convention Hotel and Conference Center.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	08/09, 09/10	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
Budget		0	97,565	0
Encumbered/Expended Amount		0	0	0
This Item		0	-81,000	0
BALANCE		0	16,565	0
<b>FUND(S): CONVENTION &amp; VISITORS BUREAU (125)</b>				
<b>COMMENTS:</b> Funds are included in the FY 2008-09 Convention & Visitors Bureau Budget. This item in the amount of \$81,000 is for Hotel and Conference Center Consulting Services. Remaining balance will be used for other contractual services.				
<b>STRATEGIC PLAN GOAL:</b> Providing Convention Hotel and Conference Center Consulting Services relates to the City's Goal of "Service Excellence".				
<b>SUMMARY OF ITEM</b>				
Staff recommends proposal of HVS Convention, Sports & Entertainment Facilities Consulting in the amount of \$81,000 be accepted as the best proposal meeting specifications conditioned upon timely execution of any necessary contract documents. HVS Convention, Sports & Entertainment Facilities Consulting will provide Convention Hotel and Conference Center consulting services.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Recap				



**PROPOSAL No. 2008-223-C  
RFP – CONSULTANT FOR CONVENTION HOTEL  
AND  
CONFERENCE CENTER STUDY**

**RECAP**

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**Opening Date/Time:** August 19, 2008 @ 5:00 PM (CDT)

**Number of Vendors Notified:** 2

**Vendors Submitting “No Response”:** 0

**Vendors Submitting Proposals:** 2

HVS Convention, Sports & Entertainment Facilities Consulting  
PKF Consulting, Inc.

**Recommended Vendors:**

HVS Convention, Sports & Entertainment Facilities Consulting

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*Karen P. Neal-Core*

Karen P. Neal-Core, Buyer  
Purchasing Division

*September 29, 2008*

Date



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Purchasing		Initials	Date	
Department Head	Mike Ryan		Executive Director		
Dept Signature:			City Manager		
Agenda Coordinator (include phone #):		<b>Nancy Corwin (Ext 7137)</b>			
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					
<b>CAPTION</b>					
Award/Rejection of Bid/Proposal for Bid No 2008-210-B for the materials, construction and installation of end panels for Davis and Schimelpfenig Libraries to Libra-tech in the amount of \$167,737.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	<b>2008-09</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	707,000	0	707,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-167,737	0	-167,737
BALANCE		0	539,263	0	539,263
<b>FUND(S): LIBRARY FACILITIES CIP</b>					
<b>COMMENTS:</b> Funds are included in the 2008-09 Library Facilities CIP. This item, in the amount of \$167,737, will leave a current year balance of \$539,263 for the Library Improvement project.					
SATRATEGIC PLAN GOAL: Library improvements relate to the City's Goal of Premier City of Families.					
<b>SUMMARY OF ITEM</b>					
Staff recommends the bid of Libra-tech in the amount of \$167,737 be accepted as the lowest responsible bid for the 2008-210-B Architectural Woodwork for the Plano Libraries End Panels Davis and Schimelpfenig Libraries the contract conditioned upon timely execution of all necessary documents.					
This project involves the materials, construction and installation of end panels for the Davis and Schimelpfenig Libraries.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
<ol style="list-style-type: none"> <li>1. Memo from Dewberry 9-23-08.</li> <li>2. Bid Recap</li> </ol>					

September 23, 2008

Nancy Corwin  
City of Plano- Purchasing Division  
1520 Avenue K, Suite 370  
Plano, TX 75074

RE: **Bid Recommendations for Bid Number 2008-210-B, Architectural Woodwork for the Plano Libraries End Panels Davis and Schimelpfenig Libraries**

Dear Ms. Corwin:

Upon careful review of Bid Tabulations of the Architectural Woodwork for the Plano Libraries End Panels, PSA- Dewberry Inc. recommends the following bids be awarded and/or other course of action:

Davis Library Schedule 1 Base Bid, Architectural Woodwork- Section 12320-

PSA- Dewberry recommends award to the bid from Libra-Tech Corporation in the amount of \$83,658.87. The submittal was complete and bid as specified without substitution of pre-approved product. This bid is within the cost allowance for the Library Architectural Woodwork budget.

Schimelpfenig Library Schedule 2 Base Bid, Architectural Woodwork- Section 12320-

PSA- Dewberry recommends award to the bid from Libra-Tech Corporation in the amount of \$84,078.12. The submittal was complete and bid as specified without substitution of pre-approved product. This bid is within the cost allowance for the Library Architectural Woodwork budget.

If you have any questions or further comments, please let us know how we may of assistance.

Sincerely,

PSA- Dewberry Inc.

*Lenda Sturdivant*

Lenda Sturdivant  
Interiors Group





## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Purchasing	Initials	Date	
Department Head	Mike Ryan	Executive Director		
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	10/7/08
Agenda Coordinator (include phone #)		Nancy Corwin (Ext 7137)		
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				
<b>CAPTION</b>				
Award/Rejection of Bid/Proposal for Bid No 2008-197-B for portable communication tower to be used with the new wireless infrastructure to Scientel in the amount of \$201,555.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: <b>2008-09</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	10,961,143	9,538,857	0	<b>20,500,000</b>
Encumbered/Expended Amount	-10,961,143	0	0	<b>-18,501,768</b>
This Item	0	-201,555	0	<b>-201,555</b>
BALANCE	0	1,796,677	0	<b>1,796,677</b>
FUND(s): TECHNOLOGY IMPROVEMENTS (TAX NOTES)				
COMMENTS: Funds are available from the 2008 tax notes sale. This term, in the amount not to exceed \$201,555 will leave a current year balance of \$1,796,677 for the Moto Mesh project. SATRATEGIC PLAN GOAL: A wireless portable tower for the wireless mesh network relates to the City's Goal of Service Excellence.				
<b>SUMMARY OF ITEM</b>				
Staff recommends the proposal of Scientel in the amount of \$201,555 be accepted as the best value for the City of Plano for the 2008-197-B RFP for the purchase of a temporary communications tower for the placement of network and communication equipment during water tower maintenance with a four year warranty the contract conditioned upon timely execution of all necessary documents.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
1. Recommendation Memo.				

# Interoffice Memo

**Date:** 09/30/08  
**To:** David Stephens, Director Technology Services  
**Cc:**  
**From:** Chester M. Helt, Infrastructure Manager  
**RE:** New Wireless Portable Tower, RFP No. 208-197-B

---

We are recommending award of this proposal for a portable communication tower to be used with the new wireless infrastructure the City is building to Scientel for a not to exceed price for the tower and the options as listed below of \$ 201,555.00. This not to exceed price includes the tower, a four year extended warranty, an outdoor cabinet and 12KW generator with auxiliary switching capability, on-site training, services to move equipment from the water tower to the tower and re-align the communication equipment and then once the work on the tower is completed services to move the equipment back to water tower and re-align the equipment again.

This tower will be used as needed to relocate equipment from our City water towers as they are repainted and to relocate equipment as required for typical maintenance on the mesh infrastructure.



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Engineering	Initials	Date		
Department Head	Alayn Upchurch	Executive Director	<i>[Signature]</i> 10/3/08 <i>[Signature]</i> 10/3/08		
Dept Signature:	<i>[Signature]</i>	City Manager			
Agenda Coordinator (include phone #):		Irene Pegues (7198)	<b>Project No. 5735</b>		
<b>ACTION REQUESTED:</b> <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					
<b>CAPTION</b>					
(Award/Rejection) of (Bid/Proposal) for Bid No. 2008-212-B for the Alma Drive Widening - Spicewood Drive to Hedgcoxe Road to RKM Utility Services, Inc., in the amount of \$998,716 for the Base Bid.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		45,463	1,337,537	0	1,383,000
Encumbered/Expended Amount		-45,463	-9,384	0	-54,847
This Item		0	-998,717	0	-998,717
BALANCE		00	329,436	0	329,436
<b>FUND(S):</b> STREET IMPROVEMENT CIP					
<b>COMMENTS:</b> Funds are included in the 2008-09 Street Improvement CIP. This item, in the amount of \$998,717, will leave a current year balance of \$329,436 for the Alma – Spicewood to Hedgcoxe project.					
<b>STRATEGIC PLAN GOAL:</b> Street widening relates to the City's Goal of Safe, Efficient Travel.					
<b>SUMMARY OF ITEM</b>					
<p>Staff recommends the base bid (dry kiln cement) of RKM Utility Services, Inc., in the amount of \$998,716.75, be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents. The Alternate Bid No. 1 (for other type cement) was for \$984,125.50. Alternate No. 2 (low nitrous oxide dry kiln cement) is greater than 5% over the base bid price at \$1,067,902.50 (16% over the dry kiln cement content cost). In keeping with the City's Green Purchasing Policy, staff recommends the award be based on the dry kiln cement purchase. The City of Allen's participation in the project is \$213,335.50. Collin County's participation in the project will be 50% of the cost of the Plano portion, up to \$400,000.</p> <p>The second vendor being recommended is McMahon Contracting, L.P., in the amount of \$1,050,545.08.</p> <p>Engineer's estimate was \$990,000.00.</p> <p>The project consists of widening of Alma Drive from 4 lanes to 6 lanes from Spicewood Drive to Hedgcoxe Road and widening of the northbound side in the City of Allen from Hedgcoxe Road to Tatum Drive.</p>					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
Bid Summary		N/A			
Location Map					

**CITY OF PLANO**  
**CORRECTED\* BID TABULATION**  
**2008-212-B**

**ALMA WIDENING – SPICEWOOD DRIVE TO HEDGCOXE ROAD – PROJECT NO. 5735**  
**SEPTEMBER 18, 2008 @ 3:00 P.M.**

**BID TABULATION**

BIDDER:	BID BOND	ADD 1 ACK	ADD 2 ACK	TOTAL		TOTAL	
				PROJ COST	BASE BID	PROJ COST	ALT. NO 1
							ALT NO. 2
RKM UTILITY SERVICES INC.	YES	YES	YES	\$ 998,716.75*	\$ 984,125.50*	\$ 1,067,902.50*	
MCMAHON CONTRACTING, L.P.	YES	YES	YES	\$1,050,545.08	\$1,050,545.08	\$1,074,472.37*	
JIM BOWMAN CONSTRUCTION L.P.	YES	YES	YES	\$1,111,371.40	\$1,111,371.40	\$1,138,022.95	
TISEO PAVING, CO.	YES	YES	YES	\$1,150,408.80*	\$1,133,124.80*	\$1,150,408.80*	
JRJ PAVING LP	YES	YES	YES	\$1,175,930.09	\$1,175,930.09	\$1,175,930.09*	
AUSTIN BRIDGE & ROAD, L.P.	YES	YES	YES	\$1,218,280.05	\$1,218,280.05	\$1,241,251.05	
L H LACEY COMPANY, LTD.	YES	YES	YES	\$1,306,337.67	\$1,291,558.04	\$1,306,337.67	
TRI-CON SERVICES	YES	YES	YES	\$1,500,594.70	\$1,472,599.99*	\$1,524,889.61*	

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

*Dianna Wike*

Dianna Wike, Senior Buyer

CORRECTED - SEPTEMBER 26, 2008

Date

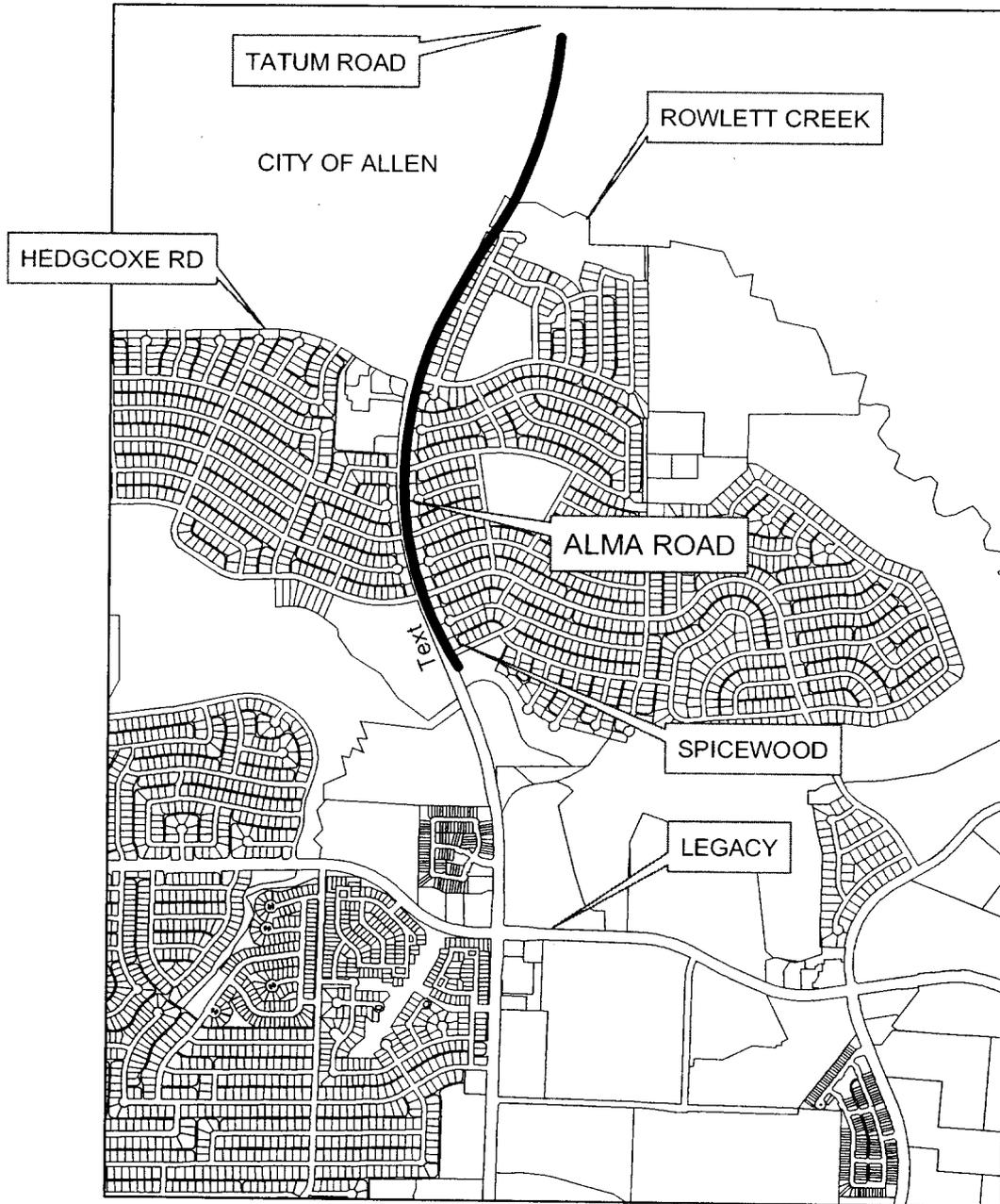
**“BID TABULATION STATEMENT”**

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

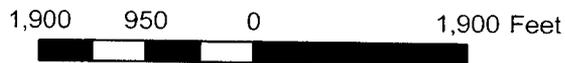
PURCHASING DIVISION  
CITY OF PLANO TEXAS

# ALMA ROAD WIDENING-SPICEWOOD DRIVE TO HEDGCOXE ROAD

PROJECT #5735



CITY OF PLANO ENGINEERING DEPT.





**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Engineering	Initials	Date	
Department Head	Alan J. Upchurch	Executive Director	10/6/08	
Dept Signature:	<i>Alan Upchurch</i>	City Manager	10/6/08	
Agenda Coordinator (include phone #):		Irene Pegues (7198)	Project No. 5909	
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				
<b>CAPTION</b>				
Award of Proposal for Bid No. 2008-224-B for Custer Ground Storage Tank Repairs Project to Natgun Corporation in the amount of \$2,143,500.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	<b>2008-09</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
Budget		7,174	2,250,826	1,750,000
Encumbered/Expended Amount		-7,174	-7,326	0
This Item		0	-2,143,500	0
BALANCE		0	100,000	1,750,000
FUND(S): <b>WATER CIP</b>				
COMMENTS: Funds are included in the 2008-09 Water CIP. This item, in the amount of \$2,143,500, will leave a current year balance of \$100,000 for the Custer Ground Storage Tanks project.				
STRATEGIC PLAN GOAL: Ground storage tank replacement relates to the City's Goal of Livable and Sustainable Community.				
<b>SUMMARY OF ITEM</b>				
Staff recommends the competitive sealed proposal of Natgun Corporation, in the amount of \$2,143,500.00, be accepted as the best value to the City conditioned upon timely execution of any necessary contract documents. Alternate No. 2 is being awarded as the concrete items are within 5% of the base bid. Alternate No. 2 uses the more environmentally friendly cement.				
The second vendor being recommended is Preload, Inc., in the amount of \$2,278,900.00.				
Engineer's estimate was \$2,200,000.00.				
The project consists of the removal of two 2.5 million gallon steel ground storage tanks and the construction of a 3.75 million gallon concrete storage tank.				
List of Supporting Documents: Recommendation Memorandum Bid Summary Location Map		Other Departments, Boards, Commissions or Agencies N/A		



## MEMORANDUM

---

**TO:** Dianna Wike, Senior Buyer  
**FROM:** Gerald P. Cosgrove, PE, Chief Engineer - CIP  
**DATE:** October 3, 2008  
**RE:** **Recommendation 2008-224-B Competitive Sealed Proposals**  
**Custer Ground Storage Tank Repairs**

---

Representatives from the Public Works and Engineering Department have reviewed and evaluated the proposals submitted for the above referenced project. The project is recommended to be awarded to Natgun Corporation in the amount of \$2,143,500.00. Natgun Corporation and Preload, Inc. are both equally qualified to construct this project. Our recommendation is based on Natgun Corporation's lower bid. As Alternate No. 2 is within 5% of the base bid, Alternate No. 2, which is the dry kiln cement with the lower NO<sub>x</sub> emission limit, will be awarded.

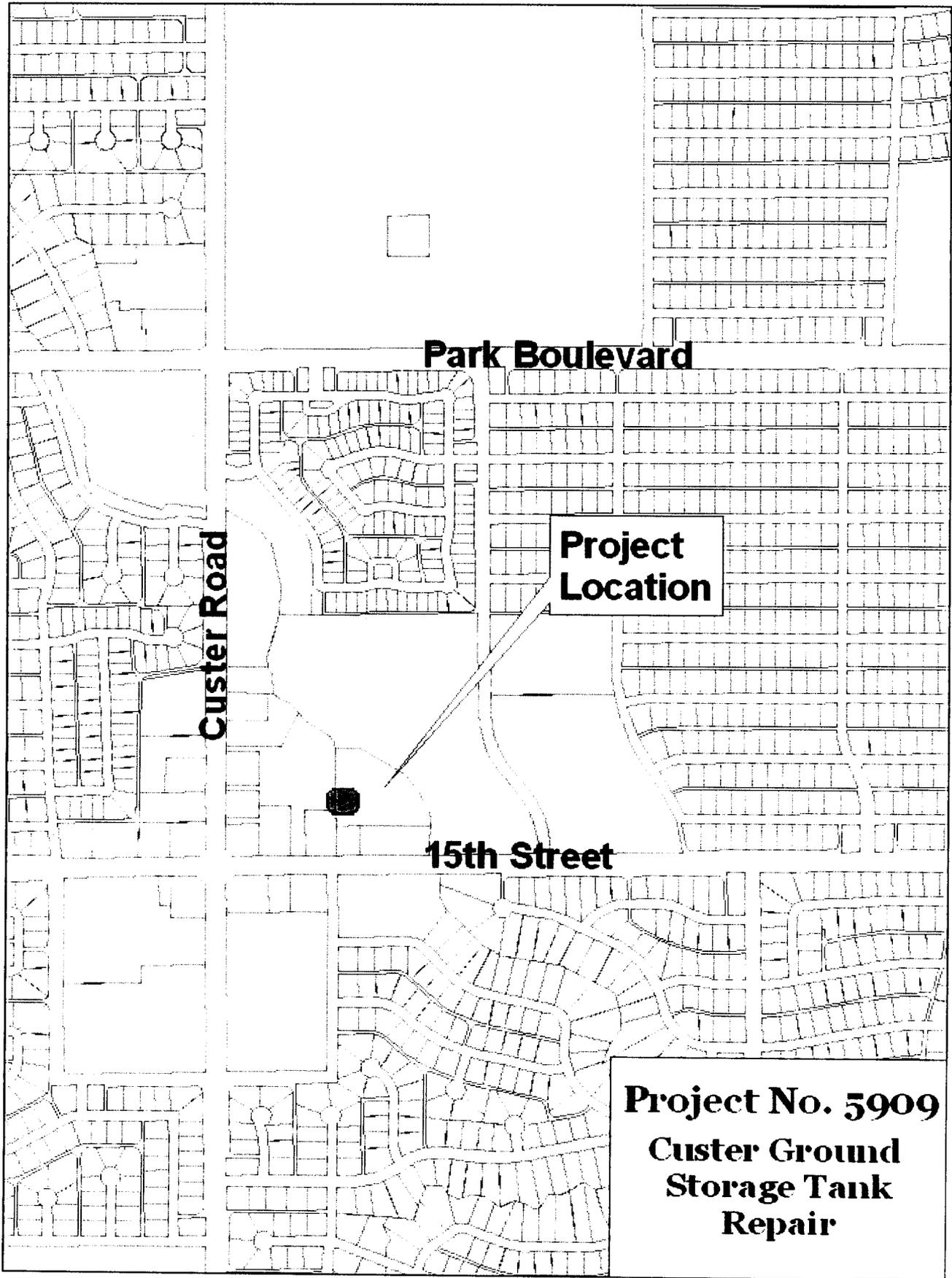
# City of Plano

## Custer Ground Storage Tank Repairs Project No. 5909

### BID TABULATION

<u>Contractor</u>	<u>Total Base Bid</u>	<u>Total Bid Alternate No. 1</u>	<u>Total Bid Alternate No. 2</u>
1 Natgun Corporation	\$ 2,143,500.00	\$ 2,127,200.00	\$ 2,143,500.00
2 Preload, Inc.	\$ 2,278,900.00	\$ 2,265,250.00	\$ 2,300,920.00

Award Alternate No. 2 as concrete items are within 5% of base bid.





**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>		Reviewed by Legal <i>MS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Parks and Recreation		Initials	Date	
Department Head	Don Wendell		Executive Director		
Dept Signature:	<i>Dana Conklin - Don Wendell</i>		City Manager	<i>[Signature]</i>	
Agenda Coordinator (include phone #):	<b>Susan Berger (7255)</b>			<b>09.23.08</b>	

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

**CAPTION**

Award/rejection of Bid/Proposal, conditional acceptance of lowest responsible Bid/Proposal, and designation of alternate lowest responsible Bid/Proposal for 2008 Trail Repairs (Bid No. 2008-198-B) to Cole Construction, Inc. in the amount of \$937,226.

**FINANCIAL SUMMARY**

NOT APPLICABLE     OPERATING EXPENSE     REVENUE     CIP

FISCAL YEAR: <b>2008-09</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	78,836	1,512,164	650,000	<b>2,241,000</b>
Encumbered/Expended Amount	-78,836	-84,764	0	<b>-163,600</b>
This Item	0	-937,226	0	<b>-937,226</b>
<b>BALANCE</b>	0	490,174	650,000	<b>1,140,174</b>

**FUND(S):    CAPITAL RESERVE**

**COMMENTS:** Funds are included in the 2008-09 Capital Reserve Fund. This item, in the amount of \$937,226, will leave a current year balance of \$490,174 for the Trail Repair project.

**STRATEGIC PLAN GOAL:** Trail repairs relate to the City's Goal of "Premiere City in Which to Live."

**SUMMARY OF ITEM**

Staff recommends that the bid received from Cole Construction, Inc. in the amount of \$937,226 be accepted as the lowest responsible bid conditioned upon timely execution of any necessary contract documents.

The base bid is for removing and replacing concrete trails at various locations throughout the City of Plano. The low bid of \$937,226 exceeds the consultant's estimate of \$877,935 but is within the available project funding of \$1,512,164. Staff does not believe that re-bidding the project would result in lower bids.

In the event Cole Construction, Inc. fails to execute contract documents, staff recommends that the project be awarded to the second lowest bidder, North Star Construction, Inc., in the amount of \$1,082,139.

**CITY OF PLANO**  
**CORRECTED BID TABULATION**  
**2008-198-B**  
**2008 TRAIL REPAIRS**  
**Project No. 5760**  
**WEDNESDAY, AUGUST 27, 2008 @ 3:00 PM (CDT)**

<b>CONTRACTOR</b>	<b>BID BOND</b>	<b>TOTAL BASE</b>
Cole Construction, Inc.	Yes	\$ 937,226.25
Northstar Construction, Inc.	Yes	\$1,082,139.30
Hencie International	Yes	\$1,091,472.25
D.H.R. Construction, Inc.	Yes	\$1,199,649.66
Ratliff Hardscape, LTD	Yes	\$1,205,458.16
Highway Technologies, LP	Yes	\$1,239,692.45
Jim Bowman Construction Co., LP	Yes	\$1,253,089.35
3i Construction, LLC.	Yes	\$1,258,695.52
Jerusalem Corp	Yes	\$1,323,706.10
Irricon	Yes	\$1,432,109.45
Tri-Con Services, Inc.	Yes	\$1,454,788.20

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

*Karen P. Neal-Core*

*August 28, 2008*

Karen P. Neal-Core, Buyer II

Date

**“BID TABULATION STATEMENT”**

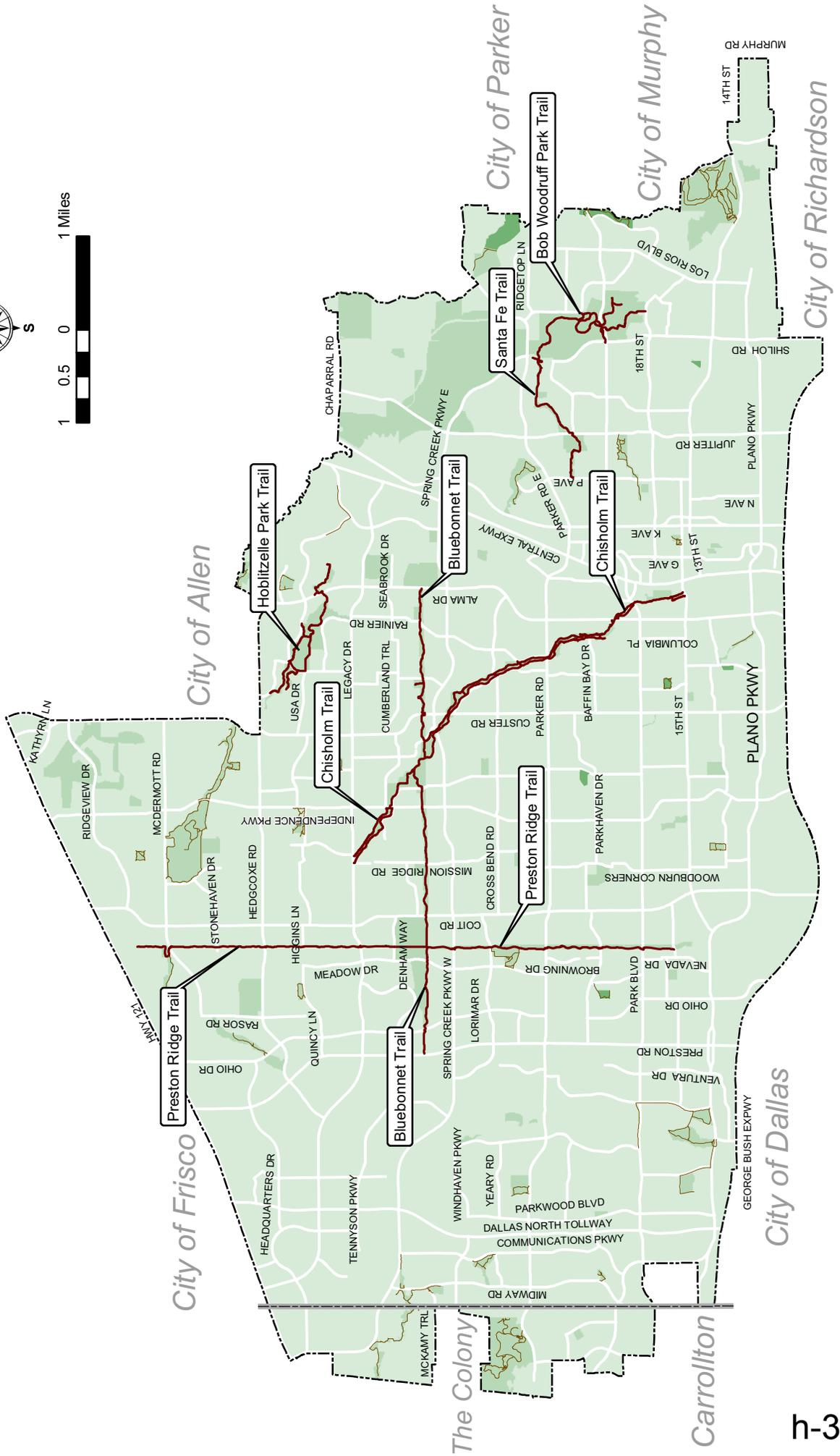
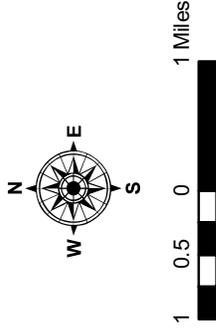
ALL BIDS SUBMITTED FOR THE DESIGNATED PROJECT ARE REFLECTED ON THIS BID TAB SHEET. **HOWEVER, THE LISTING OF A BID ON THIS SHEET SHOULD NOT BE CONSTRUED AS A COMMENT ON THE RESPONSIVENESS OF SUCH BID OR AS ANY INDICATION THAT THE CITY ACCEPTS SUCH BID AS RESPONSIVE.** THE CITY WILL MAKE A DETERMINATION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

PURCHASING DIVISION  
CITY OF PLANO TEXAS



# 2008 Trail Improvements (Bid #2008-198-B, Project 5760)

**Parks & Recreation Department  
City of Plano, Texas**





**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Purchasing		Initials	Date	
Department Head	Mike Ryan		Executive Director		
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i> 9/25/08	
Agenda Coordinator (include phone #): <b>Dianna Wike, Ext. 5512</b>					

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

**CAPTION**

Purchase from Existing Contract/Agreement to authorize the purchase of the Resurfacing of the Bay Floors at Fleet Services in the amount of \$73,678.31 from Gomez Floor Covering, Inc., through the BuyBoard Cooperative Purchasing contract, and authorizing the City Manager or his designee to execute all necessary documents. (BuyBoard Contract No. 241-06)

**FINANCIAL SUMMARY**

NOT APPLICABLE     OPERATING EXPENSE     REVENUE     CIP

FISCAL YEAR: <b>2008-09</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	56,802	254,081	0	<b>310,883</b>
Encumbered/Expended Amount	-56,802	-8,452	0	<b>-65,254</b>
This Item	0	-73,678	0	<b>-73,678</b>
BALANCE	0	171,951	0	<b>171,951</b>

**FUND(S): CAPITAL RESERVE**

**COMMENTS:** Funds are included in the 2008-09 Capital Reserve Fund. This item, in the amount of \$73,678, will leave a current year balance of \$171,951 for the Equipment & Fleet Service – Bldg. 04 project.

**STRATEGIC PLAN GOAL:** Resurfacing of bay floors relates to the City's Goals of Service Excellence.

**SUMMARY OF ITEM**

Staff recommends purchase of Resurfacing of the Bay Floors at Fleet Services, from Gomez Floor Covering, Inc., in the amount of \$73,678.31 conditioned upon timely execution of any necessary contract documents. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (BuyBoard Contract No. 241-06)

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
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## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Library Administration		Initials	Date	
Department Head	Joyce Baumbach	Executive Director	<i>[Signature]</i>	9/30/08	
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	10/1/08	
Agenda Coordinator (include phone #): <b>Mary Ann Dunnivant – Ext. 4208</b>					
<b>ACTION REQUESTED:</b> <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER: Purchase from State Contract					
<b>CAPTION</b>					
Approval of the purchase of ten 3M Selfcheck™ machines in the amount of \$198,205 from Alpha Data Corporation through an existing contract/agreement with Texas State Contract #TXMAS 6-70030, and authorizing the City Manager or his designee to execute all necessary documents.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>08/09</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		0	198,205	0	198,205
Encumbered/Expended Amount		0	0	0	0
This Item		0	-198,205	0	-198,205
BALANCE		0	0	0	0
FUND(S): <b>PC REPLACEMENT FUND (058); LONE STAR LIBRARY FUND (057)</b>					
<b>COMMENTS:</b> Funds are included in the FY 2008-09 adopted budget for the purchase of ten (10) 3M SelfCheck machines.					
<b>STRATEGIC PLAN GOAL:</b> Purchasing additional library equipment and the periodic replacement of existing equipment relates to the City's Goal of "Service Excellence."					
<b>SUMMARY OF ITEM</b>					
Approval of this purchase from Alpha Data Corporation is requested in the amount of \$198,205. Alpha Data Systems is providing 10 3M SelfCheck™ machines to Plano Public Library System. Price quote includes shipping, installation, and 9 months service for these machines. The 3M SelfCheck™ machine is required as it interfaces with the 3M Security System and Polaris circulation software and the Plano Public Library (PPLS) Security System. Purchase from Alpha Data Corporation will be made through Texas State Contract #TXMAS 6-70030.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
<ol style="list-style-type: none"> <li>1. Memo from Joyce Baumbach dated 9-25-08.</li> <li>2. Quote from Alpha Data Corporation dated 9-18-08.</li> <li>3. Affidavit of No Prohibited Interest dated 9-26-08.</li> </ol>					



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

## Memorandum

**Date:** September 25, 2008  
**To:** Mary Ann Dunnavant  
**From:** Joyce Baumbach, Director of Libraries *JB*  
**Subject:** 3M Self-Check Machines Purchase

Approval of this purchase from Alpha Data Corporation is requested in the amount of \$198,205. Alpha Data Systems is providing ten 3M SelfCheck™ machines. Their quote includes shipping, installation, and nine months service for these machines. The 3M SelfCheck™ machine is required as it interfaces with the 3M Security System and Polaris circulation software in place at Plano Public Library System. Purchase from Alpha Data Corporation will be made through Texas State Contract# TXMAS 6-70030.

Funds will be taken from the following:

Loan Star Library Funds	\$59,461.50
Budget Supplement FY 08-09	\$123,166.00
PC Replacement Fund	\$15,577.50
<b>TOTAL</b>	<b>\$198,205.00</b>

Thank you.

**ALPHA DATA CORPORATION**

*Information Technology Solutions and Information Services*

1326 Lewis Turner Blvd,  
Fort Walton Beach, FL 32547

# QUOTE

Plano Public Library		TXDIR813A
2501 Coit Road		9/18/2008
Plano, Texas 75075		Net 30
		<b>Zone 2</b>
		Pricing Valid For <b>90 Days</b>
	Mike Shamel	FOB Destination
	469-236-0147	Chuck Bachelder
	mikesh@plano.gov	(850) 292-8045
		(678) 809-0416

Item #	Qty	Part #	Description	Unit Price	Line Total
1	10	75-0500-8504-4	3M SelfCheck(TM) Model 7410 (V3) Kiosk w/Laminate Top Cabinet	17,168.00	171,680.00
2	10	V3-INST	Installation for V3	908.00	9,080.00
3	10	V3-SERV	9 Month Service for V3	1,447.00	14,470.00
Texas State Contract# TXMAS-6-70030					
Shipping*					2,975.00
<b>TOTAL</b>					<b>198,205.00</b>

**Comments:**  
\*Shipping & Handling – Freight costs not to exceed \$2975.00

**AFFIDAVIT OF NO PROHIBITED INTEREST**

I, the undersigned declare and affirm that no person or officer of **Alpha Data Corporation** (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.

Alpha Data Corporation  
Name of Contractor

By: Bill Paulchek  
Signature

BILL PAULCHEK  
Print Name

CONTROLLER  
Title

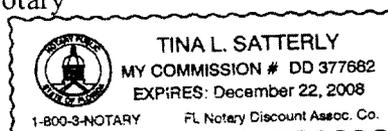
09/24/2008  
Date

STATE OF FLORIDA §

COUNTY OF OKALOOSA §

SUBSCRIBED AND SWORN TO before me this 26 day of Sept, 2008.

Tina L. Satterly  
Notary



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

J-4



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Library Administration		Initials	Date	
Department Head	Joyce Baumbach	Executive Director	<i>[Signature]</i>	10/14/08	
Dept Signature:	<i>Joyce Baumbach</i>	City Manager	<i>[Signature]</i>	10/14/08	
Agenda Coordinator (include phone #):		<b>Mary Ann Dunnivant (Ext 4208)</b>			
<b>ACTION REQUESTED:</b> <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER: Purchase from State Contract					
<b>CAPTION</b>					
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$540,000 from Baker & Taylor through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager or his designee to execute all necessary documents.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2008-2009</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	1,080,000	0	1,080,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-540,000	0	-540,000
BALANCE		0	540,000	0	540,000
FUND(S): <b>GENERAL FUND</b>					
<b>COMMENTS:</b> Funds are included in the FY 2008-09 adopted budget for Books, Multimedia, and Library materials. The balance of funds will be used for other multimedia and library materials. <b>STRATEGIC PLAN GOAL:</b> Providing multimedia and library materials relates to the City's Goal of "Service Excellence."					
<b>SUMMARY OF ITEM</b>					
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things: Because of the City of Plano's participation, the purchase from Baker & Taylor in the amount of \$540,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Baker & Taylor through the Texas State Contract 715-N1 Print Materials and Multimedia.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
1. Memo from Julie Torstad dated 9-9-08.					



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

## *Memorandum*

**Date:** September 9, 2008  
**To:** Mary Ann Dunnavant  
**From:** Julie Torstad   
**Subject:** City Council Approval for Baker & Taylor

Please request City Council approval to spend up to \$540,000 with Baker & Taylor for the purchase of various library materials including books, compact disks, books-on-CD, and DVDs. The funds should be taken from 01-682-8441 and 01-689-8441. Some of the funds will be transferred into 01-682-8442 or 01-689-8442 as necessary.

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

Thanks.



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Library Administration		Initials	Date
Department Head	Joyce Baumbach	Executive Director	<i>[Signature]</i>	10/11/08
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	10/11/08
Agenda Coordinator (include phone #): <b>Mary Ann Dunnivant (Ext 4208)</b>				
<b>ACTION REQUESTED:</b> <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER: Purchase from State Contract				
<b>CAPTION</b>				
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$150,000 from Ingram Library Services through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; authorizing the City Manager or his designee to execute all necessary documents.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>2008-2009</b>	Prior Year (CIP Only)	Current Year	Future Years
Budget		0	1,000,000	0
Encumbered/Expended Amount		0	0	0
This Item		0	-150,000	0
BALANCE		0	850,000	0
FUND(S): <b>GENERAL FUND</b>				
<b>COMMENTS:</b> Funds are included in the FY 2008-09 adopted budget for Books, Multimedia, and Library materials. The balance of funds will be used for other multimedia and library materials. <b>STRATEGIC PLAN GOAL:</b> Providing multimedia and library materials relates to the City's Goal of "Service Excellence."				
<b>SUMMARY OF ITEM</b>				
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things. Because of the City of Plano's participation, the purchase from Ingram Library Services in the amount of \$150,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Ingram Library Services through the Texas State Contract 715-N1 Print Materials and Multimedia.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
1. Memo from Julie Torstad dated 9-9-08.				



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

## *Memorandum*

**Date:** September 9, 2008  
**To:** Mary Ann Dunnivant  
**From:** Julie Torstad   
**Subject:** City Council Approval for Ingram Library Services

Please request City Council approval to spend up to \$150,000 with Ingram Library Services for the purchase of various library materials including books, books-on-CD, and DVDs. Funds should be taken from 01-682-8441. Some of the funds will be transferred into 01-682-8442 as necessary.

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

Thanks.



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Library Administration	Initials	Date		
Department Head	Joyce Baumbach	Executive Director	<i>[Signature]</i>	10/1/08	
Dept Signature:	<i>Joyce Baumbach</i>	City Manager	<i>[Signature]</i>	10/1/08	
Agenda Coordinator (include phone #): <b>Mary Ann Dunnivant (Ext 4208)</b>					
<b>ACTION REQUESTED:</b> <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER: Purchase from State Contract					
<b>CAPTION</b>					
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$250,000 from Brodart through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; authorizing the City Manager or his designee to execute all necessary documents.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2008-2009</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		0	1,000,000	0	1,000,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-250,000	0	-250,000
BALANCE		0	750,000	0	750,000
FUND(S): <b>GENERAL FUND</b>					
<b>COMMENTS:</b> Funds are included in the FY 2008-09 adopted budget for Books, Multimedia, and Library materials. The balance of funds will be used for other multimedia and library materials. <b>STRATEGIC PLAN GOAL:</b> Providing multimedia and library materials relates to the City's Goal of "Service Excellence."					
<b>SUMMARY OF ITEM</b>					
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things. Because of the City of Plano's participation, the purchase from Brodart in the amount of \$250,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Brodart through the Texas State Contract 715-N1 Print Materials and Multimedia.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
1. Memo from Julie Torstad dated 9-9-08.					



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

## *Memorandum*

**Date:** September 9, 2008  
**To:** Mary Ann Dunnavant  
**From:** Julie Torstad   
**Subject:** City Council Approval for Brodart

Please request City Council approval to spend up to \$250,000 with Brodart for the purchase of various library materials including books, compact disks, and books-on-CD. The funds should be taken from 01-682-8441. Some of the funds will be transferred into 01-682-8442 as necessary.

These purchases will be made through the State of Texas CO-OP Purchasing Program under Texas State Contract 715-N1 Print Materials and Multimedia with Brodart.

Thanks.



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Library Administration		Initials	Date	
Department Head	Joyce Baumbach	Executive Director	<i>[Signature]</i>	10/1/08	
Dept Signature:	<i>Joyce Baumbach</i>	City Manager	<i>[Signature]</i>	10/1/08	
Agenda Coordinator (include phone #): <b>Mary Ann Dunnivant (Ext 4208)</b>					
<b>ACTION REQUESTED:</b> <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER: Purchase from State Contract					
<b>CAPTION</b>					
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$140,000 from Midwest through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; authorizing the City Manager or his designee to execute all necessary documents.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
<b>FISCAL YEAR:</b>	<b>2008-2009</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		0	1,080,000	0	1,080,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-140,000	0	-140,000
<b>BALANCE</b>		0	940,000	0	940,000
<b>FUND(S): GENERAL FUND</b>					
<b>COMMENTS:</b> Funds are included in the FY 2008-09 adopted budget for Books, Multimedia, and Library materials. The balance of funds will be used for other multimedia and library materials. <b>STRATEGIC PLAN GOAL:</b> Providing multimedia and library materials relates to the City's Goal of "Service Excellence."					
<b>SUMMARY OF ITEM</b>					
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things. Because of the City of Plano's participation, the purchase from Midwest Tapes in the amount of \$140,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Midwest Tapes through the Texas State Contract 715-N1 Print Materials and Multimedia.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
1. Memo from Julie Torstad dated 9-9-08.					



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

## *Memorandum*

**Date:** September 9, 2008  
**To:** Mary Ann Dunnavant  
**From:** Julie Torstad   
**Subject:** City Council Approval for Midwest Tapes

Please request City Council approval to spend up to \$140,000 with Midwest Tapes for the purchase of various library materials including music CDs, books-on-CD, and DVDs. The funds should be taken from 01-682-8441 and 01-689-8441. Some of the funds will be transferred into 01-682-8442 or 01-689-8442 as necessary.

These purchases will be made through the State of Texas CO-OP Purchasing Program under Texas State Contract 715-N1 Print Materials and Multimedia with Midwest Tapes.

Thanks.



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Purchasing	Initials	Date	
Department Head	Mike Ryan	Executive Director		
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	<b>09.24.08</b>
Agenda Coordinator (include phone #): <b>Nancy Corwin (Ext 7137)</b>				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER APPROVAL OF RENEWALS				
<b>CAPTION</b>				
Approval of renewals for Library Periodicals & related subscription services between EBSCO Information Services, and the City of Plano; authorizing its execution by the City Manager or, in his absence, an Executive Director; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>08/09 – 09/10</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
Budget		0	286,500	0
Encumbered/Expended Amount		0	0	0
This Item		0	-75,113	-75,113
<b>BALANCE</b>		0	211,387	-75,113
<b>FUND(S):    TECHNICAL SERVICES (682)</b>				
<b>COMMENTS:</b> Funds are included in the FY 2008-09 adopted budget and future budget appropriations in the FY 2009-10 Technical Services Budget. This agreement will allow for renewal periodicals and related subscription services in the amount not to exceed \$75,113 in FY 2008-09 and \$75,113 in FY 2009-10.				
<b>STRATEGIC PLAN GOAL:</b> Providing library periodicals and related subscription services relates to the City's Goal of "Service Excellence."				
<b>SUMMARY OF ITEM</b>				
<b>Contract Renewals</b>				
Staff recommends Council approve the renewal of Library Periodicals & Related Subscription Services with EBSCO Information Services for two (2) years for a sum of \$75,112.71 each year subject to the availability and appropriation of funds. 2007-16-C originally approved by Council 11-27-06.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Engineering		Initials	Date	
Department Head	Alan L. Upchurch		Executive Director	<i>[Signature]</i> 10/1/08	
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i> 10/2/08	
Agenda Coordinator (include phone #):		Irene Pegues (7198)	Project No. 5909		
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					
<b>CAPTION</b>					
Approval of an engineering services contract by and between the City and Birkhoff, Hendricks & Conway, L.L.P., in the amount of \$99,895, for Custer Ground Storage Tank Repairs, and authorizing the City Manager or his designee to execute all necessary documents.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	<b>2008-09</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		7,174	1,772,826	1,750,000	3,530,000
Encumbered/Expended Amount		-7,174	-7,326	0	-14,500
This Item		0	-99,895	0	-99,895
BALANCE		0	1,665,605	1,750,000	3,415,605
FUND(S): <b>WATER CIP</b>					
<b>COMMENTS:</b> Funds are included in the 2008-09 Water CIP. This item, in the amount of \$99,895, will leave a current year balance of \$1,665,605 for the Custer Road Ground Storage Tank project. <b>STRATEGIC PLAN GOAL:</b> Design services for storage tanks relate to the City's Goal of Livable and Sustainable Community.					
<b>SUMMARY OF ITEM</b>					
This agreement with Birkhoff, Hendricks & Conway, L.L.P., is for engineering design for Custer Ground Storage Tank Repairs to include the removal of two 2.5 million gallon steel ground storage tanks and the construction of a 3.75 million gallon concrete ground storage tank.					
The contract fee is for \$99,895 and is detailed as follows:					
Design and Bidding Documents		\$66,600			
Bidding		\$ 3,500			
Construction		\$ 9,900			
Quality Control Testing		\$19,895			
<b>TOTAL</b>		<b>\$99,895</b>			
Funding is available from the Water Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost \$2,200,000.					
List of Supporting Documents: Engineering Services Agreement, Location Map			Other Departments, Boards, Commissions or Agencies N/A		

**CUSTER GROUND STORAGE TANK REPAIRS**

**PROJECT NO. 5909**

**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 **BIRKHOFF, HENDRICKS & CONWAY, L.L.P.**, a **TEXAS** Limited Liability Partnership, 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 **CUSTER GROUND STORAGE TANK REPAIRS** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

**I. Employment of the Engineer**

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

**II. Scope of Services**

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

**III. Schedule of Work**

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

**IV. Compensation and Method of Payment**

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

**V. Information to be Provided by the City**

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

**VI. Insurance**

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

**VII. Indemnity**

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

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

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

**VIII. Independent Contractor**

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

**IX. Assignment and Subletting**

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

**X. Audits and Records/Prohibited Interest**

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

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

**XI. Contract Termination**

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

**XII. Engineer's Opinion of Probable Construction Costs**

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

**XIII. Ownership of Documents**

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

**XIV. Complete Contract**

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

**XV. Mailing of Notices**

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

City of Plano  
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:

Birkhoff, Hendricks & Conway, L.L.P.  
11910 Greenville Avenue, Suite 600  
Dallas, TX 75243  
Attn: John W. Birkhoff

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

**XVI. Miscellaneous**

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

**SIGNED** on the date indicated below.

**BIRKHOFF, HENDRICKS & CONWAY, L.L.P.**  
A Texas Limited Liability Partnership

DATE: 9/10/08

BY: John W. Birkhoff  
John W. Birkhoff, P.E.  
MANAGING PARTNER

**CITY OF PLANO, TEXAS**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Thomas H. Muehlenbeck  
CITY MANAGER

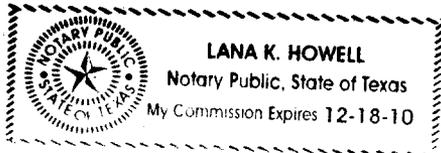
**APPROVED AS TO FORM:**

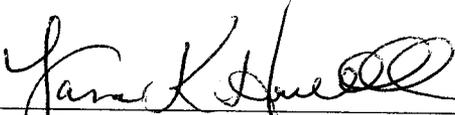
Diane C. Wetherbee  
Diane C. Wetherbee  
CITY ATTORNEY

**ACKNOWLEDGMENTS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the 10<sup>th</sup> day of Sept., 2008, by **JOHN W. BIRKHOFF, P.E., Managing Partner**, of **Birkhoff, Hendricks & Conway, L.L.P.**, a Texas Limited Liability Partnership, on behalf of said partnership.



  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, 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

**EXHIBIT "A"**  
**ENGINEERING SERVICES**

**PART I. GROUND STORAGE RESERVOIR**

Design Services: Prepare plans and specification for construction of a 3.75 Million Gallon Prestressed Concrete Ground Storage Reservoir at the Custer Pump Station site.

- A. Specifications based on following standards:
  - ▷ American Water Works Association (AWWA)
  - ▷ American Nation Standards Institute (ANSI)
  - ▷ American Society of Testing Materials (ASTM)
  - ▷ National Sanitation Foundation (NSF)
  - ▷ American Concrete Institute (ACI)
  
- B. Reservoir Accessories to include the following:
  - ▷ Pipe Connections & Valving
  - ▷ Over Flow & Drain Piping
  - ▷ Connection to Existing SCADA
  - ▷ Reservoir Ladders
  - ▷ Roof Hatches
  - ▷ Level Monitoring
  - ▷ Roof Intrusion Alarm
  - ▷ Electrical System
  - ▷ Exterior Light System
  - ▷ Vent
  
- C. Complete field surveys to establish site conditions.
  
- D. The high water level (HWL) shall match that of the existing 2.5 Million Gallon Ground Storage Reservoir.
  
- E. Complete review of piping to determine line sizes based on hydraulics.
  
- F. Complete geotechnical investigation of the site with two confirmation bores that supplement existing geotechnical reports.
  
- G. Complete sampling of existing paint and soils on site for lead.
  
- H. Prepare specifications for removal and disposal of existing Reservoir Nos. 2 and 3.
  
- I. Submit five (5) sets of half-scale (11" x 17" sheets) preliminary plans and opinions of probable construction cost to the City of Plano for review.

**PART II. FINAL DESIGN**

- A. Revise and finalize preliminary plan sheet and Special Conditions, incorporating City comments.
- B. Submit exception to TCEQ Rule for 5-foot air gap.
- C. Submit plans to TCEQ for review.
- D. Formulate opinion of probable construction cost based on final plans.
- E. Prepare final bid documents including bid proposal forms, construction plans, specifications and contract documents. Contract documents will be provided by City of Plano.
- F. Submit three sets of final plans, Special Conditions and contract documents to the City.

**PART III. BIDDING PHASE**

- A. Assist the City of Plano staff in advertising for bids. This will include providing City with Notice to Contractors for their use in publicly advertising project. Birkhoff, Hendricks & Conway L.L.P. will e-mail and/or fax notices to Publishers, and to contractors experienced in tank painting. Each project will be bid separately.
- B. Sell bidding documents to potential bidders, suppliers and other parties.
- C. Provide one copy of bidding documents to City's independent testing lab.
- D. Assist City of Plano during opening of bids and provide bidding tally sheets.
- E. Provide bid tabulation to City and contractors who submit bids.
- F. Obtain the following information from the two low bidders:
  - ▷ Past work history.
  - ▷ Physical resources to produce the project.

Formulate opinion from information received and provide the City a recommendation for award of the construction contract. Include an alternate recommendation if City Council rejects primary recommendation.

- G. After award of contract, furnish thirteen sets of prints of the final plans, specifications and contract documents to the City for construction use by the City and Contractor.
- H. Conduct Pre-Construction Conference at City facilities, including preparing an agenda.

**PART IV. CONSTRUCTION PHASE**

- A. Attend City's monthly coordination meetings with contractor, quality control personnel, and City representatives to discuss strategy, problem areas, progress, and any required coordination. Prepare a summary of these meetings and distribute them to both the City and contractor. Prior to or immediately after coordination meeting make site visit to project location.
- B. Review shop drawings and other submittal information which the Contractor submits. This review is for the benefit of the Owner and covers only general conformance with information given by the Contract Documents. The contractor is to review and stamp their approval on submittals prior to submitting to the Engineer. Review of shop drawing submissions is solely for their conformance with the design intent and conformance with information given in the construction documents. Birkhoff, Hendricks & Conway L.L.P. shall not be responsible for any aspects of a shop drawing submission that affect or are affected by the means, methods, techniques, sequences and operation of construction, safety precautions and programs incidental thereto, all of which are the Contractor's responsibility. Two copies of shop drawings in which no exceptions are taken by Birkhoff, Hendricks & Conway L.L.P. will be provided to the City.
- C. Provide written responses to requests for information or clarification.
- D. Accompany the City during their final inspection of the project.
- E. Recommend acceptance of work based on information from City's on-site representative.
- F. Visit the site at appropriate intervals as construction proceeds to observe progress and formulate opinion as to quality of work as it relates to contract documents.
- G. Review the City's on-site representative's daily reports and independent laboratory's test reports to formulate opinion of progress and attempt to identify potential problems.
- H. Prepare record drawings utilizing City and Contractor construction record information.

**PART V. QUALITY CONTROL TESTING**

Provide quality control testing during construction, utilizing Henley-Johnston & Associates of Dallas, Texas. Quality control to include earthwork, concrete, shot-crete, reinforcing steel, and backfill.

**PART VI. EXCLUSIONS**

The intent of this section is to specifically exclude from this contract the following:

- A. Providing an on-site representative.
- B. Environmental impact statements and assessments.
- C. Fees for permits or advertising.
- D. Certification that work is in accordance with plans and specifications.
- E. Environmental cleanup.
- F. Quality control and testing services during construction.
- G. Phasing of Contractors work.
- H. On-site safety precautions, programs and responsibility.

**EXHIBIT "B"**

**COMPLETION SCHEDULE ESTIMATE**

Notice to Proceed from City	
Complete Preliminary Plans and Technical Specifications .....	August 8, 2008
Receive Comments from City .....	August 25, 2008
Complete Final Plans and Technical Specifications .....	August 29, 2008
Advertise Project .....	September 3, 2008
Receive Bids .....	September 18, 2008
Award Contract .....	September 30, 2008
Notice to Proceed .....	October 15, 2008
Construction .....	October 2008 to May 2009

**EXHIBIT "C"**

**PAYMENT SCHEDULE**

Payment for basic services described under Parts I, II, III and IV shall be based on a not to exceed amount of \$80,000.00.

Payment for engineering services described under Part V shall be on the basis of salary cost times 2.40 with expenses at invoice cost times 1.15, survey crew at \$145.00 per hour.

<b><u>SUMMARY OF BASIC SERVICES</u></b>	
Preparation of Bidding Documents .....	\$66,600.00
Bidding .....	\$3,500.00
Construction .....	\$9,900.00
<b>Amount:</b>	<b>\$80,000.00</b>
<b><u>SUMMARY OF ADDITIONAL SERVICES:</u></b>	
Quality Control Testing .....	\$19,895.00
<b><u>FEE SCHEDULE</u></b>	
Principal Engineer .....	\$190.00/hr.
Staff Engineer .....	\$120.00/hr.
Geologist .....	\$90.00/hr.
Laboratory Supervisor .....	\$110.00/hr.
Engineering Technician Concrete .....	\$55.00/hr.
Engineering Technician Steel .....	\$65.00/hr.
Atterbery Limits .....	\$45.00/ea.
M/D Relationship .....	\$175.00/ea.
Flex Base M/D Relationship .....	\$375.00/each
Concrete Cylinder .....	\$15.00/ea.
Concrete Coring .....	\$135.00/hr. + \$5.00/inch

Total fee not to exceed \$99,895.00 unless authorized by the City.

**EXHIBIT "D"**  
**ENGINEERING**

**INSURANCE**

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

**1. General Insurance Requirements:**

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

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

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

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

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

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

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

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

2.2 Professional Errors and Omissions

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

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

**ENGINEERING**

**City of Plano - Insurance Checklist**

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability | Statutory limits of State of Texas<br>\$100,000 accident \$100,000 disease<br>\$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<br>Minimum \$500,000 each occurrence<br>\$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<br>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<br>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  |

- 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, \_\_\_\_\_ 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 Engineer named below. Additionally:

- 26. The above policy(s) carry the following deductibles: **Professional Liability - \$50,000 Deductible**

Full limits of coverage available for:  
 General Liability To the Best of our Knowledge Professional Liability To the Best of our Knowledge  
 Automobile Liability To the Best of our Knowledge

- 27. Liability policies are (indicate):

OCCURRENCE [ ] CLAIMS MADE [X] – PROFESSIONAL LIABILITY

Patrick P. McLaughlin 9/9/2008  
 Signature Date  
 Patrick P. McLaughlin – McLaughlin Brunson Insurance Agency, LLP

Insurance Agent (Print)

BIRKHOFF, HENDRICKS & CONWAY, LLP  
Name of Insured

9/9/2008

Date

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of BIRKHOFF, HENDRICKS & CONWAY, L.L.P., (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.

BIRKHOFF, HENDRICKS & CONWAY L.L.P.  
Name of Consultant

By: [Signature] Signature

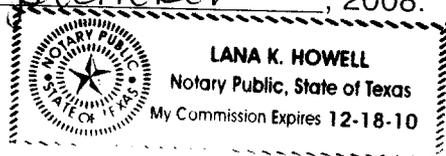
JOHN W BIRKHOFF  
Print Name

MANAGING PARTNER  
Title

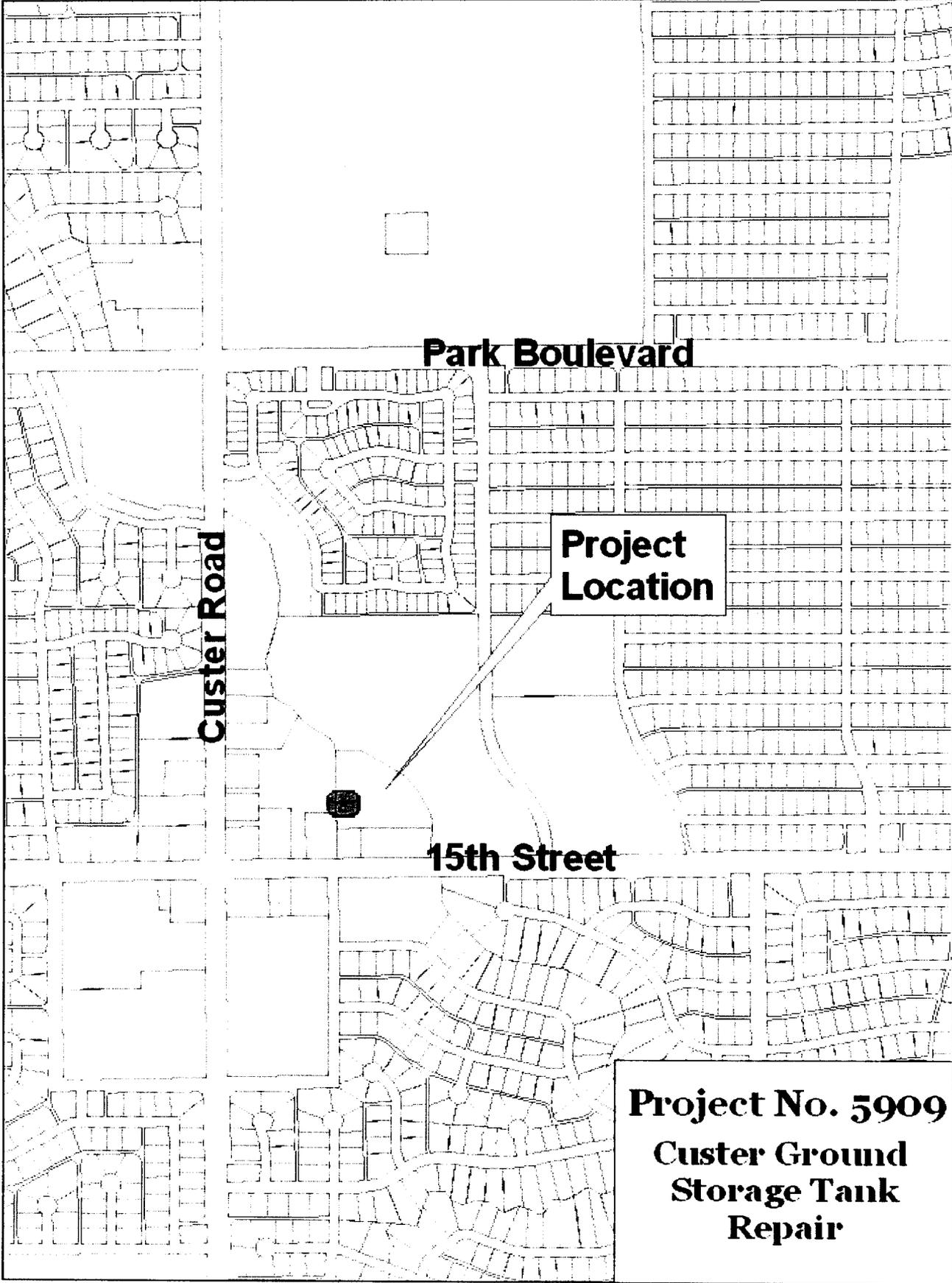
9/10/08  
Date

STATE OF TEXAS §  
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 10th day of September, 2008.



[Signature]  
Notary Public, State of Texas





**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Parks and Recreation			Initials	Date
Department Head	Don Wendell			Executive Director	<i>[Signature]</i> 10-3-08
Dept Signature:	<i>[Signature]</i>			City Manager	<i>[Signature]</i> 10/3/08
Agenda Coordinator (include phone #): <b>Susan Berger (7255)</b>					

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

**CAPTION**

Approval of a Landscape Architectural Professional Services Agreement by and between the City of Plano and JBI Partners in the amount of \$67,500 for Jack Carter Park Service Center Yard Renovation and authorizing the City Manager or his designee to execute all necessary documents.

**FINANCIAL SUMMARY**

NOT APPLICABLE     OPERATING EXPENSE     REVENUE     CIP

FISCAL YEAR: <b>2008-09</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	585,000	0	<b>585,000</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-67,500	0	<b>-67,500</b>
<b>BALANCE</b>	<b>0</b>	<b>517,500</b>	<b>0</b>	<b>517,500</b>

**FUND(S): CAPITAL RESERVE**

**COMMENTS:** Funds are included in the 2008-09 Capital Reserve. This item, in the amount of \$67,500, will leave a current year balance of \$517,500 for the Maintenance Shop Renovations project.

**STRATEGIC PLAN GOAL:** Landscape architectural services relate to the City's Goal of Premier City in Which to Live.

**SUMMARY OF ITEM**

The agreement provides for Landscape Architectural Services to prepare plans and construction documents which include surveying, site plan preparation, design development, Texas Department of Licensing and Regulation plan review, construction documents, and construction observation. Project elements include renovation of the existing yard, new screening wall between the maintenance yard and neighborhood, trail relocation, additional entry drive, relocation of existing storage buildings, and landscaping. This facility was originally developed in 1981. These improvements are needed to move the maintenance yard away from the flood plain, provide additional storage space, and improve circulation.

The cost of the professional services is \$67,500, which represents 13% of the \$500,000 construction budget. This fee is consistent with other park facility projects of this size and scope. The fee percentage for a project of this size is typically higher than the fee percentage for a larger project. JBI Partners is on the City's selected list of consultants for 2008-09.



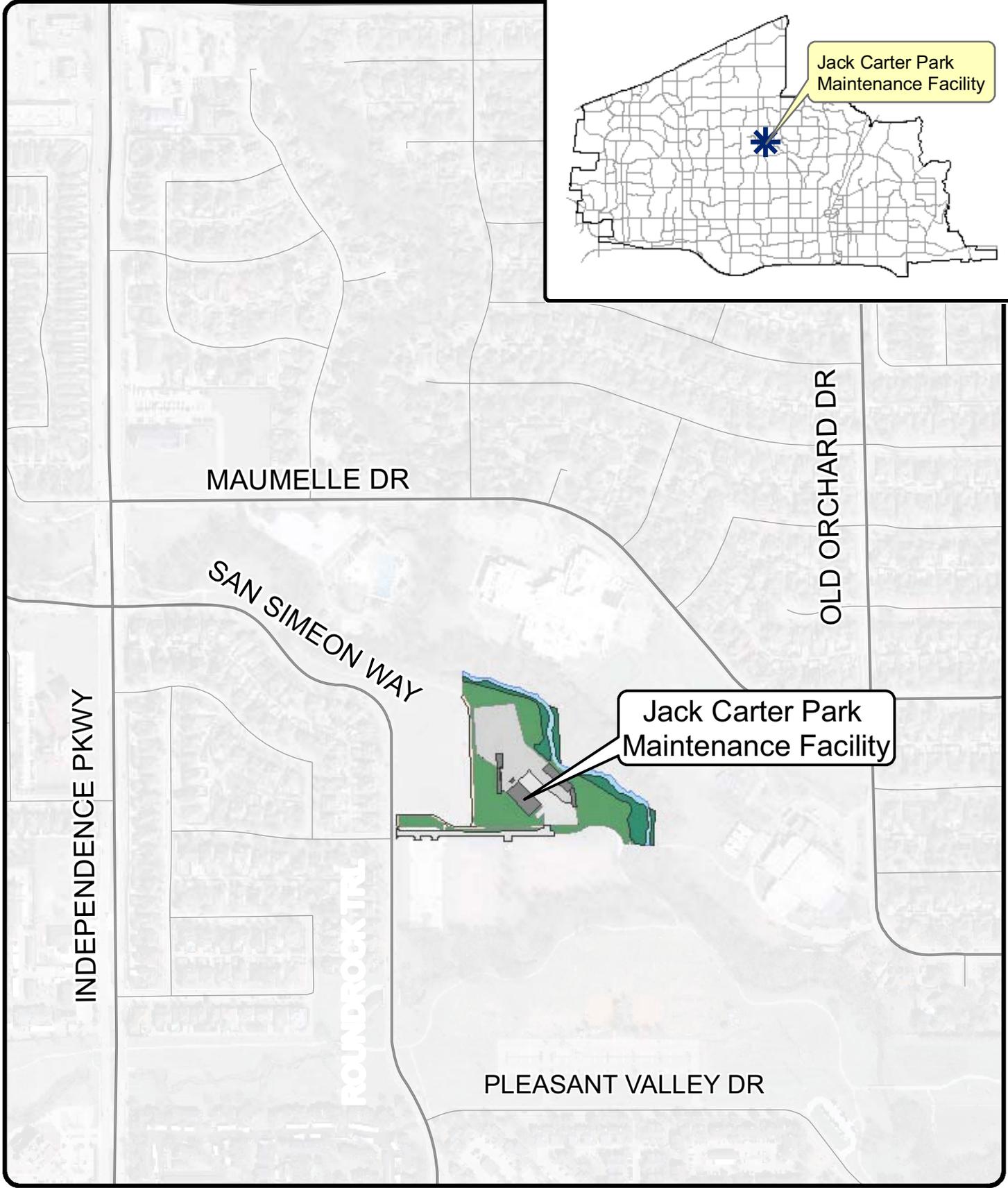
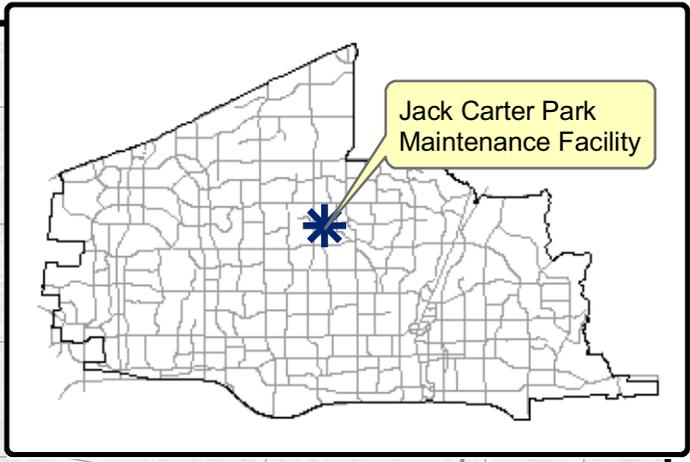
**CITY OF PLANO  
COUNCIL AGENDA ITEM**

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Location Map Landscape Architectural Services Agreement	



# Location Map

Jack Carter Park Maintenance Facility  
Yard Expansion Project #5906



**JACK CARTER PARK SERVICE CENTER YARD RENOVATION**

**PROJECT NO. 5906**

**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 **JBI PARTNERS**, 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 **JACK CARTER PARK SERVICE CENTER YARD RENOVATION** 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

2-4

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.

#### **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 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 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.

## **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:

JBI Partners  
16301 Quorum Drive, Suite 200B  
Addison, TX 75001  
Attn: Chuck McKinney

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.

**JB PARTNERS**  
A Texas Corporation

DATE: 9/12/08

BY:   
Chuck McKinney  
EXECUTIVE VICE PRESIDENT/PARTNER

**CITY OF PLANO, TEXAS**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Thomas H. Muehlenbeck  
CITY MANAGER

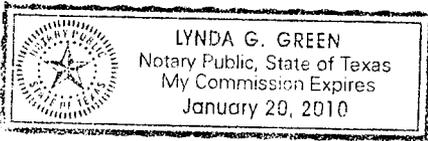
**APPROVED AS TO FORM:**

  
Diane C. Wetherbee  
CITY ATTORNEY

**ACKNOWLEDGMENTS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the 15<sup>th</sup> day of September, 2008, by **CHUCK MCKINNEY, Executive Vice President/Partner** of **JBI Partners**, a **Texas** corporation, licensed to do business in the State of Texas, on behalf of said corporation.



*Lynda G. Green*  
Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, 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

9-10



## EXHIBIT A

### SCOPE OF SERVICES CONSTRUCTION DOCUMENTS JACK CARTER PARK SERVICE CENTER YARD RENOVATION

#### Project Understanding

JBI Partners, Inc. (JBI) has been requested by the City of Plano (City) to provide a design service proposal to prepare the construction drawings for the expansion of the Jack Carter Park maintenance facility at 6500 Round Rock Trail.

The expansion will include moving the limits of the facility east approximately 75 feet, a masonry screening wall with "out buildings", a second entrance drive, trail relocation and miscellaneous improvements. The budget for this project is understood to be approximately \$585,000.

#### Scope of Services

##### SECTION I – BASIC SERVICES

###### 1. Predesign

- A. We will meet with you to discuss the project requirements and standards, review project timelines and schedules and identify the key components and issues related to the project.
- B. We will visit the site to inventory existing conditions.
- C. We will obtain available maps, plats, utility plans and as-built plans for the existing park and existing maintenance facility development.
- D. We will prepare a site analysis of the project area based on the obtained information and will identify site development opportunities and constraints.

###### 2. Site Planning

- A. Based on our site analysis and our field survey described in Section II – Additional Services of this proposal, we will prepare a preliminary site layout showing the proposed expansion and associated improvements.
- B. We will prepare a construction cost estimate for the project.

- C. We will meet with you to review the preliminary layout and cost estimate and to receive approval before proceeding to the construction documents phase.
- D. Based on the approved site layout and subsequent construction drawings and engineering plans, we will prepare a final site plan in accordance with the City of Plano Development Services requirements. We will submit the plan to Development Services and will work with you and City staff for approval.

### 3. Final Construction Documents

- A. Based on the approved preliminary site layout, JBI will prepare construction drawings for the project. These shall include, but are not limited to, the following:
  - 1) Cover sheet showing vicinity map for the project site, signature block, index of drawings and contact list;
  - 2) Existing conditions/demolition plans showing the existing site conditions as well as the removal and/or relocation of any existing elements as required to accommodate the proposed improvements;
  - 3) Dimension control and materials plan;
  - 4) Trail plan to relocate existing trail;
  - 5) Paving plan showing new entrance drive and yard area paving;
  - 6) Grading and drainage plans;
  - 7) Site construction details;
  - 8) Structural plans for screening wall and connected "out buildings";
  - 9) Erosion control plans;
  - 10) Utility plans including necessary utility relocations;
  - 11) Site electrical plans;
  - 12) Additional plans and/or details necessary to show design intent for all the proposed improvements;
  - 13) Specific plans necessary for construction of the programmed design elements or as required by the City of Plano which are related to the project;
  - 14) Landscape planting and revegetation plans; and
  - 15) Automatic irrigation plans.
- B. We will present the Construction Documents to the City for review and comment and will include the City's comments in the final drawings for approval. Final Construction Documents will be consistent with the established budget.
- C. Standards – Final drawings are to comply with applicable City of Plano, AASHTO and TAS design standards.
- D. The preliminary construction cost estimate will be modified and updated to reflect the construction drawings at the fifty percent (50%), ninety percent (90%) and one hundred percent (100%) completion milestones.
- E. JBI will provide four (4) sets of plans for the City's review and comment at approximate fifty percent (50%), ninety percent (90%) and one hundred percent (100%) complete milestones and will incorporate the City's comments into the plans.

- F. Technical Specifications – JBI will prepare technical specifications for the work included in the construction plans (CSI format) and will assemble a complete project manual. The general and supplementary conditions of the contract, bond forms, etc. shall be provided by the City. JBI will also prepare a bid form and unit price schedule for the proposed project improvements, including, without limitation, material quantities, unit prices, total base bid and alternate items. One (1) set of unbound technical specifications shall be provided to the City.
- G. Storm Water Pollution Prevention Plan (SWPPP) – JBI shall prepare a SWPPP in accordance with current Texas Commission on Environmental Quality (TCEQ) and Environmental Protection Agency (EPA) guidelines and assist in filing the Notice of Intent (NOI) for coverage under the TCEQ State permit. The SWPPP and Erosion Control Plan shall comply with the City's Erosion Control Manual.

#### 4. Construction Phase Services

- A. Bidding – Based on approved construction documents, JBI will provide bidding services to include the following:
  - 1) Attend pre-bid conference and prepare meeting notes;
  - 2) Prepare addenda items (if necessary);
  - 3) Answer questions during the bidding process;
  - 4) Review bids, as requested by the City; and
  - 5) Make a recommendation for awarding the construction contract to the low and second low bidder.
- B. Construction Administration – During construction, JBI will perform the following construction administration services:
  - 1) Attend pre-construction conference;
  - 2) Review shop drawing, submittals and mock-ups as required;
  - 3) Respond to contractor Requests For Information (RFI);
  - 4) Make periodic site visits, as required, to observe contractor progress (not continuous site inspection) to determine if the work is proceeding in general accordance with the Contract Documents (a total of four (4) site visits are anticipated). *Neither JBI nor any sub consultant guarantee the performance of any contractor and shall have no responsibility for furnishing materials or performing any work on the project;*
  - 5) Prepare punch list of items to be completed or corrected;
  - 6) Provide consultation concerning the work in progress; and
  - 7) Perform final inspection review.
- C. As-Built Plans – Based on the Contractor's records and provided information, as well as our field observations, JBI will prepare a set of as-built plans showing the approximate location of constructed improvements. This does not include full field survey of all constructed improvements.

## SECTION II – ADDITIONAL SERVICES

- A. JBI will perform an on-the-ground field topographic survey of the project area. The limits of this survey will generally be Round Rock Trail, the top of the bank of the adjacent creek and the existing access drive into the site.

The field survey will show the location of all existing fixed site facilities and features including buildings, paving, fences, visible utilities, trees over 6" caliper, as well as provide topographic information with spot elevations and contours at a one foot contour interval. In addition, two (2) bench marks for construction will be established.

- B. Texas Accessibility Standards – JBI will submit a full-sized set of construction documents to the Texas Department of Licensing and Regulation (TDLR) or an independent contract provider approved by the City for Texas Accessibility Standards review and will work with their staff for plan approval and final project inspection. Based on the plans review, JBI will revise the construction documents accordingly. In addition, JBI will coordinate the final inspection of the work for TDLR approval after the improvements have been completed.
- C. Reimbursable Expenses (Not to Exceed \$2,000.00) – Reimbursable expenses are those incurred by JBI or the sub consultants, which are not included in our basic or additional services. These costs will be invoiced at a cost of 1.10 times the actual expense incurred unless otherwise specified. This budget of two thousand dollars (\$2,000.00) will not be exceeded by JBI without the formal written approval of the City of Plano. These costs include all reasonable and necessary expenses which are chargeable to the work which, in general, include expenses for printing of plans, long distance communication charges, travel, delivery, other reproduction services and similar incidentals.
- D. Geotechnical Investigation – JBI will obtain (from a sub consultant to JBI) a subsurface soils report for conditions at the proposed screening wall location. A boring will be taken at each end of the proposed wall, and will be used for the wall's foundation design of the abutments.

## SECTION III – EXCLUSIONS

- A. Exclusions – The intent of this scope of services is to include only the services specifically listed herein and no others. Services specifically excluded from this scope of services include the following:
- 1) Construction staking;
  - 2) Field survey beyond project area described;
  - 3) Environmental impact statements or assessments;
  - 4) Platting services;
  - 5) Consulting services by others not included in this proposal;
  - 6) Services beyond those described in Section I or Section II;
  - 7) CLOMR or LOMR reports or submittal to FEMA;
  - 8) Hydrologic or hydraulic studies;
  - 9) Corps of Engineer permitting;
  - 10) Wetlands determination/delineation;
  - 11) Renderings beyond those to show design intent;

- 12) As-built field surveys; and
- 13) Easement or ROW document preparation.

B. Information to be provided by the City (subject to availability)

- 1) All available "as-built" plans including all pertinent paving, drainage and utility plans for the trail and surrounding developments (includes proposed or existing);
- 2) The City shall coordinate all right-of-entry for surveys and geotechnical borings necessary for the final design; and
- 3) The City shall coordinate all submittals with other City departments, if necessary.

C. JBI Drawing Standards

- 1) All drawing file coordinates will be Datum NAD83, North Texas Zone; and
- 2) JBI will provide the City AutoCAD files with a separate file for each plan sheet, and will have all X-Refs within that file bound to that particular sheet file.

**EXHIBIT B**  
**COMPLETION SCHEDULE**  
**JACK CARTER PARK**  
**SERVICE CENTER YARD RENOVATION**

**Schedule**

The work product described in Exhibit A, Scope of Services, will be performed in accordance with the following schedule:

A detailed project schedule based on the actual contract start time showing all tasks and subtasks will be provided for review and approval prior to the project kick-off meeting.

Item 1.	Predesign (Includes Topographic Survey)	4 Weeks
Item 2.	Site Planning (excluding final site plan)	6 Weeks
Item 3.	Final Construction Documents (Includes TDLR review and SWPPP preparation)*	16 Weeks
Item 4.	Construction Phase Services (Bidding)	4 Weeks
Item 5.	Construction Phase Services (Construction Administration)	Varies
<b>Total Project Time</b>		<b>30 weeks (Design time)</b>

\*City review is not included in schedule.

**EXHIBIT C**  
**PAYMENT SCHEDULE**  
**JACK CARTER PARK**  
**SERVICE CENTER YARD RENOVATION**

The fees for the scope of services outlined in Exhibit A, scope of services are to be a lump sum fee as follows:

**Fees**

<b>SECTION I - BASIC SERVICES</b>	
1. Predesign	\$ 2,500
2. Site Planning	\$ 6,500
3. Final Construction Drawings	\$ 33,500
4. Construction Phase Services	\$ 4,000
<b>Total Basic Services</b>	<b>\$ 46,500</b>
<b>SECTION II - ADDITIONAL SERVICES</b>	
1. Topographic Survey	\$ 15,000
2. Texas Accessibility Standards	\$ 1,500
3. Reimbursable Expenses	\$ 2,000
4. Geotechnical Investigation	\$ 2,500
<b>Total Additional Services</b>	<b>\$ 21,000</b>
<b>PROJECT TOTAL</b>	<b>\$ 67,500</b>

**JBI PARTNERS, INC.  
HOURLY FEE SCHEDULE**

<u>Title</u>	<u>Hourly Rate</u>
Principal/Associate	\$155 - \$250
Sr. Project Manager – Engineering	\$155
Project Manager – Engineering	\$140
Sr. Project Engineer	\$125
Project Engineer	\$110
Sr. Design Engineer	\$105
Design Engineer	\$90
Sr. Design Technician	\$100
Design Technician	\$85
Sr. CAD Technician	\$90
CAD Technician	\$70
Sr. Project Surveyor	\$130
Project Surveyor	\$110
Sr. Survey Technician	\$100
Survey Technician	\$80
2-Man Survey Crew	\$130
3-Man Survey Crew	\$150
Sr. Project Manager – Landscape Architecture	\$140
Project Manager – Landscape Architecture	\$125
Sr. Landscape Architect	\$120
Landscape Architect	\$105
Sr. Landscape Designer	\$95
Landscape Designer	\$80
Sr. Land Planner	\$120
Land Planner	\$80
Sr. Construction Manager	\$150
Construction Manager	\$120
Sr. Construction Estimator	\$100
Construction Estimator	\$80
Administrative Assistant	\$60

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## 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.

- 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;

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

# 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 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 and aggregate
<input type="checkbox"/> 17. Garage Liability	\$_____ BI & PD each occurrence

- 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, [REDACTED] 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

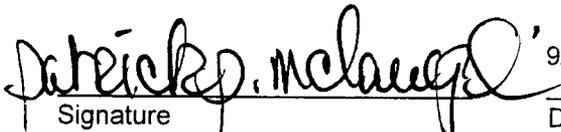
I have reviewed these requirements with the Architect named below. Additionally:

- 26. The above policy(s) carry the following deductibles: **Professional Liability - \$50,000 Deductible**

Full limits of coverage available for:  
 General Liability To the Best of our Knowledge Professional Liability To the Best of our Knowledge  
 Automobile Liability To the Best of our Knowledge

- 27. Liability policies are (indicate):

OCCURRENCE [ ] CLAIMS MADE [X] – PROFESSIONAL LIABILITY

 9/23/2008  
 Signature Date

**PATRICK P. McLAUGHLIN / McLAUGHLIN BRUNSON INSURANCE AGENCY, LLP**

\_\_\_\_\_  
 Insurance Agent (Print)

**JBI Partners, Inc.**

\_\_\_\_\_  
 Name of Insured  
 9/23/2008

\_\_\_\_\_  
 Date



## IMPORTANT

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

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

## DISCLAIMER

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

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of **JBI PARTNERS** (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.

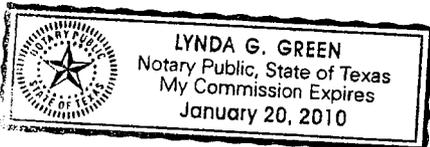
I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

JBI Partners, INC  
Name of Architect  
By: [Signature]  
Signature  
Charles B. McKinney  
Print Name  
Executive Vice President / Partner  
Title  
9/12/08  
Date

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS      §

SUBSCRIBED AND SWORN TO before me this 12<sup>th</sup> day of September, 2008.

[Signature]  
Notary Public, State of Texas



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**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal <i>not</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Economic Development		Initials	Date
Department Head	Sally Bane	Executive Director		
Dept Signature:		City Manager	<i>[Signature]</i>	<i>10/13/08</i>
Agenda Coordinator (include phone #): <b>Lynne Jones - 7109</b>				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input checked="" type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
<b>CAPTION</b>				
To approve a contract by and between the City of Plano and Plano Economic Development Board in the amount of \$858,361 to initiate, promote, monitor and perform activities related to economic development; and authorizing the City Manager or in his absence an Executive Director to execute any and all documents in connection therewith.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2008-09</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	858,361		<b>858,361</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-858,361	0	<b>-858,361</b>
BALANCE	0	0	0	<b>0</b>
FUND(S): <b>GENERAL FUND</b>				
COMMENTS: This item is included in the 2008-09 budget				
STRATEGIC PLAN GOAL: Economic Development relates to the City's Goal of "Service Excellence."w				
<b>SUMMARY OF ITEM</b>				
This item approves the agreement with the Plano Economic Development Board to perform activities related to economic development.				
List of Supporting Documents: Agreement		Other Departments, Boards, Commissions or Agencies n/a		

**AGREEMENT BETWEEN CITY OF PLANO  
AND PLANO ECONOMIC DEVELOPMENT BOARD**

STATE OF TEXAS            )  
  )  
COUNTY OF COLLIN        )       **KNOW ALL PERSONS BY THESE PRESENTS**

**THIS AGREEMENT**, this day made and entered into by and between the **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as "City"), and the **PLANO ECONOMIC DEVELOPMENT BOARD, INC., OF PLANO, TEXAS**, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as "Board");

**WHEREAS**, it is deemed to be in the best interest of the residents of and the City of Plano to expend public funds for business expansion, redevelopment, attraction, and retention within the corporate limits of the City of Plano; and

**WHEREAS**, the City of Plano has employees who are knowledgeable in the field of economic development so that these employees can serve a valuable public service by assisting the Board in facilitating business expansion, redevelopment, attraction, and retention within the corporate limits of the City of Plano; and

**WHEREAS**, the City Council finds that expending public funds for business expansion, attraction, and retention is a valid public purpose; and

**WHEREAS**, by Ordinance No. 2008-9-15 the Plano City Council authorized that an amount up to **EIGHT HUNDRED FIFTY-EIGHT THOUSAND THREE HUNDRED SIXTY-ONE AND 00/100 DOLLARS (\$858,361.00)** shall be expended for the purposes as outlined in the attachment entitled "Plano Economic Development Board Program of Work FY 08/09"; and

**WHEREAS**, the Board has established itself as being able to initiate, promote, monitor and perform activities related to economic development.

**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; Designees**

**1.01 Purpose/Consideration.** The purpose of this Agreement is to provide terms and conditions under which City shall make available personnel and funding for in-kind services as shown in **Exhibit "B"**, the cumulative value of which shall be an amount up to **EIGHT HUNDRED FIFTY-EIGHT THOUSAND THREE HUNDRED SIXTY-ONE AND 00/100 DOLLARS (\$858,361.00)** to be used for business expansion, attraction, redevelopment, and retention within the corporate limits of the City of Plano.

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City's source of these funds is general revenues derived from collection of property, sales and other taxes, as well as other sources. In consideration of the City of Plano providing and administering funding for in-kind services shown in **Exhibit "B"**, including city employees that are on loan to the Plano Economic Development Board, in the amount of **EIGHT HUNDRED FIFTY-EIGHT THOUSAND THREE HUNDRED SIXTY-ONE AND 00/100 DOLLARS (\$858,361.00)** for the 2008-2009 fiscal year, Board 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 Plano Economic Development Board; Plano Economic Development Board Program of Work FY 08/09, a copy of which is attached hereto and incorporated herein as **Exhibit "A"**; Board's FY 08/09 Proposed Budget Request, a copy of which is attached hereto and incorporated herein as **Exhibit "B"**; General Conditions of Agreement, a copy of which is attached hereto and incorporated herein as **Exhibit "C"**, and an Affidavit of No Prohibited Interest, a copy of which is attached hereto and incorporated herein as **Exhibit "D"**. The documents are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the order in which they are listed above.

**1.03 Designees of Parties.** Whenever used in this Agreement, the terms City, Plano City Manager, and Board shall also include the designees of each of the respective parties.

## **Section II. Permitted Uses of Funds**

**2.01.** Board shall use any and all funds furnished by City under this Agreement for the purposes outlined in **Exhibits "A" and "B"**. City shall be responsible for administering funds provided hereunder.

a. If during the term of this Agreement, the Board wishes to utilize funds for purposes other than stated in **Exhibits "A" and "B"**, such change will only be allowed as follows:

1. Board, as evidenced by the official minutes of the Board authorizing the change, must first approve all changes;

2. The Board shall submit the request for the change to the City Manager, or his designee, for approval. The request for change shall state the reason for and the amount of the change requested.

3. No expenditure of funds contrary to the terms of this Agreement is permitted until written approval is received from the City Manager or his designee.

**2.02** All funds shall be utilized in compliance with the Agreement and attachments hereto. Agreement compliance is defined as:

a. At least 90% of expenses funded by City monies and budgeted in each category of the application must be spent in that category. Notwithstanding the foregoing, funds may be shifted between categories with the approval of the Board and the Plano City Manager or his designee;

b. All other conditions of this Agreement must be met.

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

**2.04** Any City grant funds remaining with Board which are not expended or which are unencumbered on September 30, 2009, will revert to the City general revenues. However, upon the written request of Board and the written approval of City, funds remaining with Board on September 30, 2009, may be retained for use as approved by City.

### **Section III. Obligations of the Parties**

**3.01 General.** City shall loan City employees to Board to be used for those purposes outlined in this agreement, including but not limited to providing administrative functions for Board activities, providing accounting, banking and investment services and acting as the custodian of funds.

**3.02 City Employees.** City shall loan up to five (5) full time employees to Board for the purpose of conducting economic development activities to fulfill Board's obligations to City as specified in this Agreement (hereinafter "Employee(s)" or "City Employee(s)"). The following Employees shall be provided for the purposes specified below:

- a) One of the Employees shall serve as Executive Director of the Plano Economic Development Board;
- b) One Employee shall deal with issues related to businesses currently operating in Plano and in that capacity shall act as the Director of Business Retention and Expansion;
- (c) One Employee shall act as the Director of Technology Marketing and Redevelopment; and
- (d) Two Employees shall serve as an Administrative Assistants and provide clerical and secretarial support for Board and City Employees.

**Section IV.  
Suspension of Services**

Upon thirty (30) days prior written notice to Board, City may temporarily suspend personnel services being provided to Board, either in whole or in part. City may exercise these options without cause and without prejudice to any remedy that City may be entitled to at law, in equity, or otherwise under this Agreement.

**Section V.  
Quarterly Reports to City**

Staff shall present monthly oral reports of Board's activities to the Plano City Manager, who may require staff to present such reports to the Plano City Council. Each report shall contain information regarding the Board's activities for the previous month, including but not limited to, completed and on-going projects of Board, and any other information as requested by the Plano City Council or City staff. In addition the Board shall present an annual progress report outlining the Board's accomplishments over the previous calendar year. City will provide budget reports to Board upon request.

**Section VI.  
Term**

The term of this Agreement shall coincide with the City's fiscal year, October 1, 2008, through September 30, 2009. At the expiration of this Agreement, Board shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including but not limited to the submission of a final report to City.

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

**Section VII.  
Independent Contractor**

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

**Section VIII.  
Disbursement of Funds**

**8.01** Funds provided for under this Agreement shall be disbursed as follows:

a. Recurring items such as office supplies, bills such as telephone, copier, mail, etc., shall be funded as soon as practical after October 1, as provided in this Agreement.

b. Non-recurring expenses such as purchases for capital equipment, travel, etc. shall be funded as soon as practical after the expense occurred as provided in this Agreement.

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

**Section IX.  
Affidavit of No Prohibited Interest**

Board acknowledges and represents it is aware of the laws, City Charter, and City Code of Conduct regarding conflicts of interest. At the time of execution of this Agreement, a duly authorized representative of Board shall execute the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "D"**. By execution, Board acknowledges and accepts that the existence of a prohibited interest at any time during the term of this Agreement will render the Agreement voidable.

**Section X.  
Insurance Requirements/Indemnification**

**10.01 Insurance.** At its own expense, Board agrees to maintain during the term of this Agreement, or any extension thereof, insurance as follows:

a. Commercial General Liability - \$500,000 combined single limit coverage with \$1,000,000 general aggregate covering all premises, contents, and operations and including Personal Injury. The general aggregate limit is to apply per project.

b. The City is to be named as an additional insured in Board's Commercial General Liability policy.

c. A ten (10) day notice of cancellation or nonrenewal in writing shall be furnished by the Board's insurance carrier(s) or insurance agent(s) to the City's Risk Manager.

d. All companies must be authorized to do business in the State of Texas. The City of Plano prefers that all insurance companies be rated "A-VI" by A.M. Best or "A" or better by Standard and Poors.

**10.02 Indemnification.** Board shall release, defend, indemnify and hold harmless City and its officers, agents and employees, other than City Employees, 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 performance of the work or caused by the negligent act or omission of Board, its officers, agents, employees, other than City Employees, subcontractors, licensees, invitees or any other third parties for whom Board is legally responsible (hereinafter "Claims"). Board is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Board in fulfilling its obligation hereunder to defend and indemnify City, unless City expressly waives such right 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 Board's obligation to defend City or as a waiver of Board's obligation to indemnify City pursuant to this Agreement. Board 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 Board fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Board shall be liable for all costs incurred by City.

**Section XI.  
Non-Assignment**

Board shall not assign any interest in this Agreement, whether in whole or part, without the prior written approval of the City Council as reflected by a duly authorized resolution. Any such unapproved assignment shall render this Agreement voidable by City.

**Section XII.  
Termination**

Either party shall have the right to an early termination of this Agreement by giving the other party written notice of intention of such early termination, with such notice to be given in writing sixty (60) days before the desired early termination date. The right to early termination of this Agreement is specifically reserved to both parties. However, such commitments and obligations of Board existing prior to notice of early termination shall be honored and shall not prejudice the right of Board to pay such costs previously incurred and to be paid out of the funds furnished by City. In the event of such early termination, or at the end of the term of this Agreement, Board agrees to return to City the unused balance of any funds previously disbursed to Board by City pursuant to this Agreement within ten (10) days of either event.

In the event Board breaches any of the terms or conditions of this Agreement, whether in whole or part, City shall have the right to immediately terminate this Agreement by providing written notice to Board, notwithstanding any provisions to the

contrary. In the event of termination for breach, Board shall be solely responsible for funds expended contrary to the terms and conditions of this Agreement.

**Section XIII.  
Miscellaneous**

**13.01 Entire Agreement/Amendment.** This Agreement and its attachments embody the entire agreement between the parties and may only be modified, amended or supplemented in writing if executed by both parties.

**13.02 Authorized to Execute/Binding on Board.** The undersigned represents and warrants that he or she is the duly authorized representative of Board and that this Agreement has been approved and accepted by the Board of Trustees (or equivalent) of Board pursuant to Board resolution, a certified copy of which is attached hereto.

**13.03 Binding on the City of Plano.** This Agreement shall not be considered fully executed or binding on the City of Plano until the same shall have been executed by Board, the City Manager or his designate, and the City Secretary, and approved and accepted by the City Council of the City of Plano in open meeting as required by law. After such approval and acceptance, City shall deliver to Board a certified copy of the Resolution as evidence of the authority of the City Manger or his designate to bind the City of Plano to the covenants, terms and provisions of this Agreement and to perform the same in accordance herewith.

The parties agree that they, their officials, successors, legal representatives and administrators are bound to the terms and conditions of this Agreement.

**13.04 Notice.** Notice as required by this Agreement shall be in writing delivered to the parties as follows:

<u>City</u>	<u>Board</u>
Karen Rhodes c/o Budget Department City of Plano P.O. Box 860358 Plano, Texas 75086-0358	Jim Boswell Chairman Plano Economic Development Board 5601 Granite Parkway, Suite 310 Plano, Texas 75024
Telephone: 972/941-7194	Telephone: 972/208-8300
Fax: 972/941-7434	Fax: 972/208-8305

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

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

**13.07 Venue.** In the event of breach of this Agreement, venue for all causes of action shall be instituted and maintained in Collin County, Texas

**IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR SIGNATURES ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.**

**PLANO ECONOMIC DEVELOPMENT BOARD, INC. OF PLANO, TEXAS**

Date: \_\_\_\_\_

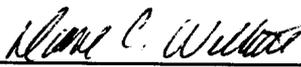
By: \_\_\_\_\_  
Jim Boswell  
CHAIRMAN, PLANO ECONOMIC DEVELOPMENT BOARD

**CITY OF PLANO, TEXAS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas H. Muehlenbeck  
CITY MANAGER

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**ACKNOWLEDGMENTS**

STATE OF TEXAS            )  
  )  
COUNTY OF \_\_\_\_\_ )

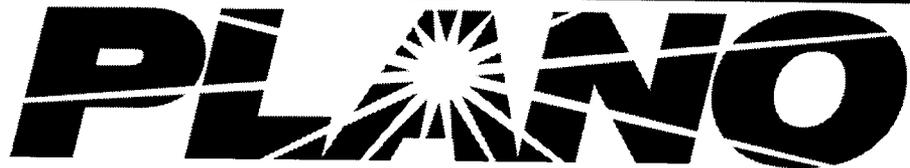
This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Jim Boswell, Chairman of **PLANO ECONOMIC DEVELOPMENT BOARD, INC. OF PLANO, TEXAS**, a Texas non-profit corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS            )  
  )  
COUNTY OF COLLIN        )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of such corporation.

\_\_\_\_\_  
Notary Public, State of Texas



## ECONOMIC DEVELOPMENT BOARD

PROGRAM OF WORK  
FY 08/09

### **The Mission of the Plano Economic Development Board is to:**

- ❑ To identify and recruit businesses which contribute to Plano's economic well being by broadening and diversifying the tax base and creating quality employment opportunities, while maintaining the high quality of life.
  
- ❑ Provide for a vibrant economy through a pro-active business retention and expansion program that encourages Plano companies to grow and expand their presence in Plano.
  
- ❑ Encourage the local economy through a business re-development program that focuses on stimulating new investment in targeted geographic areas.
  
- ❑ Promote a pro-business environment in Plano, in coordination with the City of Plano, Plano Independent School District, Collin County Community College District, Collin County, Plano Chamber of Commerce and other interested parties, through the development of policies and resources that create sustainable competitive advantages.

**PROGRAM OF WORK  
FY 08/09  
ORGANIZATIONAL INITIATIVES**

The organizational outreach and business recruitment efforts of the Plano Economic Development Board will include, but are not limited to, the following initiatives:

- Pro-actively market the comparative advantages of Plano, on a local, national, and international basis, as the optimum city for relocation and expansion.
  - Conduct marketing trips to targeted regions.
  - Run marketing campaigns in targeted regions.
  - Direct print advertising campaigns featuring representatives from the Plano business community.
  - Distribute annual Progress Report, aerials map(s) and other collateral materials.
  - Conduct a campaign to market the community to Site Selectors.
  
- Market the new PEDB website to the business, real estate and site selection communities.
  
- Market and distribute the "Make Plano Your Hometown" CD/video.
  
- Partner with Collin County communities on opportunities to jointly promote the County as an advantageous location for relocations and expansions.
  
- Secure projects that represent 2,000 employment opportunities for the citizens of the community.
  
- Network with key members of the real estate brokerage and development community to promote and reinforce Plano's standing as the optimum city for relocation and expansion.
  - Host events to detail recent developments and opportunities.
  - Present information on the community to regional real estate brokerages.
  - Implement the annual Broker Recognition and Appreciation Event.
  - Leverage corporate intelligence to enable the PEDB to address concerns and pursue opportunities within the existing business community.
  - Attend trade shows/conferences that pertain to corporate real estate, economic development and professional education.
  
- Participate in international business alliance activities and distribute international materials on Plano.
  
- Expand and maintain the Economic Development contact management data base detailing activities, issues, recognitions, correspondence, and project progress of existing and prospective companies.
  
- Collaborate with the Collin County Community College District, University of Texas – Dallas, and Southern Methodist University-in-Legacy on opportunities to improve the skills, training and education of Plano's workforce.

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**PROGRAM OF WORK**  
**FY 08/09**  
**RETENTION AND EXPANSION**

The Business Retention and Expansion program is designed to sustain positive and ongoing relationships with businesses in Plano that promote a vibrant economy, encourage long term business success, and optimize opportunities for expansion and employment growth. These efforts will include, but are not limited to, the following initiatives:

- Conduct 80 Business Retention & Expansion visits with executives of Plano firms to:
  - Determine level of satisfaction with local business climate
  - Involve Plano's leadership in resolution of problems identified through visitation program as appropriate
  - Explore plans for existing business expansion/contraction or lease renewal
  - Determine needs for skills development training and initiate next steps
  - Communicate information gathered with appropriate governmental entities or regional partners
  - Influence commercial occupancy retention rate of 90% or greater
  
- Identify businesses with leases expiring in less than 12 months and develop a communication campaign to influence renewal in Plano. Influence a lease renewal rate of 75% or greater.
  
- Organize "Breakfast with the Mayor" events that invite local executives to express their views and concerns and provide an opportunity to enhance business retention efforts. Host four breakfasts annually based on industry or geographic sectors.
  
- Identify opportunities to facilitate relationships between existing Plano businesses and international business partners to promote global commerce and expanded business opportunities.
  
- Conduct business satisfaction surveys.
  - Goal:
    - Survey 300 business stakeholders
    - Attain a 25% or greater response rate
  - Identify opportunities for business expansions
  - Identify and respond to business issues or concerns
  - Identify trends in business segments
  
- Coordinate annual business appreciation awards to recognize the positive contributions of business and industry in Plano.

**PROGRAM OF WORK**  
**FY 08/09**  
**MARKETING & REDEVELOPMENT**

The technology marketing program of the Plano Economic Development Board will be designed to communicate the advantages of doing business in Plano, and the redevelopment efforts will be tailored to the needs of targeted areas of the community. These initiatives will include, among others, the following:

- Assist in the continued development of the **Research/Technology Crossroads** by both responding to the needs of area developers, real estate professionals and local businesses.
  - Identify at least 15 businesses that could benefit from having a presence in Plano.
  - Recruit and participate in real-estate broker tour of R/T area.
  
- Refine and implement a marketing program and the associated collateral materials designed to encourage relocation or expansion of technology businesses and other desirable employers into targeted areas.
  - Develop a page on the new website dedicated to R/T area.
  - Attend at least three technology trade shows and seek to cultivate four prospects per trade show.
  
- Form R/T Crossroads Cabinet to increase development of the area and its businesses.
  - Facilitate the formation of initial membership structure and the development goals and objectives.
  - Feature Cabinet at a "Mayor's R/T breakfast".
  - Host two informal networking events to identify business-to-business opportunities.
  - Survey existing employers to provide input to organization.
  
- Work closely with the Director, Business Retention & Expansion and participate in at least 12 interviews with executives of eastern Plano firms.
  - Share information of at risk companies.
  - Develop leads of potential suppliers and partners.
  
- Stimulate redevelopment of aging retail sites.
  - Facilitate a Retail Committee to develop strategies to revitalize aging shopping centers.
  - Identify and screen qualified developers and capital partners for potential redevelopment and or adaptive reuse, and connect them with owners of problematic sites.
  - Continue implementing the Buxton study of the intersection of Preston and Park.
  - Attend ICSC events and market to targeted retailers.
  
- Collaborate with existing businesses, developers and academic institutions to develop an interactive media/video game cluster in Plano.
  - Develop marketing collateral for prospective companies.
  - Attend two industry conferences.
  - Form Digital Media Cabinet for Plano companies and academic institutions to meet annually.

- Support City of Plano and its objectives for R/T area.
  - Serve as the PEDB liaison for the Plano Transition & Revitalization Commission.
  - Provide statistics and reports of area trends and developments.

PLANO ECONOMIC DEVELOPMENT BOARD, INC. REQUEST	
BUDGET CATEGORY	08/09 REQUEST
<b>610 Personal Services</b>	
6103 Classified Salaries	\$401,471
6109 Comp Plan Contingency	\$14,398
6113 Longevity	\$2,248
6121 RSP	\$12,566
6122 TMRS	\$56,627
6123 Health Insurance	\$57,647
6125 Life Insurance	\$4,015
6127 Medicare	\$5,916
Long Term Disability	\$321
<b>Sub-Total</b>	<b>\$555,209</b>
6141 Car Allowance	\$4,260
<b>Sub-Total</b>	<b>\$559,469</b>
<b>620 Materials and Supplies</b>	
6201 Office Supplies	\$4,500
6202 Postage	\$1,500
6203 Publications	\$500
6204 Food	\$2,500
6208 Minor Apparatus	\$1,000
6219 Promotional Supplies	\$11,452
6251 Software--Non-Capital	\$1,000
6252 Hardware--Non-Capital	\$1,000
<b>Sub-Total</b>	<b>\$23,452</b>
<b>630 Contractual/Professional</b>	
6303 Communications	\$3,000
6305 Insurance	\$2,800
6306 Advertising	\$154,000
6307 Travel/Professional Dev.	\$29,000
6312 Contracts-Professional	\$11,000
6313 Maintenance Agreements	\$2,600
6342 PC Replacement Charges	\$2,735
6346 Equipment Rentals	\$840
6348 Print Shop	\$0
6353 Leased Space	\$65,740
<b>Sub-Total</b>	<b>\$271,715</b>
<b>640 Sundry</b>	
6443 Associations	\$2,725
6499 Miscellaneous	\$1,000
<b>Sub-Total</b>	<b>\$3,725</b>
<b>Grand Total</b>	<b>\$858,361</b>

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## 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 of the Agreement. Disbursements may cease if reports are not submitted.
- (2) All 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, at City's option.
- (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, and/or recovery of previous payments, disqualification from future participation in grant program offered or sponsored by or through City.
- (5) Programs, activities, employment opportunity, etc. funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religious, 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 American, the State of Texas, and the City of Plano.
- (7) The Contractor shall comply with all Federal, State and Local conflict of interest laws, statues, and regulations, and said laws shall apply to all parties and beneficiaries under this contract as well as to all officers, employees, and agents of City.
- (8) None of the funds, materials, property, or services provided directly under this contract shall be used for any partisan political activity or 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 contracts to be let by the Contractor prior to execution by the Contractor, and to require such terms and conditions as it deems necessary to protect the City's interests to be modified, added, or deleted.
- (10) For a non-profit corporation in existence for more than one (1) year at the time of the execution of this Agreement, Contractor agrees to provide a sworn statement attesting to the fact that the status of the Contractor is currently valid as a non-profit corporation.
- (11) If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- (12) City of Plano will utilize its equipment, materials, and personnel to publish newsletters for Contractor.

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**General Conditions of Agreement**

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**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>		Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Sustainability & Environmental Services			Initials	Date
Department Head	Nancy Nevil		Executive Director	<i>[Signature]</i>	<b>10-8-08</b>
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i>	<b>10/8/08</b>
Agenda Coordinator (include phone #): <b>Tiffany Stephens x4264</b>					

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

**CAPTION**

APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS, AND RECYCLEBANK LLC TO IMPLEMENT AN INCENTIVE BASED RECYCLING PROGRAM TO MUNICIPALITY RESIDENTS; IN THE AMOUNT OF \$36,000.00 FOR THE INITIAL SIX-MONTH TRIAL TERM; FUNDING WILL BE PROVIDED FOR THE INITIAL SIX-MONTH TERM FROM A GRANT FROM NCTCOG; AND AUTHORIZING THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR TO EXECUTE ALL NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

**FINANCIAL SUMMARY**

NOT APPLICABLE     OPERATING EXPENSE     REVENUE     CIP

FISCAL YEAR: <b>08/09</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	36,000	0	<b>36,000</b>
Encumbered/Expended Amount		0	0	<b>0</b>
This Item	0	-36,000	0	<b>-36,000</b>
BALANCE	0	0	0	<b>0</b>

**FUND(S):    GRANT FUNDING (013-795)**

**COMMENTS:** Expenditures for this six month trial period are covered by a NCTCOG grant. The contract may be extended for 5 years if certain target amounts of recycling materials are met and Council approves any subsequent expenditure of funds.

**STRATEGIC PLAN GOAL:** Implementing the RecycleBank Pilot Program relates to the City's Goal of Livable and Sustainable Community: Vital Neighborhoods and Exciting Urban Centers.

**SUMMARY OF ITEM**

This is a trial period for a incentive-based recycling program. The program will install the technology necessary to track the quantity of recycled materials. Residents would receive reward credits based upon the amount of material the resident recycles.

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

## AGREEMENT

THIS AGREEMENT ("*Agreement*") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008 (the "*Effective Date*"), by and between RECYCLEBANK LLC, a Pennsylvania limited liability company having its principal office located at 149 Fifth Avenue, New York, NY 10010 ("*RecycleBank*"), and the City of Plano, in the State of Texas, having its principal executive office located at 1520 Avenue K, Plano, TX 75074 ("*Municipality*"). RecycleBank and the Municipality may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

### **RECITALS:**

WHEREAS, RecycleBank is a marketing and rewards company that encourages consumers and businesses to recycle by offering them reward points that can be redeemed at participating merchants; and

WHEREAS, RecycleBank desires to have Municipality provide RecycleBank's incentive based recycling program (the "Incentive Recycling Program") to Municipality's residents ("Residents") in the Territory (as defined in Section 6 below) on the terms and conditions set forth herein; and

WHEREAS, Municipality would like to offer residents the Incentive Recycling Program and has represented to RecycleBank that it has, and that during the Term (as defined in Section 2 below) hereof it will have, the resources to perform all of its obligations hereunder.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

#### **1. Services and Assets.**

A. Services. RecycleBank agrees to provide Municipality with the Incentive Recycling Program services described in Exhibit A attached hereto and incorporated herein by reference (the "Services") from the Effective Date through the end of the Term.

B. Assets. RecycleBank further agrees to provide Municipality with use of the assets described in Exhibit B attached hereto and incorporated herein by reference (collectively, the "Assets"). All Assets shall be used by Municipality during the Term solely in connection with the Incentive Recycling Program. Municipality agrees to accept the Assets in their "as is" condition. RecycleBank shall deliver the initial Assets to be delivered by it to Municipality at the delivery location(s) and pursuant to the schedule set forth on Exhibit A. The Assets shall at all times remain the sole and exclusive property of RecycleBank, and Municipality shall have no right, title or interest in or to the Assets except as specifically set forth herein. Municipality shall ensure that the Assets are at all times free of liens and encumbrances, and shall ensure that all Assets are used in accordance with all applicable laws in the manner in which they are intended to be used and in accordance with all instructions and warning labels.

C. Disposition of Assets. Unless otherwise agreed to in writing by the parties, immediately following termination of this Agreement for any reason, RecycleBank shall have the right to pick up (at its own cost and expense) from the Municipality and/or its residents all of the Assets, free and clear of all liens, claims and encumbrances and in the same condition as they were provided by RecycleBank to Municipality, ordinary wear and tear excepted. In furtherance of the foregoing, Municipality shall, upon termination of this Agreement, provide RecycleBank with access to Municipality property for the purpose of retrieving the Assets and shall allow RecycleBank to assemble all of the Assets at the location specified in Exhibit B pending pick-up by RecycleBank. Municipality is responsible for, and shall promptly pay to RecycleBank, the replacement costs of any and all lost, stolen, damaged or unreturned Assets.

2. Term. The Initial Term commences as of the Effective Date and continues for a period of six (6) months unless sooner terminated pursuant to the other provisions of this Agreement, by operation of law, or otherwise. The Initial Term may be extended by mutual written agreement of the Parties. The Initial Term will automatically be extended for a period of five (5) years with a full implementation in the City of Plano if the amount of residential recycling increases by a total of 630 tons in the aggregate (the "Target Increase") during the Initial Term (the "Automatic Extension"). For the purposes of determining the increase and the Automatic Extension, Exhibit F lists the routes to be utilized during the Initial Term. The computed average baseline amount of recycling for the Initial Term on the routes listed in Exhibit F is approximately 1,454 tons of residential recycling from approximately 10,000 households. In the event that aggregate amount of recycling increases to 2,084 tons or more (an increase of at least 630 tons of recycling), the Target Increase is achieved and the Automatic Extension provision of this paragraph 2 immediately takes effect. The Parties hereby acknowledge that this Agreement will continue in full force and effect until termination in accordance with its provisions. If the Automatic Extension takes effect, the Parties further acknowledge that the continuation of the Automatic Extension beyond the close of any fiscal year of Municipality (the end date for the Municipality fiscal year is each September 30<sup>th</sup>), shall be subject to approval by Municipality's City Council. In the event that the Municipality's City Council does not approve the appropriation of funds for any ensuing fiscal year, the Agreement shall terminate as of September 30<sup>th</sup> of the fiscal year for which funds were previously approved and appropriated and the parties shall have no further obligations hereunder. All payments due under this contract shall be paid from current revenues of the Municipality.

3. Intentionally Omitted.

4. Municipality Obligations. Municipality agrees, throughout the Term of this Agreement, to comply with, fulfill and operate the Incentive Recycling Program in accordance with all of the terms and conditions of this Agreement, including without limitation the Service Standards described in Exhibit C attached hereto and incorporated herein by reference (the "Service Standards") and the Scope of Supply Standards described in Exhibit D attached hereto and incorporated herein by reference (the "Scope of Supply").

5. Fees. The cost for the Initial Term is \$36,000 (\$.60 per month per household for 10,000 households participating in the Incentive Recycling Program). Thereafter, the cost shall be \$.70 per household. For purposes of this Section 5A, participating in the Incentive Recycling

Program shall mean any Resident that is provided a cart containing an RFID tag and having access to the Incentive Recycling Program at any time during the applicable month.

**6. Confidentiality; Rights in Data.**

A. To the extent allowed by law, each Party shall keep confidential and not disclose to any commercial third party and will not use, except for the purposes of this Agreement, all business, financial, technical, customer, pricing and other proprietary information, and data (including customer data) that it receives or has received from the other Party (“Confidential Information”). Disclosure for the purpose of grant compliance is acceptable. For any information to be deemed “Confidential Information,” the same must be in written form and appropriately marked “CONFIDENTIAL” at the time of disclosure to the receiving party or, alternatively, if the information is disclosed orally, the same must be summarized in writing and marked “CONFIDENTIAL” by the disclosing party within ten (10) days after such disclosure. The responsibility of the City of Plano will be limited to seeking an attorney general opinion as to items that have been marked as “CONFIDENTIAL”.

B. The obligation set forth in Section 6.A does not apply to any materials or information of the types specified above to the extent that a Party can document that such materials or information: (i) are known to the Party prior to the receipt of such materials or information from the other Party; (ii) are in the public domain other than as a result of a breach of this Agreement; (iii) were furnished to a third party by the disclosing party with no restriction on disclosure; or (iv) information which the receiving Party developed independently of any disclosures of such information by the disclosing Party.

C. Each party will own all right, title, and interest, including any copyrights or other intellectual property rights, in and to any data or information that it collects, compiles or creates regarding Residents. As between the parties, the owner of such rights will have the right to use as it wishes any such information, subject to applicable law and its own privacy policy, with no duty to give the other party notice, gain the other party’s consent, account to the other party or share royalties with the other party.

**7. RecycleBank IP.**

A. Grant of License. Municipality acknowledges that RecycleBank owns certain valuable intellectual property used in connection with, relating to, and/or derived from the Incentive Recycling Program. Such intellectual property includes without limitation all of RecycleBank’s sales, marketing, informational and other materials relating to the Program and all copyrights therein, all resident, and other data derived from operation of the Incentive Recycling Program, all RecycleBank know-how, trade secrets, and technology (including the RFID technology and account information used in the RFID Tags) relating to the Program listed on Exhibit G, including without limitation as may be disclosed in RecycleBank’s patent applications or patents and those RecycleBank trademarks, service marks and logos listed and/or depicted on said Exhibit G (said trademarks, service marks and logos and the goodwill associated therewith are referred to collectively herein as the “Marks”). The foregoing is collectively referred to herein as the “RecycleBank IP.” Subject to the terms and conditions of

this Agreement, RecycleBank hereby grants to Municipality a limited, nonexclusive, nontransferable license during the Term to use the RecycleBank IP, including as incorporated in the RFID Tags, within the Territory solely in connection with the promotion and implementation of the Incentive Recycling Program. RecycleBank shall also grant Municipality certain limited rights in resident data, as set forth in Section A.3 of Exhibit A. The parties acknowledge and agree that Exhibit G may from time to time be amended as agreed in writing by the parties, and thereafter said Exhibit G shall be deemed to include all RecycleBank IP then listed and/or depicted thereon. Municipality shall have no right to sublicense any of the RecycleBank IP.

B. Ownership of RecycleBank IP. Municipality acknowledges that RecycleBank is the sole owner of the RecycleBank IP, including as incorporated in the RFID Tags, and Municipality agrees that it will do nothing inconsistent with such ownership. Municipality further agrees that nothing in this Agreement shall give Municipality any right, title or interest in the RecycleBank IP or the RFID Tags other than the right to use them in accordance with this Agreement, and that all use of the RecycleBank IP and RFID Tags by Municipality and all goodwill associated therewith shall inure to the benefit of RecycleBank. Municipality agrees that it will not at any time during the term of this Agreement or after its termination (i) register or use any mark or other term confusingly similar to the Marks, or (ii) challenge the title of RecycleBank to any of the RecycleBank IP.

C. Quality Standards. Municipality agrees that the nature and quality of all services rendered by Municipality in connection with the Marks; all services provided and goods sold by Municipality under the Marks; and all related advertising, promotional and other related uses of the Marks by Municipality (together, the “Uses”) shall conform to quality standards set by and under the control of RecycleBank.

D. Quality Maintenance. Municipality agrees to cooperate with RecycleBank in facilitating RecycleBank’s control of the nature and quality of Municipality’s Uses, and further agrees that RecycleBank shall have the right to request, review, and approve or disapprove copies or samples of all written materials and demonstrations of all other Uses, at any time, and shall be entitled to require that Municipality modify any of the Uses to conform to RecycleBank’s quality standards.

E. Form of Use. Municipality agrees that it will not use the RecycleBank IP or the RFID Tags for any purpose whatsoever, other than as contemplated herein in connection with the Incentive Recycling Program. Municipality further agrees to use the Marks only in the form and manner and with appropriate legends as prescribed from time to time by RecycleBank in accordance with customary trademark practices, and not to use any other trademark or service mark in combination with the Marks without prior written approval of RecycleBank.

F. Infringement Proceedings. Municipality agrees to notify RecycleBank of any unauthorized use by others of the RecycleBank IP, including without limitation the RFID Tags, as soon as such use comes to Municipality’s attention. Municipality shall also forward any evidence it obtains of any unauthorized use to RecycleBank. RecycleBank shall have the

sole right and discretion (but not the obligation) to bring infringement or unfair competition proceedings involving the RecycleBank IP. Municipality agrees to assist RecycleBank with all such proceedings upon request by RecycleBank.

G. No Modification. Municipality agrees and acknowledges that, except as expressly permitted herein, it has no right to, and that it will not (and will not permit any third party to) (i) use, modify, copy, or otherwise reproduce the RecycleBank IP in whole or in part, (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the RecycleBank IP or the RFID Tags, (iii) distribute, sublicense, assign, timeshare, sell, rent, lease, grant a security interest in, or otherwise transfer the RecycleBank IP or the RFID Tags or Municipality's rights hereunder, or (iv) remove any RecycleBank proprietary notices embedded in or placed on the Assets or any Incentive Recycling Program materials, except as expressly provided herein. Any attempted distribution, sublicense, assignment, timesharing, sale, renting, lease, or other transfer the RecycleBank IP or any of Municipality's rights hereunder in breach of the terms of this Agreement shall be null and void and shall be deemed a material breach by Municipality hereunder. Municipality will limit access to the RecycleBank IP to its employees who require such access in connection with the permitted use hereunder and who have agreed in writing to observe Municipality's obligations hereunder.

H. Return of Technology. Immediately following termination of this Agreement for any reason Municipality shall notify RecycleBank if it has any non-attached RFID Tags in its possession, and shall make arrangements for destruction of such RFID Tags or pick up of such RFID Tags by RecycleBank, at RecycleBank's election. RecycleBank, at its discretion can elect to arrange for the removal of affixed RFID tags at the termination of this Agreement.

8. RecycleBank Indemnification. RecycleBank shall defend any action, suit, or proceeding brought against Municipality alleging that the RecycleBank IP infringes any United States patent, trademark or copyright, and RecycleBank shall indemnify and hold Municipality, its officers, directors and employees, harmless against damages finally awarded against Municipality, costs, expenses, and losses (including, without limitation, court costs and reasonable attorneys' fees and expenses) in connection with any such action, suit or proceeding; provided, that (i) Municipality notifies RecycleBank promptly in writing of the claim in question, (ii) RecycleBank has sole control of the defense and all related settlement negotiations, and (iii) Municipality provides RecycleBank with all commercially reasonable assistance, information and authority to perform the above at RecycleBank's expense. In the event that Municipality's use of the RecycleBank IP is enjoined by a court of competent authority, RecycleBank shall, at its sole option and at its expense, either (I) procure for Municipality the right to continue using of the RecycleBank IP, or (II) modify the RecycleBank IP to avoid infringement without material impairment of their functionality. If neither of the foregoing remedies can be obtained upon commercially reasonable terms, this Agreement shall terminate, Municipality shall return the Assets to RecycleBank, and RecycleBank shall refund to Municipality any prepaid rental or service fees. The foregoing indemnity shall not apply to the extent the alleged infringement is attributable to the combination of the RecycleBank IP with products or services not provided by RecycleBank, or to the extent the RecycleBank IP is modified or altered by any person other than RecycleBank or its agents, or if the RecycleBank IP

is used outside the scope of this Agreement (any such combination, modification, alteration, or use is collectively referred to herein as a "Municipality Modification"). THIS SECTION STATES RECYCLEBANK'S SOLE LIABILITY HEREUNDER WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS.

**9. Municipality Indemnification.** To the extent allowed by Texas law and without waiving any immunities or defenses available to it, Municipality agrees to, and hereby does, indemnify, defend and hold RecycleBank its officers, directors, managers, employees, members, and assigns, harmless from and against any and all losses, claims, damages, costs, charges, expenses, liabilities, suits, demands, proceedings and actions, including reasonable attorneys fees and cost of defense, arising out of or relating to: (i) Municipality's use of any of the Assets or Services; (ii) any act or omission of Municipality in connection with the Incentive Recycling Program; (iii) a Municipality Modification as defined in Paragraph 8; or (iv) any breach or violation or any alleged breach or violation of this Agreement and/or any federal, state or local laws, rules or regulations by Municipality. RecycleBank shall promptly notify Municipality when it learns of any such claim. Municipality shall be entitled to control the defense of any such claim, but shall not enter into any settlement without RecycleBank's prior written consent. RecycleBank may engage counsel of its own to join the defense at RecycleBank's cost.

**10. Disclaimer of Warranties.** ALL RIGHTS, GOODS, AND SERVICES PROVIDED BY RECYCLEBANK HEREUNDER ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, REGARDING OR RELATING TO THE INCENTIVE RECYCLING PROGRAM, THE ASSETS OR THE RECYCLEBANK IP OR TO ANY OTHER MATERIALS, GOODS OR SERVICES FURNISHED TO MUNICIPALITY HEREUNDER OR IN CONNECTION HERewith. RECYCLEBANK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE INCENTIVE RECYCLING PROGRAM, WHETHER MADE BY RECYCLEBANK REPRESENTATIVES OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS AGREEMENT, SHALL BE DEEMED TO BE A WARRANTY BY RECYCLEBANK FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF RECYCLEBANK WHATSOEVER. MUNICIPALITY HEREBY ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE INCENTIVE RECYCLING PROGRAM AS APPROPRIATE TO ACHIEVE THE RESULTS INTENDED BY MUNICIPALITY.

**11. Limitation of Remedies and Liabilities.** MUNICIPALITY'S SOLE REMEDY AND RECYCLEBANK'S SOLE OBLIGATION WITH RESPECT TO ANY CLAIMS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT SHALL BE GOVERNED BY THIS AGREEMENT, AND IN ALL CASES MUNICIPALITY'S REMEDY SHALL BE LIMITED TO MONEY DAMAGES NOT EXCEEDING THE UNAMORTIZED PORTION, IF ANY, OF SERVICE FEES PAID TO RECYCLEBANK PRIOR TO THE DATE OF SUCH CLAIM. WITHOUT LIMITING

THE FOREGOING, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL RECYCLEBANK OR ITS SUPPLIERS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE PERFORMANCE OF THIS AGREEMENT ON BEHALF OF RECYCLEBANK, INCLUDING ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SHAREHOLDERS, DIRECTORS, OR SUBCONTRACTORS, BE LIABLE FOR ANY (I) INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY, COVER OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, LOST BUSINESS OPPORTUNITIES, LOST SAVINGS, LOST DATA, LOSSES CAUSED BY DELAY OR THE DOWNTIME OF COMPUTERS OR SERVERS, OR LOSSES FROM INTERRUPTION, TERMINATION, OR FAILED OPERATION OF THE INTERNET OR THIRD-PARTY TELECOMMUNICATION SERVICES, EVEN IF RECYCLEBANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (II) CLAIMS AGAINST MUNICIPALITY BY ANY THIRD PARTY EXCEPT AS PROVIDED IN SECTION 9 ABOVE, OR (III) DAMAGES, INCLUDING PRODUCT LIABILITY DAMAGES, CAUSED BY ANY NON-RECYCLEBANK PRODUCT. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO RECYCLEBANK'S DUTY OF INDEMNIFICATION UNDER SECTION 9 ABOVE.

12. **Insurance.** During the Term of the Contract, both Parties shall procure and maintain, at its own expense for its own benefit the insurance coverage described on attached Exhibit E.

13. **Expenses; Disbursements.** Except as otherwise expressly provided herein, both parties agree to pay all of its own expenses incurred and all disbursements made as a result of complying with the terms and conditions of and performing its obligations under this Agreement.

14. **Force Majeure.** Any delay or inability of RecycleBank in complying with the terms hereof arising from unforeseeable causes or events beyond RecycleBank's control, including, without limitation, Municipality's failure to supply necessary information or assistance, acts of God, acts of public enemy, acts of the government in either sovereign or contractual capacity, terrorism, fires, floods, labor disputes, internet failure, strikes or acts of a third party, shall excuse any resulting or related delay or failure in the performance by RecycleBank. In such event, the date of performance shall be extended for a reasonable period of time following the resolution of the cause of such delay or failure.

15. **Termination.** In addition to other express termination provisions in this Agreement, this Agreement may be terminated as follows:

- A. At any time by mutual written agreement of the parties.
- B. By RecycleBank, immediately upon notice to Municipality, in the event Municipality violates Sections 7 or 8 hereof.
- C. By either Party in the event (i) of a breach of this Agreement by the other Party (the "Breaching Party") that is not cured within ten (10) days for failure to pay fees, or thirty (30) days for other breaches, after delivery of notice of such breach to the Breaching Party, or (ii) that the other Party ceases doing business, is the subject of a voluntary bankruptcy,

insolvency or similar proceeding, is the subject of an involuntary state or federal bankruptcy, insolvency, or similar proceeding that is not dismissed within sixty (60) days of filing, makes an assignment for the benefit of creditors, becomes unable to pay its debts when due, or enters into an agreement with its creditors providing for the extension or composition of debt. Nothing contained herein shall prevent or otherwise limit a Party from obtaining injunctive or other equitable relief pursuant to Section 18 hereof.

D. Termination shall be without prejudice to any rights and obligations of the Parties that have vested prior to the effective date of termination.

**16. Effect of Termination.** Upon termination of this Agreement:

A. Municipality's rights, licenses, and privileges granted under this Agreement shall automatically terminate.

B. Municipality shall promptly pay to RecycleBank any amounts accrued and/or due and owing hereunder.

C. Municipality shall immediately cease using and shall return all Rented Carts, RFID Tags (in accordance with Section 7H), RecycleBank IP and RecycleBank Confidential Information (including customer data) in its possession and all tangible embodiments thereof.

D. Sections 1B, 6, 7B, 8 through 14, 17, 18, 20, 24 through 28 hereof and all provisions herein relating to the confidentiality of customer data will survive termination of this Agreement.

**17. Injunctive Relief.** Municipality understands and agrees that RecycleBank shall suffer irreparable harm in the event that of a breach by Municipality of any obligations under this Agreement and that monetary damages shall be inadequate to compensate RecycleBank for such breach. Accordingly, Municipality agrees that, in the event of a breach or threatened breach of any of the provisions of this Agreement, in addition to and not in limitation of any other rights, remedies or damages available at law or in equity, RecycleBank shall be entitled to a temporary restraining order, preliminary injunction and permanent injunction in order to prevent or restrain any such breach.

**18. Authority.** Each Party hereby represents and warrants to the other that it has full power and authority to enter into this Agreement, and that this Agreement has been duly authorized, executed and delivered by, and constitutes a valid, binding and legally enforceable agreement of, such Party. Concurrently with execution of this Agreement, and as a condition precedent to commencement of the RecycleBank Services hereunder, Municipality shall deliver to RecycleBank an opinion of counsel in form and substance and from counsel acceptable to RecycleBank stating that this Agreement and all of its terms and conditions (i) have been approved and accepted by the appropriate governing body of Municipality and executed by an authorized signatory on behalf of Municipality, (ii) do not violate, and are in accordance with, Municipality's charter, ordinances or other authorizing and governing documents; and (iii) constitute the valid and binding obligations of Municipality enforceable against it in accordance with their terms.

19. **Notices.** All notices, requests, waivers, demands or other communication required hereunder shall be in writing and shall be deemed to have been duly given if delivered by postage prepaid certified or registered air mail, return receipt requested, or sent by telefax and addressed to the proper party as follows:

If to RecycleBank,

RECYCLEBANK LLC  
149 5<sup>th</sup> Avenue  
4<sup>th</sup> Floor  
New York, NY 10010

If sent by telefax to:

(860)-631-8192

If to the Municipality,

City of Plano  
c/o Nancy Nevil, Director  
Department of Sustainability and Environmental Services  
4120 W. Plano Parkway  
Plano, TX 75093

If sent by Fax to:

(972) 769-4243

or such other address as shall be specified from time to time in writing by the Party entitled to receive such notices. Any notice sent by telefax shall be deemed to have been given on the date the fax was dispatched or in case of registered mail, return receipt requested, upon the date appearing on the postal receipt of registration witnessing the receipt of the notice.

20. **No Joint Venture.** Nothing contained herein shall be construed to place the Parties in the relationship of partners or joint venturers or principal and agent or employer and employee, and no Party shall have the power to obligate or bind the other Party in any manner whatsoever.

21. **Successors and Assigns.** Municipality may not assign, sublicense or delegate any of its rights or duties under this Agreement without the prior written consent of RecycleBank. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

22. **Waiver and Modification.** The waiver of a breach of any of the terms hereof or of any default hereunder shall not be deemed a waiver of any subsequent breach or default, whether of the same or similar nature, and shall not in any way affect the other terms hereof. No

waiver, change, alteration, modification or addition to this Agreement shall be effective unless in writing and properly executed by both Parties.

23. **Governing Law.** This Agreement and any disputes relating to this Agreement shall be construed under the laws of the State of Texas. For purposes of any legal action or proceeding arising out of this Agreement, RecycleBank submits and consents to the jurisdiction of the federal and state courts in Texas.

24. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and terminates and supersedes any prior agreement or understanding, oral or written, between the Parties with respect thereto. The Parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of the Agreement or any representations inducing its execution and delivery except those specifically set forth. Each of the Parties acknowledges that such party has relied on its own judgment in entering into the Agreement.

25. **Headings.** The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any of its provisions.

26. **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any right or remedy by either Party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, relevance or otherwise.

27. **Severability.** Should any paragraph or portion thereof of this Agreement be found invalid or unenforceable by any court of competent jurisdiction, it is the intent of the Parties that the validity of the remaining paragraphs of the Agreement shall not be effected thereby.

28. **Omitted. Intentionally Left Blank.**

29. **Counterparts.** This Agreement and any amendments hereto may be executed in several counterparts, and all of such executed documents shall constitute one agreement binding on all the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date above first written.

**CITY OF PLANO, TEXAS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas H. Muehlenbeck  
CITY MANAGER

APPROVED AS TO FORM

  
\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**RECYCLEBANK LLC**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### SERVICES

#### **A. OPERATIONS**

1. Technical training and support
  - Technical training and support for the weighing, identification and data management systems including the wireless data transfer system.
2. Resident support
  - Resident support with respect to the Incentive Recycling Program.
3. Reporting
  - Container management and performance reports
  - Such reports shall include resident-by-resident and route-by-route information regarding participation rates, recycling rates and tonnage collected. All such resident data is owned by RecycleBank and is provided to Municipality under a limited, non-exclusive and non-transferable license during the Term. Municipality shall keep all such data strictly confidential and shall use it for internal purposes only. Municipality shall not be entitled to receive any other resident or other data derived by RecycleBank from the Incentive Recycling Program.
4. Incentive Management and Resident Services
  - Resident and vendor reward fulfillment services and management, including RecycleBank's internet, phone and mail systems.
5. Education and Community Outreach Services
  - Web based material and information on recycling and sustainability
6. Asset Maintenance
  - RecycleBank will provide routine maintenance for serviceable Assets.

#### **B. MARKETING**

1. Local/Regional Vendor Set-up and Relations
  - RecycleBank will consult with Municipality to determine potential vendors, however RecycleBank will be responsible in its discretion for calling on and setting-up all local/regional vendors in the Incentive Recycling Program.
  - RecycleBank will contact and explain reward/redemption program to Vendors and will prepare and execute the required Vendor agreement.
  - RecycleBank will organize and develop Vendor Reward parameters and will work with Vendors on all approvals.

2. National Vendor
  - RecycleBank will utilize existing relations with National Vendors and use reasonable efforts to expand their reward offerings to the Territory.
3. Market Research Information
  - RecycleBank will be responsible for preparing, delivering and reviewing with Municipality and Vendors all applicable market research material.
4. Marketing Material
  - RecycleBank will be responsible for providing all marketing material that will be used by Municipality for any type of media advertising, mailers or general distribution.
  - RecycleBank will provide Municipality with approved artwork and copy for it to use in its marketing material to residents and for the marketing of the Incentive Recycling Program. RecycleBank reserves final approval on all advertising and other materials on which the RecycleBank name, logo or approved artwork is used.
  - Municipality may consult with RecycleBank on specific marketing programs or community outreach ideas, but RecycleBank reserves the right of final approval on any marketing campaign.
5. Training
  - Municipality will make available all necessary personnel, programs and materials for properly training designated Municipality personnel on the RecycleBank program.
6. Reward Redemption/Rewards Fulfillment
  - RecycleBank will maintain a Customer Service Department to answer resident queries relating to the Incentive Recycling Program.

**C. RECYCLEBANK MSA RECYCLING PROGRAM**

1. The identified MRF for the RecycleBank pilot implementation is the AWS Plano Facility, as this is the facility currently holding the contract with the City of Plano.
2. The AWS Plano MRF will accept the material in a commercially reasonable and competitive manner.
3. The AWS Plano MRF will be outfitted with the necessary equipment to receive the resident download information from Municipality's or its subcontractors' recycling trucks. This equipment will be provided by RecycleBank.
4. The AWS Plano MRF will be responsible for facilitating the automatic upload of resident information to RecycleBank at the end of each working day or completion of a route.

5. The AWS Plano MRF will be responsible for reporting any MRF equipment malfunctions to RecycleBank.
6. The AWS Plano MRF will provide RecycleBank information on recycled loads, by route, including loads that are contaminated, based on their normal acceptance criteria.

## **EXHIBIT B**

### **ASSETS**

#### **A. DESCRIPTION OF ASSETS**

1. RFID Tags, containing proprietary RecycleBank technology and account information, that are affixed to Carts (the "RFID Tags").
2. Community Based Weigh System "CBWS" Truck Technology to read, record, and transmit collection data (one unit per 3,500 homes).
3. MRF/scale house Technology to read and automatically transmit truck data to RecycleBank for processing

#### **DELIVERY LOCATIONS**

#### **DELIVERY SCHEDULE**

## EXHIBIT C

### MUNICIPALITY SERVICE STANDARDS

#### 1. Data Transfer

- Municipality must run a **daily** diagnostic test on all Program equipment, pre and post trip, and forward results to RecycleBank via e-mail daily.
- Municipality must report all equipment problems (truck, data readers, scanners, etc.) to RecycleBank via e-mail at the end of each working day (immediately) and must dispatch spare equipment to finish remaining route.

#### 2. Training

- Municipality will provide all equipment and facilities necessary for all employees to be properly trained in the use of Incentive Based Recycling equipment, including the Community Based Weigh System "CBWS"
- All drivers/helpers will be trained on the CBWS system
- Scale house operators, drivers and appropriate Municipality employees will be trained on data transfer equipment.
- Maintenance staff will be fully trained on all preventative maintenance, diagnostics and repair of CBWS system
- Municipality will support RecycleBank's provision of quarterly training updates and re-training, as needed.

## EXHIBIT D

### SCOPE OF SUPPLY STANDARDS

#### 1. Material Processing

- Municipality will deliver all recycling material that results from the Incentive Recycling Program to a RecycleBank licensed MRF in the Territory or, in the absence of a licensed facility, RecycleBank will negotiate and secure an agreement with a designated local MRF for use by Municipality in the Territory. In either case, this will be a full “single stream” commodity acceptance MRF that will provide processing on a commercially reasonable and competitive basis. Municipality will use only the MRF licensed or designated by RecycleBank.

#### 2. Equipment

- Municipality is required to have necessary back-up and support equipment to accommodate any downtime or repair time to support the Incentive Recycling Program Service Standards, which shall in no event be less than a back-up inventory equal to 15% of equipment necessary for meeting the Incentive Recycling Program Service Standards. Per request, RecycleBank will retrofit two (2) additional trucks for a total of five (5) trucks for the Pilot program.

**EXHIBIT E**

**INSURANCE**

RecycleBank shall maintain, at its own expense, with an insurer having a Best's rating of A or better, a commercial general liability insurance policy providing at least One Million U.S. Dollars (US \$1,000,000) of coverage (including coverage for products liability), and an excess liability insurance policy providing an annual aggregate of Three Million U.S. Dollars (US \$3,000,000) insuring against events involving the Incentive Recycling Program (collectively, the "Required Policy"). The Required Policy must be written on either an occurrence basis or on a claims-made basis. The Required Policy shall provide for at least thirty (30) days' prior written notice to RecycleBank of the cancellation or any substantial modification thereof (including, without limitation, any reduction of the aggregate limit of coverage).

The City of Plano, under the laws of Texas, is a self-insured entity. The City of Plano will be responsible for any loss that they become legally liable for up to the limits specified under Texas law.

**EXHIBIT F**

**TERRITORY**

During the Initial Term, the Incentive Recycling Program will be deployed in 10 existing recycling routes to approximately 10,000 households. The deployment routes and their corresponding estimated yearly tons of recycling are as follow:

Route	Tons/Yr
<b>W3442</b>	343
<b>R3552</b>	284
<b>T3261</b>	210
<b>M3362</b>	238
<b>R3151</b>	303
<b>W3452</b>	379
<b>R3562</b>	307
<b>T3251</b>	254
<b>M3352</b>	291
<b>R3171</b>	299

## EXHIBIT G

### RECYCLEBANK IP

#### A. MARKS

1. Trademark Serial No. 78/509,350
2. Trademark Serial No. 78/509,329

#### B. OTHER IP

1. Patent App. No. 11/345,867 – Method and System of Improving Recycling through the Use of Financial Incentives
2. Provisional Patent App. No. 60/825,383 – Method and System for Managing an Entity
3. Provisional Patent App. No 60/892.650 – Method and System of a recycling system comprising a plurality of sub-systems
4. Provisional Patent App. No 60/892,849 - Method of recycling comprising picking up carts, disposing recyclable goods at a recycling center, validating data regarding recyclable goods, importing data into management software, generating reports, and providing e-commerce rewards
5. Provisional Patent App. No 60/892,852 - Embodiments of the present invention generally relate to recycling system and method thereof. In one embodiment, the cart is provided with RFID, such that information regarding the cart (e.g., address, ownership, condition; etc.) can be retrieved. The RFID may be any RFID device suitable for embodiments of the present invention
6. RecycleBank Envirostrong Software - This application converts residential recycling activity (pounds and participation) into reward credits. It is a web-based application that manages each residential account, allows residential users to access their account, redeem rewards, and interact with RecycleBank Customer Service Department
7. Provisional Patent App. No 60/954,851- Multi-family dwellings generally have central facilities where residents bring their recyclables to a common collection bin. In accordance with one embodiment of the present invention, a recycling kiosk provides a location-based rewards model where participants share a common collection container



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Purchasing	Initials	Date		
Department Head	Mike Ryan	Executive Director			
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	<i>10/13/08</i>	
Agenda Coordinator (include phone #):		<b>Zahid Khan X7376</b>			

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

**CAPTION**

An amendment to a professional services agreement between The City of Plano and RCC Consultants, Inc., in the additional amount of \$63,685 through an existing contract/agreement 2008-157-I with RCC Consultant for police and fire data system replacement and upgrade project; authorizing the City Manager or his designee to execute all necessary documents.

**FINANCIAL SUMMARY**

NOT APPLICABLE     OPERATING EXPENSE     REVENUE     CIP

FISCAL YEAR: <b>2008-2009</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	475,250	13,299,801	10,000,000	<b>23,775,051</b>
Encumbered/Expended Amount	-475,250	-161,264	0	<b>-636,5140</b>
This Item	0	-63,685	0	<b>-63,685</b>
BALANCE	0	13,074,852	10,000,000	<b>23,074,852</b>

**FUND(S):    TECHNOLOGY IMPROVMENTS (CO'S/ TAX NOTES**

**COMMENTS:** Funds will be provided by the 2008 sale of Certificates of Obligation/Tax Notes. This item, in the amount of 505,383, will leave a current year allocation of \$6,994,617 for the Radio System Infrastructure Replacement project.

**SUMMARY OF ITEM**

The city is currently under contract with RCC Consultants for Radio System Replacement and Upgrade in the amount of \$505,383. The City has identified additional need in the amount of \$63,685 will allow to replace police and fire data system procurement assistance.

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

## 1

# Scope of Work

## Workplan & Methodology

This section of our proposal provides our proposed workplan and methodology that will be utilized to successfully complete the project.

As requested by the City, the scope of work in this proposal addresses only Phase II in order to identify the requirements, develop an RFP, evaluate and assist in selection and negotiations with the selected vendor for a new mobile data solution. At the conclusion of Phase II, following selection of the vendor, RCC would be pleased to discuss options to provide support for the subsequent implementation phase.

The individual tasks will be the same for the City of Plano baseline proposal, as well as for the options including the Cities of Allen and Wylie. The level of effort will increase slightly for each selected option as shown in the pricing section of this proposal.

Although RCC is identifying a specific approach and scope of work, RCC is flexible and prepared to modify the scope of work, if needed, to help ensure that it meets the City's needs & requirements.

Prior to executing a Consulting Services Contract for the project, RCC personnel will work with the City's project team to make any final adjustments in the scope of work that may be required by the City.

RCC has developed a number of project tools that will be utilized throughout the project to monitor and track project progress, support engineering analysis of various alternatives, and to provide robust communications between RCC and authorized members of the City's project team as the project progresses.

## Phase II Workplan—RFP, Proposal Evaluation, & Contract Negotiation

### Task 1 – Phase II Initiation & Orientation

The purpose of Task 1 is to review baseline materials and gather any additional information that may be required in order to begin development of the respective procurement documents. Included in this task is a one day requirements review meeting with each of the respective cities included in the project to collect site-specific information and parameters.

### Task 2 – Develop Requests for Proposals (RFPs)

RCC will work with the City's project team to develop a Request for Proposals for the new mobile data system. The RFP will identify the requirements of a public safety grade data network that will work in conjunction with the existing data systems. Performance requirements will be finalized and the RFP will be structured to enable vendors to submit their most appropriate technology and system configuration.

The RFP will be the basis upon which each vendor's proposal will be evaluated. Each vendor will be required to respond to all sections of the RFP, and include, where applicable, which features and capabilities are optional and at what cost. A detailed evaluation matrix will be developed to allow proposal evaluators to effectively determine which proposals best meet the specified requirements.

The City may want to consider requiring the vendors to submit their cost information separately to enable the project team to evaluate the technical responsiveness apart from proposed costs. This approach may help improve objectivity during the vendor evaluations.

The RFP will address specific technical and procedural areas, as well as support areas such as training and maintenance. These areas will include:

- RFP response procedures
- System functional & operational requirements
- System performance requirements
- System reliability and redundancy requirements
- Expandability of the proposed systems to accommodate future growth
- Optional capabilities & equipment
- Maintenance options & local support
- System/vendor information & qualifications
- System installation & acceptance testing requirements
- Training requirements

Upon completion of the initial draft RFP, RCC will submit it to the City's project team for review and discussions. Once all comments have been received, a single cycle of feedback and suggestions from the project team will be incorporated into the final document. RCC will then finalize the RFP and provide it to the City for issuance to the vendor community. RCC will identify a list of qualified vendors that could potentially respond to the RFP.

### **Task 3 – Attend & Assist the City Team in Conducting the Pre-Proposal Conference**

Within a reasonable period (typically two to three weeks) after the solicitation for proposals has been released, a single pre-proposal conference shall be conducted in the City of Plano to ensure that potential proposers understand and can respond to the RFP specifications. RCC will coordinate the scheduling of the pre-proposal conference and assist the City's project team in answering vendor questions about the project. In addition, RCC will assist in the response to vendor questions and issuance of amendments following the proposers' conference.

### **Task 4 – Conduct Initial Evaluation of Proposals**

RCC will assist the City's project team in analyzing and evaluating proposals received by the City in response to the RFP.

Typically, approximately four weeks of time are needed for RCC to evaluate the vendor proposals. RCC has included in its cost estimate the evaluation of a maximum of three (3) mobile data system proposals.

The methodology employed by RCC for the evaluation of proposals will include the utilization of a detailed evaluation matrix constructed from the RFP document(s) and designed to indicate the degree of conformance or nonconformance of each proposer's submittal.

The result of the initial evaluations is a preliminary evaluation matrix that may include questions for the vendors, a preliminary ranking of each evaluated vendor's proposal and a tentative set of findings that will be refined as the evaluation process proceeds.

#### **Task 5 – Attend Vendor Oral Presentations**

RCC personnel will attend the vendor oral presentations in the City of Plano to assist the City's project team in understanding each vendor's offering. RCC will also prepare a list of questions as may be required to clarify certain issues not fully explained in the proposals.

For the purposes of RCC's cost proposal, we have proposed one-half day per vendor on-site in the City of Plano to attend oral presentations by responding vendors. (Two days total)

The City may elect to make site visits to a selected number of vendor project sites at which they have installed systems of a nature and size comparable to the City of Plano. Since it is unknown at this time whether the City will undertake such site visits, RCC's cost proposal does not include time and expenses for these trips. In the event that the City decides to conduct site visits and would like RCC personnel to travel with the City team to those locations, RCC will provide that assistance at the hourly rates provided in our cost proposal. Travel expenses would be billed accordingly.

#### **Task 6 – Prepare & Present Evaluation Report**

Upon conclusion of the vendor presentations, RCC will prepare the final evaluation results including findings and recommendations. The results will be forwarded to the Project Team. RCC personnel will work with the Project Team to discuss the findings and recommendations.

#### **Task 7 – FCC Licensing Assistance**

RCC will assist the City in 700 MHz frequency coordination and preparation of FCC licensing applications/waivers to make use of the new 700 MHz spectrum for data. All frequency coordination and licensing fees are to be paid by the City. RCC has proposed up to 40 hours of licensing assistance. If additional time is needed, the City may request additional support at additional cost.

#### **Task 8 – Contract Negotiations**

##### **➤ Assist in Developing Contract Negotiation Strategies**

RCC will help ensure that the City of Plano receives favorable price consideration for the procured system and, perhaps as important, business and operational terms that will help foster a timely and responsive completion of the installation and system acceptance processes. Some of the more important tasks associated with the negotiation process follow.

◆ **Assist the City of Plano in Contract Negotiations**

RCC will assist the City of Plano in direct contract negotiations with the selected vendor. A negotiating team composed of the project team and other officials designated by the City will work with RCC during negotiations. RCC does not provide legal services, therefore, the City's attorney should also review proposed contract documents.

◆ **Statement of Work (SOW)**

Development of a comprehensive Statement of Work (SOW) is an integral part of contract negotiations for acquisition of the systems. The SOW defines the responsibilities of both the vendor(s) and the City in system implementation and acceptance testing. Further, the SOW process will further define finite number of system parameters which will directly affect the final contract price. RCC will assist the City in reviewing and developing the SOW and negotiating the impact on final contract price due to changes sought by the City and/or the Project Team during the process.

◆ **Establish appropriate Acceptance Test Parameters for the system**

RCC will work with the City team to develop a stringent acceptance testing program prior to execution of a contract. Acceptance test criteria include coverage, throughput and reliability. System providers are more likely to agree to such performance requirements before a contract for the new systems is executed. The negotiation of testing requirements and pass/fail criteria becomes much more difficult after the contract is signed.

For the purposes of RCC's cost proposal, we have proposed to provide 40 hours of contract negotiation assistance for the mobile data system, with two days (16 Hours) on site. In the event that additional contract negotiation assistance is needed by the City, RCC can provide the additional services at the hourly rates quoted in our cost proposal. The amount of time we have proposed is representative of other projects of similar size and scope.

## Section

**2****Cost Proposal****Professional Fees & Out-of-Pocket Expenses**

Our cost proposals are based upon the amount of time and level of skill required to successfully complete the proposed scope of work. Our professional fees & expenses have been segmented into three project phases in accordance with the project workplan. The cost proposal has been based on the following assumptions:

- Professional fees are based on the scope of the project defined in this document, and may be adjusted if the scope of work is modified or the project schedule is extended for reasons beyond RCC's control.
- Hourly rates for professional fees beyond the scope of work outlined in this proposal will be based on RCC standard rates in effect at the time the work is done. Additional expenses accrued as part of the additional work would also be billed.
- Invoices will be issued to the City monthly based on the work performed during that month.
- Invoices are due within thirty (30) days. Payments not paid within 30 days may be assessed a late fee of 1.5% per month.
- Actual out-of-pocket expenses will be in addition to professional fees and will be billed at actual plus an administrative fee of 15% to cover miscellaneous reimbursable expenses. Out-of-pocket expenses may include travel and per diem, telephone, printing, copying, and shipping. RCC will utilize its corporate discounts whenever possible and will make every effort to ensure that such expenses are reasonable and necessary.
- To help be responsive to the City's needs, RCC may move fees and expenses between project tasks as long as the total amount billed to the City does not exceed the contract amount for fees and expenses.
- RCC reserves the right to reassign staff as needed, with the approval of the agency. Such approval will not be unreasonably withheld.
- The fees and rates contained herein shall remain valid for 90 days from the date of this proposal.
- Additional terms and conditions are subject to RCC Consultant's Services agreement.

A breakdown of Professional Fees has been provided in the following pages.

**Phase II – RFP, Proposal Evaluations, Negotiations for the City of Plano**



June 20, 2008

RCC CONSULTANTS, INC. TECHNICAL SERVICES CONTRACT  
 Data System Procurement Assistance  
 City of Plano, TX  
 Phase II Procurement

Direct Engineering Expenses			
	Hours	Rate	Subtotal
Vice President General Manager	16	\$ 250.00	\$ 4,000.00
Director	128	\$ 200.00	\$ 25,600.00
Senior Consultant	120	\$ 165.00	\$ 19,800.00
Director	16	\$ 200.00	\$ 3,200.00
Senior Consultant	40	\$ 165.00	\$ 6,600.00
		\$ 165.00	\$ -
Total			\$ 59,200.00
			\$ 59,200.00

Travel and Per Diem Expenses		
	Rate	Subtotal
4 Round Trip Airline Fares #1 @	\$ 600.00	\$ 2,400.00
Round Trip Airline Fares #2 @	\$ 250.00	
6 Man. Days per Diem @	\$ 150.00	\$ 900.00
6 Days Rental Vehicle @	\$ 100.00	\$ 600.00
Miles @	\$ 0.51	
Total		\$ 3,900.00
		\$ 3,900.00
General and Administrative Fee	15%	\$ 585.00
		\$ 585.00
Miscellaneous Expenses		\$ -
		\$ -
Total		\$ 63,685.00
		\$ 63,685.00

4-7



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering	Initials	Date	
Department Head	Alan D. Upchurch	Executive Director	<i>[Signature]</i>	10/7/08
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	10/2/08
Agenda Coordinator (include phone #):		Irene Pegues X-7198 <i>[Signature]</i>	Project #4704-1	
<b>ACTION REQUESTED:</b> <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 – RATIFICATION OF SUBDIVISION IMPROVEMENT AGREEMENT				
<b>CAPTION</b>				
To ratify the terms and conditions of a Subdivision Improvement Agreement by and between the City of Plano, Texas, and UDR Developers, Inc., for oversize participation in Ridgeview Drive both east and west of Coit Road.				
<b>FINANCIAL SUMMARY</b>				
<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
<b>BALANCE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>FUND(S):</b>				
<b>COMMENTS:</b>				
STRATEGIC PLAN GOAL:				
<b>SUMMARY OF ITEM</b>				
The ratification of this Subdivision Improvement Agreement authorizes the City to reimburse the developer, UDR Developers, Inc., for the oversize off-site paving improvements from Coit Road west 200' upon acceptance of the improvements. The agreement also provides for the typical oversize reimbursement abutting the developer's frontage east of Coit Road in accordance with the Subdivision Ordinance. The Subdivision Improvement Agreement was originally executed in 2005, but due to a clerical error was not submitted to Council for approval at that time.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Subdivision Improvement Agreement Location Map		n/a		

**SUBDIVISION IMPROVEMENT AGREEMENT**  
**(OVERSIZE IMPROVEMENTS)**  
**(PARK IMPROVEMENTS)**

**THIS AGREEMENT** is made and entered into as of the **18th** day of **August, 2005**, by and between the **CITY OF PLANO, TEXAS**, a Home Rule Municipal Corporation (the "City") and **UDR Developers, Inc.**, a **Virginia corporation** (the "Developer"), in the estimated oversize participation amount of **NINETY-NINE THOUSAND ONE HUNDRED SIXTEEN DOLLARS AND FORTY-SEVEN CENTS (\$99,116.47)**, which is comprised of both onsite and offsite oversize participation, each as shown on Exhibit "A" attached hereto and made a part hereof, and in the estimated park improvement reimbursement amount of **NO DOLLARS AND NO CENTS (\$0.00)** as shown on Exhibit "B" attached hereto and made a part thereof, and in the estimated park land amount of **NO DOLLARS AND NO CENTS (\$0.00)**.

**WHEREAS**, the Developer is the developer of a certain proposed subdivision called **Coit Ridgeview Apartments**, located in the City of Plano, **Collin County, Texas** (called "Subdivision"); and

**WHEREAS**, among other reasons, the parties have entered into this Agreement for the purpose of eliminating and avoiding the harmful effects of premature subdivision which leaves property undeveloped and unproductive, and to ensure the completion of public improvements regardless of whether Developer improves or sells any lots within the Subdivision; and

**WHEREAS**, the benefits of this Agreement inure solely to the City and the Developer, not to any third parties such as lot purchasers, subcontractors, laborers, and suppliers.

**NOW, THEREFORE**, for and in consideration of **ONE DOLLAR (\$1.00)** and other good and valuable consideration, including without limitation the approval by the City of the final plat of the Subdivision, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## ARTICLE I. OBLIGATION TO COMPLETE PUBLIC IMPROVEMENTS

### 1.01. Classes of Improvements

This Agreement calls for the completion by Developer of public improvements certain of which the City will reimburse the Developer for a portion of the costs as provided in Section 3.02 of this Agreement called "Oversize Improvements" (those public improvements for which the City will reimburse the Developer for a portion of the costs, except for park improvements). Those public improvements for which there will be no reimbursement are called "Basic Improvements." The cost reimbursements for "Oversize Improvements" are described in Exhibit "A". The Public Improvements to be made to park land are called "Park Improvements". The amount of the reimbursement for the Park Improvements is set forth on Exhibit "B" attached hereto and made a part hereof. Park Improvement reimbursement is governed by Section 3.03 of this Agreement. The Oversize Improvements, Basic Improvements and Park Improvements are called the "Public Improvements." The Public Improvements are set forth on Exhibit "C" attached hereto and made a part hereof.

### 1.02. Duty to Construct

Developer shall construct or cause to be constructed the Public Improvements in accordance with the City's Standard Specifications for Public Works Construction, which are made a part hereof by reference ("Standard Specifications"), and Developer's Engineering Plans approved by the City on **July 25, 2005**, which are made a part hereof by reference ("Engineering Plans"). Developer shall commence construction of the Public Improvements no later than **November 18, 2005**, and shall complete the construction of the Public Improvements on or before **August 18, 2006** as set forth above even if it does not begin such construction of private improvements or sell any of such lots. The completion date may be extended by the mutual agreement of the parties hereto.

### 1.03 Agreed Benefit

Developer agrees that the Public Improvements to be constructed in accordance with this Agreement substantially advances a legitimate governmental interest in providing improved access to new development and expanding infrastructure capacity to accommodate new development. Developer also agrees that Developer's share of the cost of the Public Improvements to be constructed under this Agreement is fair and equitable and is roughly proportional to the impact that Developer's Subdivision will have on the City's roadways and other infrastructure. **Developer further agrees to release, indemnify and hold the City, its officers, officials, agents and employees harmless from and against any constitutional, statutory or common law claims or lawsuits Developer may now have or may accrue in the future related to or arising out of this Agreement or the Public Improvements to be constructed pursuant to this Agreement.**

## ARTICLE II. WARRANTIES

### **2.01. Warranty Against Defects**

Developer expressly warrants that the Public Improvements shall be constructed in substantial compliance with the Standard Specifications and Engineering Plans and free from all defects. Developer shall indemnify the City from all expenses and liability incurred by the City as a direct and proximate cause of such defects. This warranty and indemnity shall extend for a period of one (1) year after the acceptance of the dedication of the Oversize Improvements, or if such Public Improvements are accepted separately, one (1) year after acceptance of the dedication of the last completed Public Improvement.

### **2.02. Remedy of Defects**

The Developer shall remedy and repair all defects within twenty (20) days of written notice to Developer from the City that the defect exists. If the defect is of the type that will require additional time in which to remedy, the Developer shall specify in writing to the City within said twenty (20) day period the particular reasons why such repairs cannot be completed in said twenty (20) day period. If, in the City's reasonable opinion, such reasons for delay are justified, the City may grant the Developer additional time. However, in such event the Developer must have commenced the repair work within said twenty (20) day period and continue diligently to complete the repair work. If the City grants additional time, such extension shall be in writing and shall be for a specified period of time which shall be reasonable considering all circumstances.

### **2.03. Failure of Developer to Remedy Defect**

If the Developer fails to meet its warranty obligation, it shall be considered in default and the City, at its option, may:

- (a) Contract with another party for the repair work;
- (b) Complete the repair work with its own crews;
- (c) Contract with another party for the repair work and immediately draw down on the letter of credit or cash escrow for the amount of such repair work;
- (d) Complete the repair work with its own crews, and immediately draw down on the letter of credit or cash escrow for such costs; or
- (e) In the case where the security is a performance or maintenance bond, require that the Surety complete the repair work.

In any cases where the City decides to complete the contract with another party to complete any such work, the City shall do so in a reasonable manner and shall use its reasonable efforts to complete or contract to complete such work.

Additionally, the Developer shall be liable to the City for reimbursement of all actual costs expended by the City as a direct result of completing the repair work if such costs were not obtained by drawing down on the letter of credit or cash escrow or if, in the case of a performance or maintenance bond, the Surety fails to complete the repair work.

In a case where the security is a performance or maintenance bond, if the Surety fails to remedy the defect within thirty (30) days written notice from the City, then the City will be entitled to complete the repair work in accordance with Subsections (a) and (b) above and in such event the Surety, Principal and Developer shall be liable to the City for the actual costs to repair such defects.

### **ARTICLE III. OVERSIZE AND PARK IMPROVEMENTS**

#### **3.01. Contracting Requirements**

Before awarding a construction contract for the Oversize Improvements and Park Improvements, the Developer shall submit to the City the total bid for the Oversize Improvements and Park Improvements plus unit price bids. If, in the City's sole opinion, the bid amounts exceed prices normally bid for such Oversize Improvements and Park Improvements, the City may require the Developer to seek additional bids. It is understood that when requesting bids, the Developer must require bidders to separate their bid into unit prices. If, in the City's sole opinion, the bid is not sufficiently detailed, the City may require that the Developer have the bidder revise its bid to add such details. Before the Developer enters into a construction contract which includes Oversize Improvements and/or Park Improvements, all construction documents shall be submitted to the City for its approval, which approval shall not be unreasonably withheld. The construction contract documents shall provide that the City is a third party beneficiary by containing the following language:

"It is hereby agreed that this contract shall be incorporated and made a part of that certain Subdivision Improvement Agreement between the City of Plano and **UDR Developers, Inc.** ("Developer"), **Contract No. 4704-1A** (the "Subdivision Improvement Agreement"), which Subdivision Improvement Agreement is incorporated herein by reference. The Contractor agrees that the City of Plano shall be a third party beneficiary under this Agreement with regard to the construction of those portions of the work constituting Oversize Improvements as defined in said Subdivision Improvement Agreement. With regard to the Oversize Improvements and Park Improvements described in the Subdivision Improvement Agreement, the Contractor shall provide the same services to the City of Plano that are being provided by the Contractor to the

Developer under this Agreement. The Contractor agrees that the City will not be responsible for any of its fees or other monies due under this Agreement, but that it will look solely to the Developer for payment of any such monies or fees."

Once such construction documents are approved by the City, the Developer will not amend or change them without prior approval by the City, which approval shall not be unreasonably withheld.

### **3.02. Oversize Cost Reimbursement**

Unlike the situation covered by the typical Subdivision Improvement Agreement, the Developer is agreeing to construct certain Oversize Improvements which are not located adjacent to property owned by the Developer, and the City is agreeing to reimburse Developer for a portion of the costs of such Oversize Improvements on the basis described in this paragraph, rather than as provided in Article VI of the City's Subdivision Ordinance. Exhibit "A" hereto identifies two separate categories of cost participation by the City in Oversize Improvements: The "Offsite Portion" and the Onsite Portion". Notwithstanding anything to the contrary contained in this Agreement, the City agrees to reimburse Developer for the Offsite Portion of the Oversize Improvements within sixty (60) days following the City's approval and acceptance of the Offsite Improvements.

If the Developer completes the Oversize Improvements as provided in this Agreement and they are accepted by the City, which acceptance shall not be unreasonably withheld, the City will reimburse the Developer for the Onsite Portion of the costs of the Oversize Improvements ("Oversize Costs"), as provided in Article VI of the City's Subdivision Ordinance No. 98-9-5 as amended (the "Subdivision Ordinance"). The amount, manner and time of reimbursement shall be strictly governed by this Subdivision Ordinance. Developer's obligation to construct and complete the Oversize Improvements is independent of and in no way conditioned upon the City's reimbursement of such Oversize Costs. The term "costs of the Oversize Improvements" includes actual costs of construction of the Oversize Improvements in accordance with the Standard Specifications and Engineering Plans and the construction contract approved in advance by the City, and includes engineering fees not to exceed six (6) percent of such costs. The costs of Oversize Improvements specifically excludes costs to acquire right-of-way, real property, or other incidental costs. The term "Oversize Costs" is defined as that portion of the costs of improvements that are to be reimbursed by the City in accordance with the provisions of the Subdivision Ordinance.

### **3.03. Park Cost Reimbursement**

The City will only reimburse for those park costs that are eligible for reimbursement (the "Reimbursable Park Costs") as provided for in the Administrative Guidelines. Developer will dedicate to the City the Park Improvements and the

"Parkland" on which the Park Improvements will be made. The Parkland consists of 0 acres of land, 0 acres of which are "non-flood plain land" and 0 acres of which are either flood plain land, land located within utility easements, or unusable non-flood plain land. Pursuant to the Administrative Guidelines, the non-flood plain land will be reimbursed at **THIRTY-FIVE THOUSAND AND NO/100 DOLLARS (\$35,000.00)** per acre while other categories of land shall be reimbursed at **FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00)** per acre. Therefore, the total amount of reimbursement for Parkland provided for in this Agreement is **NO DOLLARS AND NO CENTS (\$0.00)**.

When the developer completes the Park Improvements as provided in this Agreement and they are accepted by the City, which acceptance shall not be unreasonably withheld, the City will reimburse the Developer for the Reimbursable Park Improvements and for the cost of the Parkland in the manner provided for in the "Plano Park and Recreation Fee Article" being Article XII of Chapter 16 of the City of Plano Code of Ordinances (the "Park Fee Ordinance") and the Administrative Guidelines. In the event that the Park Fee Ordinance conflicts with the Administrative Guidelines, the Park Fee Ordinance shall control. The amount, manner, and time of reimbursement shall be strictly governed by the Park Fee Ordinance and the Administrative Guidelines. The Developer's obligation to construct and complete the Park Improvements is independent of and in no way conditioned upon the City's reimbursement of the costs of the Reimbursable Park Improvements and the costs of the Parkland. Unless otherwise provided for in the Park Fee Ordinance and Guidelines, the term "Costs" includes actual costs of construction of the Standard Park Improvements in accordance with the Standard Specifications and Engineering Plans and the construction contract approved in advance by the City, and includes engineering fees not to exceed six percent (6%) of such costs. The term "Costs" specifically excludes any incidental costs.

Notwithstanding anything contained in this Agreement or the Subdivision Ordinance, the Park Fee Ordinance or the Administrative Guidelines to the contrary, the City shall not reimburse that portion of the Oversize Costs and Reimbursable Park Improvement Costs which together exceed thirty percent (30%) of the costs of the Public Improvements.

#### ARTICLE IV. SECURITY

##### **4.01. Forms of Security**

In order to guarantee completion of the Public Improvements and the faithful performance of this Agreement, the Developer no later than ten (10) days after the award of a construction contract and before the commencement of the construction of the Public Improvements shall deliver to the City the following:

- (a) A performance bond and a payment bond from the Contractor performing the work in the penal sum of one hundred (100) percent of the cost to complete the Public Improvements insuring the completion of the Public Improvements. The bonds

shall be in form and substance identical to the bond forms attached hereto as Exhibit "D" and made a part by reference (the "Performance Bond" and "Payment Bond", respectively; collectively called the "Bonds"), unless changes are approved in writing by the City Attorney or his/her designee, which approval shall not be unreasonably withheld. The Bonds shall be signed by a corporate Surety or Sureties authorized to do business in the State of Texas, and shall be signed by the Contractor performing the work as principal. The City shall be named as a co-obligee in the Bonds. A power of attorney shall be attached to the Bonds evidencing that the agent signing the Bonds has authority to sign the Bonds on behalf of the Surety. The Bonds shall additionally insure that the Public Improvements shall be free of defects for the period of warranty set forth in Article II of this Agreement; and

(b) An irrevocable letter of credit in the sum of one hundred (100) percent of the cost to complete the Public Improvements and in form and substance identical to the letter of credit attached hereto as Exhibit "E" and made a part hereof by reference (the "Letter of Credit") unless changes are approved in writing by the City Attorney or his/her designee, which approval shall not be unreasonably withheld. The Letter of Credit shall be issued by a local bank approved in advance by the City, which approval shall not be unreasonably withheld. The Letter of Credit shall be payable at sight to the City upon presentation of the City's written statement stating that Developer is in default or that the City is otherwise entitled to draw down on the Letter of Credit. Such certificate shall be conclusive to allow the City to draw the proceeds of the Letter of Credit. In no event shall the City be required to prove to the issuer that the Developer is actually in default or to specify specific grounds of default in order to draw proceeds of the Letter of Credit. The Letter of Credit is intended to be security for the faithful completion of the Public Improvements and to ensure against defects for the warranty period specified in Article II of this Agreement; or

(c) The cash sum of (the "Cash Escrow") in an amount equal to one hundred (100) percent of the cost to complete the Public Improvements. The Cash Escrow is intended to be security (in place of a Letter of Credit) for the faithful completion of the Public Improvements and to ensure against defects for the warranty period specified in Article II of this Agreement.

#### **4.02. Duration of and Reductions of Letter of Credit**

(a) The Letter of Credit shall be issued for a period of at least one (1) year. If the Public Improvements have not been accepted by the City within thirty (30) days of the expiration date of the Letter of Credit, and Developer has not provided a new Letter of Credit for an additional period of at least one (1) year, identical in amount (unless the Letter of Credit was previously reduced in amount pursuant to Section 4.02(c)) and in all other respects to the original Letter of Credit (unless the City Attorney or his/her designee approves in writing any changes to the new Letter of Credit), which approval is not unreasonably withheld, then the City shall be entitled to immediately draw down the proceeds of the original Letter of Credit (or previously reduced Letter of Credit). This provision shall not be construed to require that the City accept the new Letter of

Credit if Developer is in default and the City has elected to draw down from the proceeds of the original Letter of Credit (or previously reduced Letter of Credit).

(b) Within ten (10) days after the acceptance of the Public Improvements, the Developer shall deliver to the City another Letter of Credit equal in amount to ten (10) percent of the original Letter of Credit, unless the City Attorney or his/her designee approves in writing changes to this Letter of Credit, which approval is not unreasonably withheld. This Letter of Credit shall be for a period of one (1) year and shall be security to insure against defects during the warranty period specified in Article II of this Agreement. However, if this Letter of Credit is not delivered to the City at least thirty (30) days before the expiration of the original Letter of Credit (or the additional new Letter of Credit as described above), then the City shall be entitled to draw down on ten (10) percent of the proceeds of such existing Letter of Credit. Such money shall be held in escrow by the City and used as security against defects during the warranty period. In lieu of the Letter of Credit provided for in this subparagraph (b), the City Engineer may accept a Maintenance Bond as provided for in subparagraph (d) of this Section 4.02.

(c) From time to time as portions of the Public Improvements are completed in accordance with the Standard Specifications and the Engineering Plans, the Developer may make application to the City Engineer or his/her designee to reduce the amount of the original Letter of Credit or Cash Escrow. If the City Engineer or his/her designee is satisfied that such portion of the completed Public Improvements has been substantially completed in accordance with the Standard Specifications and Engineering Plans, he/she may (but is not required to) cause the amount of the Letter of Credit or Cash Escrow to be reduced by such amount that he/she in his/her reasonable discretion deems is appropriate so that the remaining amount of the Letter of Credit or Cash Escrow adequately ensures the completion of the remaining Public Improvements. If the City Engineer or his/her designee has approved the reduction and the issuing bank will not reduce the Letter of Credit without issuing a new Letter of Credit, the City will accept a new Letter of Credit for such reduced amount, if it substantially conforms with the provisions of this Article IV. The decision of the City Engineer or his/her designee to reduce the amount of the Letter of Credit or Cash Escrow shall in no way be construed as an acceptance by the City of the completed Public Improvements.

(d) When Cash Escrow is used as the security, all accrued interest shall become a part of the Cash Escrow and shall be used as security for the completion of the Public Improvements. The term "Cash Escrow" used in this Agreement includes accrued interest. After final acceptance of the Public Improvements by the City, the Cash Escrow shall be reduced to ten (10) percent of the original Cash Escrow amount. The remaining ten (10) percent Cash Escrow shall be retained for a period of one (1) year after acceptance of the Public Improvements as security to ensure against defects during the warranty period specified in Article II of this Agreement. In lieu of the retention of the ten (10) percent Cash Escrow or ten (10) percent Letter of Credit provided for in paragraph 4.02(b) of this Agreement, the City Engineer may accept a

maintenance bond in the same amount from the Contractor actually performing the work. Such maintenance bond shall be substantially in the same form and substance as the form attached hereto as Exhibit "F", which is made a part hereof by reference, unless changes are approved in writing by the City Attorney or his/her designee. At such time as the remaining Cash Escrow is refunded to the Developer, such refund shall include accrued interest, calculated at one (1) percent less than the rate of actual earnings. The one (1) percent accrued interest on the principal amount of the Cash Escrow shall be retained by the City as an administrative expense to cover the cost of administering this Agreement. In the event that money is refunded within six (6) months of deposit, only the principal will be refunded.

## ARTICLE V. DEDICATION AND ACCEPTANCE

### **5.01. City Inspection**

During the construction of the Public Improvements the City will inspect the Public Improvements, for compliance with this Agreement, the Standard Specifications and the Engineering Plans. Upon completion of the Public Improvements, the City shall make a final inspection of the Public Improvements.

### **5.02. Public Improvements to be Constructed on Public Property; Good Title**

Public Improvements other than Park Improvements shall be constructed wholly within property dedicated to the public in fee simple absolute or within easements. Park land dedication shall be made to the City of Plano in fee simple absolute. All Park Improvements shall be made on such park land dedications to the City. All dedications shall be made complete prior to final acceptance by the City. At the option of the City, the City may require that the Developer convey by warranty deed, fee simple title to the City of all or part of the real property upon which the Public Improvements are located. In addition, the City may require, at its option, that Developer provide at Developer's cost title insurance in an amount equal to the cost of the Oversize Improvements and Park Improvements, or such other evidence of title acceptable to the City Attorney or his/her designee, indicating that the City will be receiving good and indefeasible fee simple title free and clear of all liens, encumbrances and restrictions.

### **5.03. Final Acceptance**

If the Public Improvements are completed except screening walls, landscape and growth of erosion control materials, and surety is provided (in accordance with the Subdivision Regulations) to insure completion of the remaining items, the final plat can be submitted to the Planning and Zoning Commission. If approved by the Commission, the plat will be recorded at the County Clerk's office, by the Engineering Department, within five (5) working days after receipt of mylars executed by the owners and surveyor. If the Public Improvements are in substantial compliance with this Agreement, the Standard Specifications, and the Engineering Plans, and the final subdivision plat has been approved and filed of record in the County Land Records, and so long as the Developer has substantially complied with Sections 5.01 and 5.02 of this Agreement, the City Engineer shall issue his/her letter of acceptance which shall evidence the City's acceptance of ownership and maintenance of the Public Improvements and the real property associated therewith. In no event shall the City be required to accept separate Public Improvements at different times. However, nothing shall preclude the City from doing so if, in the reasonable opinion of the City Engineer, it is beneficial and feasible for the City to do so.

## ARTICLE VI. DEFAULT AND REMEDIES

### 6.01. Events of Default

The following shall be considered as events of default:

(a) The Developer has failed to commence construction of the Public Improvements by the date specified in Section 1.02 of this Agreement.

(b) The Developer has failed to substantially complete construction of the Public Improvements in accordance with the Standard Specifications and Engineering Plans by the completion date specified in Section 1.02 of this Agreement.

(c) The Developer has failed to perform work on the Public Improvements for fourteen (14) consecutive days, unless due to causes beyond Developer's control.

(d) The Developer has been declared insolvent.

(e) The filing of a voluntary or involuntary petition in bankruptcy by or against the Developer.

(f) The commencement of a foreclosure proceeding of a lien against the Property, or its conveyance in lieu of foreclosure.

(g) The Developer's failure to cure a defect within the cure period provided in Section 2.02 of this Agreement.

(h) The failure of the contractor and any subcontractor who actually performs construction work on the Public Improvements to maintain insurance as required by Section 7.02 of this Agreement.

(i) The failure of Developer to substantially comply with any other covenant or promise contained in this Agreement.

### 6.02. Specific Remedies

(a) In the event of default by Developer, after notice and applicable time period, the City shall be entitled to draw down on the proceeds of the Letter of Credit when a Letter of Credit has been issued as security, use the Cash Escrow when it has been deposited with the City, and to require that the Surety remedy the default when a performance or maintenance bond has been issued. Notwithstanding the foregoing, in the event of default, the damages that the City is entitled to recover from developer shall not be limited to the amount of the Letter of Credit, Cash Escrow and Performance Bond, but shall be based upon the actual costs reasonably incurred in completing the Oversize Improvements or to cure defects within the warranty period.

(b) In the event the City files an action to enforce the terms of this Agreement, including without limitation, a court action or claim in bankruptcy court, the City will be entitled to its actual court costs and reasonable attorneys' fees.

### **6.03. Performance Bond Surety**

In the case where a performance or maintenance bond is the security, the City shall give the Surety thirty (30) days written notice to commence work to complete the Public Improvements or correct a defect if within the warranty period. If the Surety has not commenced work within said thirty (30) day period, the City shall be entitled to complete the work or repair the defect by contract or by its own forces in compliance with Section 2.03 of this Agreement. In such event, the City shall be entitled to reimbursement from the Developer and Surety, jointly and severally, for the actual costs of completion.

### **6.04. Remedies Cumulative**

The remedies of the City provided in this Agreement shall be construed to be cumulative and nonexclusive. The City shall also be entitled to exercise all other rights and remedies that are available at law and in equity. Specifically the right to draw down on the proceeds of the Letter of Credit, or Cash Escrow or to require the Surety to complete the work or repair the defect are in addition to and not in lieu of the City's other rights and remedies.

## **ARTICLE VII. INDEMNIFICATION AND INSURANCE**

### **7.01. Indemnity**

The Developer and its Sureties shall indemnify, defend, and hold harmless the City, its officers, agents and employees from all suits, actions or claims of any character, name and description brought for or on account of any injuries, including death or damages received or sustained by any person or property on account of or arising out of the construction of the Public Improvements or defects existing within the warranty period; or on account of or arising out of the operations of the Developer, its contractor, agents or employees or the contractor's subcontractors, agents or employees; or on account of any negligent act or omission of the Developer, its contractor, agents or employees or the contractor's subcontractors, agents or employees; or on account of any failure to provide the necessary barricades, warning lights or signs; and shall be required to pay any judgment with costs, which may be obtained against the City, its officers, agents or employees growing out of such injury, including death or damages.

## **7.02. Insurance**

All contractors or subcontractors performing any portion of the work to construct or complete the Public Improvements must meet the insurance requirements of 1.26.1 of the special provisions of the Standard Specifications required for heavy construction, and the policy endorsement and special condition requirements of Item 1.26.4 of the Standard Specifications.

## **ARTICLE VIII. MISCELLANEOUS**

### **8.01. Assignment**

This Agreement may not be assigned without the express written consent of the City. However, the City shall consent to such an assignment if all of the following conditions are satisfied:

- (a) Developer is not in default;
- (b) The assignment is to a new owner and developer of the Property;
- (c) Developer provides the City with written evidence satisfactory to the City Attorney or his/her designee that the new owner is the record owner of the Property;
- (d) Developer delivers to the City an original counterpart of the assignment fully executed by the Developer and new owner in form and substance identical (unless such changes are approved by the City Attorney or his/her designee) to the document attached hereto as Exhibit "G" and made a part hereof by reference (the "Assignment"). Under the Assignment, the new owner shall assume and agree to perform all obligations of the Developer under this agreement; and
- (e) The new owner delivers to the City the security required by this Agreement.

The City Manager, an Executive Director or City Engineer of the City are authorized to approve assignments on behalf of the City.

### **8.02. Entire Agreement**

This Agreement contains the entire agreement between the City and the Developer, and cannot be varied except by written agreement executed by the parties hereto.

### **8.03. Time is of the Essence**

Time is of the essence of this Agreement.

#### **8.04. Notice**

Any notice to be given or to be served upon a party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, it shall be deemed to have been given and delivered to and received by the party (or such party's agent or representative) to whom it is addressed. Such notice shall be given to the parties hereto at the address set forth under their respective signatures below. In case of the Surety, notice shall be given to the Surety at the address set forth in the Performance Bond. Any party hereto, including the Surety on the Performance Bond, may, at any time by giving two (2) days written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice shall be given.

#### **8.05. Nonwaiver**

No waiver of the City's rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by an authorized representative of the City. No delay or omission in the exercise of any right or remedy accruing to the City upon a breach of this Agreement by the Developer or its Sureties will impair its right or remedy or be construed as a waiver for any such breach theretofore or thereafter occurring. The waiver by the City of any breach of any term, covenant or conditions shall not be deemed to be a waiver of any other or subsequent breach of this same or any other term, covenant or condition herein contained.

#### **8.06. No Vested Rights**

Nothing in this Agreement shall be implied to vest any rights in the Developer except as are provided by statute, ordinance or as expressly provided in this Agreement.

#### **8.07. Recitals and Headings**

Recitals contained at the beginning of this Agreement shall be construed as a part of this Agreement. However, headings used throughout this Agreement have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Agreement.

#### **8.08. Successors and Assigns, Covenants with the Land, and Subordination by Lienholders**

This Agreement shall be binding upon the successors and assigns of the Developer and shall be covenants running with the land described herein as the Property and be binding upon all future owners of the Property. This Agreement or a memorandum thereof, may be recorded in the Land Records of the county in which the

Property is located. All existing lienholders shall be required to subordinate their liens to the covenants contained in this Agreement.

**8.09. Venue**

This Agreement shall be construed under and in accordance with the laws of the State of Texas and is fully performable in **Collin** County, Texas. Exclusive venue shall be in Collin County, Texas.

**8.10. Severability**

In case any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or un-enforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**8.11. No Waiver of Governmental Immunity**

Nothing contained in this Agreement shall be construed as a waiver of the City's sovereign or governmental immunity.

**8.12. Developer's Authority**

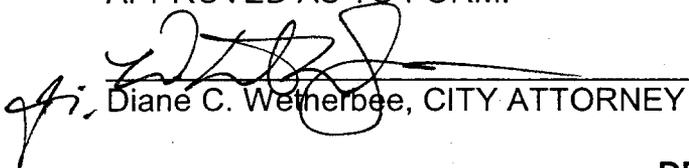
The Developer represents and warrants to the City that it has full power and authority to enter into and fulfill the obligations of this Agreement.

EXECUTED as of the date first above written.

**CITY OF PLANO, TEXAS**  
**A Home Rule Municipal Corporation**

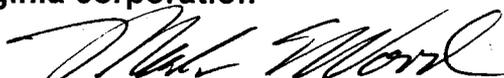
By:   
Name: **ALAN L. UPCHURCH, P.E.**  
Title: City Engineer  
Address: 1520 K Avenue  
PO Box 860358  
Plano, Texas 75086-0358

APPROVED AS TO FORM:

  
Diane C. Wetherbee, CITY ATTORNEY

**DEVELOPER:**

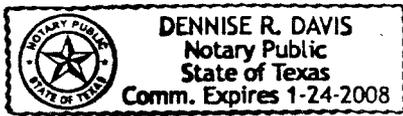
**UDR Developers, Inc.**  
**a Virginia corporation**

By:   
Mark E. Wood  
Vice President  
Address: 4055 VALLEY VIEW LN.  
SUITE 300  
DALLAS, TEXAS  
75244

**ACKNOWLEDGMENTS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the 13<sup>th</sup> day of September, 2005, by **Alan L. Upchurch, P.E., City Engineer** of the **City of Plano, Texas**, a Home Rule Municipal Corporation, on behalf of said municipal corporation.

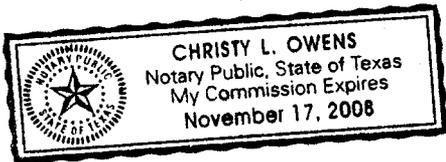


Dennise R. Davis  
Notary Public in and for the State of Texas

--- AND ---

STATE OF Texas §  
                                  §  
COUNTY OF Dallas §

This instrument was acknowledged before me on the 22<sup>nd</sup> day of August, 2005, by **Mark E. Wood, Vice President** of **UDR Developers, Inc.**, a Virginia corporation, on behalf of said corporation.



Christy L. Owens  
Notary Public, State of Texas

**BROCKETTE-DAVIS-DRAKE, inc**  
 Consulting Engineers  
 Civil - Surveying  
 4144 N. Central Expressway, Ste 1100  
 Dallas, Texas 75204  
 214-824-3647 Fax: 214-824-7064

**CONSTRUCTION COST ESTIMATE**

Date: 8/9/2005  
 Proj # C04360

**EXHIBIT "A"**

Project Description: Ridgeview Dr. Improvements from Coit Rd. to 120' west of Nolan Dr.  
 & Coit Rd. to 230' west of Coit Rd. including signalization.

By: Robert R. Jebavy

**Ridgeview Dr. Improvements**

Item No.	Description	Unit	Quantity	Unit Price	Amount
	<b>Onsite Paving Improvements</b>				
*	Unclassified street excavation	CY	831	3.00	\$ 2,493.00
*	8" 5000psi concrete pavement w/#3 @ 24" ocew and integral curb (6.5' wide)	SY	1037	26.75	\$ 27,739.75
*	8" 5000psi concrete pavement w/#3 @ 24" ocew and integral curb (Coit Intersection LTLs)	SY	650	26.75	\$ 17,387.50
*	8" 5000psi concrete pavement w/#3 @ 24" ocew and integral curb (Med. LTLs)	SY	295	26.75	\$ 7,891.25
*	6% Lime stabilization for 6.5' wide conc. Pav.	SY	1128	2.00	\$ 2,256.00
*	6% Lime stabilization for Coit Inter. LTLs	SY	688	2.00	\$ 1,376.00
*	6% Lime stabilization for Med. Openings	SY	316	2.00	\$ 632.00
*	Hydrated Lime	TONS	29	95.00	\$ 2,755.00
*	Landscape ramp	EA	2	500.00	\$ 1,000.00
*	Longitudinal butt joint	LF	195	2.00	\$ 390.00
*	Median nose w/brick paver	SF	178	12.50	\$ 2,225.00
*	4" cermaic plain white round traffic button	EA	13	6.00	\$ 78.00
*	4" acrylic reflective white square traffic button	EA	13	6.00	\$ 78.00
*	2" PVC conduit	LF	90	12.50	\$ 1,125.00
*	Pull box	EA	2	350.00	\$ 700.00
	<b>Sub-Total</b>				\$ 68,126.50

Item No.	Description	Unit	Quantity	Unit Price	Amount
	<b>Offsite Paving Improvements</b>				
*	Unclassified street excavation	CY	89	3.00	\$ 267.00
*	8" 5000psi concrete pavement w/#3 @ 24" ocew and integral curb (6.5' wide)	SY	163	26.75	\$ 4,360.25
*	8" 5000psi concrete pavement w/#3 @ 24" ocew and integral curb (Coit Intersection)	SY	29	26.75	\$ 775.75
*	6% Lime stabilization for 6.5' wide conc. Pav.	SY	189	2.00	\$ 378.00
*	6% Lime stabilization for Coit Inter.	SY	38	2.00	\$ 76.00
*	Hydrated Lime	TONS	3	95.00	\$ 285.00
*	Longitudinal butt joint	LF	111	2.00	\$ 222.00

**BROCKETTE-DAVIS-DRAKE, inc**  
 Consulting Engineers  
 Civil - Surveying  
 4144 N. Central Expressway, Ste 1100  
 Dallas, Texas 75204  
 214-824-3647 Fax: 214-824-7064

**CONSTRUCTION COST ESTIMATE**

Date: 8/9/2005  
 Proj # C04360

**EXHIBIT "A"**

Project Description: Ridgeview Dr. Improvements from Coit Rd. to 120' west of Nolan Dr.  
 & Coit Rd. to 230' west of Coit Rd. including signalization.

By: Robert R. Jebavy

**Ridgeview Dr. Improvements**

Item No.	Description	Unit	Quantity	Unit Price	Amount
	<b>Offsite Paving Improvements Continued</b>				
*	Median nose w/brick paver	SF	73	12.50	\$ 912.50
*	Metal Barricade	LF	6.5	45.00	\$ 292.50
*	3" PVC-Trenched	LF	25	6.00	\$ 150.00
*	4" PVC-Bored	LF	170	15.00	\$ 2,550.00
*	Ground Cable	LF	10	0.75	\$ 7.50
*	Ground Boxes Type II	EA	4	400.00	\$ 1,600.00
*	Relocate Existing Signs	EA	2	50.00	\$ 100.00
*	Install New Signs	EA	2	100.00	\$ 200.00
*	30" Drilled Shaft Foundation	LF	28	100.00	\$ 2,800.00
*	Back Plates (3-12" Sections)	EA	4	25.00	\$ 100.00
*	Back Plates (5-12" Sections)	EA	2	25.00	\$ 50.00
*	16C #14 AWG	LF	430	1.80	\$ 774.00
*	7C #14 AWG	LF	303	1.70	\$ 515.10
*	Traffic Signal Pole w/ 30' Mast Arm	EA	1	1,000.00	\$ 1,000.00
*	Traffic Signal Pole w/ 44' Mast Arm	EA	1	1,000.00	\$ 1,000.00
*	Vehicle Signal Sections (12" LED Red Ball)	EA	6	50.00	\$ 300.00
*	Vehicle Signal Sections (12" LED Green Ball)	EA	6	50.00	\$ 300.00
*	Vehicle Signal Sections (12" LED Yellow Ball)	EA	6	50.00	\$ 300.00
*	Vehicle Signal Sections (12" LED Green Arrow)	EA	2	50.00	\$ 100.00
*	Vehicle Signal Sections (12" LED Yellow Arrow)	EA	2	50.00	\$ 100.00
*	Uni-Directional Opticom Detector	EA	1	100.00	\$ 100.00
*	Opticom Detector Cable	LF	173	4.00	\$ 692.00
*	Salvaging Traffic Signals	EA	1	1,000.00	\$ 1,000.00
*	Relocation of VIVDS Detection Equipment	EA	2	1,500.00	\$ 3,000.00
*	VIVDS Detection Cable (6C #18 AWG)	LF	536	2.00	\$ 1,072.00
	<b>Sub-Total</b>				\$ 25,379.60
	<b>6% Engineering Fee</b>				\$ 5,610.37
	<b>GRAND TOTAL</b>				\$ 99,116.47

**EXHIBIT "B"**

**PARK IMPROVEMENTS**

"NONE"

**BROCKETTE-DAVIS-DRAKE, .**

Consulting Engineers

Civil - Surveying

4144 N. Central Expressway, Ste 1100

Dallas, Texas 75204

214-824-3647 Fax: 214-824-7064

**CONSTRUCTION COST ESTIMATE****EXHIBIT "C"**

Date: 8/9/2005

Proj # C04360

Project Description: Ridgeview Dr. Improvements from Coit Rd. to 120' west of Nolan Dr.  
& Coit Rd. to 230' west of Coit Rd. including signalization.

By: Robert R. Jebavy

ITEM	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
<b>PAVING IMPROVEMENTS</b>					
1	UNCLASSIFIED STREET EXCAVATION	CY	2,581	\$3.00	\$7,743
2	8" 5000 psi CONCRETE PAVEMENT	SY	6,066	\$26.75	\$162,266
3	8" 5000 PSI CONC. PAV. (TEMP)	SY	185	\$26.75	\$4,949
4	6" LIME TREATED SUBGRADE	SY	6,420	\$2.00	\$12,840
5	6" LIME TREATED SUBG. (TEMP)	SY	195	\$2.00	\$390
6	LIME (27#/SY)	TN	91	\$95.00	\$8,645
7	LANDSCAPE RAMPS	EA	3	\$500.00	\$1,500
8	SAWCUT AND CONNECT TO EX. PAV	LF	630	\$15.00	\$9,450
9	BFR	EA	4	\$850.00	\$3,400
10	4' SIDEWALK	SF	5,760	\$3.50	\$20,160
11	MEDIAN NOSE PAVERS	SF	353	\$12.50	\$4,413
12	PULL BOX	EA	2	\$350.00	\$700
13	2" PVC CONDUIT	LF	90	\$12.50	\$1,125
14	METAL BARRICADE	LF	25	\$45.00	\$1,125
<b>PAVEMENT MARKINGS</b>					
15	4" CERAMIC PLN WHITE RD BUTTON	EA	26	\$6.00	\$156
16	4" ACRYLIC REF WHITE SQ BUTTON	EA	26	\$6.00	\$156
<b>TRAFFIC SIGNAL RELOCATION</b>					
17	3" PVC-TRENCHED	LF	25	\$6.00	\$150
18	4" PVC-BORED	LF	170	\$15.00	\$2,550
19	GROUND CABLE	LF	10	\$0.75	\$8
20	GROUND BOXES TYPE II	EA	4	\$400.00	\$1,600
21	RELOCATE EX. SIGNS	EA	2	\$50.00	\$100
22	INSTALL NEW SIGNS	EA	2	\$100.00	\$200
23	30" DRILLED SHAFT FOUNDATION	LF	28	\$100.00	\$2,800
24	BACK PLARES (3-12" SECTIONS)	EA	4	\$25.00	\$100
25	BACK PLARES (5-12" SECTIONS)	EA	2	\$25.00	\$50
26	16C #14 AWG	LF	430	\$1.80	\$774
27	7C #14 AWG	LF	303	\$1.70	\$515
28	TRAFFIC SIG. POLE W/30' MAST ARM	EA	1	\$1,000.00	\$1,000
29	TRAFFIC SIG. POLE W/44' MAST ARM	EA	1	\$1,000.00	\$1,000
30	VEH. SIGNAL SECS. (12" LED RED BALL)	EA	6	\$50.00	\$300
31	VEH. SIGNAL SECS. (12" LED GREEN BALL)	EA	6	\$50.00	\$300
32	VEH. SIGNAL SECS. (12" LED YELLOW BALL)	EA	6	\$50.00	\$300
33	VEH. SIGNAL SECS. (12" LED GREEN ARROW)	EA	2	\$50.00	\$100
34	VEH. SIGNAL SECS. (12" LED YELLOW ARROW)	EA	2	\$50.00	\$100
35	UNI-DIRECTIONAL OPTICOM DETECTOR	EA	1	\$100.00	\$100
36	OPTICOM DETECTOR CABLE	LF	173	\$4.00	\$692
37	SALVAGING TRAFFIC SIGNALS	EA	1	\$1,000.00	\$1,000
38	RELOCATION OF VIVDS DETECTION EQUIP.	EA	2	\$1,500.00	\$3,000
39	VIVDS DETECTION CABLE (6C #18 AWG)	LF	536	\$2.00	\$1,072
				PAVING:	\$256,827

U-22

**BROCKETTE-DAVIS-DRAKE, i**

Consulting Engineers

Civil - Surveying

4144 N. Central Expressway, Ste 1100

Dallas, Texas 75204

214-824-3647 Fax: 214-824-7064

**CONSTRUCTION COST ESTIMATE****EXHIBIT "C"**

Date: 8/9/2005

Proj # C04360

Project Description: Ridgeview Dr. Improvements from Coit Rd. to 120' west of Nolan Dr.  
& Coit Rd. to 230' west of Coit Rd. including signalization.

By: Robert R. Jebavy

ITEM	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
<b>WATERLINE IMPROVEMENTS</b>					
1	8" WATERLINE	LF	215	\$18.00	\$3,870
2	6" WATERLINE	LF	65	\$16.00	\$1,040
3	8" VALVE	EA	3	\$700.00	\$2,100
4	6" VALVE	EA	3	\$600.00	\$1,800
5	12" VALVE	EA	3	\$1,000.00	\$3,000
6	FIRE HYDRANT ASSEMBLY	EA	3	\$2,300.00	\$6,900
7	FITTINGS	TN	2	\$3,200.00	\$6,400
8	CONNECT TO EX. 12" WATERLINE	EA	3	\$750.00	\$2,250
WATER:					\$27,360
<b>DRAINAGE IMPROVEMENTS</b>					
1	27" RCP	LF	75	\$50.00	\$3,750
2	12' RECESSED CURB INLET	EA	1	\$3,000.00	\$3,000
3	ROCK RIP-RAP	SY	28	\$30.00	\$840
STORM:					\$7,590
<b>TOTAL PUBLIC CONSTRUCTION</b>					<b>\$291,777</b>



**PROVIDED FURTHER**, that if any legal action be filed on this Bond, exclusive Venue shall lie in Collin County, Texas.

**AND PROVIDED FURTHER**, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work or to the Specifications.

This Bond is given pursuant to the provisions of V.T.C.A., Government Code Section 2253.001, et seq., and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by V.A.T.S., Insurance Code Article 7.19-1.

**IN WITNESS WHEREOF**, this instrument is executed in (2) copies, each one of which shall be deemed an original, this, the 9th day of September, 2005.

**PRINCIPAL:**

Site Concrete, Inc.

Address 3340 Roy Orr Blvd. Grand Prairie, TX 75050

Tel. No. 972-313-0733

**ATTEST:**

Jean S. Boney

**BY:**

**TITLE:** Jean S. Boney, President

**SURETY:** Arch Insurance Company

Address 2911 Turtle Creek Blvd., Suite 300 Dallas, TX 75219

Tel. No. 972-331-3706

**ATTEST:**

Michael B. Hill

**BY:**

**TITLE:** Michael B. Hill, Attorney-in-Fact

The Resident Agent of the Surety in Collin County or Dallas County, Texas, for delivery of notice and service of process is:

NAME: William D. Baldwin  
STREET ADDRESS: 1201 Kas Dr., Suite B  
CITY, STATE, ZIP: Richardson, TX 75081

For additional information on the above named Surety company you may contact the Texas Department of Insurance at (800)578-4677.

**NOTE:** Date on Page 1 of Performance Bond must be same as Contract. Date on Page 2 of Performance Bond must be after the date of the Contract. If Resident Agent is not a corporation, give a person's name.

**PAYMENT BOND**

STATE OF TEXAS  
COUNTY OF COLLIN

§  
§  
§

**KNOW ALL MEN BY THESE PRESENTS:**

That Site Concrete, Inc., hereinafter called "Principal", and Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, and fully licensed to transact business in the State of Texas, hereinafter "Surety", are held and firmly bound unto the CITY OF PLANO, TEXAS, a home-rule municipal corporation, hereinafter called "City", UDR Developers, Inc., A Virginia Corporation hereinafter sometimes called "Owner" (the City and Owner are collectively called "Obligees"), in the penal sum of Two Hundred Ninety One Thousand Seven Hundred Seventy Seven DOLLARS (\$ 291,777.00--) in lawful money of the United States, to be paid in Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

**THE OBLIGATION TO PAY SAME** is conditioned as follows: Whereas, the Principal entered into a certain written Contract with the ~~Beneficiary~~ <sup>OWNER</sup>, dated the 31st day of August, 2005, A.D. which is made a part hereof by reference, wherein the City is a third party beneficiary with regard to the completion of certain public improvements (as defined therein); said Contract calling for the completion of the public improvements among other things.

**NOW, THEREFORE**, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material in the prosecution of the Work provided for in said Contract and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modification to the Surety is hereby expressly waived, then this obligation shall be void; otherwise it shall remain in full force and effect.

**PROVIDED FURTHER**, that if any legal action be filed on this Bond, exclusive venue shall lie in Collin County, Texas.

**AND PROVIDED FURTHER**, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to Contract, or to the Work performed thereunder, or the Plans, Specifications, Drawings, etc., accompanying the same, shall in anyway affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time,

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alteration or addition to the terms of the Contract, or to the Work to be performed thereunder.

This Bond is given pursuant to the provisions of V.T.C.A., Government Code Section 2253.001, et seq., and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by V.A.T.S., Insurance Code Article 7.19-1.

IN WITNESS WHEREOF, this instrument is executed in counterparts, each one of which shall be deemed an original, this the 9th day of September, 2005.

**PRINCIPAL:**

Site Concrete, Inc.

Address 3340 Roy Orr Blvd., Grand Prairie, TX 75050

Tel. No. 972-313-0733

**ATTEST:**

Joceli C. Couch

**BY:**

Jean S. Boney, President

**SURETY:** Arch Insurance Company

Address 2911 Turtle Creek Blvd., Suite 300 Dallas, TX 75219

Tel. No. 972-331-3706

**ATTEST:**

Michael B. Hill

**BY:**

Michael B. Hill, Attorney-in-Fact

The Resident Agent of the Surety in Collin County or Dallas County, Texas, for delivery of notice and service of the process is:

NAME: William D. Baldwin

STREET ADDRESS: 1201 Kas Dr., Suite B

CITY, STATE, ZIP: Richardson, TX 75081

For additional information on the above named Surety company you may contact the Texas Department of Insurance at (800)578-4677.

**NOTE:** Date on Page 1 of Payment Bond must be same date as Contract. Date on Page 2 of Payment Bond must be after the date of Contract. If Resident Agent is not a corporation, give a person's name.

## POWER OF ATTORNEY

Know All Men By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal office in Kansas City, Missouri (hereinafter referred to as the "Company") does hereby appoint

Michael B. Hill, Cindy Fowler, William D. Baldwin and Glenn E. Ganci of Richardson, TX (EACH)

its true and lawful Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:

Any and all bonds and undertakings

EXCEPTION: NO AUTHORITY is granted to make, execute, seal and deliver bonds or undertakings that guarantee the payment or collection of any promissory note, check, draft or letter of credit.

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The Company may revoke this appointment at any time.

The execution of such bonds and undertakings in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office in Kansas City, Missouri.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on March 3, 2003, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or any Vice President, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings, obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on March 3, 2003:

VOTED, That the signature of the Chairman of the Board, the President, or any Vice President, or their appointees designated in writing and filed with the Secretary, and the signature of the Vice President, the seal of the Company, and certifications by the Vice President, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on March 3, 2003, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company.

In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 19<sup>th</sup> day of March, 20 04.

Arch Insurance Company

Attested and Certified

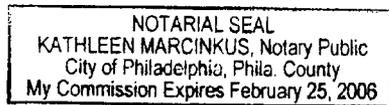


Edward M. Titus  
Edward M. Titus, Vice President

Mary Jeanne Anderson  
Mary Jeanne Anderson, Vice President

STATE OF PENNSYLVANIA SS  
COUNTY OF PHILADELPHIA SS

I, Kate Marcinkus, a Notary Public, do hereby certify that Edward M. Titus and Mary Jeanne Anderson personally known to me to be the same persons whose names are Vice Presidents of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.



Kathleen Marcinkus  
Kathleen Marcinkus, Notary Public  
My commission expires 2-25-06

CERTIFICATION

I, Edward M. Titus, Vice President of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated March 19, 2004 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said Mary Jeanne Anderson, who executed the Power of Attorney as Vice President, was on the date of execution of the attached Power of Attorney the duly elected Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 9th day of September, 20 05.

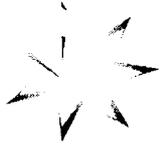
Edward M. Titus  
Edward M. Titus, Vice President

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.



Home Office: Kansas City, MO

00ML0013 00 03 03



ARCH Insurance Company

ARCH Surety

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## TEXAS CONSUMER NOTICE

### IMPORTANT NOTICE

To obtain information or make a complaint:

You may contact your agent at the telephone number provided on the Declarations page of your policy.

You may call Mary Jeanne Anderson, Surety, Arch Insurance Company, at the toll-free, telephone number provided below:

**1-866-472-8845**

You may contact the Texas Department of Insurance to obtain information on companies' coverages, rights or complaints at:

**1-800-252-3439**

You may write the Texas Department of Insurance:

**P.O. Box 149104  
Austin, TX. 78714-9104  
FAX# (512) 475-1771**

### PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the agent or the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

### ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.









**EXHIBIT "F"**

**MAINTENANCE BOND**

STATE OF TEXAS

COUNTY OF COLLIN

**KNOW ALL MEN BY THESE PRESENTS:** \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_ and State of Texas, as Principal, and \_\_\_\_\_, authorized under the laws of the State of Texas to act as surety on bonds for principals, (called "Surety"), are held and firmly bound unto the **CITY OF PLANO**, a Home Rule Municipal Corporation (called "City"), in the penal sum of \_\_\_\_\_ **DOLLARS \$**\_\_\_\_\_, for the payment of which, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents:

**WHEREAS**, the Principal has entered into a contract (called "Contract") with \_\_\_\_\_ (called "Developer") dated the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, which among other things calls for the construction of certain public improvements (called "Work"), which inure to the benefit of the City, such public improvements being in connection with development of \_\_\_\_\_, an addition or subdivision incorporated hereby reference and which public improvements are listed on Exhibit "A" attached hereto and incorporated herein by reference; and

**WHEREAS**, under the terms of the specifications of the Work, the Principal is required to give a bond in the amount specified hereinabove to guarantee the replacement and repair of defective or faulty workmanship furnished or installed by the Principal for a period of one (1) year, from and after the date the Work is completed by Principal and accepted by the City.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, that if the Principal shall for a period of one (1) year, from and after the date the Work is completed by the Principal and accepted by the City, replace and repair any and all defective or faulty workmanship in the Work, then the above obligation shall be void; otherwise, the said obligation shall remain in full force and effect.

Venue for any action to enforce this Bond shall be Collin County, Texas

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_ day of \_\_\_\_\_.

<p style="text-align: center;">Principal</p> <hr/> <p>By: _____  Title: _____  Address: _____  _____  _____</p>	<p style="text-align: center;">Surety</p> <hr/> <p>By: _____  Title: _____  Address: _____  _____  _____</p>
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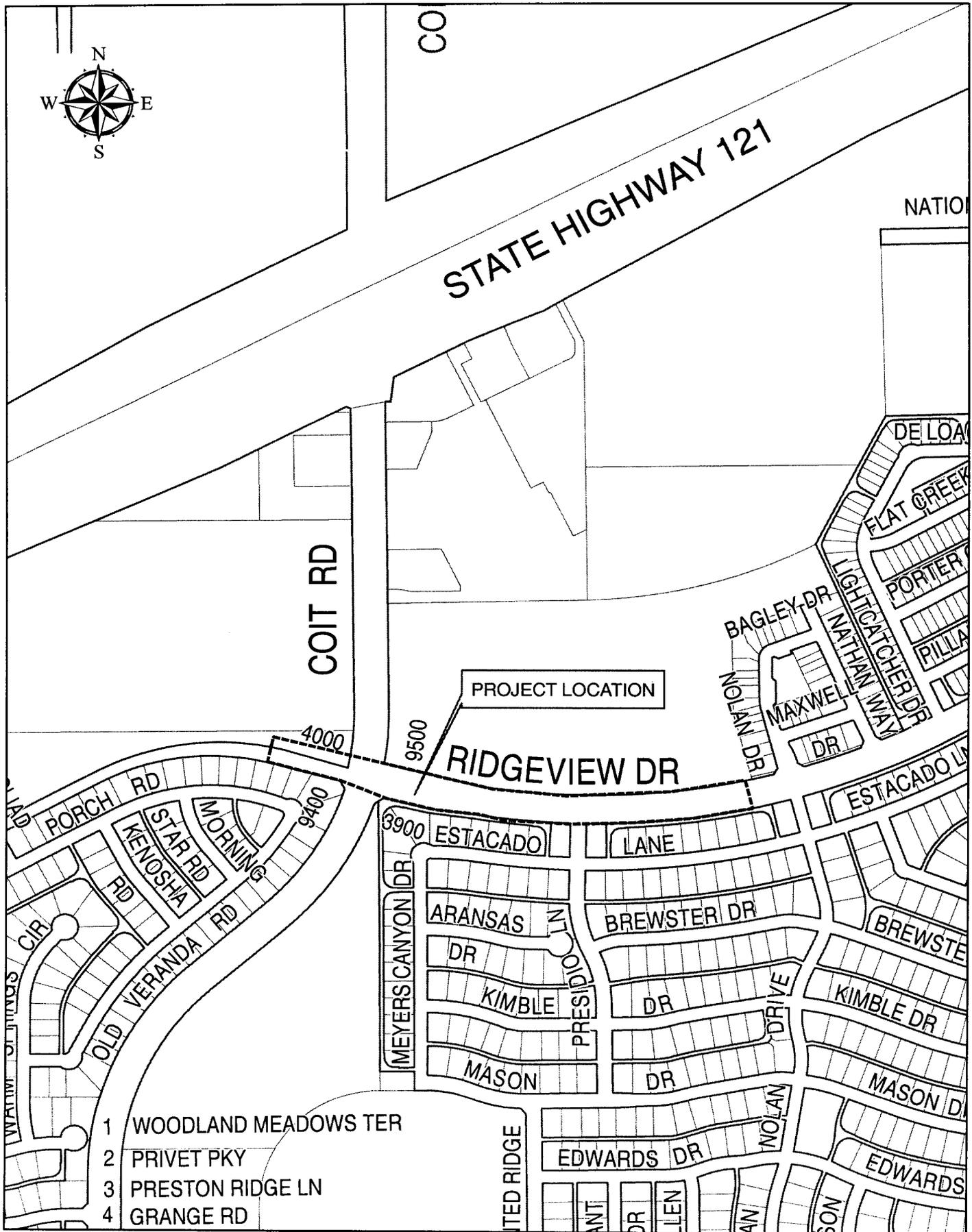
The name and address of the Resident Agent of Surety is:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip \_\_\_\_\_

**EXHIBIT "G"**  
**ASSIGNMENT**

**"NOT APPLICABLE"**

# RIDGEVIEW DRIVE PAVING IMPROVEMENTS





**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Engineering		Initials	Date	
Department Head	Alan L. Upchurch	Executive Director	<i>[Signature]</i>	10/12/08	
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	10/13/08	
Agenda Coordinator (include phone #):		Irene Pegues (7198)	Project No. 4704-1		
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 REIMBURSEMENT OF OVERSIZE					

**CAPTION**

Approving and authorizing reimbursement to UDR Developers, Inc. for oversized participation for paving improvements in Ridgeview Drive associated with construction of Coit / Ridgeview Apartments, in the amount of \$99,116.47.

**FINANCIAL SUMMARY**

<input type="checkbox"/> NOT APPLICABLE	<input type="checkbox"/> OPERATING EXPENSE	<input type="checkbox"/> REVENUE	<input checked="" type="checkbox"/> CIP		
FISCAL YEAR:	<b>2008-09</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget			830,695	300,000	1,130,695
Encumbered/Expended Amount			49	0	49
This Item			-99,116	0	-99,116
BALANCE			731,628	300,000	1,031,628

FUND(S): **STREET IMPROVEMENT CIP**

COMMENTS: Funds are included in the 2008-09 Street Improvement CIP. This item, in the amount of \$99,116, will leave a current year balance of \$731,628 for Streets Oversized Reimbursements.

STRATEGIC PLAN GOAL: Oversized participation for paving improvements relates to the City's Goal of Livable and Sustainable Neighborhoods.

**SUMMARY OF ITEM**

In accordance with the Subdivision Ordinance and a Subdivision Improvement Agreement, reimbursement to UDR Developers, Inc. is due for oversized paving improvements in Ridgeview Drive associated with construction of Coit / Ridgeview Apartments. The construction was inspected and found to be in conformance with the executed Agreement.

Staff recommends the City Council authorize payment for the oversized participation.

List of Supporting Documents: Memo dated 9/29/09 from Chief Engineer Letter dated 9/18/08 from City Engineer Exhibits A & C Location Map	Other Departments, Boards, Commissions or Agencies n/a
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# **MEMORANDUM**

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**Date:** September 29, 2008  
**To:** Melody Morgan, CIP Budget Coordinator  
**From:** Charles Davis, Chief Engineer/Private Development   
**Subject:** Coit / Ridgeview Apartments  
Project No. 4704

We have now accepted the improvements in subject addition.

In accordance with our Subdivision Improvement Agreement dated August 18, 2005, reimbursement for oversize paving in Ridgeview Drive is due to UDR Developers, Inc. Total City Participation will be \$99,116.47.

On-site Improvement	\$72,214.09
Off-site Improvement	<u>26,902.38</u>
Total City Participation:	\$99,116.47

xc: Alan Upchurch, City Engineer  
Ricky Lindley, Mapping & Information Supervisor  
Charles Davis, Chief Engineer/Private Development



September 18, 2008

Pat Evans  
Mayor

Jean Callison  
Mayor Pro Tem

Harry LaRosiliere  
Deputy Mayor Pro Tem

Pat Miner ✓  
Place 1

Scott Johnson  
Place 2

Mabrie Jackson  
Place 3

Sally Magnuson  
Place 4

Lee Dunlap  
Place 8

Thomas H. Muehlenbeck  
City Manager

UDR Texas Properties, LP  
5430 LBJ Freeway, Suite 1250  
Dallas, Texas 75240

**Re: Coit/Ridgeview Apartments  
9600 Coit Road  
Project No. 4704-2**

Gentlemen:

A final inspection of the water, sanitary sewer, paving, and drainage improvements, as shown on plans prepared by Brockette, Davis, Drake, Inc., has been made by the City of Plano. These improvements were found to be satisfactory and in accordance with the City of Plano specifications.

Maintenance Bonds have been received from Site Concrete, Inc., and Gene Walker & Sons Concrete Contractors, Inc. Therefore, the improvements noted above are accepted by the City of Plano subject to the one-year maintenance requirements.

Certificates of Occupancy are released by this department subject to approval by the Building Inspection Department.

Sincerely,

Alan Upchurch, P.E.  
City Engineer

Is

xc: Building Inspection - Keith Schmidt, Anthony Han, Charles Hart, Maria Lee, Cliff Bormann  
Planning - Charles Alexander, Salena Lewis  
Engineering - Dennis Maloy, Irene Pegues  
Public Works - Dale Pettit  
Utility Operations - David Ratcliff  
Parks - Jim Fox  
Verizon  
Southwestern Bell (2 locations)  
Brockette, Davis, Drake, Inc.  
Site Concrete, Inc.  
Gene Walker & Sons Concrete Contractors, Inc.

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

**BROCKETTE-DAVIS-DRAKE, inc**  
 Consulting Engineers  
 Civil - Surveying  
 4144 N. Central Expressway, Ste 1100  
 Dallas, Texas 75204  
 214-824-3647 Fax: 214-824-7064

**CONSTRUCTION COST ESTIMATE**

Date: 8/9/2005  
 Proj # C04360

**EXHIBIT "A"**

Project Description: Ridgeview Dr. Improvements from Coit Rd. to 120' west of Nolan Dr.  
 & Coit Rd. to 230' west of Coit Rd. including signalization.

By: Robert R. Jebavy

**Ridgeview Dr. Improvements**

Item No.	Description	Unit	Quantity	Unit Price	Amount
	<b>Onsite Paving Improvements</b>				
*	Unclassified street excavation	CY	831	3.00	\$ 2,493.00
*	8" 5000psi concrete pavement w/#3 @ 24" ocev and integral curb (6.5' wide)	SY	1037	26.75	\$ 27,739.75
*	8" 5000psi concrete pavement w/#3 @ 24" ocev and integral curb (Coit Intersection LTLs)	SY	650	26.75	\$ 17,387.50
*	8" 5000psi concrete pavement w/#3 @ 24" ocev and integral curb (Med. LTLs)	SY	295	26.75	\$ 7,891.25
*	6% Lime stabilization for 6.5' wide conc. Pav.	SY	1128	2.00	\$ 2,256.00
*	6% Lime stabilization for Coit Inter. LTLs	SY	688	2.00	\$ 1,376.00
*	6% Lime stabilization for Med. Openings	SY	316	2.00	\$ 632.00
*	Hydrated Lime	TONS	29	95.00	\$ 2,755.00
*	Landscape ramp	EA	2	500.00	\$ 1,000.00
*	Longitudinal butt joint	LF	195	2.00	\$ 390.00
*	Median nose w/brick paver	SF	178	12.50	\$ 2,225.00
*	4" cermaic plain white round traffic button	EA	13	6.00	\$ 78.00
*	4" acrylic reflective white square traffic button	EA	13	6.00	\$ 78.00
*	2" PVC conduit	LF	90	12.50	\$ 1,125.00
*	Pull box	EA	2	350.00	\$ 700.00
	<b>Sub-Total</b>				\$ 68,126.50

Item No.	Description	Unit	Quantity	Unit Price	Amount
	<b>Offsite Paving Improvements</b>				
*	Unclassified street excavation	CY	89	3.00	\$ 267.00
*	8" 5000psi concrete pavement w/#3 @ 24" ocev and integral curb (6.5' wide)	SY	163	26.75	\$ 4,360.25
*	8" 5000psi concrete pavement w/#3 @ 24" ocev and integral curb (Coit Intersection)	SY	29	26.75	\$ 775.75
*	6% Lime stabilization for 6.5' wide conc. Pav.	SY	189	2.00	\$ 378.00
*	6% Lime stabilization for Coit Inter.	SY	38	2.00	\$ 76.00
*	Hydrated Lime	TONS	3	95.00	\$ 285.00
*	Longitudinal butt joint	LF	111	2.00	\$ 222.00

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**BROCKETTE-DAVIS-DRAKE, inc**  
 Consulting Engineers  
 Civil - Surveying  
 4144 N. Central Expressway, Ste 1100  
 Dallas, Texas 75204  
 214-824-3647 Fax: 214-824-7064

**CONSTRUCTION COST ESTIMATE**

Date: 8/9/2005  
 Proj # C04360

**EXHIBIT "A"**

Project Description: Ridgeview Dr. Improvements from Coit Rd. to 120' west of Nolan Dr.  
 & Coit Rd. to 230' west of Coit Rd. including signalization.

By: Robert R. Jebavy

**Ridgeview Dr. Improvements**

Item No.	Description	Unit	Quantity	Unit Price	Amount
	<b>Offsite Paving Improvements Continued</b>				
*	Median nose w/brick paver	SF	73	12.50	\$ 912.50
*	Metal Barricade	LF	6.5	45.00	\$ 292.50
*	3" PVC-Trenched	LF	25	6.00	\$ 150.00
*	4" PVC-Bored	LF	170	15.00	\$ 2,550.00
*	Ground Cable	LF	10	0.75	\$ 7.50
*	Ground Boxes Type II	EA	4	400.00	\$ 1,600.00
*	Relocate Existing Signs	EA	2	50.00	\$ 100.00
*	Install New Signs	EA	2	100.00	\$ 200.00
*	30" Drilled Shaft Foundation	LF	28	100.00	\$ 2,800.00
*	Back Plates (3-12" Sections)	EA	4	25.00	\$ 100.00
*	Back Plates (5-12" Sections)	EA	2	25.00	\$ 50.00
*	16C #14 AWG	LF	430	1.80	\$ 774.00
*	7C #14 AWG	LF	303	1.70	\$ 515.10
*	Traffic Signal Pole w/ 30' Mast Arm	EA	1	1,000.00	\$ 1,000.00
*	Traffic Signal Pole w/ 44' Mast Arm	EA	1	1,000.00	\$ 1,000.00
*	Vehicle Signal Sections (12" LED Red Ball)	EA	6	50.00	\$ 300.00
*	Vehicle Signal Sections (12" LED Green Ball)	EA	6	50.00	\$ 300.00
*	Vehicle Signal Sections (12" LED Yellow Ball)	EA	6	50.00	\$ 300.00
*	Vehicle Signal Sections (12" LED Green Arrow)	EA	2	50.00	\$ 100.00
*	Vehicle Signal Sections (12" LED Yellow Arrow)	EA	2	50.00	\$ 100.00
*	Uni-Directional Opticom Detector	EA	1	100.00	\$ 100.00
*	Opticom Detector Cable	LF	173	4.00	\$ 692.00
*	Salvaging Traffic Signals	EA	1	1,000.00	\$ 1,000.00
*	Relocation of VIVDS Detection Equipment	EA	2	1,500.00	\$ 3,000.00
*	VIVDS Detection Cable (6C #18 AWG)	LF	536	2.00	\$ 1,072.00
	<b>Sub-Total</b>				\$ 25,379.60
	<b>6% Engineering Fee</b>				\$ 5,610.37
	<b>GRAND TOTAL</b>				\$ 99,116.47

**BROCKETTE-DAVIS-DRAKE,**  
 Consulting Engineers  
 Civil - Surveying  
 4144 N. Central Expressway, Ste 1100  
 Dallas, Texas 75204  
 214-824-3647 Fax: 214-824-7064

**CONSTRUCTION COST ESTIMATE**

**EXHIBIT "C"**

Date: 8/9/2005  
 Proj # C04360

Project Description: Ridgeview Dr. Improvements from Coit Rd. to 120' west of Nolan Dr.  
 & Coit Rd. to 230' west of Coit Rd. including signalization.

By: Robert R. Jebavy

ITEM	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
<b>PAVING IMPROVEMENTS</b>					
1	UNCLASSIFIED STREET EXCAVATION	CY	2,581	\$3.00	\$7,743
2	8" 5000 psi CONCRETE PAVEMENT	SY	6,066	\$26.75	\$162,266
3	8" 5000 PSI CONC. PAV. (TEMP)	SY	185	\$26.75	\$4,949
4	6" LIME TREATED SUBGRADE	SY	6,420	\$2.00	\$12,840
5	6" LIME TREATED SUBG. (TEMP)	SY	195	\$2.00	\$390
6	LIME (27#/SY)	TN	91	\$95.00	\$8,645
7	LANDSCAPE RAMPS	EA	3	\$500.00	\$1,500
8	SAWCUT AND CONNECT TO EX. PAV	LF	630	\$15.00	\$9,450
9	BFR	EA	4	\$850.00	\$3,400
10	4' SIDEWALK	SF	5,760	\$3.50	\$20,160
11	MEDIAN NOSE PAVERS	SF	353	\$12.50	\$4,413
12	PULL BOX	EA	2	\$350.00	\$700
13	2" PVC CONDUIT	LF	90	\$12.50	\$1,125
14	METAL BARRICADE	LF	25	\$45.00	\$1,125
<b>PAVEMENT MARKINGS</b>					
15	4" CERAMIC PLN WHITE RD BUTTON	EA	26	\$6.00	\$156
16	4" ACRYLIC REF WHITE SQ BUTTON	EA	26	\$6.00	\$156
<b>TRAFFIC SIGNAL RELOCATION</b>					
17	3" PVC-TRENCHED	LF	25	\$6.00	\$150
18	4" PVC-BORED	LF	170	\$15.00	\$2,550
19	GROUND CABLE	LF	10	\$0.75	\$8
20	GROUND BOXES TYPE II	EA	4	\$400.00	\$1,600
21	RELOCATE EX. SIGNS	EA	2	\$50.00	\$100
22	INSTALL NEW SIGNS	EA	2	\$100.00	\$200
23	30" DRILLED SHAFT FOUNDATION	LF	28	\$100.00	\$2,800
24	BACK PLARES (3-12" SECTIONS)	EA	4	\$25.00	\$100
25	BACK PLARES (5-12" SECTIONS)	EA	2	\$25.00	\$50
26	16C #14 AWG	LF	430	\$1.80	\$774
27	7C #14 AWG	LF	303	\$1.70	\$515
28	TRAFFIC SIG. POLE W/30' MAST ARM	EA	1	\$1,000.00	\$1,000
29	TRAFFIC SIG. POLE W/44' MAST ARM	EA	1	\$1,000.00	\$1,000
30	VEH. SIGNAL SECS. (12" LED RED BALL)	EA	6	\$50.00	\$300
31	VEH. SIGNAL SECS. (12" LED GREEN BALL)	EA	6	\$50.00	\$300
32	VEH. SIGNAL SECS. (12" LED YELLOW BALL)	EA	6	\$50.00	\$300
33	VEH. SIGNAL SECS. (12" LED GREEN ARROW)	EA	2	\$50.00	\$100
34	VEH. SIGNAL SECS. (12" LED YELLOW ARROW)	EA	2	\$50.00	\$100
35	UNI-DIRECTIONAL OPTICOM DETECTOR	EA	1	\$100.00	\$100
36	OPTICOM DETECTOR CABLE	LF	173	\$4.00	\$692
37	SALVAGING TRAFFIC SIGNALS	EA	1	\$1,000.00	\$1,000
38	RELOCATION OF VIVDS DETECTION EQUIP.	EA	2	\$1,500.00	\$3,000
39	VIVDS DETECTION CABLE (6C #18 AWG)	LF	536	\$2.00	\$1,072
PAVING:					\$256,827

**BROCKETTE-DAVIS-DRAKE, i.**

Consulting Engineers

Civil - Surveying

4144 N. Central Expressway, Ste 1100

Dallas, Texas 75204

214-824-3647 Fax: 214-824-7064

**CONSTRUCTION COST ESTIMATE****EXHIBIT "C"**

Date: 8/9/2005

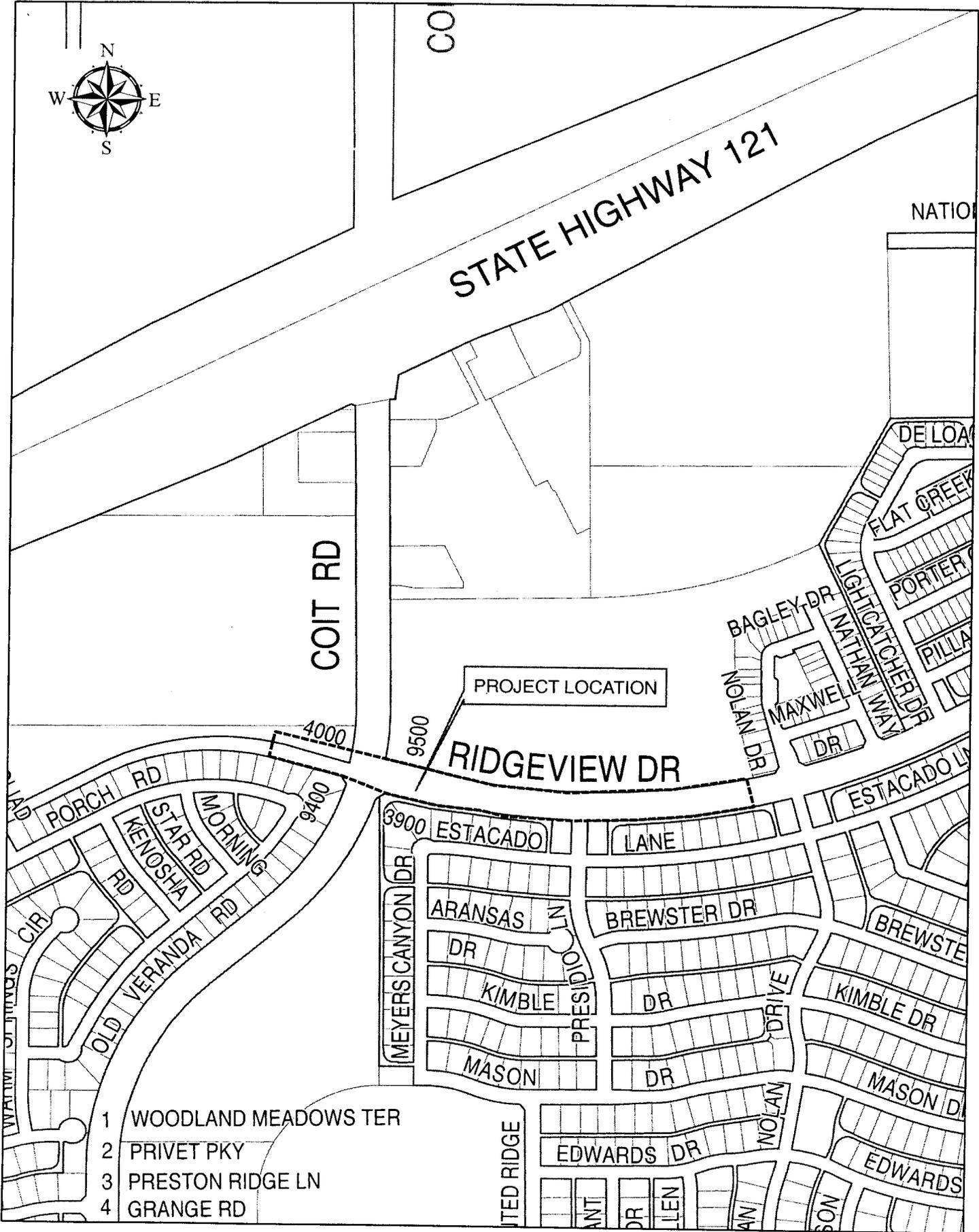
Proj # C04360

Project Description: Ridgeview Dr. Improvements from Coit Rd. to 120' west of Nolan Dr.  
& Coit Rd. to 230' west of Coit Rd. including signalization.

By: Robert R. Jebavy

ITEM	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
<b>WATERLINE IMPROVEMENTS</b>					
1	8" WATERLINE	LF	215	\$18.00	\$3,870
2	6" WATERLINE	LF	65	\$16.00	\$1,040
3	8" VALVE	EA	3	\$700.00	\$2,100
4	6" VALVE	EA	3	\$600.00	\$1,800
5	12" VALVE	EA	3	\$1,000.00	\$3,000
6	FIRE HYDRANT ASSEMBLY	EA	3	\$2,300.00	\$6,900
7	FITTINGS	TN	2	\$3,200.00	\$6,400
8	CONNECT TO EX. 12" WATERLINE	EA	3	\$750.00	\$2,250
WATER:					\$27,360
<b>DRAINAGE IMPROVEMENTS</b>					
1	27" RCP	LF	75	\$50.00	\$3,750
2	12' RECESSED CURB INLET	EA	1	\$3,000.00	\$3,000
3	ROCK RIP-RAP	SY	28	\$30.00	\$840
STORM:					\$7,590
<b>TOTAL PUBLIC CONSTRUCTION</b>					<b>\$291,777</b>

# RIDGEVIEW DRIVE PAVING IMPROVEMENTS



- 1 WOODLAND MEADOWS TER
- 2 PRIVET PKY
- 3 PRESTON RIDGE LN
- 4 GRANGE RD



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal <i>3</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Library Administration (681)	Initials	Date	
Department Head	Joyce Baumbach	Executive Director	<i>[Signature]</i> 9/29/08	
Dept Signature:	<i>Joyce Baumbach</i>	City Manager	<i>[Signature]</i> 9/29/08	
Agenda Coordinator (include phone #):		<b>Mary Ann Dunnavant (Ext. 4208)</b>		
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				
<b>CAPTION</b>				
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 \$78,250.00 from Collin County; authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the agreement herein; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2008-2009</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	78,250	0	<b>78,250</b>
BALANCE	0	78,250	0	<b>78,250</b>
FUND(s): <b>GENERAL FUND (01)</b>				
<b>COMMENTS:</b> Approval of this item will result in \$78,250 in revenue from the Collin County Interlocal Cooperative Agreement. The grant will be used by the City of Plano Library System and provides full library services for the residents of Collin County.				
<b>STRATEGIC PLAN GOAL:</b> Interlocal Library service agreements relate to the City's Goals of "Service Excellence" and "Premier City for Families."				
<b>SUMMARY OF ITEM</b>				
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 \$78,250.00 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 \$78,250.00 FROM COLLIN COUNTY; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THE AGREEMENT HEREIN; 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 \$78,250.00; 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.

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

DULY PASSED AND APPROVED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**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 **MUNICIPALITY** is a duly organized political subdivision of the State of Texas engaged in the administration of the Municipal Government and related services for the benefit of the citizens and residents of the City of Plano.

The library is a department established by the **MUNICIPALITY** for administering and providing library services for the general public in the City of Plano, 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 \$78,250.00 for the 2009 fiscal year (October 2008 through September 2009) of the **COUNTY**, under the conditions and terms set out herein. All funding for this Agreement shall be derived from current revenues.

In exchange for said funds provided by the **COUNTY**, the library department of the **MUNICIPALITY** shall, for the 2009 fiscal year, 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. Full library services shall mean those standard services offered by the library, which may be expanded or contracted as needed by the **MUNICIPALITY.**

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 a department 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).

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

For the aforementioned services provided by the **LIBRARY**, as a department of the **MUNICIPALITY**, the **COUNTY** agrees to pay **MUNICIPALITY** for the full performance of this agreement: the sum of \$78,250.00 with equal payments of \$19,563.00 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 obligations 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 as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas.

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 \_\_\_\_\_, 2008.

**COUNTY**

By: \_\_\_\_\_

**KEITH SELF**

County Judge

Date: \_\_\_\_\_

**MUNICIPALITY**

**CITY OF PLANO, TEXAS, a Home Rule Municipal Corporation**

By: \_\_\_\_\_

**THOMAS H. MUEHLENBECK**

City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, City Attorney



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable	
Council Meeting Date:	<b>10/13/08</b>		Reviewed by Legal <i>WJ</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable	
Department:	Library Administration (681)		Initials	Date	
Department Head	Joyce Baumbach	Executive Director			
Dept Signature:	<i>Joyce Baumbach</i>	City Manager	<i>[Signature]</i>	<b>09.19.08</b>	
Agenda Coordinator (include phone #):	<b>Mary Ann Dunnavant (Ext. 4208)</b>				
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					
<b>CAPTION</b>					
Approving the terms and conditions of an Interlocal Cooperation Agreement For Library Services by and between the City of Plano and Denton County, Texas providing the terms and conditions for receipt of funding in the amount of \$11,200 from Denton County; authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the agreement herein; and providing an effective date.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2007-2008</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	11,200	0	<b>11,200</b>
BALANCE		0	11,200	0	<b>11,200</b>
FUND(s):	<b>GENERAL FUND</b>				
<b>COMMENTS:</b> Approval of this Interlocal Cooperative Agreement will result in \$11,200 in revenue from Denton County. The total amount received will be used for the purchase of library services by and between the City of Plano and Denton County and is included in the 2008-09 Adopted Budget.					
<b>STRATEGIC PLAN GOAL:</b> Interlocal agreements to provide library services relate to the City's Goals of "Service Excellence" and "Premier City in Which to Live."					
<b>SUMMARY OF ITEM</b>					
Approval of this Interlocal Cooperation Agreement for Library Services between the City of Plano and Denton County is requested for receipt of funding in the amount of \$11,200 from Denton County.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
1. Interlocal Cooperation Agreement for Library Services is attached as Exhibit "A" to the Resolution.					

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT FOR LIBRARY SERVICES BY AND BETWEEN THE CITY OF PLANO AND DENTON COUNTY, TEXAS PROVIDING THE TERMS AND CONDITIONS FOR RECEIPT OF FUNDING IN THE AMOUNT OF \$11,200 FROM DENTON COUNTY; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THE AGREEMENT HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, the City Council has been presented a proposed Interlocal Cooperation Agreement For Library Services by and between the City of Plano, Texas, and Denton County, Texas, (see Exhibit "A") providing terms and conditions for receipt of funding from Denton County, Texas in the amount of \$11,200; 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.

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

**DULY PASSED AND APPROVED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.**

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY



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

III.

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

IV.

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

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

V.

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

necessary for the proper execution and completion of the duties and obligations of the **MUNICIPALITY** stated in this Agreement; and shall give all attention necessary for such proper supervision and direction.

VI.

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

VII.

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

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

VIII.

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

IX.

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

The address of **COUNTY** is:

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

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The address of the **MUNICIPALITY** is: The City of Plano through  
Plano Public Library System  
2501 Coit Rd.  
Plano, Texas 75075  
Attention: Joyce Baumbach  
Telephone: 972-769-4208

X.

For the full performance of the services above stated, **COUNTY** agrees to pay **MUNICIPALITY** fees as described herein, from current revenues available for such payment. **COUNTY** shall pay **MUNICIPALITY** fees in the amount of **SIX THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$6,200.00)**, based upon North Central Texas Council of Governments service population allocation figures provided to **COUNTY** by the Library Advisory Board, payable in equal quarterly installments to **MUNICIPALITY** commencing October 1, 2008. The Allocation chart setting forth said figures is attached hereto and incorporated herein for all intents and purposes as Exhibit "A." In addition, **COUNTY** agrees to pay **MUNICIPALITY** an amount not to exceed **FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00)** in matching funds upon the following conditions:

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

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

XI.

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

X-7

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

XII.

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

XIII.

The validity of this Agreement, and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. Further, this Agreement shall be performable and all compensation payable in Denton County, Texas.

XIV.

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

XV.

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

**EXECUTED** in triplicate originals in Denton County, Texas, by the authorized representatives.

**COUNTY**

By \_\_\_\_\_  
Mary Horn, County Judge  
Denton County, Texas

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

**MUNICIPALITY**

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

City Council Meeting  
Dated October 13, 2008

ATTEST:

ATTEST:

By \_\_\_\_\_  
Denton County Clerk

By \_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

BY \_\_\_\_\_  
Assistant District Attorney

BY \_\_\_\_\_  
City Attorney

APPROVED AS TO CONTENT:

BY \_\_\_\_\_  
Director, Library Services

**AUDITOR'S CERTIFICATE**

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

\_\_\_\_\_  
James Wells, Denton County Auditor

Exhibit "A"  
Service Population Allocation Chart  
**CALCULATION WORKSHEET FOR COUNTY FUNDING (2008-2009)**

DENTON COUNTY POPULATION: 614,650  
 POPULATION OF CITIES WITH LIBRARIES: 384,600  
 REMAINING POPULATION: 230,050  
 Goal: 549,900

County Pop ratio: 0.598153926

PER CAPITA: \$ 0.732  
 MATCHING: \$ 10,000.00

AUBREY	6,704	4,195	2,509	\$ 4,907	\$ 10,000	\$ 14,907	14900					
CARROLLTON	111,839	69,980	41,859	\$ 81,862	\$ -	\$ 81,862	81900					
FLOWER MOUND	99,805	62,450	37,355	\$ 73,053	\$ -	\$ 73,053	73100					
FRISCO	54,272	33,959	20,313	\$ 39,725	\$ 5,000	\$ 44,725	44700					
JUSTIN	4,954	3,100	1,854	\$ 3,628	\$ 10,000	\$ 13,628	13600					
KRUM	6,073	3,800	2,273	\$ 4,445	\$ 10,000	\$ 14,445	14400					
LAKE CITIES	52,419	32,800	19,619	\$ 38,369	\$ 10,000	\$ 48,369	48400					
LEWISVILLE	147,922	92,558	55,364	\$ 108,273	\$ -	\$ 108,273	108300					
LITTLE ELM	40,194	25,150	15,044	\$ 29,420	\$ 10,000	\$ 39,420	39400					
PILOT POINT	6,393	4,000	2,393	\$ 4,679	\$ 10,000	\$ 14,679	14700					
PLANO	8,467	5,298	3,169	\$ 6,198	\$ 5,000	\$ 11,199	11200					
PONDER	1,215	760	455	\$ 889	\$ 10,000	\$ 10,888	10900					
SANGER	10,708	6,700	4,008	\$ 7,838	\$ 10,000	\$ 17,838	17800					
THE COLONY	63,686	39,850	23,836	\$ 46,616	\$ 10,000	\$ 56,616	56600					
<b>Aubrey Population:</b>												
Aubrey	2,500	1,500	900	\$ 1,800	\$ 5,000	\$ 6,800	6800					
Crossroads	670	400	240	\$ 480	\$ 1,000	\$ 1,480	1480					
Krugerville	1,025	600	350	\$ 700	\$ 1,500	\$ 2,200	2200					
Total	4,195	2,500	1,500	\$ 3,000	\$ 7,500	\$ 10,500	10500					
<b>Lake Cities Population:</b>												
Corinth	19,650	12,000	7,000	\$ 14,000	\$ 10,000	\$ 24,000	24000					
Hickory Creek	3,750	2,250	1,350	\$ 2,700	\$ 5,000	\$ 7,700	7700					
Lake Dallas	7,000	4,200	2,500	\$ 5,000	\$ 10,000	\$ 15,000	15000					
Shady Shores	2,400	1,440	864	\$ 1,728	\$ 5,000	\$ 6,728	6728					
Total	32,800	20,000	12,000	\$ 24,000	\$ 30,000	\$ 54,000	54000					
<b>Little Elm Population:</b>												
Little Elm	19,650	12,000	7,000	\$ 14,000	\$ 10,000	\$ 24,000	24000					
Oak Point	3,750	2,250	1,350	\$ 2,700	\$ 5,000	\$ 7,700	7700					
Total	23,400	14,250	8,350	\$ 16,700	\$ 15,000	\$ 31,700	31700					
<b>Carrollton</b>	120,550	75,000	45,000	\$ 90,000	\$ 10,000	\$ 100,000	100000					
less Dallas county	50,570	30,000	18,000	\$ 36,000	\$ 5,000	\$ 41,000	41000					
Carrollton (Denton Co)	69,980	45,000	27,000	\$ 54,000	\$ 5,000	\$ 59,000	59000					

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ATTACHMENT "B" TO INTERLOCAL COOPERATION AGREEMENT

**205 Internet Policy**

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

**205.1 Mission Statement**

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

**205.2 Internet Policy**

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

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

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

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

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

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

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

\*Minors – Persons who are under 18 years of age

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

The Texas Penal Code defines obscenity as:

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

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

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

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

T.P.C. 43.21.

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

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

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## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal <i>al</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Planning		Initials	Date	
Department Head	P. Jarrell		Executive Director	<i>[Signature]</i> 10/6/08	
Dept Signature:	<i>P. Jarrell</i>		City Manager	<i>[Signature]</i> 10/8/08	
Agenda Coordinator (include phone #): <b>Tammy Stuckey, ext. 7156</b>					

**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 OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AGREEMENTS BETWEEN THE CITY OF PLANO, TEXAS, AND VARIOUS HERITAGE PRESERVATION ORGANIZATIONS WHICH RENDER SERVICES THAT ARE BENEFICIAL TO THE PUBLIC AND SERVE A VALID PUBLIC PURPOSE IN THE TOTAL AMOUNT OF \$682,710; AUTHORIZING THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR, TO EXECUTE SUCH AGREEMENTS WITH THESE ORGANIZATIONS FOR THE PROVISION OF SUPPORT OF HERITAGE PRESERVATION; AND PROVIDING AN EFFECTIVE DATE.

### FINANCIAL SUMMARY

NOT APPLICABLE    
  OPERATING EXPENSE    
  REVENUE    
  CIP

FISCAL YEAR: <b>2008-2009</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	682,710	0	<b>682,710</b>
Encumbered/Expended Amount	0		0	<b>0</b>
This Item	0	-682,710	0	<b>-682,710</b>
<b>BALANCE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

**COMMENTS:** Funding for this item in the amount of \$682,710 is included in the approved 2008-09 Budget. Funding for this item is included in the approved 2008-09 Budget. The total amount of \$682,710 includes \$677,710 funded from Hotel/Motel Tax Revenue in the Convention and Tourism Fund. Also included is this an addition \$5,000 which was approved in the General Fund to be used for a fire protection sprinkler system.

**STRATEGIC PLAN GOAL:** Providing funding for various Heritage Preservation organizations relates to the City's goal of "Premier City in which to live".

### SUMMARY OF ITEM

This resolution establishes funding agreements for the purpose of heritage preservation with various non-profit organizations as reviewed and approved by the City Council in the 2008-09 adopted budget. This item amounts to \$682,710.00. The funds will be provided to the Plano Conservancy for Historic Preservation, Inc., the Plano Heritage Association (Heritage Farmstead Museum), the Plano African American Museum (P.A.A.M.), and the North Texas Masonic Historic Museum and Library with 50% being distributed by November 30, 2008. The remaining amounts will be distributed as follows: 25% by February 28, 2009 and 25% by July 1, 2009. There are two sample agreements attached (Exhibit A & B) because the Plano African American Museum's grant comes from both the Hotel/Motel Tax Revenue and the General Fund. All other grants come from the Hotel/Motel Tax Revenue only. Therefore, different language was required for the Plano African American Museum grant.



# CITY OF PLANO COUNCIL AGENDA ITEM

List of Supporting Documents:

Resolution

Modified Agreements

Other Departments, Boards, Commissions or Agencies

Heritage Commission

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RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AGREEMENTS BETWEEN THE CITY OF PLANO, TEXAS, AND VARIOUS HERITAGE PRESERVATION ORGANIZATIONS WHICH RENDER SERVICES THAT ARE BENEFICIAL TO THE PUBLIC AND SERVE A VALID PUBLIC PURPOSE IN THE TOTAL AMOUNT OF \$682,710; AUTHORIZING THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR, TO EXECUTE SUCH AGREEMENTS WITH THESE ORGANIZATIONS FOR THE PROVISION OF SUPPORT OF HERITAGE PRESERVATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has assigned to the Heritage Commission the responsibility of considering funding requests from outside heritage preservation organizations; and

**WHEREAS**, this Commission entertained funding requests, conducted extensive review, and made recommendations for funding to City Council based on established criteria; and

**WHEREAS**, the City Council received such recommendations during budget deliberations, conducted a public hearing on the proposed budget and approved and adopted the 2008-2009 budget; and

**WHEREAS**, pursuant to Ordinance No. 2008-9-15 the City Council has appropriated funds for such purposes and find that the services provided by these organizations are beneficial to the public and serve a valid public purpose; and

**WHEREAS**, the City Council desires to enter into agreements with the various heritage preservation organizations, two sample agreements are attached hereto by reference as Exhibit "A" and Exhibit "B", which establishes the terms and conditions for funding; and

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

**Section 1.** The terms and conditions of the Modified Agreements with the below named organizations in the amounts specified, having been reviewed by the City Council and found to be proper and acceptable and in the best interests of the City of Plano are hereby in all things approved:

Heritage Preservation Grants:

Plano African American Museum (P.A.A.M.)	\$159,798
Plano Conservancy for Historic Preservation	\$161,578
Plano Heritage Association	\$344,834
North Texas Masonic Historic Museum and Library	<u>\$16,500</u>
TOTAL	\$682,710

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

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

**DULY PASSED AND APPROVED THIS THE 13TH DAY OF OCTOBER, 2008.**

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM;

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

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**FUNDING AGREEMENT BETWEEN CITY OF PLANO  
AND**

---

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

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

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

**WHEREAS**, pursuant to Ordinance No. 2008-9-15, the City Council determined that the City should expend the sum of \$\_\_\_\_\_ for the purposes outlined in the attachment entitled "Heritage Preservation Grant Application" (hereinafter referred to as "Application"); and

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

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

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

**1.01 Purpose/Consideration.**

This Agreement provides the terms and conditions under which City will make available the sum of \$\_\_\_\_\_, for use to support the activities outlined in attached Exhibit "A," Contractor's funding application. The City's source of these funds is derived from the

Hotel/Motel Tax revenues. Contractor agrees to accept responsibility for guaranteeing City grant funds are used for the items in Exhibit "A".

In consideration of the City of Plano providing the funding specified for the 2008-09 fiscal year, Contractor shall abide by the terms and conditions of this Agreement.

**1.02 Priority of Documents.**

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

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

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

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

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

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

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

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

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

**2.04** Unexpended and unencumbered City funds that remain with the Contractor after September 30, 2009, will revert to the City.

**SECTION III  
NON-ASSIGNMENT**

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

**SECTION IV  
INDEPENDENT CONTRACTOR**

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

**SECTION V  
DISBURSEMENT OF FUNDS**

**5.01** The City will disburse funds provided under this Agreement as follows:

1. 50% of the funds by November 30, 2008.
2. 25% of the funds by February 28, 2009.
3. The remaining 25% of the funds by July 1, 2009.

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

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

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

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

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

**5.07 Reporting Requirements.**

Within thirty (30) days of the close of each preceding quarter of the contract term, Contractor agrees to provide financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the Line Item Budget of Approved Expenditures attached in Exhibit "A", as well as a description of program goals achieved and/or progress of same for the preceding quarter. These reports shall contain a Certificate of Compliance with notarized signatures of two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. Reports submitted without required notarized signatures will be rejected and considered incomplete.

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

**SECTION VI  
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**SECTION VII  
INSURANCE REQUIREMENTS/INDEMNIFICATION**

**7.01 Insurance.**

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit "D". Additionally, this insurance must specifically cover any and all activities occurring on City property, including those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed certificate of insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract.

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

At its own expense, a Contractor receiving funds in the amount of \$75,000.00 or more agrees to maintain during the term of this Agreement, or any extension thereof, an Employee Dishonesty Bond (EDB) in an amount equal to the total dollar amount awarded to Contractor by

the City as defined in the grant agreement. A copy of proof of EDB shall be attached to the funding agreement as an additional attachment to Exhibit "D". Bonds shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

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

### **7.03 Indemnification.**

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

City shall have the right to select or to approve defense counsel retained by Contractor to fulfill its obligation to defend and indemnify the City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not a waiver of Contractor's obligation to defend or indemnify the City pursuant to this Agreement. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is

invoking its right to indemnification under this Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor is liable for all costs incurred by City.

**SECTION VIII  
TERM**

**8.01** The term of this Agreement is October 1, 2008, through September 30, 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. After a notice of early termination, Contractor may use City funds only for costs incurred before the notice of termination date. Contractor, however, must return to the City the unused balance of any funds disbursed to the Contractor pursuant to this Agreement within ten (10) days of either an early termination or at the end of the Agreement term.

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

**SECTION X  
MISCELLANEOUS**

**10.01 Entire Agreement.**

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

**10.02 Authority**

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

This Agreement does not become 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  
Liz Casso  
City of Plano  
1520 K Avenue, Suite 250  
Plano, TX 75074  
972-941-5343

Contractor

**10.05 Paragraph Headings.**

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

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**10.06 Interpretation of Contract.**

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

**10.07 Venue.**

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

**IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR SIGNATURES ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_.**

\_\_\_\_\_

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF PLANO, TEXAS**

BY: \_\_\_\_\_  
Thomas H. Muehlenbeck  
CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**ACKNOWLEDGMENTS**

STATE OF TEXAS        )  
  )  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_ of  
\_\_\_\_\_, a non-profit corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

STATE OF TEXAS        )  
  )  
COUNTY OF COLLIN    )

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

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

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

The Contractor agrees to the following general conditions:

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

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

**EXHIBIT "C"**  
**AFFIDAVIT OF NO PROHIBITED INTEREST**

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

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

\_\_\_\_\_  
Name of Contractor

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §  
§

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

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**EXHIBIT "D"**

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

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

The policy will be endorsed to contain the following provisions: 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 Certificate Holder Information should read as follows:

City of Plano  
Attn: Risk Manager  
P.O. Box 860358  
Plano, TX 75086-0358

CC: Liz Casso, Heritage Preservation Officer

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.

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**FUNDING AGREEMENT BETWEEN CITY OF PLANO  
AND  
PLANO AFRICAN AMERICAN MUSEUM**

The **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as "City"), and **Plano African American Museum (P.A.A.M.)**, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as "Contractor"), enter into this funding agreement to set out the terms and conditions governing the grant of City funds to Contractor for the purposes set out herein.

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

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

**WHEREAS**, pursuant to Ordinance No. 2008-9-15, the City Council determined that the City should expend the sum of \$159,798.00 for the purposes outlined in the attachment entitled "Heritage Preservation Grant Application" (hereinafter referred to as "Application"); and

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

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

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

**1.01 Purpose/Consideration.**

This Agreement provides the terms and conditions under which City will make available the sum of \$159,798.00, for use to support the activities outlined in attached Exhibit "A," Contractor's funding application. The City's source of these funds is general revenues derived

from collection of property, sales and other taxes, as well as other sources. Contractor agrees to accept responsibility for guaranteeing City grant funds are used for the items in Exhibit "A".

In consideration of the City of Plano providing the funding specified for the 2008-09 fiscal year, Contractor shall abide by the terms and conditions of this Agreement.

**1.02 Priority of Documents.**

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

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

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

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

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

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

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

- 1. At least 90% of expenses budgeted in each line item of the Application and funded by City monies must be spent within that line item;
- 2. All requests to reallocate funds from one line item to another must first be approved by the Contractor's Board, as evidenced by the official minutes of the Board authorizing the change and submitted to the Heritage Preservation Officer. If the Heritage Preservation Officer finds that the request conforms to Item 1 of 2.02 above, the amended line item budget shall be approved. If the Heritage Preservation Officer finds that the amendments do not conform to 2.02.1 above, the request must be approved in accordance with the conditions set forth in b and c of Item 1 of 2.01;
- 3. The Building Sprinklers improvement project shall be considered a separate line item and is subject to the terms set forth in Items 1 & 2 of 2.02.
- 4. Contractor must meet all other conditions of this Agreement.

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

2.04 Unexpended and unencumbered City funds that remain with the Contractor after September 30, 2009, will revert to the City.

**SECTION III  
NON-ASSIGNMENT**

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

**SECTION IV  
INDEPENDENT CONTRACTOR**

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

**SECTION V  
DISBURSEMENT OF FUNDS**

**5.01** The City will disburse funds provided under this Agreement as follows:

1. 50% of the funds by November 30, 2008.
2. 25% of the funds by February 28, 2009.
3. The remaining 25% of the funds by July 1, 2009.

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

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

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

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

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

**5.07 Reporting Requirements.**

Within thirty (30) days of the close of each preceding quarter of the contract term, Contractor agrees to provide financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the Line Item Budget of Approved Expenditures attached in Exhibit "A", as well as a description of program goals achieved and/or progress of same for the preceding quarter. These reports shall contain a Certificate of Compliance with notarized signatures of two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. Reports submitted without required notarized signatures will be rejected and considered incomplete.

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

**SECTION VI  
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**SECTION VII  
INSURANCE REQUIREMENTS/INDEMNIFICATION**

**7.01 Insurance.**

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit "D". Additionally, this insurance must specifically cover any and all activities occurring on City property, including those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed certificate of insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract.

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

At its own expense, a Contractor receiving funds in the amount of \$75,000.00 or more agrees to maintain during the term of this Agreement, or any extension thereof, an Employee Dishonesty Bond (EDB) in an amount equal to the total dollar amount awarded to Contractor by

the City as defined in the grant agreement. A copy of proof of EDB shall be attached to the funding agreement as an additional attachment to Exhibit "D". Bonds shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

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

**7.03 Indemnification.**

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

City shall have the right to select or to approve defense counsel retained by Contractor to fulfill its obligation to defend and indemnify the City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not a waiver of Contractor's obligation to defend or indemnify the City pursuant to this Agreement. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is

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invoking its right to indemnification under this Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor is liable for all costs incurred by City.

**SECTION VIII  
TERM**

**8.01** The term of this Agreement is October 1, 2008, through September 30, 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. After a notice of early termination, Contractor may use City funds only for costs incurred before the notice of termination date. Contractor, however, must return to the City the unused balance of any funds disbursed to the Contractor pursuant to this Agreement within ten (10) days of either an early termination or at the end of the Agreement term.

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

**SECTION X  
MISCELLANEOUS**

**10.01 Entire Agreement.**

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

**10.02 Authority**

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

This Agreement does not become 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  
Liz Casso  
City of Plano  
1520 K Avenue, Suite 250  
Plano, TX 75074  
972-941-5343

Contractor  
Plano African American Museum  
P.O. Box 261250  
Plano, TX 75023  
214-659-8715 (T. J. Johnson)

**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.

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**10.06 Interpretation of Contract.**

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

**10.07 Venue.**

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

**IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR SIGNATURES ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.**

\_\_\_\_\_

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF PLANO, TEXAS**

BY: \_\_\_\_\_  
Thomas H. Muehlenbeck  
CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**ACKNOWLEDGMENTS**

STATE OF TEXAS       )  
  )  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_ of  
\_\_\_\_\_, a non-profit corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

STATE OF TEXAS       )  
  )  
COUNTY OF COLLIN    )

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

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

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

The Contractor agrees to the following general conditions:

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

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**EXHIBIT "C"**  
**AFFIDAVIT OF NO PROHIBITED INTEREST**

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

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

\_\_\_\_\_  
Name of Contractor

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_

§  
§  
§

COUNTY OF \_\_\_\_\_

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

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

EXHIBIT "D"

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

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

The policy will be endorsed to contain the following provisions: 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 Certificate Holder Information should read as follows:

City of Plano  
Attn: Risk Manager  
P.O. Box 860358  
Plano, TX 75086-0358

CC: Liz Casso, Heritage Preservation Officer

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.

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**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>			Reviewed by Purchasing <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Not Applicable	
<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory			Reviewed by Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable	
Council Meeting Date: <b>10/13/2008</b>			Reviewed by Legal <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable	
Department: Finance			Initials: _____ Date: _____	
Department Head: Denise Tacke <i>DT</i>	Executive Director: _____		<i>BA</i> <b>07.23.08</b>	
Dept Signature: _____	City Manager: _____			
Agenda Coordinator (include phone #): <b>Brianna Alvarado X7479</b>				
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				
<b>CAPTION</b>				
<p><b>A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE CITY OF PLANO'S PARTICIPATION IN "TEXPOOL", A PUBLIC FUNDS INVESTMENT POOL; DESIGNATING AUTHORIZED REPRESENTATIVES AND INVESTMENT OFFICERS; AND PROVIDING AN EFFECTIVE DATE.</b></p>				
<b>FINANCIAL SUMMARY</b>				
<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	<b>TOTALS</b>
Budget	0			
Amount Approved by Council	0			
This Item	0			
<b>BALANCE</b>	<b>0</b>			
FUND(s):				
COMMENTS:				
<b>SUMMARY OF ITEM</b>				
<p>A request by Finance Director Denise Tacke to designate investment officers and authorized representatives to transmit funds for investment in TexPool/TexPool Prime and all other actions deemed necessary for the investment of local funds.</p>				
List of Supporting Documents:				
Resolution				

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE CITY OF PLANO'S PARTICIPATION IN "TEXPOOL", A PUBLIC FUNDS INVESTMENT POOL; DESIGNATING AUTHORIZED REPRESENTATIVES AND INVESTMENT OFFICERS; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Plano, Texas ("Participant"), is a local government of the State of Texas and is empowered to delegate to a public funds investment pool the authority to invest funds and to act as custodian of investments purchased with local investment funds; and

WHEREAS, it is in the best interest of the Participant to invest local funds in investments that provide for preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act; and

WHEREAS, the Texas Local Government Investment Pool ("TexPool/TexPool *Prime*"), a public funds investment pool, was created on behalf of entities whose investment objective in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act.

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

Section I: The individuals, whose signatures appear in this Resolution, are Authorized Representatives of the Participant and are each hereby authorized to transmit funds for investment in TexPool/TexPool *Prime* and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds.

Section II. An Authorized Representative of the Participant may be deleted by a written instrument signed by all remaining Authorized Representatives provided that the deleted Authorized Representative (1) is assigned job duties that no longer require access to the Participant's TexPool/TexPool *Prime* account or (2) is no longer employed by the Participant.

Section III. The Participant may be amending Resolution signed by the Participant add an Authorized Representative provided the additional Authorized Representative is an officer, employee, or agent of the Participant.

Section IV. The following officers, officials or employees of the City of Plano are hereby designated as "Authorized Representatives" with full power and authority to: transmit funds for investment in TexPool/TexPool *Prime*, deposit money and withdraw money from the City of Plano's TexPool account from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds of the City of Plano:

**Signature:** \_\_\_\_\_

**Printed Name:** Thomas H. Muehlenbeck

**Title:** City Manager

**Signature:** Denise Tacke

**Printed Name:** Denise Tacke

**Title:** Director of Finance

**Signature:** Brianna Alvarado

**Printed Name:** Brianna Alvarado

**Title:** Treasury Analyst

**Signature:** Mary Reese

**Printed Name:** Mary Reese

**Title:** Controller

In accordance with TexPool procedures, an Authorized Representative shall promptly notify TexPool in writing of any changes in who is serving as Authorized Representatives.

Section V: This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this 13th day of October, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal <i>ws</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering	Initials	Date	
Department Head	Alan L. Upchurch	Executive Director	<i>[Signature]</i> 10/3/08 <i>[Signature]</i> 10/3/08	
Dept Signature:	<i>[Signature]</i>	City Manager		
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>[Signature]</i>	#5623	
<b>ACTION REQUESTED:</b> <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				
<b>CAPTION</b>				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AND GRANTING TWO ELECTRIC EASEMENTS TO ONCOR ELECTRIC SERVICE COMPANY ON CITY PROPERTY LOCATED ON THE NORTH SIDE OF 15 <sup>TH</sup> STREET, 127.53' WEST OF DALLAS AREA RAPID TRANSIT AND THE SOUTHWEST CORNER OF 15 <sup>TH</sup> STREET AND "H" AVENUE, AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE HIS DESIGNEE, AND PROVIDING AN EFFECTIVE DATE.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
<b>BALANCE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
FUND(s):				
COMMENTS:				
<b>SUMMARY OF ITEM</b>				
The two electric easements on 15 <sup>th</sup> Street will allow the electrical service to be placed underground in conjunction with the 15 <sup>th</sup> Street widening project.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map		n/a		

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AND GRANTING TWO ELECTRIC EASEMENTS TO ONCOR ELECTRIC SERVICE COMPANY ON CITY PROPERTY LOCATED ON THE NORTH SIDE OF 15<sup>TH</sup> STREET, 127.53' WEST OF DALLAS AREA RAPID TRANSIT AND THE SOUTHWEST CORNER OF 15<sup>TH</sup> STREET AND "H" AVENUE, AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE HIS DESIGNEE, AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the two electric easements on 15<sup>th</sup> Street will allow the electrical service to be placed underground in conjunction with the 15<sup>th</sup> Street widening project, copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter the "Easements"); and,

**WHEREAS**, upon full review and consideration of the Easements, 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, shall be authorized to execute the Easements on behalf of the City of Plano;

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

**Section I.** The City Council hereby authorizes the granting of the Easements and determines that the Easements are acceptable and are hereby in all things approved.

**Section II.** The City Manager or in his absence his designee is hereby authorized to execute the Easements and all other documents in connection with said Easements on behalf of the City of Plano.

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

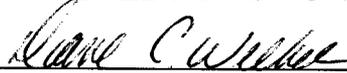
**DULY PASSED AND APPROVED** this the 13th day of October, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**ELECTRIC EASEMENT  
15<sup>th</sup> STREET WIDENING - PROJECT #5623**

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

**KNOW ALL MEN BY THESE PRESENTS:**

THAT, **THE CITY OF PLANO, TEXAS**, a home-rule municipal corporation, hereinafter called "Grantor," for and in consideration of the sum of **TEN DOLLARS (\$10.00)** and other good and valuable consideration to Grantor in hand paid by **ONCOR ELECTRIC SERVICE COMPANY**, a Texas corporation, hereinafter called "Grantee," the receipt and sufficiency of which is hereby acknowledged, does hereby GIVE, GRANT, and CONVEY to the Grantee, its successors and assigns, the right to construct, reconstruct and perpetually maintain electrical facilities (the "Facilities"), together with all incidental improvements and all necessary laterals in, upon and across the real property located in the City of Plano, Collin County, Texas, as more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference as if fully set forth herein (the "Easement Property").

**TO HAVE AND TO HOLD** the same perpetually unto the Grantee, its successors and assigns, together with the right and privilege at all times to enter the Easement Property, or any part thereof, with the right of access across Grantor's adjacent property, for the purpose of constructing, reconstructing and maintaining said Facilities, and all incidental improvements and for making connections therewith. The Grantee, its successors and assigns, shall have the right to construct, reconstruct and perpetually maintain additional Facilities at all times in the future, within the Easement Property.

This easement may be assigned in whole or in part.

**CITY OF PLANO, TEXAS**

By: \_\_\_\_\_

**Thomas H. Muehlenbeck**  
CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, City Attorney

**ACKNOWLEDGMENT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by **Thomas H. Muehlenbeck**, City Manager of the **CITY OF PLANO, TEXAS**. a home-rule municipal corporation for and on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**After Recording Return to:**  
Plano City Attorney's Office  
P.O. Box 860358  
Plano, Texas 75086-0358

COUNTY: COLLIN  
HIGHWAY: FM 544 (W. 15<sup>th</sup> Street)  
PROJECT LOCATION:  
From: G Avenue  
To: I Avenue

August 15, 2005

CSJ:  
ACCT:

Metes and Bounds Description for Parcel Park E

BEING a 618 square feet tract of land in the Joseph Klepper Survey, Abstract No. 213, City of Plano, Dallas County, Texas, being part a certain tract of land as described to the City of Plano, being part of Lot 1, Block 1 of Haggard Park Addition, an unrecorded plat to the City of Plano, said 940 square feet tract of land being more particularly described by metes and bounds as follows:

**COMMENCING** at the intersection of the existing north right-of-way line of 15<sup>th</sup> Street (a variable width right-of-way) and the east line of that certain tract of land described in deed to Dallas Area Rapid Transit (a variable width), from which a ½-inch steel rebar rod with yellow plastic cap marked "RPLS 3963" found (controlling monument) bears North 51 degrees 27 minutes 45 seconds West, a distance of 499.26 feet;

**THENCE** South 89 degrees 22 minutes 30 seconds West, along the existing north right-of-way of said 15<sup>th</sup> Street, a distance of 127.53 feet to a cut "X" in concrete set for the **POINT OF BEGINNING**;

- (1) **THENCE** continuing South 89 degrees 22 minutes 30 seconds West, along the existing north right-of-way line of said new 15<sup>th</sup> Street right-of-way, a distance of 15.00 feet to a cut "X" in concrete set for corner, from which a ½-inch steel rebar rod with yellow plastic cap marked "WEIRT ASSOC., INC." found (controlling monument) bears North 51 degrees 50 minutes 15 seconds West, a distance of 514.19 feet;
- (2) **THENCE** North 00 degrees 37 minutes 30 seconds West, a distance of 41.18 feet to a one-half inch steel rebar with yellow plastic cap marked "AZB" set for corner;
- (3) **THENCE** North 89 degrees 22 minutes and 30 seconds East, a distance of 15.00 feet to a one-half inch steel rebar with yellow plastic cap marked "AZB" set for corner;
- (4) **THENCE** South 00 degrees 37 minutes 30 seconds East, a distance of 41.18 feet to the **POINT OF BEGINNING** and containing 618 square feet or 0.0142 acres of land, more or less.

COUNTY: COLLIN  
HIGHWAY: FM 544 (W. 15<sup>th</sup> Street)  
PROJECT LOCATION:  
From: G Avenue  
To: I Avenue

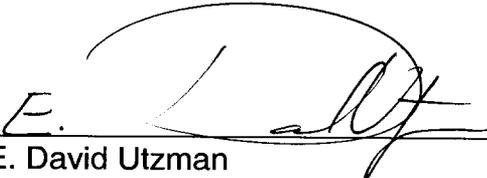
August 15, 2005

CSJ:  
ACCT:

Metes and Bounds Description for Parcel Park E

A plat of even date accompanies this description.

Basis of bearing is the Texas State Plane Coordinate System, Central Zone, North American Datum 1983 (NAD 83). All coordinates and distances shown are adjusted to the surface using adjustment factor of 1.000152710.

  
\_\_\_\_\_

E. David Utzman  
Registered Professional Land Surveyor  
Texas No. 4607

10/02/08  
Date

Arredondo, Zepeda & Brunz Inc.  
11355 McCree Road  
Dallas, Texas 75238  
(214) 341-9900 (214)  
341-9925 - Fax



# JOSEPH KLEPPER SURVEY ABSTRACT NO. 213

1/2" SR W/CAP  
FND  
CM

1/2" SR W/CAP  
FND  
CM

REPLAT OF  
LOT 1, BLOCK 1  
HAGGARD PARK ADDITION  
(UNRECORDED PLAT)

OWNER  
CITY OF PLANO

N 51°50'15" W 514.19'

N 51°27'45" W 499.26'

DALLAS AREA  
RAPID TRANSIT  
(VARIABLE WIDTH ROW)

PAD  
LOCATION

(PARK E)

618 S.F./  
0.0142 AC.

N 89°22'30" E 15.00'

N 00°37'30" W 41.18'

S 00°37'30" E 41.18'

CUT "X"  
IN CONC  
SET

CUT "X"  
IN CONC  
SET

POINT OF  
COMMENCING

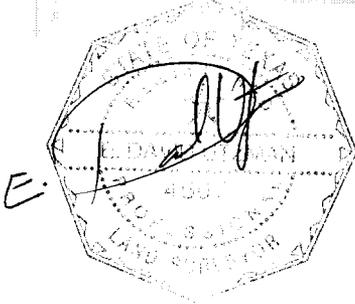
S 89°22'30" W 15.00'

S 89°22'30" W 127.53'

POINT OF  
BEGINNING

15th STREET  
(VARIABLE WIDTH ROW)

I AVENUE  
(VARIABLE WIDTH ROW)



### LEGEND

EXISTING RIGHT OF WAY LINE	---
PROPERTY LINE	— —
COUNTY LINE	—  —
CONTROL OF ACCESS LINE	— _ —
SURVEY LINE	— —
FENCE LINE	—x—x—
CITY LIMITS	---
EASEMENTS	---
RAILROAD STRUCTURE	— — — — —

1/2" STEEL REBAR SET w/YELLOW  
CAP MARKED "AZB" UNLESS  
OTHERWISE NOTED.

CM = CONTROL MONUMENT

OPRRPCT

OFFICIAL PUBLIC RECORDS  
OF REAL PROPERTY OF  
COLLIN COUNTY, TEXAS

DRCCT

DEED RECORDS OF COLLIN COUNTY, TEXAS

PRCCT

PLAT RECORDS OF COLLIN COUNTY, TEXAS

### AREA SUMMARY

PARENT TRACT	6.9619 AC. (303,260 SF)
EASEMENT AREA	0.0142 AC ( 618 SF)

### NOTE:

AERIAL FILE SHOWN IS NOT CURRENT.

SCALE IN FEET



SCALE: 1" = 50'

A PLAT OF A SURVEY OF A  
618 S.F. (0.0142 AC.) TRACT OF LAND  
IN THE JOSEPH KLEPPER SURVEY  
ABSTRACT NUMBER 213  
CITY OF PLANO  
COLLIN COUNTY, TEXAS

10/02/08

DATE

9/5/06 AM

10/11/2008

S:\MISC\2008\25\_COP-15157\00p\parcel\_park-e.dgn

PARCEL PARK-E

aa-7

COUNTY: COLLIN  
HIGHWAY: FM 544 (W. 15<sup>th</sup> Street)  
PROJECT LOCATION:  
From: G Avenue  
To: I Avenue

August 15, 2005

CSJ:  
ACCT:

Metes and Bounds Description for Parcel 3E

BEING a 407 square feet tract of land in the Joseph Klepper Survey, Abstract No. 213, City of Plano, Dallas County, Texas, being part a certain tract of land as described in deed to the City of Plano as recorded in Clerk's File 2001-121827, Official Public Records of Real Property of Collin County (OPRRPCC), said 705 square feet tract of land being more particularly described by metes and bounds as follows:

**COMMENCING** at a 1/2-inch steel rebar rod found (controlling monument) along the west line of a certain called 0.702 acre tract of land as described in deed to 15<sup>th</sup> Street Village L.P. as recorded in Clerk's File 2003-0235014, OPRRPCC, said commencing point also being the east corner common to a certain called 1.00 acre tract of land as described in deed to 15<sup>th</sup> Street Village L.P. as recorded in Clerk's File 2003-0235015, OPRRPCC, and a certain called tract of land as described in deed to Howard D. Hamilton, Jr., as recorded in Clerk's File 2000-0104796, OPRRPCC;

**THENCE** North 00 degrees 16 minutes 13 seconds West, along the line common to said 15<sup>th</sup> Street Village L.P. 0.702 acre tract of land and said Howard D. Hamilton, Jr., tract of land, a distance of 101.71 feet, to a point for corner in the new south right-of-way line of 15<sup>th</sup> Street (a variable width right-of-way), from which a bent 1/2-inch steel rebar with yellow plastic cap marked "AZB" found (controlling monument) bears North 89 degrees 47 minutes 04 seconds West, a distance of 80.25 feet;

**THENCE** North 89 degrees 25 minutes 00 seconds East, along the line common to said 15<sup>th</sup> Street Village L.P. 0.702 acre tract of land, said City of Plano tract of land and said new 15<sup>th</sup> Street right-of-way, a distance of 237.23 feet to a one-half inch steel rebar with yellow plastic cap marked "AZB" set for the **POINT OF BEGINNING**;

(1) **THENCE** continuing North 89 degrees 25 minutes 00 seconds East, along the line common to said City of Plano tract of land and the said new 15<sup>th</sup> Street right-of-way, a distance of 20.33 feet to a one-half inch steel rebar with yellow plastic cap marked "AZB" set for the north end of a corner clip corner for H Avenue (a variable width right-of-way);

(2) **THENCE** South 45 degrees 42 minutes 55 seconds East, along said corner clip, a distance of 14.17 feet to a cut "X" in concrete set for the south end of said corner clip, said point being on the west right-of-way line of said H Avenue;

COUNTY: COLLIN  
HIGHWAY: FM 544 (W. 15<sup>th</sup> Street)  
PROJECT LOCATION:  
From: G Avenue  
To: I Avenue

August 15, 2005

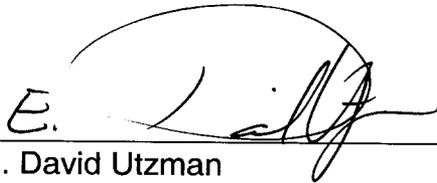
CSJ:  
ACCT:

Metes and Bounds Description for Parcel 3E

- (3) **THENCE** South 00 degrees 51 minutes 16 seconds East, along the west right-of-way line of said H Avenue, a distance of 5.06 feet to a one-half inch steel rebar with yellow plastic cap marked "AZB" set for corner;
- (4) **THENCE** South 89 degrees 25 minutes and 00 seconds West, a distance of 30.40 feet to a one-half inch steel rebar with yellow plastic cap marked "AZB" set for corner;
- (5) **THENCE** North 00 degrees 35 minutes 00 seconds West, a distance of 15.06 feet to the **POINT OF BEGINNING** and containing 407 square feet or 0.0093 acres of land, more or less.

A plat of even date accompanies this description.

Basis of bearing is the Texas State Plane Coordinate System, Central Zone, North American Datum 1983 (NAD 83). All coordinates and distances shown are adjusted to the surface using adjustment factor of 1.000152710.

  
 \_\_\_\_\_  
 E. David Utzman  
 Registered Professional Land Surveyor  
 Texas No. 4607

10/02/08  
Date

Arredondo, Zepeda & Brunz Inc.  
11355 McCree Road  
Dallas, Texas 75238  
(214) 341-9900 (214)  
341-9925 - Fax







**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Not Applicable
Council Meeting Date: <b>10/13/08</b>		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Parks and Recreation			Initials
Department Head	Don Wendell	Executive Director	<i>[Signature]</i> 10.6.08	
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i> 10/6/08	
Agenda Coordinator (include phone #): <b>Susan Berger (7255)</b>				

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

**CAPTION**

Approving an easement and right-of-way agreement between the City of Plano and Oncor Electric Delivery Company LLC providing for electric service to the Plano Sports Authority recreation facility at Enfield Park; and authorizing its execution by the City Manager or, in his absence, an Executive Director; and providing 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**

Oncor Electric Delivery Company LLC has requested an electrical easement in order to provide underground electrical service to the new Plano Sports Authority recreational facility at Enfield Park. The exact location of the service line was determined during the construction of the building.

The easement must be conveyed by the City of Plano to Oncor since the facility is located on City property leased to PSA. The lease agreement with PSA was entered into on November 21, 2005 and subsequently modified on July 9, 2007 and March 4, 2008.

List of Supporting Documents:

- Location Map
- Agreement with Exhibit

Other Departments, Boards, Commissions or Agencies

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO APPROVING AN EASEMENT AND RIGHT-OF-WAY AGREEMENT BETWEEN THE CITY OF PLANO AND ONCOR ELECTRIC DELIVERY COMPANY LLC PROVIDING FOR ELECTRIC SERVICE TO THE PLANO SPORTS AUTHORITY RECREATION FACILITY AT ENFIELD PARK; AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has received a proposed Easement and Right-of-Way Agreement, in which the City of Plano authorizes the use of a portion of Enfield Park property by Oncor Electric Delivery Company LLC to provide electrical service to the Plano Sports Authority recreation facility, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (hereinafter "Agreement"); and

**WHEREAS**, upon full review and consideration of the Easement and Right-of-Way Agreement, and all matters attendant and related thereto, the City Council finds that the Agreement is in the best interest of the citizens and the City of Plano.

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

**Section I.** The City Council hereby approves the Agreement attached hereto and incorporated herein as Exhibit A.

**Section II.** The City Council authorizes the City Manager, or in his absence, an Executive Director, to execute the Agreement and all other documents in connection with the Agreement on behalf of the City of Plano.

**Section III.** This Resolution becomes effective from and after its adoption.

RESOLUTION NO. \_\_\_\_\_

Page 2

DULY PASSED AND APPROVED this the \_\_ day of \_\_\_\_.  
2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

bb-3

District: McKinney

WR #: 2900595

ER # \_\_\_\_\_

**EASEMENT AND RIGHT OF WAY**

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN

§

§

That The City of Plano, hereinafter called "Grantor", whether one or more, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration to Grantor in hand paid by **Oncor Electric Delivery Company LLC, a Delaware limited liability company**, 1601 Bryan Street, Dallas, Texas 75201, hereinafter referred to as "Grantee", has granted, sold and conveyed and by these presents does grant, sell and convey unto said Grantee, its successors and assigns, an easement and right-of-way for underground electric supply, consisting of a variable number of wires and cables, supporting structures, surface mounted equipment, conduits and all necessary or desirable appurtenances over, under, through, across and upon Grantor's land described as follows:

**SEE EXHIBIT "A" (ATTACHED)**

Grantor recognizes that the general course of said lines, or the metes and bounds as described above, is based on preliminary surveys only, and Grantor hereby agrees that the easement and right-of-way and its general dimensions hereby granted shall apply to the actual location of said lines when constructed.

Together with the right of ingress and egress along and upon said easement and right-of-way and over and across Grantor's adjoining properties for the purpose of and with the right to construct, maintain, operate, repair, remove, replace, reconstruct, abandon in place, and to change the size and capacity of said underground facilities; the right to relocate said facilities in the same relative direction of said facilities; the right to relocate said facilities in the same relative position to any adjacent road if and as such is widened in the future;; the right to prevent excavation within the easement area; the right to prevent construction of, within the easement area, any and all buildings, structures or other obstructions which, in the sole judgment of Grantee, may endanger or interfere with the efficiency, safety, and/or convenient operation of said facilities and their appurtenances and the right to trim or remove trees or shrubbery within, , said easement area, including by use of herbicides or other similar chemicals approved by the U.S. Environmental Protection Agency, to the extent in the sole judgment of Grantee, as may be necessary to prevent possible interference with the operation of said facilities or to remove possible hazard thereto. Grantor shall not make changes in grade, elevation or contour of the land or impound water within the easement area as described above without prior written consent of Grantee.

bb-4

Grantor reserves the right to use the land within the above described easement area for purposes not inconsistent with Grantee's use of such property, provided such use shall not, in the sole judgment of Grantee, interfere with the exercise by Grantee of the rights hereby granted.

TO HAVE AND TO HOLD the above described easement and right-of-way unto the said Grantee, its successors and assigns, until all of said electric lines and facilities shall be abandoned, and in that event said easement and right-of-way shall cease and all rights herein granted shall terminate and revert to Grantor or Grantor's heirs, successors or assigns, and legal representatives, to warrant and forever defend the above described easement and right-of-way unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

The City of Plano

By: \_\_\_\_\_

Name Thomas H. Muehlenbeck

Title: City Manager

STATE OF TEXAS

§  
§  
§

COUNTY OF

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as the act and deed of \_\_\_\_\_, as the \_\_\_\_\_ thereof, for the purposes and consideration therein expressed, in the capacity therein stated and that he/she is authorized to do so.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public in and for the State of Texas

EXHIBIT A  
ONCOR ELECTRIC DELIVERY  
COMPANY EASEMENT

PAGE 1 OF 2

STATE OF TEXAS  
COUNTY OF COLLIN

BEING a 0.05 acre tract, lot or parcel of land situated in the Daniel Rowlett Survey, Abstract No. 738, in the City of Plano, Collin County, Texas, and being a portion of Lot 1, Block 1, Enfield Park Addition, an addition to the City of Plano, Collin County, Texas according to the plat thereof recorded in Cabinet Y at Page 380, Plat Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 1 inch iron pipe found for corner, said corner being the Southeast corner of said Lot 1, at the intersection of the north line of Seabrook Road and the west line of Stadium Drive (65 foot right-of-way), same point being the beginning of a curve to the right having a chord bearing of North 85 degrees 24 minutes 57 seconds West, a chord distance of 117.20 feet and a radius of 1312.68 feet;

THENCE along said curve to the right a distance of 117.24 feet along the north line of said Seabrook Road to a 1/2 inch iron rod found for corner;

THENCE North 82 degrees 51 minutes 26 seconds West, continuing along the north line of said Seabrook Road, a distance of 212.90 feet to a point for corner, said point being the POINT of BEGINNING;

THENCE North 82 degrees 51 minutes 26 seconds West, continuing along the north line of said Seabrook Road, a distance of 3.45 feet to a 1/2 inch iron rod found said point also being the beginning of a curve to the left having a chord bearing of North 83 degrees 08 minutes 23 seconds West, a chord distance of 13.54 feet and a radius of 1372.68 feet;

THENCE along said curve to the right a distance of 13.54 feet along the north line of said Seabrook Road to a point for corner;

THENCE North 34 degrees 58 minutes 06 seconds East, departing the north line of said Seabrook Road and through the interior of said Lot 1, a distance of 119.82 feet to a point for corner;

THENCE North 88 degrees 52 minutes 53 seconds East, continuing through the interior of said Lot 1, a distance of 28.91 feet to a point for corner;

THENCE South 02 degrees 05 minutes 22 seconds West, continuing through the interior of said Lot 1, a distance of 15.00 feet to a point for corner;

THENCE South 88 degrees 52 minutes 53 seconds West, continuing through the interior of said Lot 1, a distance of 20.65 feet to a point for corner;

THENCE South 34 degrees 58 minutes 06 seconds West, continuing through the interior of said Lot 1, a distance of 103.83 feet to the POINT of BEGINNING and containing 2,049 square feet or 0.05 acres of computed land.

*William P. Price*

William P. Price, R.P.L.S. No. 3047



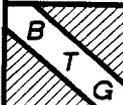
9.22.09

bb-6



972-717-5151  
105 DECKER COURT, SUITE 910

Fax 972-717-2176  
IRVING, TEXAS 75062



BUENA TIERRA GROUP  
SURVEYING • CONSULTING • MANAGEMENT

400 S. INDUSTRIAL BOULEVARD, SUITE 228 (817) 354-1445  
EULESS, TEXAS 76040 (817) 354-1451 (F)

EXHIBIT A

0.05 ACRES  
ONCOR ELECTRIC DELIVERY  
COMPANY EASEMENT

BEING A PORTION OF  
LOT 1, BLOCK 1  
ENFIELD PARK ADDITION  
CABINET Y, PAGE 380  
PLAT RECORDS, COLLIN COUNTY, TEXAS  
CITY OF PLANO, TEXAS

EXHIBIT A  
ONCOR ELECTRIC DELIVERY  
COMPANY EASEMENT

PAGE 2 OF 2

LOT 1, BLOCK 1  
ENFIELD PARK ADDITION  
CABINET "Y", PAGE 380  
PLAT RECORDS, COLLIN COUNTY, TEXAS

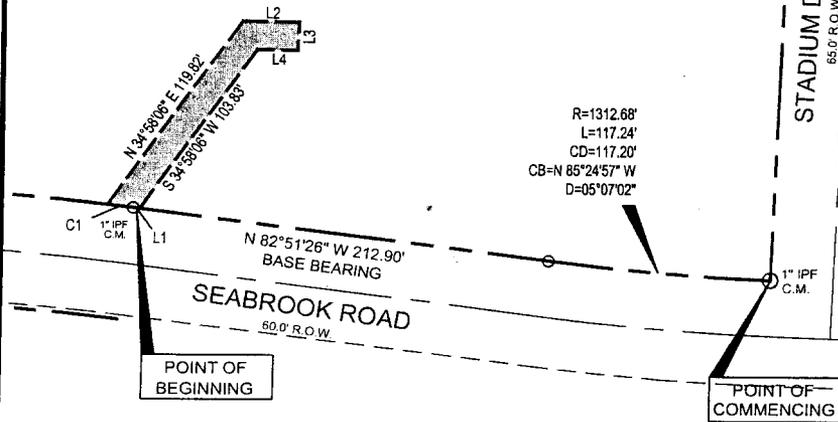
CHASE OAKS VILLAS PHASE  
CAB G, PG. 36,



Scale 1" = 80'

CURVE TABLE					
CURVE	R=	D=	L=	LC=	CB=
C1	1372.68'	0°33'55"	13.54'	13.54'	N 83°08'23" W

LINE TABLE		
LINE	LENGTH	BEARING
L1	3.45	N 82°51'26" W
L2	28.91	S 88°52'53" E
L3	15.00	S 02°05'22" W
L4	20.65	N 88°52'53" W



CARPENTER VILLAGE, LTD.  
VOL. 1893, PG. 384,  
D.R.C.C.

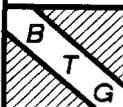
EXHIBIT A

0.05 ACRES  
ONCOR ELECTRIC DELIVERY  
COMPANY EASEMENT

BEING A PORTION OF  
LOT 1, BLOCK 1  
ENFIELD PARK ADDITION  
CABINET Y, PAGE 380  
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CITY OF PLANO, TEXAS



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105 DECKER COURT, SUITE 910 IRVING, TEXAS 75062



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EULESS, TEXAS 75040 (817) 354-1451 (F)

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**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal <i>aw</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	City Secretary		Initials	Date
Department Head	Diane Zucco	Executive Director	<i>[Signature]</i>	<b>09.19.08</b>
Dept Signature:		City Manager		
Agenda Coordinator (include phone #):		<b>Sharon Kotwitz - x7120</b>		
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				
<b>CAPTION</b>				
To adopt and enact Supplement Number 83 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
<b>BALANCE</b>	0	0	0	0
<b>FUND(s):</b>				
<b>COMMENTS:</b> This item has no fiscal impact				
<b>SUMMARY OF ITEM</b>				
Adoption of this ordinance enables this supplement to be admissible in court.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS ADOPTING AND ENACTING SUPPLEMENT NUMBER 83 TO THE CODE OF ORDINANCES FOR THE CITY OF PLANO; PROVIDING FOR AMENDMENT TO CERTAIN SECTIONS OF THE CODE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Plano, Texas adopted a new Code of Ordinances upon adoption of Ordinance No. 87-3-14, on March 9, 1987; and

**WHEREAS**, Sections V and VI of Ordinance No. 87-3-14 provide for amendment to said Code of Ordinances; and

**WHEREAS**, §3.11 of the City of Plano Charter provides that the City Council has the power to have its ordinances codified and printed in Code form, and that such printed form shall have full force and effect without the necessity of publishing the same or any part thereof in a newspaper; and

**WHEREAS**, the Code of Ordinances of the City of Plano, Texas has been revised by previous amendments duly passed as individual ordinances by the City Council and such amendments are reflected on Supplement Number 83;

**WHEREAS**, The City Council wishes to adopt the ordinance codification version appearing in Supplement 83 of the Plano Code of Ordinances in order for the printed Code form to be considered identical to the original ordinance and to eliminate any confusion or differences in the format of the original ordinance.

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

**Section I.** The City Council hereby adopts the printed Code form of the ordinances contained in Supplement 83 as prepared by the codifier.

**Section II.** This Ordinance shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this the 13th day of October, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

ce-2

M:ord-supplement83



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Planning	Initials	Date	
Department Head	P. Jarrell	Executive Director	10/6/08	
Dept Signature:	<i>P. Jarrell</i>	City Manager	10/6/08	
Agenda Coordinator (include phone #):		<b>T. Stuckey - 7156</b>		

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

**CAPTION**

APPROVING THE TERMS AND CONDITIONS OF A BOUNDARY ADJUSTMENT AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS AND THE CITY OF FRISCO, TEXAS; AUTHORIZING THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR, TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY OF PLANO; AND PROVIDING 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
<b>BALANCE</b>	0	0	0	0

**FUND(S):**

**COMMENTS:**

**SUMMARY OF ITEM**

In 1997, Plano and Frisco entered into a boundary agreement that set the city limit line at the northern right-of-way of SH 121, with an eventual reversion to the centerline of the roadway as it was built to freeway (now tollway) status. Since much of the construction of the tollway is now complete, it is appropriate to move the city limit line to the centerline of the roadway. This change will assist the Police and Fire Departments with traffic enforcement and emergency response. A separate agreement between the two cities addresses the traffic signals along the frontage roads; this agreement is not affected by the boundary adjustment and Plano will continue to operate the signals.

List of Supporting Documents:  
Ordinance and Agreement

Other Departments, Boards, Commissions or Agencies

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF A BOUNDARY ADJUSTMENT AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS AND THE CITY OF FRISCO, TEXAS; AUTHORIZING THE CITY MANAGER OR, IN HIS ABSENCE AN EXECUTIVE DIRECTOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY OF PLANO; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City of Plano and the City of Frisco entered into a boundary agreement that set the city limit line at the northern right-of-way of State Highway 121, with an eventual reversion to the centerline of the roadway as it was built to freeway (tollway) status; and

**WHEREAS**, much of the construction of the tollway is now complete and it is appropriate to move the city limit line to the centerline of the roadway; and

**WHEREAS**, the City Council has been presented a proposed Boundary Adjustment Agreement with regard to State Highway 121 between the City of Frisco, Texas and the City of Plano, Texas, 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, in his absence, an Executive Director, shall be authorized to execute it on behalf of the City of Plano.

**NOW, THEREFORE, BE IT ORDAINED 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, an Executive Director, 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 Ordinance shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

BOUNDARY ADJUSTMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between the CITY OF FRISCO, TEXAS, hereinafter referred to as "Frisco," and the CITY OF PLANO, TEXAS, hereinafter referred to as "Plano."

WHEREAS, Frisco's city limit boundary is in part contiguous with the city limit boundary of Plano; and

WHEREAS, Section 43.031 of the Texas Government Code authorizes adjacent cities to enter into mutually agreeable changes in their boundaries of areas that are less than 1,000 feet in width; and

WHEREAS, since 1976 Frisco and Plano have entered into a number of city limit boundary adjustment agreements or amendments establishing and altering the location of the city limit boundary line between the two municipalities along Highway 121 with the current boundary being located along the northern right-of-way line of State Highway 121 west of Spring Creek Parkway east to the its intersection with Custer Road; and

WHEREAS, Frisco and Plano have previously agreed that with the widening of State Highway 121 to freeway status the two cities would enter into an adjustment agreement establishing a mutual boundary along the center line of State Highway 121 right-of-way; and

WHEREAS, State Highway 121 construction is nearing completion with divided lanes of traffic; and

WHEREAS, representatives of Frisco and Plano have met and agreed on a mutually acceptable boundary which is in the best interest of the citizens of each city.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions, and promises expressed herein, Frisco and Plano agree as follows:

SECTION I.  
Statement of Intent

It is the intent of Frisco and Plano to modify their respective boundaries in the manner shown on the map attached to and made a part of this Agreement as Exhibit "A." Said boundary line is the center line of State Highway 121 right-of-

dd-4

way along the entire length of said highway between the two cities such that the service road and main lanes of State Highway 121 south of the center line shall be in Plano and the service road and main lanes of State Highway 121 north of the center line shall be in Frisco.

**SECTION II.**  
**Relinquishment of Territory**

To accomplish the objective set forth in Section I above, Frisco does hereby grant, relinquish, and apportion unto Plano all land, if any, that is less than 1,000 feet in width currently within the city limits of Frisco to Plano that lies south of the center line of State Highway 121 right-of-way along the length of its common boundary with Plano. Plano does hereby grant, relinquish, and apportion unto Frisco all land that is less than 1,000 feet in width currently within the city limits of Plano to Frisco that lies north of the center line of State Highway 121 right-of-way along the length of its common boundary with Frisco.

**SECTION III.**  
**Waiver of Extraterritorial Jurisdiction**

Frisco does hereby waive all of its extraterritorial jurisdiction in the property located south of the boundary line established in Sections I and II above. Plano does hereby waive all of its extraterritorial jurisdiction in the property located north of the boundary line established in Sections I and II above.

It is expressly agreed and understood that this waiver shall operate only in favor of the parties to this agreement, and shall not constitute a waiver of any right, including extraterritorial jurisdiction rights, which either party may be able to assert against any other municipality.

**SECTION IV.**  
**Severability**

Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

**SECTION V.  
Effective Date**

Plano and Frisco agree that this Agreement shall take effect only upon ratification and adoption by the governing bodies of each city.

**SIGNED** this \_\_\_\_ day of \_\_\_\_\_, 2008.  
**CITY OF PLANO, TEXAS**

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Thomas H. Muehlenbeck  
CITY MANAGER

APPROVED AS TO FORM

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**CITY OF FRISCO, TEXAS**

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
George Purefoy  
CITY MANAGER

APPROVED AS TO FORM

\_\_\_\_\_  
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §  
  §  
COUNTY OF COLLIN §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2008 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

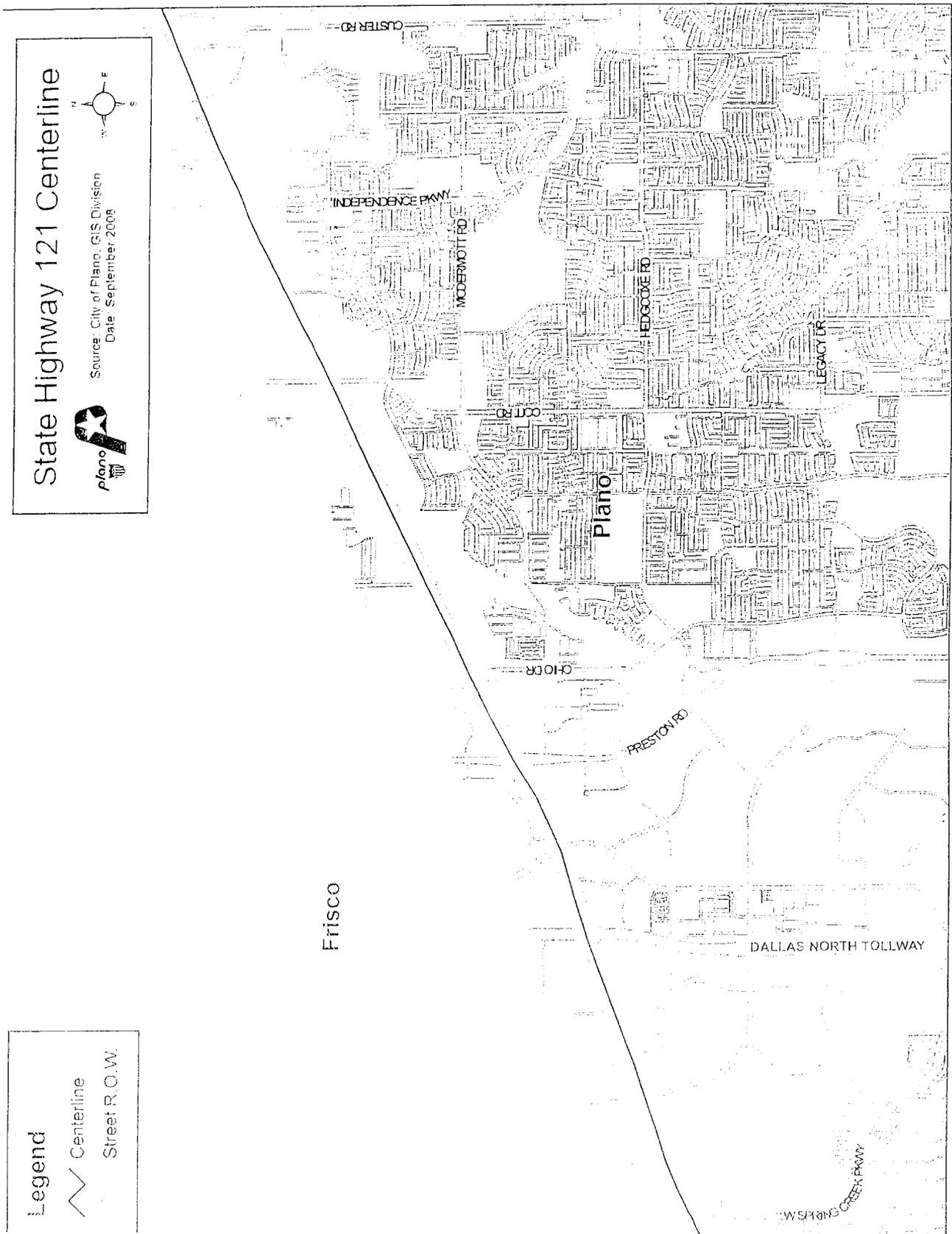
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2008 by **GEORGE PUREFOY**, City Manager of the **CITY OF FRISCO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

EXHIBIT A



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**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal <i>WR</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Budget & Research	Initials	Date	
Department Head	Karen Rhodes <i>[Signature]</i>	Executive Director		
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	<i>10/13/08</i>
Agenda Coordinator (include phone #): <b>Carla Rude</b>				
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				
<b>CAPTION</b>				
AN ORDINANCE OF THE CITY OF PLANO, TEXAS, APPROVING THE CARRYING FORWARD OF FISCAL YEAR 2007-08 FUNDS TO FISCAL YEAR 2008-09; AND APPROVING AN EFFECTIVE DATE.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2008-09</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	12,914,093	0	<b>12,914,093</b>
BALANCE	0	12,914,093	0	<b>12,914,093</b>
<b>FUND(S):    GENERAL FUND, CATV FUND, WATER &amp; SEWER FUND; SUSTAINABILITY &amp; ENVIRONMENTAL SERVICES FUND; MUNICIPAL DRAINAGE FUND, PROPERTY &amp; LIABILITY LOSS FUND; ECONOMIC DEVELOPMENT FUND</b>				
<b>COMMENTS:</b> Funds are available from the FY 2007-08 approved budget in the listed funds as carry-forwards into FY 2008-09 for the completion of various projects and other purchases.  <b>STRATEGIC PLAN GOAL:</b> Carrying forward of available funds for the completion of projects relates to the City's Goal of "Service Excellence".				
<b>SUMMARY OF ITEM</b>				
This ordinance approves the FY 2007-2008 Carry Forward List to FY 2008-2009 and sets the level of transfers for the various funds, as reviewed by the City Council.				
List of Supporting Documents: 2007-08 Carry Forward Request Log		Other Departments, Boards, Commissions or Agencies		

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF PLANO, TEXAS, APPROVING THE CARRYING FORWARD OF FISCAL YEAR 2007-2008 FUNDS TO FISCAL YEAR 2008-09; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on September 8, 2008, the City Council approved the budget for fiscal year 2008-2009 by passing Ordinance 2008-9-15; 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 2007-2008 to fiscal year 2008-2009.

**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 2007-2008 to the fiscal year budget 2008-2009:

A.	General Fund	\$2,081,815
B.	CATV Fund	\$8,500
C.	Water & Sewer Fund	\$17,748
D.	Sustainability & Environmental Services Fund	\$154,276
E.	Municipal Drainage Fund	\$94,000
F.	Property/Liability Loss Fund	\$64,707
G.	Economic Development Fund	\$10,493,047

Ordinance No. \_\_\_\_\_

Page 2

**Section II.** This Ordinance shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

9

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes: From	To	Approval Amount
	<b>BUDGETED PROJECTS/ITEMS</b>						
113	Legal	ProLaw Office Management software	\$ 14,134	Remaining funds to be pay for the software	113.8451	113.8451	\$ 14,134
116	Public Information	Translations Services	\$ 4,000	Funds needed for web translations services	116.6312	116.6312	\$ 4,000
215	Non-Departmental	Retirement Payouts	\$ 86,000	Reserve Non-Departmental retirement funds for add'l Retirement payouts in 2008-09	215.6199	215.6199	\$ 86,000
		Special Retiree Medicare payments	\$ 750,000	Reserves for paying Medicare premiums for those EE's who did not pay into FICA-HI after April 1986	215.6127	215.6127	\$ 750,000
321	Records Management	Compensation Compression Maintenance for new scanners	\$ 175,963 \$ 15,000	Compensation compression Funds needed to pay maintenance on new scanners	215.6199 321.6313	215.6199 321.6313	\$ 175,963 \$ 15,000
		Info Mgmt. Annual Conference	\$ 693	Funds needed to attend the Association for Image and Information Management Annual Conference	321.6307	321.6307	\$ 693
352	Facilities Maintenance	Due to lower than anticipated natural gas prices and a warmer than usual winter, there are saving in the Utilities - Gas account. Due to lower than anticipated electricity usage, carry forward for anticipated rate increases in 2008-09	\$ 80,000 \$ 40,000	The natural gas company has requested an increase in gas prices, so it is anticipated that a portion of remaining 2006-07 funds will be needed to cover the price increase in 2007-08. Rates are expected to increase 17% in October 2008	352.6332 352.6331	352.6332 352.6331	\$ 80,000 \$ 40,000
381	Human Resources	New AMX System for the City Council Chamber Acrobat Adobe licenses	\$ 10,000 \$ 795	Project has started and bids have been received, but the project will not be completed until next fiscal year. The fund need to carry forward to pay the vendor upon completion. Order was placed through Technology Services so the Department will not receive invoices until after 09/30/08	352.8416 381.6251	352.8416 381.6251	\$ 10,000 \$ 795
384	Professional Development	Dell 5210N Workgroup Laser Printer Fit for Duty Exam Training through on-line media	\$ 760 \$ 5,000 \$ 28,000	Order was placed through Technology Services so the Department will not receive invoices until after 09/30/08 Requesting funds for medical exam for employee. Technology Services preferred to wait until the implementation of SharePoint Server 2007 since it could possibly impact specifications for the software	381.6252 381.6444 384.8452	381.6252 381.6444 384.8452	\$ 760 \$ 5,000 \$ 28,000

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes: From	To	Approval Amount
512	Community Outreach	Replenishing gift and accessory inventory	\$ 2,000	Have had several major visits and unanticipated events that have depleted the current inventory and more visits/events are expected.	512.6441	512.6441	\$ 2,000
		Postage	\$ 500	Insure sufficient funds are available due to rising postage costs.	512.6202	512.6202	\$ 500
		Outside Printing	\$ 400	Insure sufficient funds are available due to rising printing costs.	512.6301	512.6301	\$ 400
534	PSC	Emergency Citizen Notifications	\$ 19,900	Maintenance Cost related to making up to (100,000) emergency notification phone calls that were not used during this fiscal year.	534.6313	534.6313	\$ 19,900
		Emergency Citizen Notifications	\$ 12,000	Communications Cost related to making up to (100,000) emergency notification phone calls that were not used during this fiscal year.	534.6303	534.6303	\$ 12,000
552	Fire	Supplemental Equipment for Engine Companies	\$ 9,243	Delay in purchase due to unrelated weather events	552.6208	552.6208	\$ 9,243
		Fireman's Heritage Fund Grant	\$ 11,317	Delay in purchasing various items from the grant received from the Fireman's Heritage Fund: Safety vests, smoke alarms for deaf citizens, recruiting materials and handouts, USAR helmets	552.6208	552.6208	\$ 11,317
556	Homeland Security	E-Team Incident Management Software.	\$ 18,200	Provide (2) Train-The-Trainer classes for a total of (4) four people for the E-Team Incident Management Software.	556.6309	556.6309	\$ 18,200
582	Health	Cradle Kits	\$ 275	Cradle kits have been ordered, but not received (066-1705)	582.6252	582.6252	\$ 275
619	Property Standards	Cellular Hardware	\$ 955	Blackberry was not purchase during 2007-08 due to delay in hiring supervisor position	619.6241	619.6241	\$ 955
		(3) desktops and (3) laptops	\$ 8,100	Desktops and laptops were not purchase in FY 2007-08 due to delay in hiring of supervisor position	619.6252	619.6252	\$ 8,100
		Contracts and Professional Services	\$ 8,793	Invoices have not been received from Contractors for the work orders related to public nuisance conditions at various properties	619.6312	619.6312	\$ 8,793
		Contracts - Other	\$ 7,363	Invoices have not been received from Contractors for the work orders related to public nuisance conditions at various properties	619.6319	619.6319	\$ 7,363
		International Accreditation Services	\$ 18,570	Accreditation was placed on hold during FY 2007-08 due to possible budget reductions, will pursue in 2008-09	619.6446	619.6446	\$ 18,570

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Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount
					From	To	
622	Planning	ESRI enhancements	\$ 25,000	Annual enhancements program/project is running about a year behind	622.6312	622.6312	\$ 25,000
		Zoning Ordinance	\$ 75,000	Staff is currently working with consultants. Delays have pushed back the completion of this project. Funds are need to complete the zoning ordinance update (anticipated completion: Fall 2008).	622.6312	622.6312	\$ 75,000
623	Rental Registration & Inspection	Cellular Hardware	\$ 955	Blackberry was not purchase during 2007-08 due to delay in hiring supervisor position	623.6241	623.6241	\$ 955
		Notepad computers	\$ 5,000	(2) additional reporting units required for rental program delayed due to field testing	623.6252	623.6252	\$ 5,000
632	Creative Arts	Business Plan for Theatre operations	\$ 30,000	Key Staff resignation delayed the project.	632.6312	632.6312	\$ 30,000
636	Athletics	Consultant for Athletic facilities signage design and changes	\$ 5,000	Hire a consultant to work with staff to develop regulatory, directional, and general signage at the City's athletic facilities	636.6312	636.6312	\$ 5,000
639	Courtyard Theatre	Replace Exterior Sign for Theatre and Cox Building	\$ 2,500	Staff turnover delayed project.	639.6312	639.6312	\$ 2,500
644	Ground Maint Svcs District #1	Chemical Sprayer	\$ 25,000	Surplus funds are available in Chemicals account to purchase a chemical sprayer for this district.	644.6212	644.8421	\$ 25,000
645	Public Art	Graphic Design and printing of book for Libraries Public Art	\$ 5,000	Library project installation and dedication delayed	645.6312	645.6312	\$ 5,000
		Catering for Public Art Ceremonies	\$ 1,400	Library project installation and dedication delayed	645.6204	645.6204	\$ 1,400
647	Sports Turf Maint. Services	Plaques for dedication of Public Art Projects	\$ 1,875	Library project installation and dedication delayed	645.6441	645.6441	\$ 1,875
		Laptop replacement	\$ 1,200	Replacement of MAC computer (not covered by PC repl. Fund)	645.8452	645.6252	\$ 1,200
647	Sports Turf Maint. Services	Use savings to fund price increases in mowing/trimming contracts	\$ 30,000	Surplus funds are available in this cost center to offset price increase for mowing and trimming services at Schell/Old Shepard park sites.	648.6312	647.6312	\$ 30,000
		Contractual repairs to ice machines and irrigation	\$ 7,200	Funding for ice machine and irrigation repairs when advanced technical support is needed	647.6314	647.6314	\$ 7,200
647	Sports Turf Maint. Services	Maintenance parts and supplies	\$ 30,000	Funding for repairs to irrigation systems	647.6229	647.6229	\$ 30,000
		Trailer mounted spreader	\$ 7,000	Funding for trailer which is pending at Equipment Services	647.8416	647.8416	\$ 7,000
647	Sports Turf Maint. Services	Verticut Mower	\$ 10,000	Funding for verticut mower pending at Equipment Services	647.8421	647.8421	\$ 10,000
		Implements & Apparatus	\$ 88,929	Funding for rolling stock and apparatus which is pending at Equipment Services	647.8416	647.8416	\$ 88,929
647	Sports Turf Maint. Services	Rolling Stock	\$ 17,145	Funding for rolling stock and apparatus which is pending at Equipment Services	647.8421	647.8421	\$ 17,145

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes: From To	Approval Amount
648	Ground Maint Svcs District #2	Use savings to purchase a wildflower seeder	\$ 8,000	Surplus funds are available in this cost center and will be used to purchase wildflower seeded to replace an unit which is 18 years old. The Plano Parks Foundation will contribute a matching \$8,000 towards this purchase.	648.6216 648.8416	\$ 8,000
649	Natural Resources	Wildlife Control	\$ 10,000	Surplus funds are available in this cost center and will be used for additional wildlife control (bees, beavers, coyotes)	649.6312 649.6312	\$ 10,000
658	Ground Maint Sacs District #3	Portable radios	\$ 5,120	(2) portable Radios budgeted in FY 2008-09 were not purchased by the radio shop	658.6234 658.6234	\$ 5,120
665	Liberty Park Rec Center	TV upgrades for cardio theater system supplement 00665001	\$ 6,000	Currently \$7,900 encumbered. Requesting remaining funding be carry-forward.	665.8411 665.8411	\$ 6,000
719	Neighborhood Maintenance	Safe Streets Program	\$ 245,530	Certain projects in the SSP have been identified but not yet installed. These funds are required to complete the projects in FY 2008-09.	719.6202 719.6202	\$ 2,000
721	Engineering	Storm Water Consulting	\$ 30,000	Funds are required to contract with consultant to evaluate the proposed changes to the City's Storm Water Management Program and proposed modifications to the ISWM procedures.	719.6208 719.6208 719.6312 719.6312 719.6348 719.6348 721.6312 721.6312	\$ 188,922 \$ 52,608 \$ 2,000 \$ 30,000
		Hybrid Vehicles	\$ 81,000	(3) Hybrid vehicles have been ordered but are not expected to be received until FY 2009/10	721.8421 721.8421	\$ 81,000
<b>01</b>	<b>Subtotal General Fund</b>		<b>\$ 2,081,915</b>			<b>\$ 2,081,915</b>
181	PTN	Solid State Camera	\$ 5,500	Camera is not available for purchase until October 2008	181.6208 181.6208	\$ 5,500
		P2Media Cards	\$ 3,000	Need to purchase add'l P2 Media Cards	181.6222 181.6222	\$ 3,000
<b>18</b>	<b>Subtotal CATV</b>		<b>\$ 8,500</b>			<b>\$ 8,500</b>
761	Utility Maintenance Admin	Water Efficiency Projects	\$ 15,000	Funds requested to promote water efficiency projects and consumer education programs	761.6312 761.6312	\$ 15,000
765	Meter Services	Laptops	\$ 2,748	Meter Shop laptop upgrades (066-1705)	765.6208 765.6208	\$ 2,748
<b>41</b>	<b>Subtotal Water &amp; Sewer</b>		<b>\$ 17,748</b>			<b>\$ 17,748</b>

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Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes: From	To	Approval Amount
712	Environmental Education	Sustainability laptop	\$ 1,280	Laptop for EE Patty Stewart (066-1705)	712.6252	712.6252	\$ 1,280
		Recycle Bank Promo items	\$ 2,145	Live Green EXPO promotional items	712.6301	712.6301	\$ 2,145
714	Compost Marketing & Operation	Tractor	\$ 98,000	Purchase delayed due to specifications writing and meeting "off road" requirements	714.8421	714.8421	\$ 98,000
		Radios for Tractor & Windrow turner	\$ 5,780	Purchase delayed due to delays in ordering windrow turner and tractor	714.6234	714.6234	\$ 2,800
					717.6348.EXPO	714.6234	\$ 2,980
717	Sustainability	Yardwise Rebate program	\$ 5,000	Yardwise classes rescheduled for Fall 2008, citizens will need access to rebate funds in FY 2008-09	717.6499	717.6499	\$ 5,000
		Public Recycling Containers	\$ 30,071	Delay in determining sites for public use recycling containers	717.6208	717.6208	\$ 30,071
		DIY Home Energy Kits	\$ 12,000	Elliott's Hardware donated the kits for use in FY 2007-08, but the City will assume the kit purchases in FY 2008-09	717.6208	717.6208	\$ 445
					717.6346.EXPO	717.6208	\$ 2,764
					717.6348.EXPO		\$ 2,289
					717.6441.EXPO		\$ 5,084
					717.6441		\$ 1,348
					717.6208.EXPO		\$ 70
<b>45</b>	<b>Subtotal Sustainability &amp; Environmental Services</b>		<b>\$ 154,276</b>				<b>\$ 154,276</b>
472	Municipal Drainage	Storm Water Consulting	\$ 40,000	Funds are required to contract with consultant to evaluate the proposed changes to the City's Storm Water Management Program and proposed modifications to the iSWM procedures.	472.6312	472.6312	\$ 40,000
		Hybrid Vehicles	\$ 54,000	(3) Hybrid vehicles have been ordered but are not expected to be received until FY 2009/10	472.8421	472.8421	\$ 54,000
<b>47</b>	<b>Subtotal Municipal Drainage Fund</b>		<b>\$ 94,000</b>				<b>\$ 94,000</b>

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes: From	To	Approval Amount
117	Risk Management	Insurance	\$ 64,707	Funds to be used to purchase increased insurance coverage during FY 2008-09 due to add'l infrastructure and facilities after an internal property audit. Also, to purchase terrorist coverage, and Pollution coverage.	117.6305	117.6305	\$ 64,707
<b>65</b>	<b>Subtotal Property/Liability Loss Fund</b>		<b>\$ 64,707</b>				<b>\$ 64,707</b>
226	Economic Development	Advertising Contracts	\$ 27,000	Work-in-progress on video/CD and website.	226.6306	226.6306	\$ 27,000
			\$ 20,000	Photography rights for website work-in-progress	226.6312	226.6312	\$ 20,000
231	Economic Development Incentive Fund	Incentive Fund	\$ 10,446,047	Carry forward remaining fund balance for future projects	231.6319	231.6319	\$ 10,446,047
<b>76</b>	<b>Subtotal for Economic Development</b>		<b>\$ 10,493,047</b>				<b>\$ 10,493,047</b>
<b>GRAND TOTAL CARRY FORWARDS REQUESTED</b>			<b>\$ 12,914,093</b>	<b>GRAND TOTAL CARRY FORWARDS APPROVED</b>			<b>\$ 12,914,093</b>

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**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal <i>W</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Legal		Initials	Date
Department Head	Diane Wetherbee	Executive Director		
Dept Signature:	<i>Diane Wetherbee</i>	City Manager	<i>[Signature]</i>	<i>10/4/08</i>
Agenda Coordinator (include phone #): <b>Lynne Jones - 7109</b>				
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				
<b>CAPTION</b>				
<p>A RESOLUTION OF THE CITY OF PLANO, TEXAS AMENDING RESOLUTION NO. 2007-6-9(R) AND RESOLUTION NO. 2008-4-25(R) TO EXTEND THE DATE IN THE CAPITAL FUNDING AGREEMENTS APPROVED BY THOSE RESOLUTIONS TO OCTOBER 1, 2010 FOR THE CITIES TO RECEIVE CREDIT FOR ADVANCING CAPITAL FUNDS FOR THE PROPOSED PROJECT UPON THE CITIES ENTERING INTO A CONTRIBUTION AGREEMENT FOR AN APPROVED PROJECT; AUTHORIZING THE CITY MANAGER OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR TO EXECUTE ALL DOCUMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.</p>				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
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:				
<b>SUMMARY OF ITEM</b>				
<p>In all prior capital funding agreements for the ACC, there is a provision that the Cities who have contributed capital funds before action on an approved project will receive credit for those funds as long as a decision on an Approved Project and Contribution Agreement is in place by October 1, 2008. At this time, there is not an Approved Project or Contribution Agreement. Passage of this Resolution will extend the date until October 1, 2010 for all prior capital funding agreements. Allen and Frisco will be requested to approve this extension.</p>				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
n/a		n/a		

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF PLANO, TEXAS AMENDING RESOLUTION NO. 2007-6-9(R) AND RESOLUTION NO. 2008-4-25(R) TO EXTEND THE DATE IN THE CAPITAL FUNDING AGREEMENTS APPROVED BY THOSE RESOLUTIONS TO OCTOBER 1, 2010 FOR THE CITIES TO RECEIVE CREDIT FOR ADVANCING CAPITAL FUNDS FOR THE PROPOSED PROJECT UPON THE CITIES ENTERING INTO A CONTRIBUTION AGREEMENT FOR AN APPROVED PROJECT; AUTHORIZING THE CITY MANAGER OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR TO EXECUTE ALL DOCUMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the cities of Allen, Frisco, and Plano, collectively referred to as "Cities" previously entered into capital funding agreements for design and other services related to the Arts of Collin County Commission, Inc., sometimes referred to Arts of Collin County, Inc., and these agreements contained provisions for the Cities to receive credit for advancing capital funds for the proposed project upon the Cities entering into a Contribution Agreement for an Approved Project; and

**WHEREAS**, the Plano City Council adopted Resolution No. 2007-6-9(R) which extended the date to receive credit for previously advanced funds under prior capital funding agreements to October 1, 2008; and

**WHEREAS**, the City Council approved Resolution No. 2008-4-25(R) to provide for additional funding in the amount of \$100,000 from each City for the final construction and bid documents for a proposed project pertaining to the Arts of Collin County Commission, Inc.; and

**WHEREAS**, the Plano City Council finds that the Contribution Agreement and Approved Project will not be in effect by October 1, 2008 and it is reasonable to extend this date in all prior capital funding agreements to October 1, 2010 in order to carry forward the provision for receiving credit for previously advanced funds and preserve the remaining terms and conditions as the existing agreements; and

**WHEREAS**, the Cities desire to amend Section III. "Credit to Cities" of each previous Funding Agreement to extend the date for each City to receive credit for its capital contribution for the Approved Project from October 1, 2008 to October 1, 2010.

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

**Section I.** The City of Plano approves of a second amendment to Section III. Credit to Cities of the Funding Agreements previously amended and approved by Resolution No. 2007-6-9(R) for the limited purpose to extend the date to October 1, 2010 for the participating Cities to receive credit to be made in Article III of the funding agreements, and all other remaining terms and conditions are in full force and effect. Section III. Credit to Cities is hereby further amended in each of the Funding Agreements approved by Resolution No. 2007-6-9(R) to read in its entirety as follows:

**“III. Credit to Cities**

In consideration of Plano, Frisco, and Allen each providing up to **FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$400,000)** of their bond funds for this Agreement, the parties agree that upon all Cities entering into a Contribution Agreement for an Approved Project as set forth in Article II, section 2 of the Interlocal and this event occurs not later than October 1, 2010, Plano, Frisco and Allen shall each receive a credit for its capital contribution for the Approved Project in the amount it has furnished under this Agreement.” (Original Agreement approved by City of Plano Resolution No. 2004-11-28(R) passed November 22, 2004).

**“III. Credit to Cities**

In consideration of Plano, Frisco, and Allen each providing up to an additional **THREE HUNDRED FIVE THOUSAND AND ONE HUNDRED AND ELEVEN DOLLARS (\$305,111)** of their bond funds for this Agreement, the parties agree that upon all Cities entering into a Contribution Agreement for an Approved Project as set forth in Article II, section 2 of the Interlocal, and this event occurs not later than October 1, 2010, Plano, Frisco, and Allen shall each receive a credit for its capital contribution for the Approved Project in the amount it has furnished under this Agreement.” (Original Agreement approved by City of Plano Resolution No. 2005-6-11(R) passed June 13, 2005).

**“III. Credit to Cities**

In consideration of Plano, Frisco, and Allen each providing up to an additional **SEVEN HUNDRED FIVE THOUSAND AND SIX HUNDRED AND NINETY EIGHT DOLLARS (\$705,698)** of their

bond funds for this Agreement, the parties agree that upon all Cities entering into a Contribution Agreement for an Approved Project as set forth in Article II, section 2 of the Interlocal, and this event occurs not later than October 1, 2010, Plano, Frisco, and Allen shall each receive a credit for its capital contribution for the Approved Project in the amount it has furnished under this Agreement.” (Original Agreement approved by City of Plano Resolution No. 2005-11-13(R) passed November 14, 2005).

“III. Credit to Cities

In consideration of Plano, Frisco, and Allen each providing up to an additional **ONE MILLION TWO HUNDRED SEVENTY SEVEN THOUSAND SIX HUNDRED DOLLARS (\$1,277,600)** of bond funds for this Agreement, the parties agree that upon all Cities entering into a Contribution Agreement for an Approved Project as set forth in Article II, section 2 of the Interlocal, and this event occurs not later than October 1, 2010, Plano, Frisco, and Allen shall each receive a credit for its capital contribution for the Approved Project in the amount it has furnished under this Agreement.” (Original Agreement approved by City of Plano Resolution No. 2006-9-19(R) passed September 25, 2006).

**Section II.** The City of Plano approves of an amendment to Section III. Credit to Cities of the Funding Agreement approved by Resolution No. 2008-4-25(R) for the limited purpose to extend the date to October 1, 2010 for credit to be made to the Cities in Section III, and all other remaining terms and conditions are in full force and effect. Section III. Credit to Cities of the Funding Agreement approved by Resolution No. 2008-4-25(R) is hereby amended to read in its entirety as follows:

“III. Credit to Cities

In consideration of Plano, Frisco, and Allen each providing up to an additional **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)** of bond funds for this Agreement, the parties agree that upon all Cities entering into a Contribution Agreement for an Approved Project as set forth in Article II, section 2 of the Interlocal Agreement, and this event occurs not later than October 1, 2010, Plano, Frisco and Allen shall each receive a credit for its capital contribution for the Approved Project in the amount it has furnished under this Agreement.” (Original Agreement approved by Resolution No. 2008-4-25(R) passed April 14, 2008).

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

**DULY PASSED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**DATE:** October 7, 2008  
**TO:** Honorable Mayor & City Council  
**FROM:** James Duggan, Chairman, Planning & Zoning Commission  
**SUBJECT:** Results of Planning & Zoning Commission Meeting of October 6, 2008

**AGENDA ITEM NO. 7 - PUBLIC HEARING  
ZONING CASE 2008-66  
APPLICANT: MIKE EPPERSON**

Request for a Specific Use Permit for Gymnastics/Dance Studio on one lot on 0.6± acre located on the north side of Summit Avenue, 500± feet east of Jupiter Road. Zoned Light Industrial-1.

**APPROVED:** 7-0 **DENIED:** \_\_\_\_\_ **TABLED:** \_\_\_\_\_

**LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0

**LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0

**PETITION(S) RECEIVED:** N/A **# OF SIGNATURES:** N/A

**STIPULATIONS:**

Recommended for approval as submitted.

**FOR CITY COUNCIL MEETING OF:** October 13, 2008 (To view the agenda for this meeting, see [www.planotx.org](http://www.planotx.org))

**PUBLIC HEARING - ORDINANCE**

EH/dc

xc: David Vicars, TPLP Office Park Properties  
Mike Epperson, Heart Gymnastics, LLC

CITY OF PLANO  
PLANNING & ZONING COMMISSION

October 6, 2008

**Agenda Item No. 7**

**Public Hearing:** Zoning Case 2008-66

**Applicant:** Mike Epperson

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**DESCRIPTION:**

Request for a Specific Use Permit for Gymnastics/Dance Studio on one lot on 0.6± acre located on the north side of Summit Avenue, 500± feet east of Jupiter Road. Zoned Light Industrial-1.

**REMARKS:**

The requested zoning is a Specific Use Permit (SUP) for Gymnastics/Dance Studio. Gymnastics/Dance Studio is a building or portion of a building used as a place of work for a gymnast or dancer or for instructional classes in gymnastics or dance. The purpose and intent of an SUP is to authorize and regulate a use not normally permitted in a district which could be of benefit in a particular case to the general welfare, provided adequate development standards and safeguards are established.

The proposed Gymnastics/Dance Studio is part of an office warehouse building with direct access to the exterior of the building. The proposed use meets the required parking and all the other zoning regulations.

**RECOMMENDATION:**

Recommended for approval as submitted.

**ORDINANCE NO. \_\_\_\_\_**  
**(Zoning Case 2008- 66)**

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. 596 SO AS TO ALLOW THE ADDITIONAL USE OF GYMNASTICS/DANCE STUDIO ON 1.2± ACRES OF LAND OUT OF THE WILLIAM BEVERLY SURVEY, ABSTRACT NO. 135, LOCATED ON THE NORTH SIDE OF SUMMIT AVENUE, 500± FEET EAST OF JUPITER ROAD, IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, PRESENTLY ZONED LIGHT INDUSTRIAL-1; 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 13th day of October, 2008 for the purpose of considering granting Specific Use Permit No. 596 for the additional use of Gymnastics/Dance Studio on 1.2± acres of land out of the William Beverly Survey, Abstract No. 135, located on the north side of Summit Avenue, 500± feet east of Jupiter Road in the City of Plano, Collin County, Texas, presently zoned Light Industrial-1 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 13th day of October, 2008; and

**WHEREAS**, the City Council is of the opinion and finds that the granting of Specific Use Permit No. 596 for the additional use of Gymnastics/Dance Studio on 1.2± acres of land out of the William Beverly Survey, Abstract No. 135, located on the north side of Summit Avenue, 500± feet east of Jupiter Road 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. 596, allowing the additional use of Gymnastics/Dance Studio on 1.2± acres of land out of the William Beverly Survey, Abstract No. 135, located on the north side of Summit Avenue, 500± feet east of Jupiter Road in the City of Plano, Collin County, Texas, presently zoned Light Industrial-1, said property being more fully described on the legal description in Exhibit "A" attached hereto.

**Section II.** It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

**Section III.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**Section IV.** The repeal of any ordinance or part of ordinances affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section V.** Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

**Section VII.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED AND APPROVED THIS THE 13TH DAY OF OCTOBER, 2008.**

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Pat Evans, MAYOR

ATTEST:

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Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"  
LEGAL DESCRIPTION

ZC 2008-66

BEING approximately 52,432 square feet out of an approximate 112,172 square foot facility, commonly known as Summit Business Center, Building 5, located on Summit Avenue, Plano, Texas and situated on a tract of land described as follows:

BEING 11.556 acres of land situated in the William Beverly Survey, Abstract 135, Collin County, Texas, and being a part of Block 13, Central Plano Industrial Park, as shown by Plat Records in Cabinet C, Page 187 of the Plat Records of Collin County, Texas, said 11.556 acres of land to be more particularly described by metes and bounds as follows:

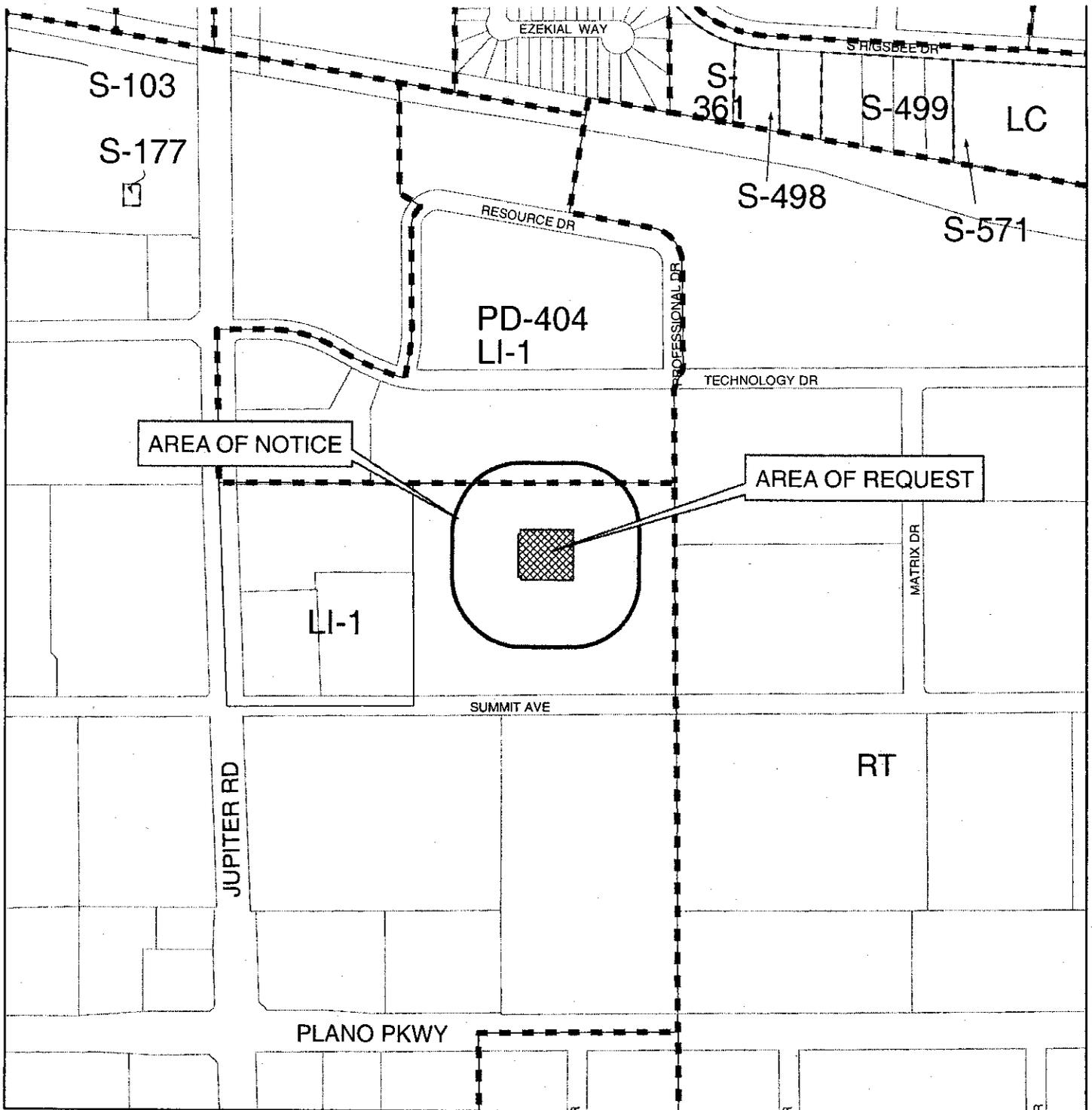
BEGINNING at a ¼-inch iron rod found for the northeast corner of this 11.556 acre tract and also being the northeast corner of the above referenced Block 13;

THENCE South 00° 12' 15" West, a distance of 632.76 feet to a point for corner, said point for corner being in the north right-of-way line of Summit Avenue, said point being 30 feet at right angles from the centerline of said Summit Avenue, said point also being referenced by a 1-inch iron rod found which bears North 89° 47' 28" West, a distance of 35.87 feet;

THENCE North 89° 47' 28" West, a distance of 795.01 feet along the north right-of-way line of Summit Avenue and along the south line of the above referenced Block 13 to a 1-inch iron rod found for the southwest corner of this 11.556 acre tract, said point also being the southeast corner of a tract of land conveyed to Gilford Joint Venture as recorded in Volume 1796, Page 524 of the Deed Records of Collin County, Texas;

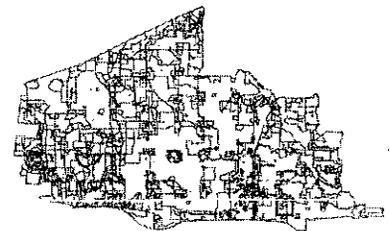
THENCE North 00° 13' 36" East, a distance of 633.73 feet along the east boundary line of said Gilford Joint Venture tract to a ½-inch iron rod set for the northeast corner of said Gilford tract and also the northwest corner of said Gilford tract and also the northwest corner of this 11.56 acre tract;

THENCE South 89° 43' 18" East, a distance of 794.76 feet along the north line of the above referenced Block 13 back to the POINT OF BEGINNING and CONTAINING 503,357 square feet or 11.556 acres of land.



Zoning Case #: 2008-66

Existing Zoning: LIGHT INDUSTRIAL-1



○ 200' Notification Buffer



*P*



# CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	<b>10/13/08</b>	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Development Business Center		Initials	Date
Department Head	Frank F. Turner	Executive Director		
Dept Signature:		City Manager	<i>[Signature]</i>	10/18/08
Agenda Coordinator (include phone #):		<b>Sherry Jackson Ext. (7122)</b>		
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				
<b>CAPTION</b>				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A DEVELOPMENT AGREEMENT BY AND BETWEEN TENTH STREET PLANO, L.P. AND THE CITY OF PLANO, TEXAS FOR RENOVATION OF EXISTING IMPROVEMENTS LOCATED AT 910 10TH STREET, PLANO, TEXAS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>2008-2009</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	800,000	0
BALANCE		0	800,000	0
FUND(S): <b>TIF#2 FUNDS</b>				
COMMENTS: Public improvements will be paid out of TIF#2 funds.				
<b>SUMMARY OF ITEM</b>				
Proposed development agreement is for renovation of existing improvements located at 910 10 <sup>th</sup> Street.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A DEVELOPMENT AGREEMENT BY AND BETWEEN TENTH STREET PLANO, L.P. AND THE CITY OF PLANO, TEXAS FOR RENOVATION OF EXISTING IMPROVEMENTS LOCATED AT 910 10<sup>TH</sup> STREET, PLANO, TEXAS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has been presented a proposed development agreement for renovation of existing improvements located at 910 10<sup>th</sup> Street, Plano, Texas, between Tenth Street Plano, L.P. ("TSP") and the City of Plano, Texas, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

**WHEREAS**, TSP's proposed renovations are located in Tax Increment Financing District No. 2 and is in keeping with the intent of that reinvestment zone to promote sound growth; and

**WHEREAS**, a portion of the proposed "Public Improvements" (as defined in Exhibit "A") that are to be dedicated to the public are to be funded through the revenue derived by Tax Increment Financing District No. 2; and

**WHEREAS**, the renovation of the Property in accordance with the Plan by TSP will contribute important direct and indirect economic and social benefits to the City including, but not limited to, the creation of an enhanced ad valorem real and business personalty improvements and new jobs, 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**, 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, an Executive Director, 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 in his absence, an Executive Director, 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.

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DULY PASSED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

**DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF PLANO, TEXAS AND TENTH STREET PLANO, L.P.**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Plano, a Texas municipal corporation of Collin County, Texas (the "City"), acting by and through its duly authorized officers, and Tenth Street Plano, L.P., a Texas limited partnership, ("TSP");

**RECITALS:**

WHEREAS, the City is authorized pursuant to the laws of Texas and its Home Rule Charter to enter into agreements with persons or entities intending to undertake any development on real property for the purposes of providing public facilities and services; and

WHEREAS, TSP desires to renovate the existing improvements situated on approximately 18 acres located at 910 10<sup>th</sup> Street, Plano, Texas and as shown in Exhibit "A" attached hereto ("the Property"); and

WHEREAS, TSP has proposed renovations on the Property in substantial compliance with a preliminary project design and concept plan prepared by TSP attached hereto as Exhibit "B" (which design and concept plan, together with all additions, changes and amendments thereto approved by TSP and the City, is referred to in this Agreement as the "Plan") and which renovations are hereafter referred to as the "Initial Renovation Improvements"; and

WHEREAS, TSP's proposed renovations are located in Tax Increment Financing District No. 2 and is in keeping with the intent of that reinvestment zone to promote sound growth; and

WHEREAS, a portion of the proposed "Public Improvements" (as hereinafter defined) that are to be dedicated to the public are to be funded through the revenue derived by Tax Increment Financing District No. 2; and

WHEREAS, the construction of the "Public Improvements" and other improvements on the Property are within Tax Increment Financing District No. 2 and are being reimbursed from TIF funds, the competitive bidding requirements and reimbursement limits established by the Texas Local Government Code do not apply; and

WHEREAS, the renovation of the Property in accordance with the Plan by TSP will contribute important direct and indirect economic and social benefits to the City including, but

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not limited to, the creation of an enhanced ad valorem real and business personalty improvements and new jobs, 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 TSP 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;

WHEREAS, it is essential to the City's public health, safety and general welfare to assure that the Property is supported by adequate levels of public facilities and services; and

WHEREAS, the City Council has adopted Resolution No. \_\_\_\_\_ on \_\_\_\_\_, 2008, approving this Agreement with TSP and authorizing the City Manager to execute same by affixing their hand and the City Seal;

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

**SECTION 1. CONDITION PRECEDENT**

The parties recognize and agree that this Agreement is conditioned on the City obtaining approval and availability of funds from Tax Increment Financing District No. 2 to fund the Construction Allowance described in SECTION 3 below. Inclusion of reimbursement incentives within the Tax Increment Financing District No. 2 shall be determined no later than January 1, 2009.

**SECTION 2. TSP'S OBLIGATIONS**

As a condition to the obligations to be performed by the City as enumerated in SECTION 3 of this Agreement, TSP agrees to the following:

1. TSP will complete and obtain necessary regulatory approvals;
2. TSP will provide to the reasonable satisfaction of the City an economic overview letter from any of TSP's bankers, lenders or such other qualified person or entity attesting, to their knowledge, TSP's financial ability to complete its obligations under this Agreement;
3. TSP will provide the Plan to renovate the Property, which consists of approximately 400,000 square feet of industrial space.

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4. TSP will complete the Initial Renovation Improvements twelve (12) months from the execution of this Agreement but not later than December 31, 2009, subject to the provisions of SECTION 6, herein;
5. TSP shall make real property improvements to the Property in accordance with the Plan that have a taxable value (as determined by the Collin County Appraisal District) of not less than Nine Million Dollars (\$9,000,000.00);
6. TSP will obtain all necessary permits from the City, which shall not be unreasonably withheld, conditioned or delayed by the City and begin construction of the renovations no later than sixty (60) days following receipt of permit. Construction shall be deemed to have begun when TSP actually commences site work, as depicted on the Plan, (i.e., demolition, grading or clearing) on the Property;
7. TSP shall be responsible for the construction of all Public Improvements in substantial conformity to the Plan as prepared by the architect of record (the "Architect") or civil engineer of record (the "Civil Engineer"), subject to all necessary City regulatory approvals which shall not be unreasonably withheld, conditioned or delayed, and for supervision and management of construction of the Public Improvements. The "Public Improvements" (as that term is used in this Agreement) shall mean the "Storm Drain", the "Water Line", and the "Paving". All Public Improvements, as the same are described or referred to in Exhibit "C" attached to this Agreement, shall be located in public right-of-way or easements. All "Landscape and Screening" shall be located within or adjacent to the Dallas Area Rapid Transit ("DART") right-of-way; and
8. TSP shall be responsible for all maintenance and operation expenses associated with the Property; however, the City shall be responsible for the maintenance and operation expenses associated with the Storm Drain and Water Line.

### SECTION 3. CITY'S OBLIGATIONS

As consideration for the obligations to be performed by TSP as enumerated in SECTION 2 of this Agreement, the City agrees to the following:

1. The City agrees, subject to the conditions contained herein, to pay for the Public Improvements, as shown in Exhibit "C", in an amount not to exceed Eight Hundred Thousand Dollars (\$800,000.00) (also called "Construction Allowance") as more fully described in SECTION 5 below. TSP will pay actual costs of completion of Public Improvements to the extent each line-item cost exceeds the amount for that item as shown in SECTION 5 below. The Construction Allowance will be available to TSP on a "line-item cost" basis as each line item is

completed and inspected by the City, such that cost savings realized with respect to discreet line-item allocations will be retained by the City. In no event will the aggregate of funds advanced by the City exceed the Construction Allowance. The Construction Allowance will be used toward the payment of all costs set forth in SECTION 5 below, including both "hard" and "soft" costs (including, but not limited to tests and architectural and engineering services).

2. TSP shall negotiate and obtain any required third party approvals and/or easements (including as to adjoining property owners) as may be reasonably necessary for the construction and installation of the Initial Renovation Improvements and Public Improvements (the "Off-Site Requirements"). The City agrees to cooperate with TSP in TSP's efforts to obtain the Off-Site Requirements.

3. The City may seek reimbursement of any Public Improvement costs from Tax Increment Financing Funds. The source of funding (including grants) for all Public Improvements paid for by the City is at the discretion of the City and may include reimbursement of costs from Tax Increment Financing District 2 Funds.

4. The City and TSP will coordinate and jointly approve the design of the Public Improvements;

5. The City agrees to grant to TSP the right to use easements and land owned or controlled by the City as may be reasonably necessary for the construction and installation of the Initial Renovation Improvements and Public Improvements (including, without limitation, fire lane access).

#### SECTION 4. DESIGN AND CONSTRUCTION PROCUREMENT

A. Design management for the Public Improvements and the renovations will be provided by the Architect or Civil Engineer for the renovations or such other party as shall be mutually agreed to by the parties to this Agreement. Architects and Engineers retained by TSP for the design and engineering services required for the successful completion of this Project shall meet all state licensing requirements.

B. Procurement of construction for the Public Improvements must be in accordance with the following provisions:

1. All Plans for the Public Improvements shall be submitted to the City Engineer for review and approval, which shall not be unreasonably withheld, conditioned or delayed. All Plans shall comply with the standards and requirements for similar developments located in the City, unless otherwise approved by the City in its reasonable discretion for the Plan. Nothing in this Agreement shall be construed to waive any review or permitting process or to diminish the City's regulatory authority.

2. TSP shall use reasonable efforts to insure that the Public Improvements are completed in a timely manner in accordance with the construction contract documents, plans and specifications.

3. Any construction contract for the construction of the Public Improvements shall specify that the contractor shall look solely to TSP concerning any claim under the contract. For each such construction contract TSP shall acquire and maintain or require its general contractor to acquire and maintain, during any period for which the renovations of the Property is under construction, comprehensive general liability insurance in the amount of the construction contract or \$1,000,000, whichever is greater. Such insurance shall cover any and all claims which might arise out of the construction contract, whether by the contractor, a subcontractor, materialman or otherwise. All such insurance shall: (a) be issued by a carrier which is rated "B+" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, and (b) name TSP and City as an additional insured. Certified copies of all of such policies shall be delivered to the City upon the execution of a construction contract; provided, however, that the City, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance together with the declaration page of such policies, along with the endorsement naming the City as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, TSP and City shall receive written notice of such cancellation, non-renewal or modification.

4. The contract shall require for the construction of all Public Improvements, that the contractor provide performance and payment bonds and 10% maintenance bonds or other lawful surety in a form acceptable to the City.

5. All project designs, drawings, site plans and other documents produced by TSP in connection with the renovations and the Public Improvements, including those attached to this Agreement, shall remain the property of TSP. However, in exchange for TSP's acceptance of the above-described reimbursement from the City, the City will retain all necessary rights to use such portion of the Plans created for public facilities and infrastructure, and all assignable rights in the boundary survey and environmental site assessment of the Property obtained by TSP.

#### SECTION 5. PAYMENT

A. The total amount of reimbursement from the City to TSP for construction of Public Improvements and Demolition and Abatement costs shall not exceed Eight Hundred Thousand Dollars (\$800,000.00) and the maximum reimbursement within each category of improvement shall be capped as follows:

\$225,000 for Storm Drain Water Line

\$200,000 for Water Line  
\$250,000 for Demolition and Abatement  
\$215,000 for Paving within public right-of-ways or easements  
\$ 60,000 for Landscape and Screening

B. Upon completion and acceptance of the items eligible for reimbursement as described in **Exhibit "C"** and in this SECTION, 5/8ths of the reimbursement paid to TSP shall be declared a grant and will not be subject to recovery by the City.

C. The remaining 3/8ths of the reimbursement shall be deemed a grant not subject to recovery by the City if TSP is able to satisfy the following conditions by May 1, 2011:

1. At least eighty-five percent (85%) of the Property's rentable square footage is leased and certificate(s) of occupancy are issued and meets one of the two following:
2. TSP provides documentation that the cost of Initial Renovation Improvements to the Property, any landlord and tenant finish work, and any fees for design and engineering service shall total at least Five Million Dollars (\$5,000,000.00); or
3. The Collin County Appraisal District appraises the value of the real property improvements at not less than Nine Million Dollars (\$9,000,000.00).

D. If TSP is unable to satisfy the conditions described in Subsection C above, TSP shall repay to the City (as the City's sole remedy) One Hundred Thousand Dollars (\$100,000.00) in a lump sum within thirty (30) days of written demand and the balance of the recoverable funds (that being, \$200,000.00) shall be paid to the City in two equal annual payments (on May 1, 2012 and May 1, 2013, unless the amount owed is cancelled under Subsection E below) together with interest at six percent (6%) compounded annually.

E. If at anytime before May 1, 2012, TSP satisfies the conditions described in Subsection C above, the remaining balance of the Two Hundred Thousand Dollars (\$200,000.00) owed to the City under Subsection D above (together with all accrued interest thereon) shall be cancelled, declared a grant and not subject to recovery by the City nor any longer owed to the City.

#### SECTION 6. **FORCE MAJEURE**

It is expressly understood and agreed by the parties to this Agreement that if the obligations of the parties as contemplated hereunder is delayed by reason by war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, or acts of the other party, its affiliates/related entities and/or their contractors, the party so obligated or permitted shall be excused from doing or

performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

**SECTION 7. TERM**

The term of this Agreement shall begin on the date of execution, and end upon the complete performance of all obligations and conditions precedent by parties to this Agreement.

**SECTION 8. AUTHORITY OF TSP**

TSP represents and warrants to the City that TSP is duly formed, validly existing and in good standing under the laws of the State of Texas. TSP has full power, authority and legal right to execute and deliver this Agreement. This Agreement constitutes a legal, valid, and binding obligation of TSP and the City, enforceable in accordance with its terms.

**SECTION 9. EVENTS OF DEFAULT**

A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement and such failure is not cured within thirty (30) days following written notice thereof from the non-defaulting party to the defaulting party (which cure period shall be extended if the default is not susceptible to cure within said 30 day period so long as the cure is commenced within said 30 day period and thereafter diligently pursued), or if the representation provided for in SECTION 8 is not true or correct in any material respect. A party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default by the defaulting party, or, with the giving of notice or passage of time, or both, would constitute a default by the defaulting party under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party requires or proposes to require with respect to curing the default.

**SECTION 10. NOTICES**

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mails by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for City, to:

City of Plano, Texas  
Attention: City Manager  
1520 Avenue K  
P. O. Box 860358

If intended for TSP, to:

Tenth Street Plano, L.P.  
c/o: Holt Lunsford Commercial  
Attention: David Cartwright  
5055 Keller Springs Road, Suite 300

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Plano, Texas 75086-0358

Addison, Texas 75001

With copy to:

Andrews Barth & Harrison, PC  
Attention: Stan Barth  
8235 Douglas Avenue, Suite 1120  
Dallas, Texas 75225

**SECTION 11. GIFT TO PUBLIC SERVANT**

A. City may terminate this Agreement immediately if TSP has knowingly offered, conferred, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

B. For purposes of this SECTION, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

C. Notwithstanding any other legal remedies, City may require TSP to remove any employee, affiliate or contractor of TSP from the renovations and the Public Improvements on the Property who has violated the restrictions of this SECTION or any similar state or federal law, and obtain reimbursement for any expenditures made to TSP as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

**SECTION 12. APPLICABLE LAWS**

This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws.

**SECTION 13. VENUE AND GOVERNING LAW**

This Agreement is performable in Collin County, Texas and venue of any action arising out of this Agreement shall be exclusively in Collin County, Texas. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

**SECTION 14. LEGAL CONSTRUCTION**

In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

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**SECTION 15. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**SECTION 16. CAPTIONS**

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

**SECTION 17. SUCCESSORS AND ASSIGNS**

A. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. Provided, however, this Agreement shall not be assigned without the prior consent of TSP and the Plano City Council, which approvals shall not be unreasonably withheld; provided, further, however, TSP may assign this Agreement to TSP's lender as collateral.

B. An assignment or delegation of this Agreement to an Affiliate of TSP shall not require City Council approval and shall not result in a breach of the Agreement if the Affiliate of TSP expressly assumes all of the obligations of TSP under this Agreement for the balance of the term of this Agreement and provides evidence establishing the relationship between TSP and an Affiliate. TSP shall notify the City in writing, however, within 30 days of such assignment. "Affiliates", as used herein, includes any parent, sister, partner, joint venturer, equity investor or subsidiary entity of TSP; any entity in which either of TSP, a major shareholder, owns an equity interest or is a joint venturer or partner (whether general or limited).

**SECTION 18. ENTIRE AGREEMENT**

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

**SECTION 19. INCORPORATION OF RECITALS**

The recitals set forth herein are intended, and are hereby deemed to be a part of this Agreement.

*[Signatures on following page]*

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**EXECUTED** on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. \_\_\_\_\_ approved by the City Council on \_\_\_\_\_, acting through its duly authorized officials.

CITY OF PLANO, TEXAS, a home rule municipal corporation

By: \_\_\_\_\_  
Thomas H. Muehlenbeck, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, City Attorney

Tenth Street Plano, L.P., a Texas limited partnership

By: Tenth Street Plano GP, LLC, a Texas limited liability company, its general partner

By: Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS       )  
                                  )  
COUNTY OF DALLAS    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, of Tenth Street Plano GP, LLC, a Texas limited liability company, general partner of Tenth Street Plano, L.P., a Texas limited partnership, on behalf of said partnership.

\_\_\_\_\_  
Notary Public, State of Texas

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LIST OF EXHIBITS

EXHIBIT A	Property Legal Description
EXHIBIT B	Design and Concept Plan
EXHIBIT C	Public Improvements and Demolition

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## EXHIBIT "A"

DESCRIPTION, of a 17.867 acre tract of land situated in the Joseph Klepper Survey, Abstract No. 213 and the Samuel Klepper Survey, Abstract No. 216, Collin County, Texas; said tract being all of the Capital Wire and Cable Co., an addition to the City of Plano, Texas recorded in Cabinet G, Page 293 of the Map Records of Collin County, Texas; said tract also being all of that certain tract of land described as Tract 2, in Exhibit "A" in Special Warranty Deed to Tenth Street BSF, LLC recorded in Instrument No. 20070219000227850 of the Official Public Records of Collin County, Texas; said 17.867 acre tract being more particularly described as follows (bearing basis for this survey based on a bearing of South 89 degrees, 21 minutes, 00 seconds East for the south right-of-way line of 10th Street according to the said plat of Capital Wire and Cable Co.):

BEGINNING, at a "+" cut in concrete found for corner at the intersection of the said south line of 10th Street (a variable width right-of-way) and the west right-of-way line of the Dallas Area Rapid Transit (a 100-foot wide right-of-way, formerly the Houston & Texas Central Railroad); said point being the northeast corner of said Capital Wire and Cable Co.;

THENCE, South 01 degrees, 03 minutes, 00 seconds West, departing the said south line of 10th Street and along the said west line of the Dallas Area Rapid Transit, a distance of 983.90 feet to a 1/2-inch iron rod with "R-Delta Engineers" cap found for corner; said point being the northeast corner of that certain tract of land described in Exhibit "A" in Deed Without Warranty to the City of Richardson, Texas recorded in Volume 5004, Page 1618 of the Deed Records of Collin County, Texas;

THENCE, North 87 degrees, 24 minutes, 00 seconds West, departing the said west line of the Dallas Area Rapid Transit and along the north line of said City of Richardson tract, a distance of 454.93 feet to a 1/2-inch iron rod with "RPLS 4813" cap found for corner; said point being the southeast corner of Lot 1, Block 1, Parkway Business Center II, an addition to the City of Plano, Texas recorded in Cabinet E, Page 66 of said Map Records;

THENCE, North 01 degrees, 09 minutes, 19 seconds East, departing the said north line of the City of Richardson tract and along the east line of said Lot 1, Block 1, a distance of 322.50 feet to a "+" cut in concrete found for corner; said point being the northeast corner of said Lot 1, Block 1;

THENCE, North 88 degrees, 50 minutes, 41 seconds West, along the north line of said Lot 1, Block 1, a distance of 700.00 feet to a "+" cut in concrete set for corner; said point being the northwest corner of said Lot 1, Block 1;

THENCE, South 36 degrees, 28 minutes, 32 seconds West, along the northwest line of said Lot 1, Block 1, a distance of 204.08 feet to a "+" cut in concrete found for corner in the northeast right-of-way line of Avenue "F" (a 60-foot wide Street Easement recorded in Volume 963, Page 311 and Volume 964, Page 675, both of said Deed Records); said point being the southwest corner of said Lot 1, Block 1 and in a non-tangent curve to the right;

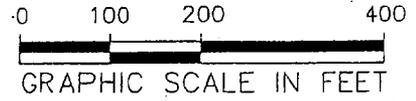
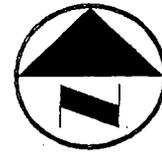
THENCE, in a northwesterly direction, along the said northeast line of Avenue "F" and said curve to the right, having a central angle of 06 degrees, 02 minutes, 41 seconds, a radius of 360.00 feet, a chord bearing and distance of North 33 degrees, 51 minutes, 57 seconds West, 37.96 feet, an arc distance of 37.98 feet to a point for corner (nothing found or set) in the southeast right-of-way line of the Dallas Area Rapid Transit (a 100-foot wide right-of-way, formerly the St. Louis & Southwestern Railroad); from said point a "+" cut in concrete found bears North 72 degrees, 08 minutes West, 0.4 feet;

THENCE, North 36 degrees, 56 minutes, 00 seconds East, along the said southeast line of the second referenced Dallas Area Rapid Transit, a distance of 960.09 feet to a 1/2-inch iron rod with "Pacheco Koch" cap set for corner at the intersection of said southeast line of the second referenced Dallas Area Rapid Transit and the said south line of 10th Street;

THENCE, South 89 degrees, 21 minutes, 00 seconds East, departing the said southeast line of the second referenced Dallas Area Rapid Transit and along the said south line of 10th Street, a distance of 731.48 feet to the POINT OF BEGINNING;

CONTAINING, 778,307 square feet or 17.867 acres of land, more or less.

EXHIBIT "B"



PART OF  
LOT 1, BLOCK 2  
BURGE ADDITION  
(VOL. 1, PG. 127)  
TENTH STREET INDUSTRIES, L.P.  
(VOL. 4887, PG. 3731)

10TH STREET

DALLAS AREA RAPID TRANSIT

DALLAS AREA RAPID TRANSIT

AVENUE F

LOT 1, BLOCK 1  
PARKWAY BUSINESS CENTER II  
(VOL. E, PG. 66)  
RPH INDUSTRIAL TEXAS, L.P.  
(VOL. 5502, PG. 5447)

CAPITAL WARE WAREHOUSE  
10TH STREET INDUSTRIAL  
DIST. VOL. 20070218000227450  
EXISTING 330,450 SF  
ONE-STORY BUILDING  
PROPOSED USE: WAREHOUSE

TRUCK LOADING AREA

TRUCK LOADING AREA

TRUCK LOADING AREA

EXISTING 180,000 SF ONE-STORY  
WASCHRY BUILDING  
PROPOSED USE: WAREHOUSE

**PUBLIC IMPROVEMENTS:**

12" Water Line	\$ 200,000
60" Storm Sewer	\$ 225,000
Paving in ROW or Esmts.	\$ 215,000
Landscaping	\$ 60,000

**SITE PLAN EXHIBIT  
CITY WAREHOUSE**

LOCATED IN THE CITY OF PLANO, TEXAS

**Pacheco Koch Consulting Engineers**  
8350 N. CENTRAL EXPWY. SUITE 1000 DALLAS, TX. 75206 972.235.3031

DRAWN BY EMJ	CHECKED BY EMH	SCALE 1"=200'	DATE 10/02/2008	JOB NUMBER 2954-08.300
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DWG FILE: 2954-08.300CV.DWG  
XREF FILE: 2954-08.300BA.DWG  
YREF FILE: 2954-08.300SL.DWG

3-18

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10/07/2008 - 10:15AM

EJOHNSON

**Exhibit C**

**Public Improvements**

Add one (1) sixty inch (60") RCP storm drain connecting existing pipe in DART ROW to outfall at same location as existing sixty inch (60") pipe (the "Storm Drain")

Construct new twelve inch (12") water line and connect to existing City lines (the "Water Line")

Repair and replace fire lane paving as needed (the "Paving")

**Landscape and Screening**

Provide landscape and screening (the "Landscape and Screening") within or adjacent to the DART right-of-way.

**Demolition and Abatement**

Demolition of existing improvements on the Property and the abatement or environmental hazards



P.O. Box 860358  
Plano, Texas 75086-0358  
972-941-7000  
Fax. No. 972-941-0099  
<http://www.ci.plano.tx.us>

## **MEMORANDUM**

**Date:** October 7, 2008

**To:** Mayor and City Council

**From:** Rod Hogan, Executive Director 

**Subject:** Long Term Power Purchase Agreement with Cities Aggregation Power Project

The City is a member of the Cities Aggregation Power Project (“CAPP”), a non-profit political subdivision corporation aggregator. Created in 2001 in anticipation of the deregulation of the Texas retail electric market, CAPP pools members’ electric power needs in order to negotiate lower, more stable prices through bulk purchasing. CAPP is run by a voluntary 10 member Board of Directors comprised entirely of city employees and city officials. Plano currently holds one of these board positions.

CAPP and its sister political subdivision corporation aggregator, South Texas Aggregation Project, Inc. (“STAP”), have more than 150 political subdivision members that purchase in excess of one billion kWh annually. Together CAPP and STAP have provided its members with significant savings since the electric market deregulated in 2002.

CAPP has entered into a Power Purchase Agreement (“PPA”) with Luminant Generation Company LLC, Big Brown Power Company, LLC and Oak Grove Management Company, LLC (collectively, “Luminant”) for approximately 150 MW of baseload power from seven different units over a 24-year period. CAPP has entered into the contract on behalf of all CAPP members and STAP members that are willing to be allocated a portion of approximately 150 MW, corresponding to each participating member’s energy consumption as a percentage of all participating members’ consumption. Plano’s total baseload represents approximately 4.5% of the total baseload power agreement between CAPP/STAP and Luminant. The term baseload is defined as 60% of our current total electrical demand.

There will be a briefing on the October 13, 2008 City Council agenda regarding this agreement. This presentation will be made by CAPP’s legal consultant Geoffrey Gay from the firm Lloyd Gosselink in Austin. On the October 27, 2008 City Council agenda, there will be further consideration regarding this agreement and if approved, an ordinance will be submitted that will commit the City to the PPA. Between the October 13<sup>th</sup> and October 26<sup>th</sup> City Council meetings, the staff will be developing additional information regarding potential savings to our current power supply agreement.

Because the PPA would include a debt calculation for Plano, if approved by the City Council, it would add some additional long-term debt obligations. Denise Tacke, Finance Director, asked our financial advisor to review the proposed PPA and its impact regarding our portion of the debt service requirements that will be attached to the agreement. The following are the summary comments from First Southwest Company.

*“This transaction should not have a negative impact on the City of Plano’s ratings due to the fact that Plano’s pre-paid portion is relatively small in relationship to the total debt of the City. RJ Covington estimates Plano’s prepaid cost to be less than \$18 million with annual payments below \$1.5 million (these amounts are subject to market conditions at the time of the CAPP Bond sale). By comparison, Plano currently has around \$360 million in general obligation debt outstanding with annual payments exceeding \$42 million.”*

*“Initially, the rating agencies may view this debt as a new obligation, even though it will not create a new cash requirement for the City. Once it is demonstrated that the contract is performing as expected, and that Plano is not changing the way it budgets for costs of electricity, we believe that the ratings agencies will view this similar to “self-supporting” debt as it is not a new obligation of the City.”*

**CAPP Long-Term Contract Background:**

Although CAPP member historical savings are significant, the price volatility in the market makes it difficult for CAPP members to accurately budget for power expenditures from year to year. This is because power contract options made available to retail customers like CAPP, regardless of source, have been priced as if the energy was produced exclusively from natural gas-fired plants. The price of natural gas is extremely volatile. Energy experts, including the Chairman of the Public Utility Commission of Texas, agree that this trend will continue over the long term.

In 2005, the CAPP Board authorized its consultants to find alternatives to purchasing the entirety of CAPP power requirements in a market that links the price of all energy to natural gas prices. Contracting for a 24-year commitment of lignite/coal-fired capacity at a fixed price (with slight escalation over the term of the contract) to serve a portion of members’ power requirements will lower overall energy costs and provide political subdivisions with an ability to more accurately predict and stabilize the impact of energy prices on annual budgets.

The CAPP long-term contract allows for better, more fiscally responsible budgets resulting from the stable and predictable long term energy costs that will be available to CAPP members through the baseload contract. Taxpayers benefit because CAPP member cities will have more stable energy pricing and reduce the chance of passing higher energy costs on through higher taxes and fees when electricity prices experience volatility and spiking because of fluctuating market prices.

**Purpose of the Ordinance:**

To execute the PPA, an ordinance is required that approves the CAPP Member Contract that commits the City to purchasing electric power to satisfy approximately 60% of its recent energy needs through the CAPP PPA for up to 24 years and to pay a proportionate amount of the debt service obligation associated with CAPP’s prepayment of PPA capacity costs. The ordinance acknowledges review of the Member Contract and the Disclosure Statement and authorizes the City Manager, city officer or city employee as may be appropriate to sign or modify the Member Contract and to take all necessary actions to carry out the terms of the ordinance, the Member Contract, and Disclosure Statement. The Member Contract approved by this ordinance makes certain that capacity payments (debt service obligation) payable by the City will be public property finance contractual obligations pursuant to Texas Local Government Code Chapter 271, Subchapter A, secured by a pledge of such member’s ad valorem taxes, which will be assigned to support debt issued by CAPP to pay the capacity costs of the PPA.

**Additional Electric Purchases:**

There will be a need to secure the remaining annual electrical demand requirement (40%) utilizing CAPP’s current process on the open market. CAPP’s consultants have worked on tying up this portion of CAPP’s requirements utilizing a shorter term agreement.

The CAPP Board has instructed its consulting team to work on securing a 5 year agreement. If the City Council decides not to pursue the long term agreement with CAPP, Plano would use this agreement to lock up our entire electrical load demand for 5 years. Part of Staff’s savings projections will include this contingency.

Please let me know if I can provide additional information.