

PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON NOVEMBER 23, 2009, FOLLOWED BY PRELIMINARY OPEN MEETING IN THE PLANO MUNICIPAL BUILDING, 1520 K AVENUE, IN COMPLIANCE WITH VERNON'S TEXAS CODES ANNOTATED, GOVERNMENT CODE CHAPTER 551 (OPEN MEETINGS ACT), AS FOLLOWS:

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

EXECUTIVE SESSION

- | | | | |
|------|--|-------------|---------|
| I. | Legal Advice | Wetherbee | 10 min. |
| | A. Respond to questions and receive legal advice on agenda items | | |
| | B. Plano Economic Development Board | | |
| | C. Vacancy on City Council | | |
| II. | Economic Development | Muehlenbeck | 5 min. |
| | A. Discuss a financial offer or other incentive to a business prospect to locate, stay, or expand in Plano and consider any commercial and financial information from the business prospect. | | |
| III. | Personnel | Council | 15 min. |
| | A. Discussion of Council Appointees | | |

PRELIMINARY OPEN MEETING

- | | | | |
|------|---|---------|---------|
| I. | Consideration and action resulting from Executive Session discussion: | Council | 5 min. |
| II. | Comprehensive Monthly Financial Report | Tacke | 10 min. |
| III. | Council items for discussion/action on future agendas | Council | 5 min. |
| IV. | 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: November 23, 2009

CALL TO ORDER: 7:00 p.m.

INVOCATION: Reverend Edlen Cowley
St. Andrew United Methodist Church

PLEDGE OF ALLEGIANCE: The Men of Note Chorus

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>PROCLAMATIONS & SPECIAL RECOGNITION</u></p> <p>Special Recognition: Plano ISD Council of PTA's Presentation: To City of Plano – 9th Place in Digital Cities Survey Presentation: To City of Plano Parks and Recreation Department for 15 Year Accreditation from National Recreation and Parks Association</p> <p><u>OATHS OF OFFICE</u></p> <p><u>Senior Citizens Advisory Board</u> John J. Pfister</p> <p><u>COMMENTS OF PUBLIC INTEREST</u></p> <p><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> <p><u>CONSENT AGENDA</u></p> <p><u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	<p><u>Approval of Minutes</u> November 9, 2009</p> <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p>	
(b)	<p>Bid No. 2009-181-C for Median and Right of Way Landscape Maintenance – Various Locations – Group A, in the amount of \$112,091 for Option 1 to SLM Landscape and Maintenance, and authorizing the City Manager to execute all necessary documents. This will establish an annual fixed price contract with three optional one-year renewals.</p>	
(c)	<p>Bid No. 2009-182-C for Median and Right of Way Landscape Maintenance – Various Locations – Group B, in the amount of \$127,133 for Option 1 to SLM Landscape and Maintenance, and authorizing the City Manager to execute all necessary documents. This will establish an annual fixed price contract with three optional one-year renewals.</p> <p>Purchase from an Existing Contract</p>	
(d)	<p>To authorize the maintenance renewal for CommVault Backup Software, in the amount of \$115,812 from Dell Corporation, through a State of Texas Department of Information Resources (DIR) contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-890)</p>	
(e)	<p>To authorize the purchase of maintenance support for network infrastructure switches in the amount of \$232,546 from INX, Inc. through a Department of Information Resources (DIR) contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-239)</p> <p>Approval of Change Order</p>	
(f)	<p>To Liberty Mutual Insurance Company, as takeover contractor for Hisaw and Associates General Contractors, Inc., whose contract was called into default and terminated, increasing the contract in the amount of \$45,294 for Plano Fire Station No. 12/Emergency Operations Center Complex, Change Order No. 5, adding electric panel and receptacles and relocating racks in the EOC Server Room, and authorizing the City Manager to execute all necessary documents.</p> <p>Adoption of Resolutions</p>	
(g)	<p>To approve the terms and conditions of an Agreement by and between Motorola, Inc., a sole source provider, and the City of Plano for technical support services for centralized remote telephone support on technical issues in an amount not to exceed \$83,696; authorizing its execution by the City Manager; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(h)	To approve the terms and conditions of a Support and Maintenance Agreement by and between the City of Plano and Bio-Key International, Inc., the sole source provider of Bio-Key Software Applications, in an amount not to exceed \$57,544; authorizing its execution by the City Manager; and providing an effective date.	
(i)	To approve the terms and conditions of a Local Project Advance Funding Agreement by and between the City of Plano and Texas Department of Transportation for Citywide Off-peak Signal Retiming; authorizing its execution by the City Manager; and providing an effective date.	
	<p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	Public Hearing and consideration of an Ordinance to designate a certain area within the City of Plano as Reinvestment Zone No. 120 for a Tax Abatement consisting of a 20.54 acre tract of land located 500 feet north of Tennyson Parkway and east of Corporate Drive, in the City of Plano, Texas establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date.	
(2)	A Resolution to approve the terms and conditions of an Agreement by and between the City of Plano, Texas, and Pizza Hut of America, Inc., a Delaware corporation, providing for a real and business personal property tax abatement and authorizing its execution by the City Manager; and providing an effective date.	
(3)	A Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Pizza Hut of America, Inc.; authorizing its execution by the City Manager; and providing an effective date.	
(4)	<p>To accept the resignation of a Council Member and consideration of an ordinance to order a Special Election to be held on January 30, 2010 for the purpose of electing one (1) member of Council, Place No. 3 (District 3), to fill a vacancy until the May 2011 General Election; designating locations of polling places; ordering notices of election to be given as prescribed by law in connection with such election; and providing an effective date.</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	



Phil Dyer
Mayor

November 19, 2009

Harry LaRosiliere
Mayor Pro Tem

Lee Dunlap
Deputy Mayor Pro Tem

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

Pat Miner
Place 1

Ben Harris
Place 2

Honorable Mayor and City Council:

Mabrie Jackson
Place 3

We will begin our meeting on Monday in Executive Session where we will receive legal advice from the City Attorney. This will be followed by Item II. Discussion of Potential Economic Development Prospects and Item III. Discussion of Council Appointees.

Lissa Smith
Place 4

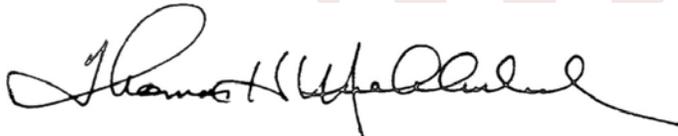
Jean Callison
Place 7

The Preliminary Open Meeting will begin with results from the Executive Session followed by the Comprehensive Monthly Financial Report.

I look forward to seeing you on Monday.

Thomas H. Muehlenbeck
City Manager

Sincerely yours,



Thomas H. Muehlenbeck



comprehensive monthly
finance report

OCTOBER

ABOUT THIS REPORT

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

This report is comprised of five sections:

1. The **Financial Analysis** reports the performance of the major operating funds of the City. Narrative disclosures are used to highlight any significant changes or fluctuations.
- 1A. The **Financial Summary** provides comparative data for major revenue sources and expenditure items.
2. The **Economic Analysis** section contains a summary of the key economic indicators and an in-depth review with graphic illustrations.
3. The **Investment Report** provides a description of investment activity during the month and a summary of interest earnings.
4. The **Quarterly Hotel/Motel Report** provides a summary of Hotel/Motel tax collections during the previous fiscal quarter, as well as comparisons and analyses of tax receipts and occupancy data from the two fiscal years preceding.

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

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



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

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SECTION 1

FINANCIAL ANALYSIS

City of Plano Comprehensive Monthly Finance Report

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

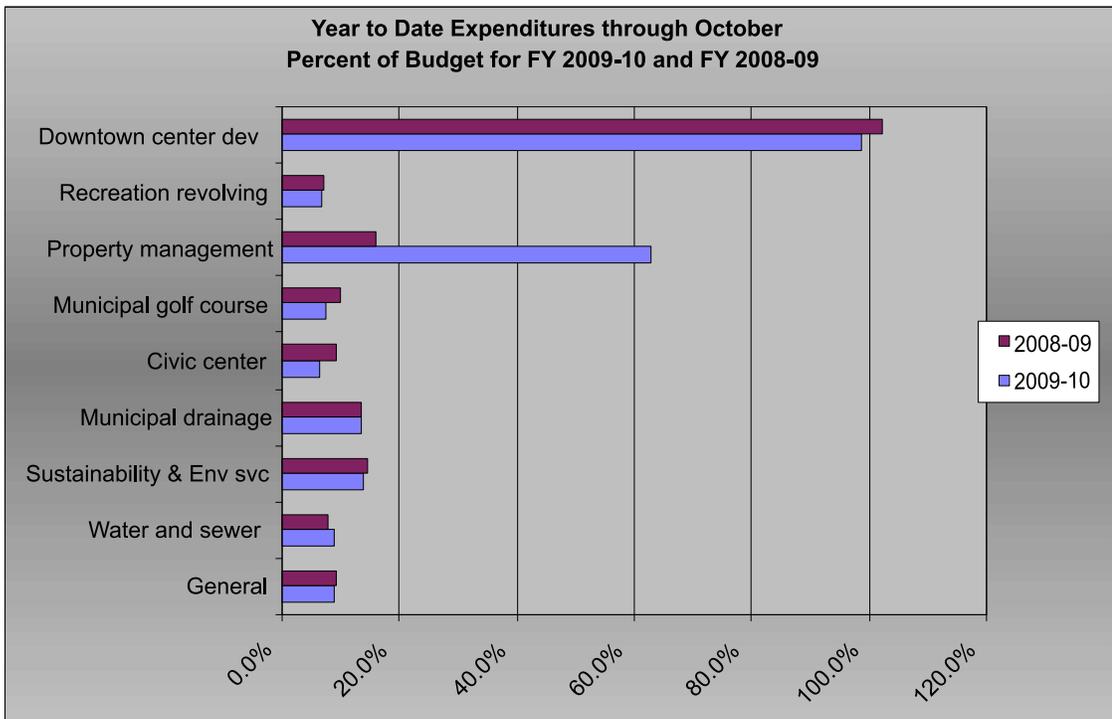
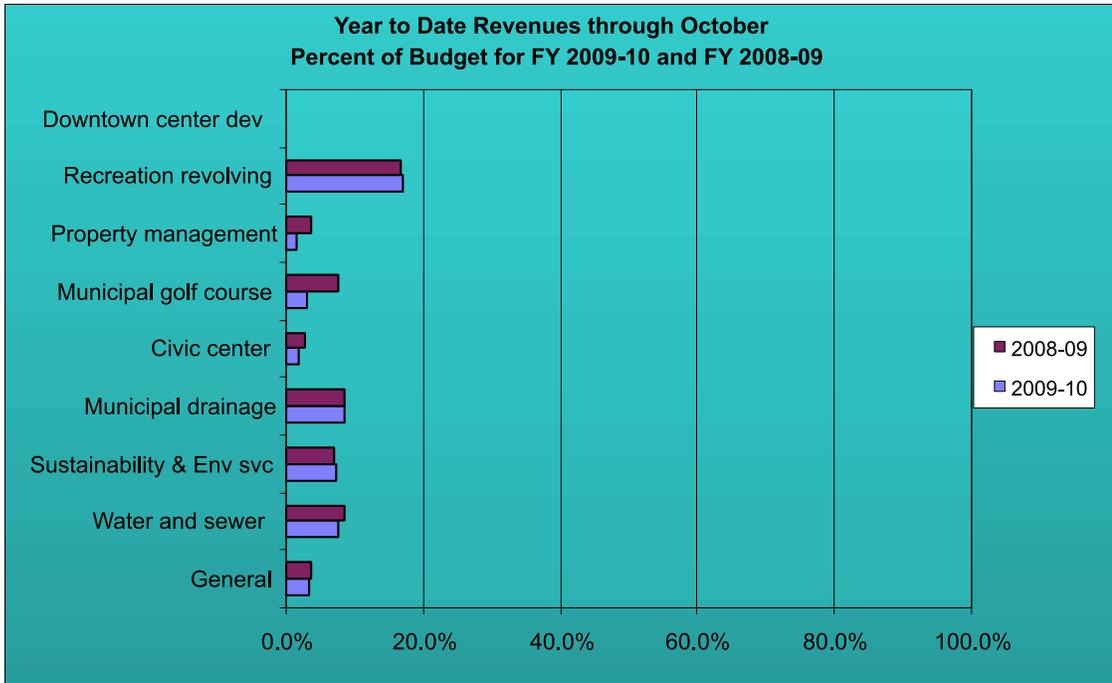
REPORT NOTES OCTOBER, 2009

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

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

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

HIGHLIGHTS OF GENERAL FUND VARIANCES



REPORT NOTES CONTINUED

OCTOBER, 2009

FINANCIAL HIGHLIGHTS

GENERAL FUND VARIANCES

Revenues

- Ad valorem tax revenue decreases of \$186,952 from the prior year are the result of refunds processed by Collin County Tax Assessor and Collector's Office. Because property tax collections were applied against refunds owed, no property tax revenue was received until October 23.
- Sales tax revenues decreased from the prior year by \$309,408 as a result of the declining economy and a net unfavorable audit adjustment of \$82,683. An unfavorable audit adjustment of \$46,076 was made in October 2009 as compared to a favorable adjustment of \$36,607 in the prior year.
- Telephone franchise fee revenues decreased \$64,438 in the current year due to the timing of payments received from AT&T and several small companies.
- Electric franchise payments decreased \$65,856 due to a lower settlement factor implemented by the Public Utility Commission.
- Court fines and forfeitures increased \$211,672 due to increased activity from the Police Department's Warrant Unit as well as efforts by the Compliance and Collection Unit.
- Alarm permit revenues increased \$9,050 due to an increase in the number of new permits and renewals.
- Ambulance service revenues decreased \$31,034 over the prior year primarily due to the timing of payments.
- Revenues generated from issuance of building permits decreased \$60,778 due to an overall decrease in new residential and commercial construction.
- The City of Plano has an interlocal agreement between the Cities of Lucas and Parker for dispatch services by the City's Public Safety Communications department. Revenues collected from these cities, which are based on population, have increased over prior year by \$42,500 primarily due to timing of collections.
- Athletic field user fees decreased \$8,888 due to the timing of collections as well as decreased participation in youth baseball and softball. There is a national decline in both sports as well as a trend toward club rather than recreational participation.
- Interest income decreased \$22,572 due to a decline in the market.

Expenditures

- Personal services decreased \$217,283 from the prior year. Salaries decreased by \$605,718 due a reduction of 59 positions in fiscal year 2009 and the timing of the final September 2009 payroll. The payroll calendar resulted in an additional day being recorded in September 2009 as compared to October of last year. The salaries decrease is offset by \$426,735 for funding of the City's Section 115 trust that began in December 2008.
- An equipment replacement fund for \$250,000 was established in October 2009 for Parks and Recreation.
- Transfers to Technology Services increased over the prior year by \$43,136 due to higher costs budgeted in the current year.
- Electric payments decreased \$119,839 from the prior year as a result of the City's participation in an electric aggregation group which contracts for lower rates.
- Increased rainfall in September and October 2009 allowed for reduced billings to City Departments of \$110,091.
- The Safe Streets Program decreased \$22,068. Prior year encumbrances include \$22,478 for speed cushion installations.
- Facilities maintenance repair costs decreased \$61,689. Prior year costs included encumbrances of \$45,000 for security fencing at the Facilities Maintenance Center.
- Expenditures and encumbrances for janitorial services decreased \$58,109 as a result of modifications decreasing the annual contract by \$56,809. The contract in fiscal year 2010 is

REPORT NOTES CONTINUED

OCTOBER, 2009

\$1,089,325 as compared to \$1,146,134 in the prior year.

- Professional services in the Police Department decreased \$133,609. Of the amount, \$115,000 for juvenile referral and victims assistance counseling costs were expensed in October 2008. These costs are not budgeted in the current year.
- The Human Resources Department encumbered funds of \$57,624 in the prior year for office and kitchen remodeling.
- Municipal garage charges to maintain city fleet decreased \$78,429. The decrease is attributable to lower fuel rates, implementation of new fuel conservation measures, and a reduction in several take home vehicles.
- Expenditures and encumbrances for training in the fire department decreased \$46,127. Some fire rescue trainings were funded through grant funding which the department obtained in the last fiscal year.
- The Police department cancelled several training classes because of low enrollment, causing a decrease of \$5,628 as compared to the prior year.
- Costs associated with ammunition in the Police department decreased \$92,872. Ammunitions are procured on an "as needed basis".
- Community services grants decreased \$29,574. However, additional grants of \$44,578 are budgeted to be paid in the current year.
- Capital Outlay purchases decreased \$105,395. Of this amount, \$49,034 was encumbered in the prior year for installations of digital patrollers. Library book purchases decreased by \$69,132 due to the timing of books ordered.

BUSINESS-TYPE VARIANCES

Water and Sewer

- Increased rainfall in September and October resulted in water revenue decreases of \$1,498,367 as compared to October 2008. Sewer revenues increased over the prior year by \$536,157 due to rate increases implemented in March 2009. Personal services costs increased \$34,706. Salary expense decreases of \$35,483 were offset by increases in health insurance costs of \$26,370 and funding of the City's 115 Trust of \$40,095. Expenses and encumbrances for fixed meter reading network increased \$247,092. Costs encumbered in the prior year to repair a pump at the Ridgeview pump station totaled \$72,000. Decreases of \$108,025 in contractual services include prior year encumbrances of \$60,000 for utility bill print mail services. These services are encumbered in November of the current year for \$74,338. Internet processing fees decreased \$65,379 as a result of the timing of prior year invoices received. Expenses and encumbrances include costs of \$1,070,402 associated with the construction of a new environmental education complex, expected to be completed by February 2010. The Water and Sewer Fund will be reimbursed 50% of building construction costs by Environmental Services Fund.

Sustainability & Environmental Services

- Residential solid waste revenues are \$29,013 higher than the prior year primarily due to timing of the utility billing cycle. Compost revenues and tipping fees increased \$6,607 and \$30,658, respectively. Sale of landscape bags decreased \$65,520. Expenses and encumbrances decreased from the prior year by \$251,996. Personal services costs decreased \$47,909. Salaries decreased \$81,089 due to the timing of the September payroll and staff reductions in fiscal year 2009. This decrease is partially offset by increases in health insurance of \$15,182 and funding of the City's 115 Trust of \$24,435. Contractual payments to NTMWD decreased \$67,199 from the prior year. The contract with Otto Container Management decreased \$33,126 from the prior year due to efforts made to reconcile and adjust cart inventory in a consistent basis. Municipal garage charges decreased \$68,065 due to lower fuel rates and implementation of new fuel conservation measures. Contractual professional services in the Solid Waste Collections Department increased \$43,462 due to the addition of a secondary temporary labor service.

REPORT NOTES CONTINUED

OCTOBER, 2009

Municipal Drainage

- Interest income decreased \$2,348 due to a decline in the market. Personal services increased \$17,270 over the prior year due to increased salary and benefit related costs. Of the benefit cost increase, year to date funding for the City's Section 115 Trust is \$6,075. Current year encumbrances include \$23,247 for parking lot sweeping and after storm events. Costs associated with concrete structures decreased from the prior year by \$37,653.

Civic Center

- Lease fees are lower by \$6,805 from the prior year due to fewer corporate business events. Decreases in catering and equipment revenues of \$36,248 and service charge revenues of \$5,485 are a result of less corporate spending for ancillary services. Interest income decreased \$4,154 as compared to the prior year due to a decline in the market. Expenses and encumbrances decreased \$233,290. Included are prior year encumbrances of \$179,592 for building design services to expand the Plano Centre as well as a reduction in food expense of \$18,302. Payments made in support of historic preservation decreased \$89,030 primarily due to the timing of payments. Annual funding for the program has decreased \$16,537 as compared to the prior year budget. The Plano Convention & Tourism Bureau encumbrances include \$42,000 for services to assist in promotional efforts of area events and activities. The contract was implemented in December 2008 with a total cost of \$48,000.

Golf Course

- Excessive rainfall caused 12 days of closure of the golf course resulting in decreased golf revenues of \$41,700. Personal services decreased \$18,394 due to a reduction in staff in the prior year. Electric payments decreased \$2,475 from the prior year as the result of the City's participation in an electric aggregation group which contracts for lower rates. Costs of maintenance parts and supplies decreased from the prior year by \$6,044.

Recreation Revolving

- Recreation class participation increased over the prior year resulting in revenue increases of \$19,400. Contractual services increased \$17,877 including \$10,000 for a concert at the Oak Point Center amphitheater and additional costs for instructors and programs at the recreation centers. Minor apparatus costs decreased \$6,030 as a result of prior year purchases of gymnastic products.

Property Management

- The City demolished the Downtown Center South in fiscal year 2009. However, remaining costs associated with demolishing the Center are encumbered for \$12,508.



SECTION 1A

FINANCIAL SUMMARY

City of Plano
Comprehensive Monthly Finance Report

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH OCTOBER 31 OF FISCAL YEARS 2010, 2009, AND 2008
 GENERAL FUND

	Fiscal Year	Annual Budget	1 Month Actual	Actual/ Budget	Performance Index
REVENUES:					
Ad valorem tax	2010	\$ 82,436,251	57,425	0.1%	0.84
	2009	83,068,770	244,377	0.3%	3.53
	2008	77,466,721	463,239	0.6%	7.18
Sales tax	2010	57,821,890	4,112,432	7.1%	85.35
	2009	57,417,708	4,421,840	7.7%	92.41
	2008	61,181,328	4,940,022	8.1%	96.89
Other revenue	2010	49,997,631	2,043,392	4.1%	49.04
	2009	52,721,887	2,106,419	4.0%	47.94
	2008	<u>48,068,964</u>	<u>2,176,673</u>	4.5%	54.34
TOTAL REVENUE	2010	190,255,772	6,213,249	3.3%	39.19
	2009	193,208,365	6,772,636	3.5%	42.06
	2008	<u>186,717,013</u>	<u>7,579,934</u>	4.1%	48.72
EXPENDITURES & ENCUMBRANCES:					
Current operating	2010	\$ 197,663,823	17,519,830	8.9%	106.36
	2009	201,136,043	18,617,464	9.3%	111.07
	2008	199,162,227	13,652,522	6.9%	82.26
Capital outlay	2010	1,010,000	430,830	42.7%	511.88
	2009	2,505,307	536,225	21.4%	256.84
	2008	<u>2,254,500</u>	<u>936,781</u>	41.6%	498.62
Total expenditures and encumbrances	2010	198,673,823	17,950,660	9.0%	108.42
	2009	203,641,350	19,153,689	9.4%	112.87
	2008	<u>201,416,727</u>	<u>14,589,303</u>	7.2%	86.92
Excess (deficiency) of revenues over (under) expenditures	2010	(8,418,051)	(11,737,411)	-	-
	2009	(10,432,985)	(12,381,053)	-	-
	2008	(14,699,714)	(7,009,369)	-	-
OTHER FINANCING SOURCES (USES)					
Transfers in	2010	19,486,530	1,623,878	8.3%	100.00
	2009	17,634,574	1,469,548	8.3%	100.00
	2008	16,609,119	1,384,093	8.3%	100.00
Transfers out	2010	(20,344,972)	(1,695,414)	8.3%	100.00
	2009	(19,678,201)	(1,639,850)	8.3%	100.00
	2008	<u>(21,947,400)</u>	<u>(1,828,950)</u>	8.3%	100.00
NET CHANGE IN FUND BALANCES	2010	(9,276,493)	(11,808,947)		
	2009	(12,476,612)	(12,551,355)		
	2008	(20,037,995)	(7,454,226)		
FUND BALANCES-BEGINNING	2010		42,744,130		
	2009		44,741,546		
	2008		<u>45,683,660</u>		
FUND BALANCES-ENDING OCTOBER 31	2010		30,935,183		
	2009		32,190,191		
	2008		<u>38,229,434</u>		

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH OCTOBER 31 OF FISCAL YEARS 2010, 2009, AND 2008
 WATER AND SEWER FUND

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>1 Month Actual</u>	<u>Actual/ Budget</u>	<u>Performance Index</u>
REVENUES:					
Water and sewer revenue	2010	\$ 114,488,347	8,543,197	7.5%	89.54
	2009	110,225,529	9,509,772	8.6%	103.53
	2008	96,339,563	8,531,887	8.9%	106.27
Other fees and service charges	2010	2,669,903	213,679	8.0%	96.04
	2009	2,572,861	232,345	9.0%	108.37
	2008	<u>2,693,389</u>	<u>155,431</u>	5.8%	69.25
TOTAL REVENUE	2010	117,158,250	8,756,876	7.5%	89.69
	2009	112,798,390	9,742,117	8.6%	103.64
	2008	<u>99,032,952</u>	<u>8,687,318</u>	8.8%	105.27
EXPENSES & ENCUMBRANCES:					
Capital outlay	2010	-	1,112,333	0.0%	-
	2009	-	76,584	0.0%	0.00
	2008	1,245,000	78,720	6.3%	75.87
Other expenses & encumbrances	2010	78,000,112	5,850,294	7.5%	90.00
	2009	75,009,576	5,866,162	7.8%	93.85
	2008	<u>66,173,780</u>	<u>4,509,526</u>	6.8%	81.78
Total expenses and encumbrances	2010	78,000,112	6,962,627	8.9%	107.12
	2009	75,009,576	5,942,746	7.9%	95.07
	2008	<u>67,418,780</u>	<u>4,588,246</u>	6.8%	81.67
Excess (deficiency) of revenues over (under) expenses	2010	39,158,138	1,794,249	-	-
	2009	37,788,814	3,799,371	-	-
	2008	31,614,172	4,099,072	-	-
TRANSFERS IN (OUT)					
Transfers in	2010	-	-	0.0%	-
	2009	-	-	0.0%	0.00
	2008	254,530	21,211	8.3%	100.00
Transfers out	2010	(38,482,630)	(3,206,886)	8.3%	100.00
	2009	(34,349,069)	(2,862,422)	8.3%	100.00
	2008	<u>(30,888,665)</u>	<u>(2,574,055)</u>	8.3%	100.00
CHANGE IN NET ASSETS	2010	\$ 675,508	(1,412,637)		
	2009	3,439,745	936,949		
	2008	980,037	1,546,228		
TOTAL NET ASSETS-BEGINNING	2010		323,719,463		
	2009		321,538,734		
	2008		<u>315,705,835</u>		
TOTAL NET ASSETS-ENDING OCTOBER 31	2010		322,306,826		
	2009		322,475,683		
	2008		<u><u>317,252,063</u></u>		

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH OCTOBER 31 OF FISCAL YEARS 2010, 2009, AND 2008
 SUSTAINABILITY AND ENVIRONMENTAL SERVICES FUND

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>1 Month Actual</u>	<u>Actual/ Budget</u>	<u>Performance Index</u>
REVENUES:					
Commerical solid waste franchise	2010	\$ 6,709,797	480,000	7.2%	85.84
	2009	6,496,731	480,000	7.4%	88.66
	2008	6,351,573	527,052	8.3%	99.58
Refuse collection revenue	2010	13,005,330	1,053,519	8.1%	97.21
	2009	13,316,939	1,026,145	7.7%	92.47
	2008	12,272,746	966,453	7.9%	94.50
Other fees and service charges	2010	2,508,431	110,882	4.4%	53.04
	2009	2,502,911	63,700	2.5%	30.54
	2008	<u>2,100,592</u>	<u>66,883</u>	3.2%	38.21
TOTAL REVENUE	2010	22,223,558	1,644,401	7.4%	88.79
	2009	22,316,581	1,569,845	7.0%	84.41
	2008	<u>20,724,911</u>	<u>1,560,388</u>	7.5%	90.35
EXPENSES & ENCUMBRANCES:					
Capital outlay	2010	-	-	0.0%	0.00
	2009	256,170	16,900	6.6%	79.17
	2008	141,500	-	0.0%	0.00
Other expenses & encumbrances	2010	21,209,293	2,930,545	13.8%	165.81
	2009	21,440,299	3,165,641	14.8%	177.18
	2008	<u>19,969,352</u>	<u>2,489,817</u>	12.5%	149.62
Total expenses and encumbrances	2010	21,209,293	2,930,545	13.8%	165.81
	2009	21,696,469	3,182,541	14.7%	176.02
	2008	<u>20,110,852</u>	<u>2,489,817</u>	12.4%	148.57
Excess (deficiency) of revenues over (under) expenses	2010	1,014,265	(1,286,144)	-	-
	2009	620,112	(1,612,696)	-	-
	2008	614,059	(929,429)	-	-
TRANSFERS IN (OUT)					
Transfers in	2010	100,000	8,333	8.3%	100.00
	2009	100,000	8,333	8.3%	100.00
	2008	100,000	8,333	8.3%	100.00
Transfers out	2010	(1,288,707)	(107,392)	8.3%	100.00
	2009	(1,223,535)	(101,961)	8.3%	100.00
	2008	<u>(1,174,818)</u>	<u>(97,902)</u>	8.3%	100.00
CHANGE IN NET ASSETS	2010	\$ (174,442)	(1,385,203)		
	2009	(503,423)	(1,706,324)		
	2008	(460,759)	(1,018,998)		
TOTAL NET ASSETS-BEGINNING	2010		1,695,729		
	2009		1,690,291		
	2008		<u>2,308,223</u>		
TOTAL NET ASSETS-ENDING OCTOBER 31	2010		310,526		
	2009		(16,033)		
	2008		<u><u>1,289,225</u></u>		

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH OCTOBER 31 OF FISCAL YEARS 2010, 2009, AND 2008
 MUNICIPAL DRAINAGE FUND

	Fiscal Year	Annual Budget	1 Month Actual	Actual/ Budget	Performance Index
REVENUES:					
Fees and service charges	2010	\$ 5,007,613	426,153	8.5%	102.12
	2009	4,928,110	423,976	8.6%	103.24
	2008	4,723,698	416,367	8.8%	105.77
Miscellaneous revenue	2010	85,000	5,709	6.7%	80.60
	2009	150,000	8,057	5.4%	64.46
	2008	125,000	23,717	19.0%	227.68
TOTAL REVENUE	2010	5,092,613	431,862	8.5%	101.76
	2009	5,078,110	432,033	8.5%	102.09
	2008	4,848,698	440,084	9.1%	108.92
EXPENSES & ENCUMBRANCES:					
Capital outlay	2010	-	-	0.0%	-
	2009	-	-	0.0%	-
	2008	-	-	0.0%	0.00
Other expenses & encumbrances	2010	3,026,620	404,727	13.4%	160.47
	2009	2,803,503	381,561	13.6%	163.32
	2008	2,579,209	320,595	12.4%	149.16
Total expenses and encumbrances	2010	3,026,620	404,727	13.4%	160.47
	2009	2,803,503	381,561	13.6%	163.32
	2008	2,579,209	320,595	12.4%	149.16
Excess (deficiency) of revenues over (under) expenses	2010	2,065,993	27,135	-	-
	2009	2,274,607	50,472	-	-
	2008	2,269,489	119,489	-	-
TRANSFERS OUT					
Operating transfers out	2010	(2,991,845)	(249,320)	8.3%	100.00
	2009	(2,867,538)	(238,962)	8.3%	100.00
	2008	(2,710,706)	(225,892)	8.3%	100.00
CHANGE IN NET ASSETS					
	2010	(925,852)	(222,185)		
	2009	(592,931)	(188,490)		
	2008	(441,217)	(106,403)		
TOTAL NET ASSETS-BEGINNING					
	2010		23,023,463		
	2009		21,003,753		
	2008		21,105,863		
TOTAL NET ASSETS-ENDING OCTOBER 31					
	2010		22,801,278		
	2009		20,815,263		
	2008		20,999,460		

MONTHLY FINANCIAL SUMMARY REPORT
THROUGH OCTOBER 31 OF FISCAL YEARS 2010, 2009, AND 2008
NON-MAJOR BUSINESS TYPE FUNDS

	Fiscal Year	Annual Budget	1 Month Actual	Actual/ Budget	Performance Index
REVENUES:					
Hotel/motel tax	2010	\$ 4,494,486	-	0.0%	0.00
	2009	4,964,601	-	0.0%	0.00
	2008	4,518,066	-	0.0%	0.00
Other revenue	2010	6,761,751	697,375	10.3%	123.76
	2009	6,974,294	792,043	11.4%	136.28
	2008	6,695,120	737,946	11.0%	132.27
TOTAL REVENUE	2010	11,256,237	697,375	6.2%	74.35
	2009	11,938,895	792,043	6.6%	79.61
	2008	11,213,186	737,946	6.6%	78.97
EXPENSES & ENCUMBRANCES:					
Capital outlay	2010	-	-	0.0%	-
	2009	-	-	0.0%	0.00
	2008	80,500	100,067	124.3%	1491.68
Other expenses & encumbrances	2010	12,218,004	869,095	7.1%	85.36
	2009	12,550,538	1,127,364	9.0%	107.79
	2008	11,659,342	730,624	6.3%	75.20
Total expenses and encumbrances	2010	12,218,004	869,095	7.1%	85.36
	2009	12,550,538	1,127,364	9.0%	107.79
	2008	11,739,842	830,691	7.1%	84.91
Excess (deficiency) of Revenues over (under) expenses	2010	(961,767)	(171,720)	-	-
	2009	(611,643)	(335,321)	-	-
	2008	(526,656)	(92,745)	-	-
TRANSFERS OUT:					
Operating transfers out	2010	(577,806)	(48,151)	8.3%	100.00
	2009	(1,444,860)	(120,405)	8.3%	100.00
	2008	(1,120,300)	(93,359)	8.3%	100.00
CHANGE IN NET ASSETS	2010	(1,539,573)	(219,871)		
	2009	(2,056,503)	(455,726)		
	2008	(1,646,956)	(186,104)		
TOTAL NET ASSETS-BEGINNING	2010		10,801,647		
	2009		13,062,762		
	2008		13,467,830		
TOTAL NET ASSETS-ENDING OCTOBER 31	2010		10,581,776		
	2009		12,607,036		
	2008		13,281,726		

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH OCTOBER 31 OF FISCAL YEARS 2010, 2009, AND 2008
 ECONOMIC DEVELOPMENT FUND

	Fiscal Year	Annual Budget	1 Month Actual	Actual/ Budget	Performance Index
REVENUES:					
Miscellaneous revenue	2010	\$ 200,000	20,021	10.0%	120.13
	2009	310,000	22,724	7.3%	87.96
	2008	<u>185,000</u>	<u>45,294</u>	24.5%	293.80
EXPENSES & ENCUMBRANCES					
Personal services	2010	596,878	43,748	7.3%	87.95
	2009	559,469	42,760	7.6%	91.72
	2008	550,728	26,122	4.7%	56.92
Materials and supplies	2010	15,500	7	0.0%	0.54
	2009	23,452	2,469	10.5%	126.33
	2008	23,500	7,619	32.4%	389.06
Contractual / professional and other	2010	5,272,154	7,980	0.2%	1.82
	2009	5,485,693	947,905	17.3%	207.36
	2008	6,275,424	25,709	0.4%	4.92
Capital outlay	2010	-	-	0.0%	-
	2009	-	-	0.0%	-
	2008	-	-	0.0%	-
Total Expenses and Encumbrances	2010	<u>5,884,532</u>	<u>51,735</u>	0.9%	10.55
	2009	6,068,614	993,134	16.4%	196.38
	2008	<u>6,849,652</u>	<u>59,450</u>	0.9%	10.42
Excess (Deficiency) of Revenues Over (Under) Expenses	2010	(5,684,532)	(31,714)	-	-
	2009	(5,758,614)	(970,410)	-	-
	2008	(6,664,652)	(14,156)	-	-
TRANSFERS IN					
Operating transfers in	2010	5,910,201	492,517	8.3%	100.00
	2009	6,068,614	505,718	8.3%	100.00
	2008	<u>6,849,652</u>	<u>570,804</u>	8.3%	100.00
CHANGE IN NET ASSETS					
	2010	225,669	460,803		
	2009	310,000	(464,692)		
	2008	185,000	556,648		
TOTAL NET ASSETS-BEGINNING					
	2010		14,046,444		
	2009		12,255,577		
	2008		<u>6,940,876</u>		
TOTAL NET ASSETS-ENDING OCTOBER 31					
	2010		14,507,247		
	2009		11,790,885		
	2008		<u>7,497,524</u>		

EQUITY IN TREASURY POOL

OCTOBER 2009

FUND NO.	FUND NAME	CASH	EQUITY IN TREASURY POOL	TOTAL 10/31/09	TOTAL 10/1/09	TOTAL 10/31/08
GENERAL FUND:						
01	General	\$ 28,380	24,180,376	24,208,756	39,172,121	26,487,400
77	Payroll	-	3,137,554	3,137,554	2,010,272	3,067,737
24	City Store	-	-	-	-	9,818
		28,380	27,317,930	27,346,310	41,182,393	29,564,955
DEBT SERVICE FUND:						
03	G.O. Debt Service	-	3,282,516	3,282,516	3,285,456	5,683,747
		-	3,282,516	3,282,516	3,285,456	5,683,747
CAPITAL PROJECTS:						
22	Recreation Center Facilities	-	602,644	602,644	601,809	580,317
23	Street Enhancement	-	1,681,472	1,681,472	1,679,141	1,632,224
25	1991 Police & Courts Facility	-	1,064,494	1,064,494	1,063,019	1,262,738
27	1991 Library Facility	-	883,059	883,059	881,835	866,071
28	1991 Fire Facility	-	3,686,002	3,686,002	3,680,893	2,280,499
29	Technology Improvements	-	1,217,001	1,217,001	1,215,315	747,182
31	Municipal Facilities	-	453,814	453,814	453,185	441,808
32	Park Improvements	-	7,161,797	7,161,797	7,151,871	5,745,562
33	Street & Drainage Improvement	-	6,405,203	6,405,203	9,455,742	6,129,509
35	Capital Reserve	-	40,063,322	40,063,322	39,870,612	38,539,783
38	DART L.A.P.	-	773,634	773,634	772,562	762,127
39	Spring Creekwalk	-	23,814	23,814	23,781	23,460
52	Park Service Areas	-	5,629,447	5,629,447	5,627,066	5,821,425
53	Creative & Performing Arts	-	2,258,969	2,258,969	2,255,838	2,188,858
54	Animal Control Facilities	-	348,019	348,019	347,537	336,662
59	Service Center	-	132,858	132,858	132,674	130,882
60	Joint Use Facilities	-	641,004	641,004	640,116	629,500
85	Public Arts	-	121,129	121,129	120,961	116,674
160	TXDOT-SH121	-	11,728,832	11,728,832	10,192,812	-
110	G.O. Bond Clearing - 1999	-	322,231	322,231	321,785	324,390
190	G.O. Bond Clearing - 2000	-	3,609,705	3,609,705	3,607,700	3,647,559
230	Tax Notes Clearing - 2001	-	1,102,492	1,102,492	1,100,963	1,345,093
240	G.O. Bond Clearing - 2001-A	-	182,440	182,440	182,187	182,527
250	Tax Notes Clearing - 2001-A	-	59,141	59,141	59,059	158,691
270	G.O. Bond Refund/Clearing - 2003	-	122,900	122,900	122,730	137,098
310	G.O. Bond Refund/Clearing - 2005	-	-	-	-	-
093	G.O. Bond Clearing - 2006	-	-	-	-	-
089	C.O. Bond Clearing - 2006	-	146,550	146,550	146,347	197,637
102	G.O. Bond Clearing - 2007	-	1,131,587	1,131,587	1,221,403	8,437,134
105	Tax Notes Clearing - 2007	-	-	-	-	518
082	G.O. Bond Clearing - 2008	-	9,873,447	9,873,447	11,759,316	32,481,325
083	Tax Notes Clearing - 2008	-	10,112,612	10,112,612	11,283,467	16,652,863
106	G.O. Bond Clearing - 2009	-	20,823,862	20,823,862	20,795,000	-
150	Tax Notes Clearing - 2009	-	6,386,587	6,386,587	6,377,735	-
		-	138,750,068	138,750,068	143,144,461	131,800,116
ENTERPRISE FUNDS:						
26	Municipal Drainage CIP	-	296,441	296,441	296,030	281,546
34	Sewer CIP	-	10,788,670	10,788,670	10,880,651	8,262,919
36	Water CIP	-	11,189,254	11,189,254	10,379,496	5,962,111
37	Downtown Center Development	-	137,540	137,540	141,340	111,486
41	Water & Sewer - Operating	501,741	(836,853)	(335,112)	1,976,623	2,620,532
42	Water & Sewer - Debt Service	-	512,707	512,707	328,790	390,951
43	Municipal Drainage - Debt Service	-	3,579,430	3,579,430	3,356,177	3,503,167
44	W & S Impact Fees Clearing	-	-	-	-	3,465,984
45	Sustainability & Environmental Services	113,236	(746,552)	(633,316)	(598,717)	(23,306)
46	Convention & Tourism	4,310	2,495,079	2,499,389	2,800,286	4,146,609
81	Friends of Plano Centre	-	3,959	3,959	3,953	3,900
47	Municipal Drainage	40,080	4,052,036	4,092,116	4,189,957	4,308,292
48	Municipal Golf Course	-	87,389	87,389	126,677	118,559
49	Property Management	-	460,597	460,597	470,085	444,192
51	Recreation Revolving	350	1,110,442	1,110,792	1,387,532	1,141,637
104	Municipal Drain Bond Clearing-1996	-	-	-	-	180,146
320	Municipal Drain Rev Bond Clearing - 2005	-	-	-	-	152,701
094	Municipal Drain Rev Bond Clearing - 2006	-	-	-	-	164,064
330	Municipal Drain Rev Bond Clearing - 2007	-	1,598,298	1,598,298	1,600,634	2,299,516
340	Municipal Drain Rev Bond Clearing - 2008	-	2,126,240	2,126,240	2,123,293	2,094,615
107	Municipal Drain Rev Bond Clearing - 2009	-	1,782,849	1,782,849	1,780,378	-
		659,717	38,637,526	39,297,243	41,243,185	39,629,621

EQUITY IN TREASURY POOL

OCTOBER 2009

FUND NO.	FUND NAME	CASH	EQUITY IN TREASURY POOL	TOTAL 10/31/09	TOTAL 10/1/09	TOTAL 10/31/08
SPECIAL REVENUE FUNDS:						
2	Sproles Library	-	186,610	186,610	186,351	185,131
4	TIF-Mall	-	-	-	-	-
5	TIF-East Side	-	5,764,609	5,764,609	5,774,599	6,002,395
11	LLEBG-Police Grant	-	40,925	40,925	40,868	26,019
12	Criminal Investigation	-	1,348,397	1,348,397	1,341,294	1,019,432
13	Grant	95	(600,711)	(600,616)	(469,977)	(251,677)
14	Wireline Fees	-	9,805,934	9,805,934	9,740,731	397,242
15	Judicial Efficiency	-	127,168	127,168	126,175	118,432
16	Industrial	-	18,299	18,299	18,273	18,027
17	Intergovernmental	-	372,484	372,484	371,968	380,962
18	Government Access/CATV	-	243,724	243,724	296,436	322,323
19	Teen Court Program	-	50,100	50,100	49,271	46,897
20	Municipal Courts Technology	-	1,710,663	1,710,663	1,706,473	1,555,382
24	American Recovery/Reinv Act Grant	-	227,107	227,107	226,793	-
55	Municipal Court-Building Security Fees	-	1,160,975	1,160,975	1,179,873	1,308,064
56	911 Reserve Fund	-	-	-	-	8,550,288
57	State Library Grants	-	(1,990)	(1,990)	(35,972)	51,676
67	Disaster Relief	-	1,205,136	1,205,136	1,203,465	1,103,492
68	Animal Shelter Donations	-	212,325	212,325	207,918	185,270
73	Memorial Library	-	340,960	340,960	348,226	376,781
86	Juvenile Case Manager	-	277,298	277,298	276,850	168,038
87	Traffic Safety	-	2,301,613	2,301,613	2,322,902	1,337,277
88	Child Safety	-	1,013,399	1,013,399	1,007,206	833,068
		95	25,805,025	25,805,120	25,919,723	23,734,519
INTERNAL SERVICE FUNDS:						
6	Public Safety Technology	-	2,009,619	2,009,619	2,006,834	1,720,728
9	Technology Infrastructure	-	(7,793)	(7,793)	(7,782)	(108,106)
58	PC Replacement	-	871,950	871,950	946,678	2,074,875
61	Equipment Maintenance	200	750,717	750,917	1,006,981	(4,228,320)
62	Information Technology	-	4,652,316	4,652,316	4,692,594	3,507,721
63	Office Services	125	(181,857)	(181,732)	(104,926)	(34,156)
64	Warehouse	100	65,829	65,929	144,325	115,756
65	Property/Liability Loss	-	4,527,885	4,527,885	4,434,801	5,597,746
66	Technology Services	-	6,741,780	6,741,780	6,845,943	12,435,262
71	Equipment Replacement	-	15,951,675	15,951,675	15,723,557	10,468,411
78	Health Claims	-	11,531,588	11,531,588	11,149,912	7,829,003
79	Parkway Service Ctr. Expansion	-	(28,226)	(28,226)	(28,187)	(28,239)
		425	46,885,483	46,885,908	46,810,730	39,350,681
FIDUCIARY FUNDS:						
7	Unclaimed Property	-	62,970	62,970	58,343	57,854
8	Library Training Lab	-	2,742	2,742	2,739	5,727
69	Collin County Seized Assets	-	153,986	153,986	146,232	263,282
74	Developers' Escrow	-	2,433,243	2,433,243	2,463,818	4,186,779
75	Plano Economic Development Trust	-	376,656	376,656	376,134	684,549
76	Economic Development	200	14,274,473	14,274,673	13,843,089	11,264,912
84	Rebate	-	1,494,303	1,494,303	1,492,232	1,018,728
		200	18,798,373	18,798,573	18,382,587	17,481,831
TOTAL		\$ 688,817	299,476,921	300,165,738	319,968,535	287,245,470
TRUST FUNDS						
		CASH	TRUST INVESTMENTS	TOTAL 10/31/09	TOTAL 10/1/09	TOTAL 10/31/08
72	Retirement Security Plan	-	65,458,505	65,458,505	65,458,505	61,611,854
91	115 Trust	-	28,233,374	28,233,374	27,657,043	21,299,132
TOTAL TRUST FUNDS		\$ -	93,691,879	93,691,879	93,115,548	82,910,986

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

Cash	17,919,094
Local Government Investment Pool	3,144,078
Texas Daily	6,334,435
Federal Securities	195,033,684
Certificates of Deposit	75,199,000
Fair Value Adjustment	526,112
Interest Receivable	1,320,518
	<u>299,476,921</u>

HEALTH CLAIMS FUND
THROUGH OCTOBER 31 OF FISCAL YEARS 2010 AND 2009

Health Claims Fund	FY 09-10	FY 08-09	1 month	FY 09-10	FY 08-09	Year to Date
	October	October	Variance Favorable (Unfavorable)	Total	Total	Variance Favorable (Unfavorable)
Revenues						
Employees Health Ins. Contributions	\$ 263,835	\$ 250,411	13,424	\$ 263,835	\$ 250,411	13,424
Employers Health Ins. Contributions	1,760,566	1,537,760	222,806	1,760,566	1,537,760	222,806
Contributions for Retirees	91,095	79,931	11,164	91,095	79,931	11,164
Cobra Insurance Receipts	4,865	8,431	(3,566)	4,865	8,431	(3,566)
Retiree Insurance Receipts	32,140	27,809	4,331	32,140	27,809	4,331
Retiree Contributions	-	-	-	-	-	-
Employer Contribution-OPEB	542,430	-	542,430	542,430	-	542,430
Interest	15,729	14,713	1,016	15,729	14,713	1,016
Total Revenues	2,710,660	1,919,055	791,605	2,710,660	1,919,055	791,605
Transfers Out						
Transfers Out	670,209	-	(670,209)	670,209	-	(670,209)
Expenses						
Insurance	78,423	116,433	38,010	78,423	116,433	38,010
Contracts- Professional Svc.	47,817	38,652	(9,165)	47,817	38,652	(9,165)
Contracts- Other	60,155	86,042	25,887	60,155	86,042	25,887
Health Claims Paid Reinsurance	2,215	1,132	(1,083)	2,215	1,132	(1,083)
Health Claims - Prescription	341,755	258,597	(83,158)	341,755	258,597	(83,158)
Health Claims Paid -UHC	1,204,961	1,551,915	346,954	1,204,961	1,551,915	346,954
Cobra Insurance Paid	231	230	(1)	231	230	(1)
Retiree Insurance Paid	7,146	6,861	(285)	7,146	6,861	(285)
Retiree Insurance Paid- Medicare	45,385	39,604	(5,781)	45,385	39,604	(5,781)
Total Expenses	1,788,088	2,099,466	311,378	1,788,088	2,099,466	311,378
Net increase (decrease)	252,363	(180,411)	432,774	\$ 252,363	\$ (180,411)	432,774
Health Claims Fund Balance - Cumulative						
	\$ 7,627,346	\$ 3,799,429	3,827,917			

ANALYSIS OF PROPERTY LIABILITY LOSS FUND THROUGH OCTOBER 31 OF FISCAL YEARS 2010, 2009, & 2008

PROPERTY LIABILITY LOSS FUND	Fiscal Year 2010	Fiscal Year 2009	Fiscal Year 2008
Claims Paid per General Ledger	\$ 80,912	137,260	19,429
Net Judgments/Damages/Attorney Fees	18,545	43,841	13,423
Total Expenses	\$ 99,457	181,101	32,852

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SECTION 2

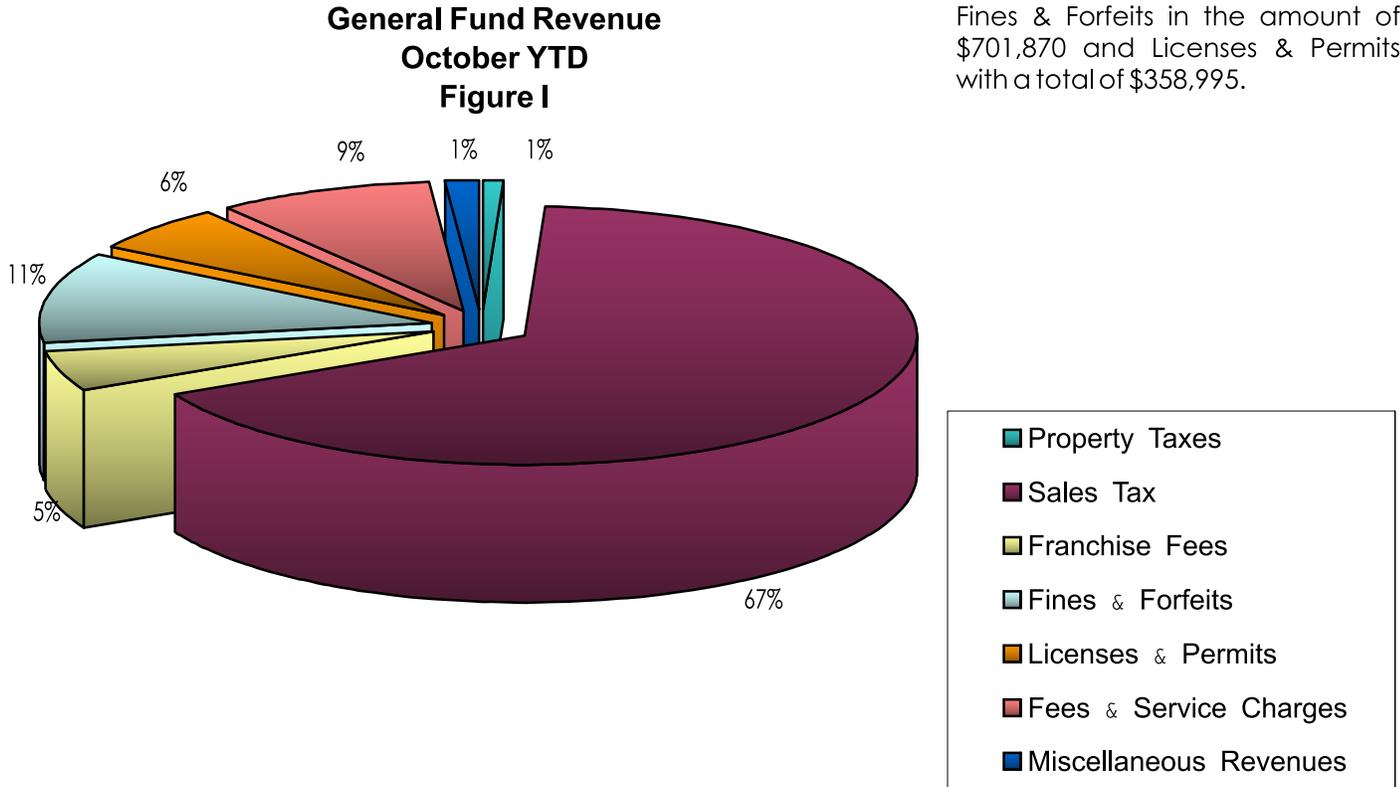
ECONOMIC ANALYSIS

City of Plano
Comprehensive Monthly Finance Report

ECONOMIC ANALYSIS

Figure I shows a breakdown of the various sources of revenues for the City's General Fund year to date through October 31, 2009. The largest category is Sales Tax in the amount of \$4,112,432. Closest behind Sales Tax are

Fines & Forfeits in the amount of \$701,870 and Licenses & Permits with a total of \$358,995.



**Expenditures and Encumbrances
October YTD
Figure II**

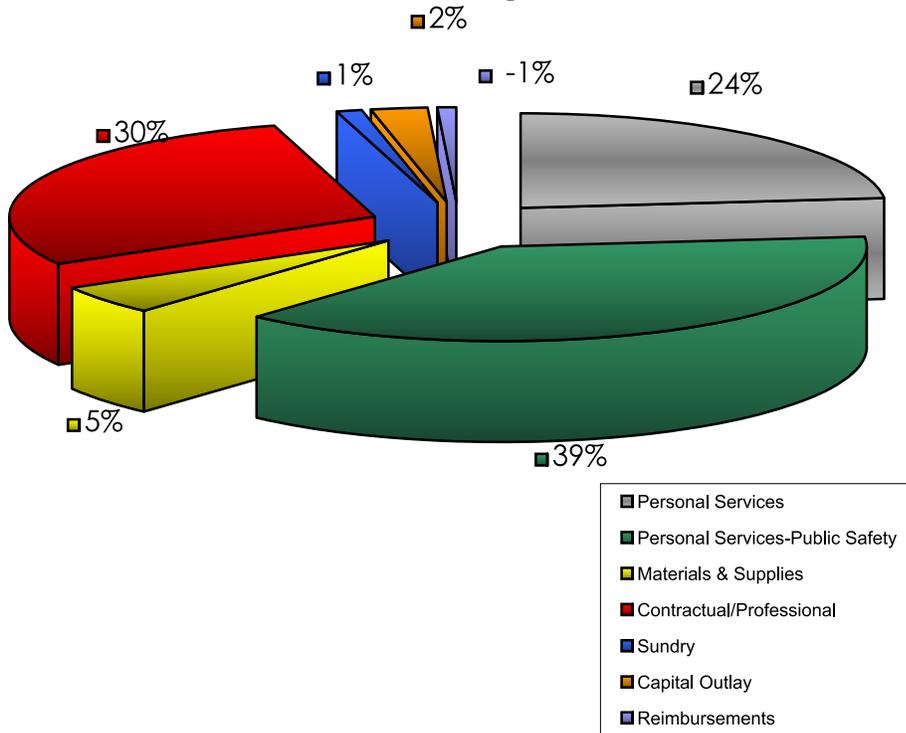


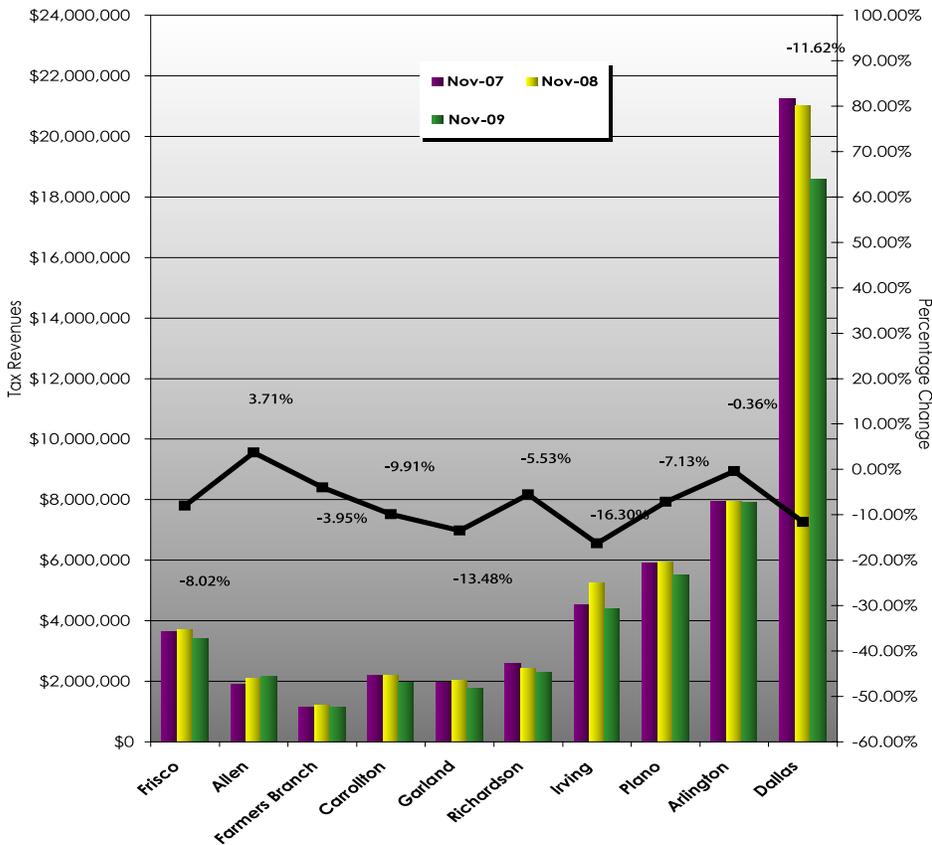
Figure II shows a breakdown of the various expenditures and encumbrances for the City's General Fund Year to Date through October 31, 2009. The largest category is personal services-public safety in the amount of \$6.8 million which includes the police, fire, fire-civilian and public safety communications departments. Closest behind that category are Contractual/Professional Services with a total of \$5.1 million, and Personal Services (for all other departments) totaling \$4.2 million.

ECONOMIC ANALYSIS

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

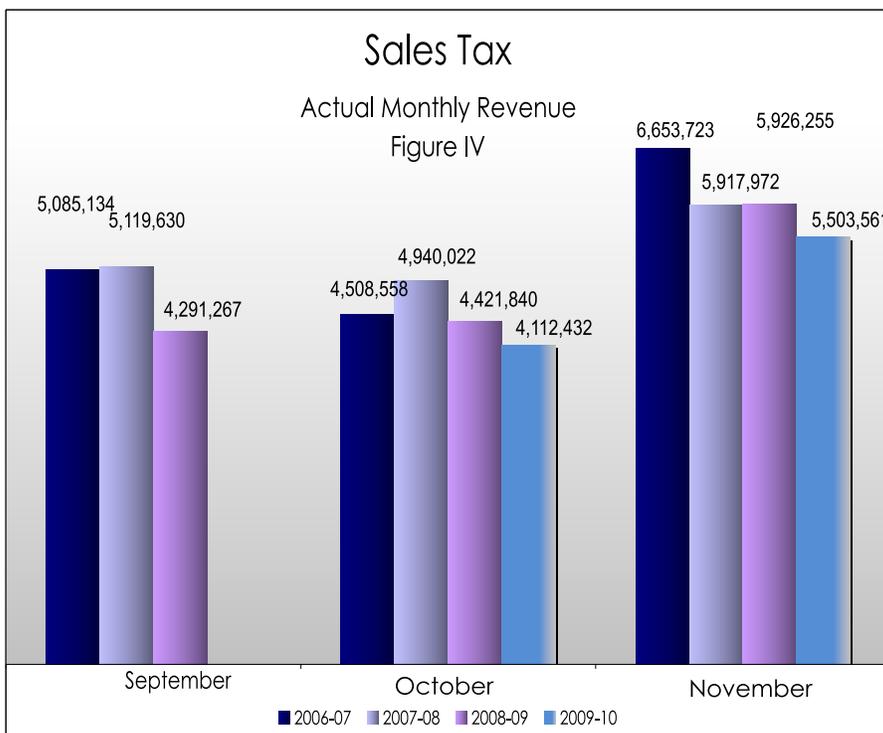
Sales Tax Comparisons
City of Plano and Area Cities

Figure III



cities of Allen and Frisco, which have a 2% rate, but distribute half of the amount shown in the graph to 4A and 4B development corporations within their respective cities, and the City of Arlington which has a 1.75% sales tax rate with .25% dedicated to road maintenance and .50% for funding of the Dallas Cowboys Complex Development Project. In the month of November the City of Plano received \$5,503,561 from this 1% tax.

The percentage change in sales tax allocations for the area cities, comparing November 2008 to November 2009, ranged from 3.71% for the City of Allen to -16.30% for the City of Irving.



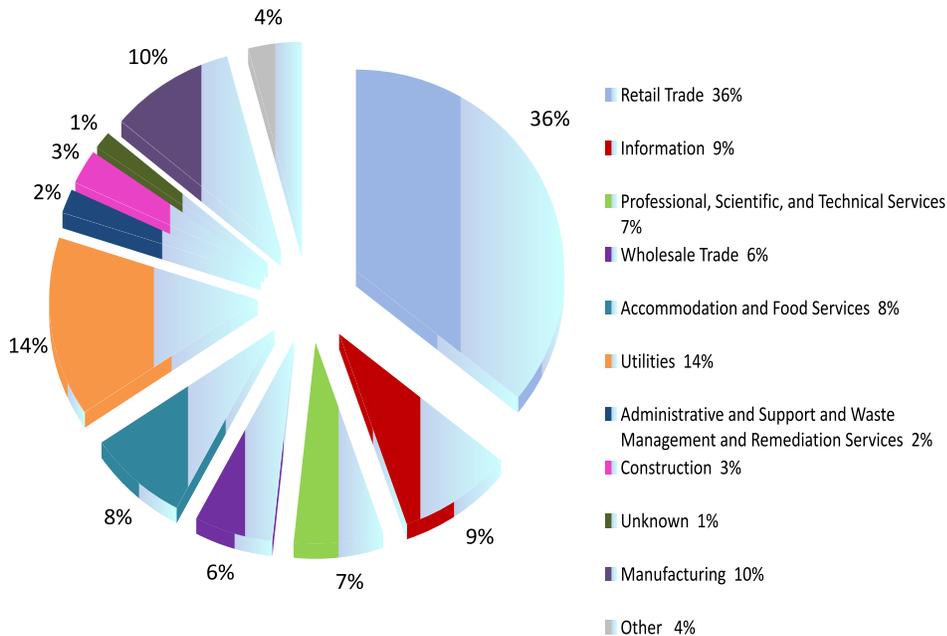
Sales tax allocation of \$5,503,561 was remitted to the City of Plano in the month of November. This amount represents a decrease of -7.13% compared to the amount received in November 2008. Sales tax revenue for 2006-07 totaled \$63,370,505, for 2007-08 totaled \$64,114,729, and for 2008-09 totaled \$57,493,767. Current year to date sales tax revenue is \$9,615,993.

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

Figure IV represents actual sales and use tax receipts for the month of September for fiscal years 2006-2007, 2007-2008, 2008-2009, and 2009-2010.

ECONOMIC ANALYSIS

Figure V
Sales and Use Tax by NAICS Code



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

Some examples in each code are as follows:

Retail Trade: Wal-Mart, Costco, Kohl's.
Information: AT&T, Verizon, Microsoft licensing.

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

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

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

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

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

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

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

Manufacturing: Pepsico, TI, Apple, Frito Lay.

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

Cumulative Jobs Created in Plano
Figure VI

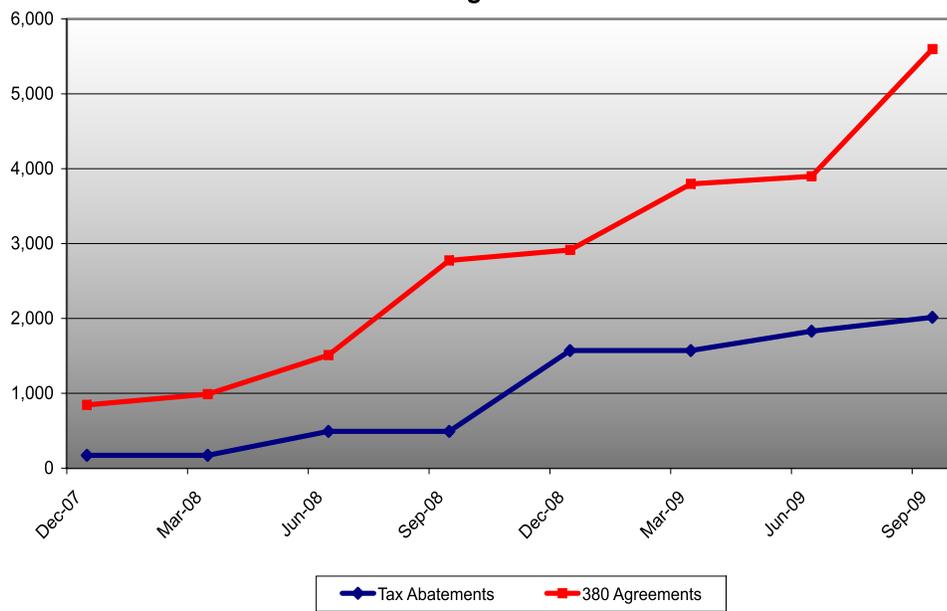


Figure VI, left, tracks the number of jobs cumulatively beginning 4th quarter 2007 created in Plano due to the City entering into either a Property Tax Abatement Agreement or a 380 Economic Development Agreement (380 agreement).

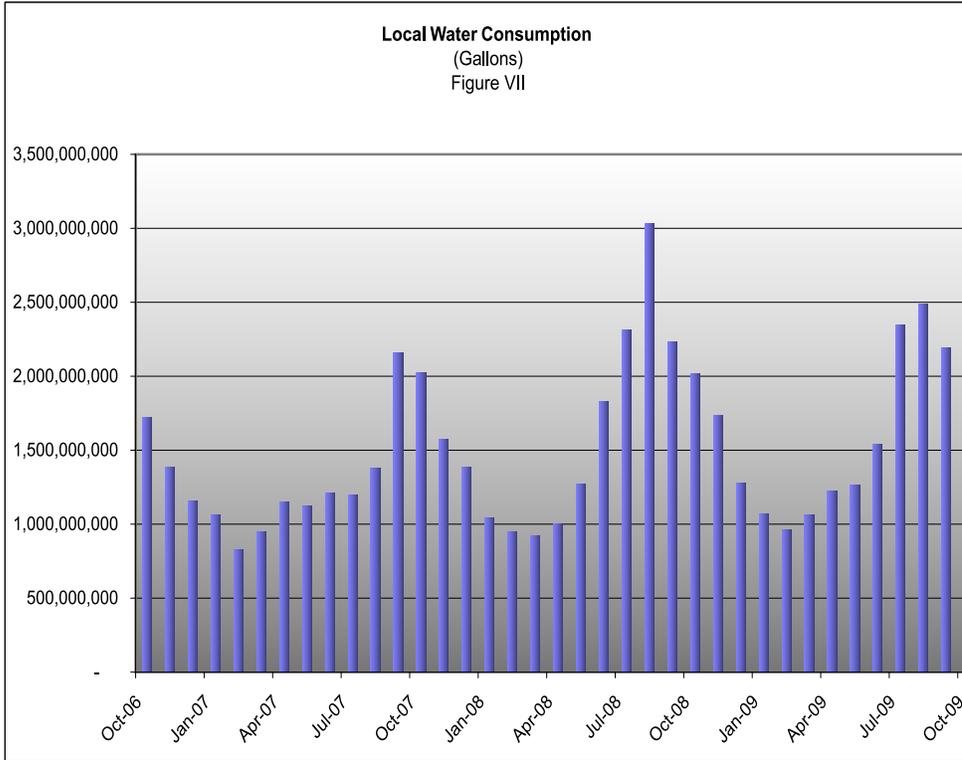
The City of Plano often uses property tax abatements to attract new industry and commercial enterprises, and to encourage the retention and development of existing businesses. The City can limit the property taxes assessed on real property or tangible personal property located on real property due to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

Enacted by the Texas Legislature in 1991, 380 Agreements let cities make loans and grants of public money to businesses or developers in return for

building projects within the city. Cities often pay these grants from the increase in sales or property taxes generated by the project. During the 3rd quarter of 2009, 1,699 jobs were created via 380 agreements. Please note that the quarterly jobs created in this figure are based on the date the agreement was passed by City Council.

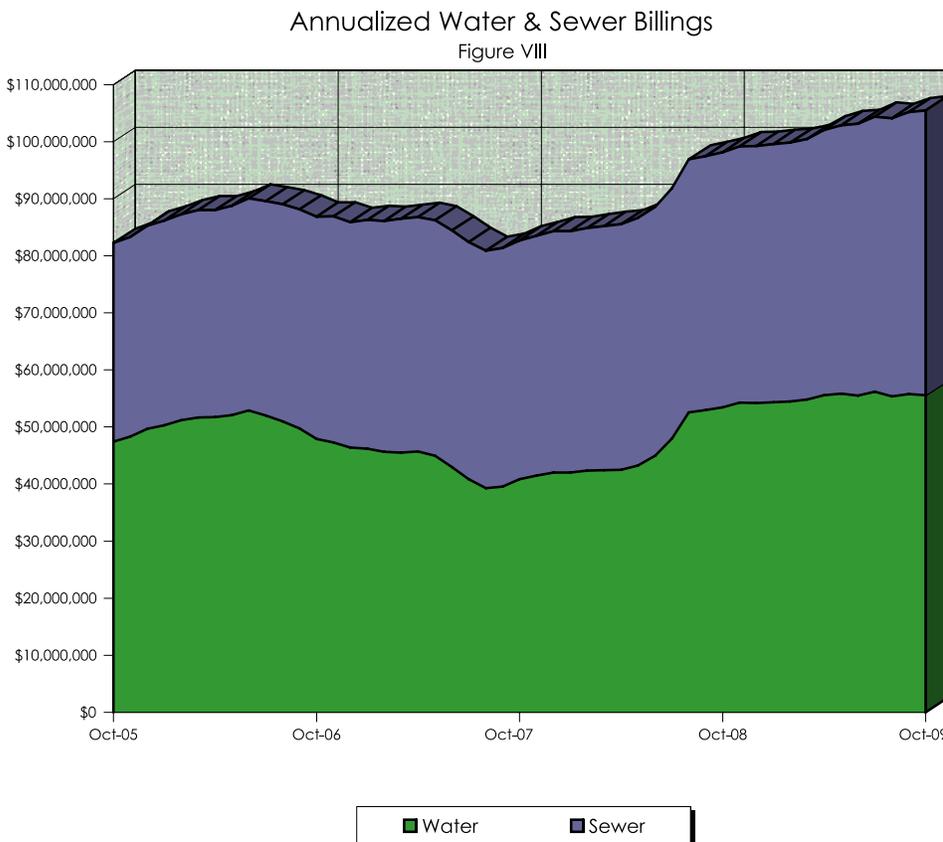
ECONOMIC ANALYSIS

In October, the City of Plano pumped 1,416,147,000 gallons of water from the North Texas Municipal Water District (NTMWD). Consumption was 1,919,512,800 gallons among 78,828 billed water accounts while billed



sewer accounts numbered 74,798. The minimum daily water pumpage was 38,177,000 gallons, which occurred on Tuesday, October 13th. Maximum daily pumpage was 60,429,000 gallons and occurred on Thursday, October 1st. This month's average daily pumpage was 45,682,000 gallons.

Figure VII shows the monthly actual local water consumption.



The actual water and sewer customer billing revenues in October were \$5,377,007 and \$4,455,133, representing a decrease of -4.19% and an increase of 13.49% respectively compared to October 2008 revenues. The aggregate water and sewer accounts netted \$9,832,140 for an increase of 3.09%.

October consumption brought annualized revenue of \$55,550,240 for water and \$49,908,760 for sewer, totaling \$105,459,001. This total represents an increase of 7.45% compared to last year's annualized revenue.

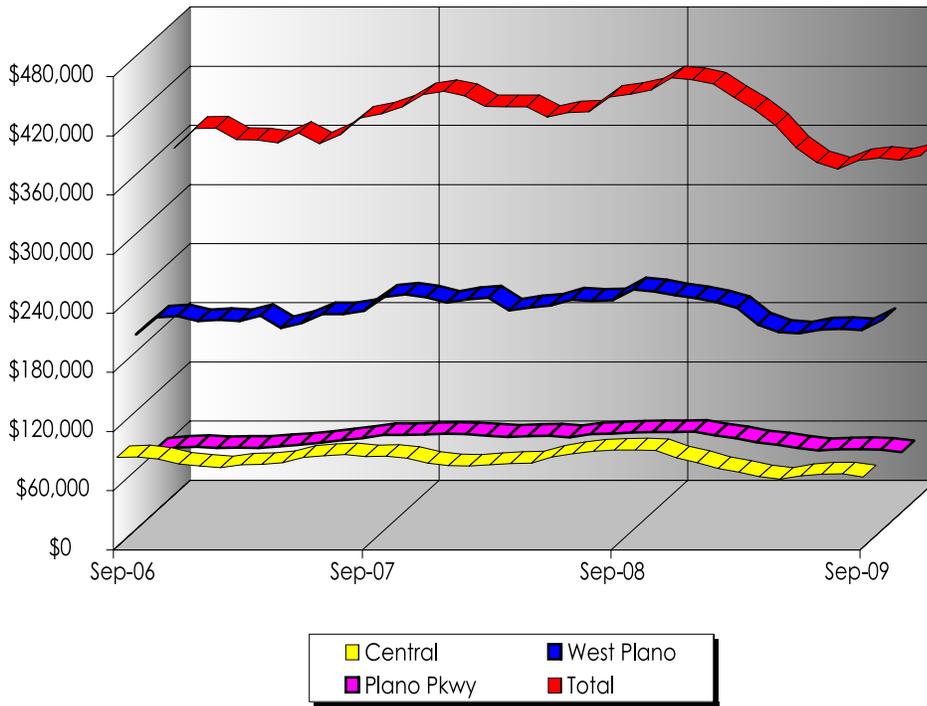
Figure VIII represents the annualized billing history of water and sewer revenues for October 2005 through October 2009.

ECONOMIC ANALYSIS

Hotel/Motel Occupancy Tax

Six Month Trend

Figure IX



September revenue from hotel/motel occupancy tax was \$372,510. This represents a decrease of \$108,059 or -22.49% compared to September 2008. The average monthly revenue for the past six months (see graph) was \$344,237, a decrease of 18.62% from the previous year's average. The six-month average for the Central area decreased to \$70,974, the West Plano average decreased to \$212,597, and the Plano Pkwy average decreased to \$60,666 from the prior year.

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

*The September revenue and central average excludes Candlewood Suites Hotel (E. 190) and Best Western Hotel occupancy tax. These hotels had not made their occupancy tax payments by CMFR submission deadline.

Unemployment Rates Unadjusted Rate Comparison Figure X

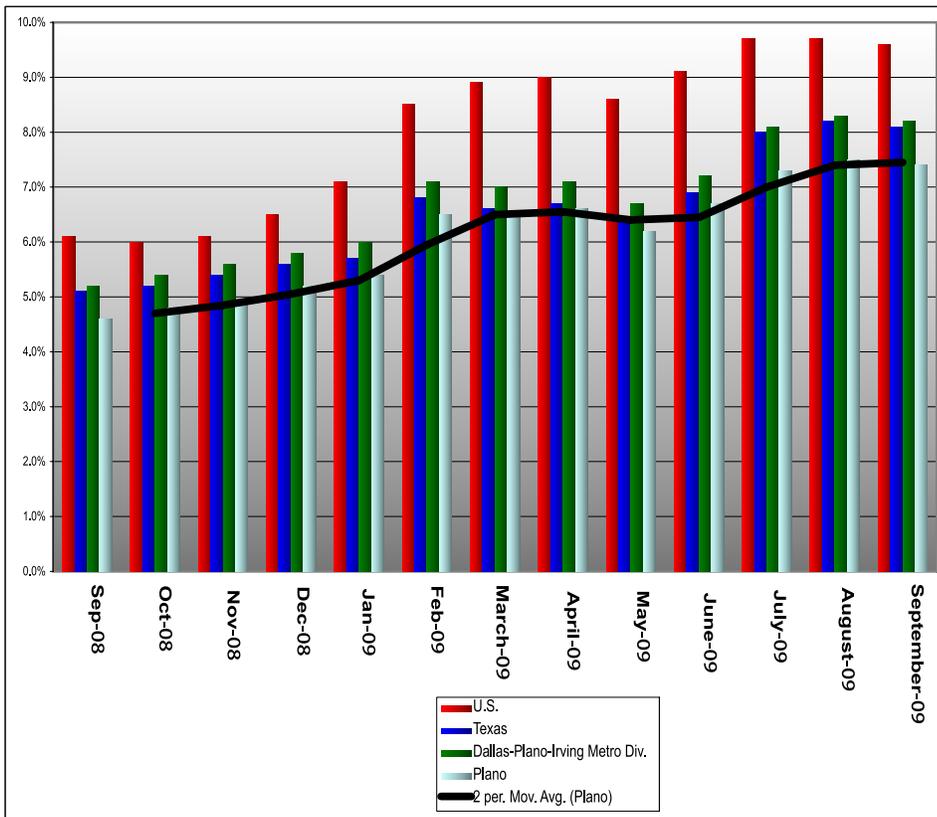
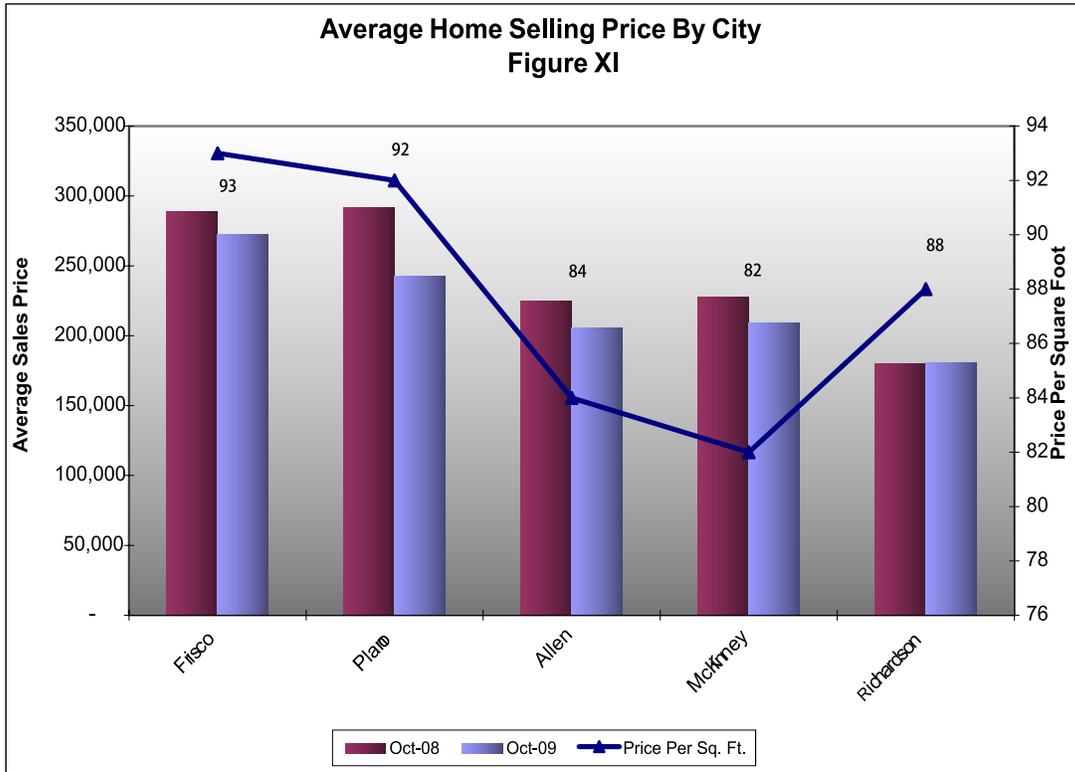


Figure X shows unadjusted unemployment rates based on the Bureau of Labor Statistics U.S. City Average, and Local Area Unemployment Statistics estimates for the State of Texas, the Dallas-Plano-Irving Metropolitan Division and the City of Plano from September 2008 to September 2009.

ECONOMIC ANALYSIS

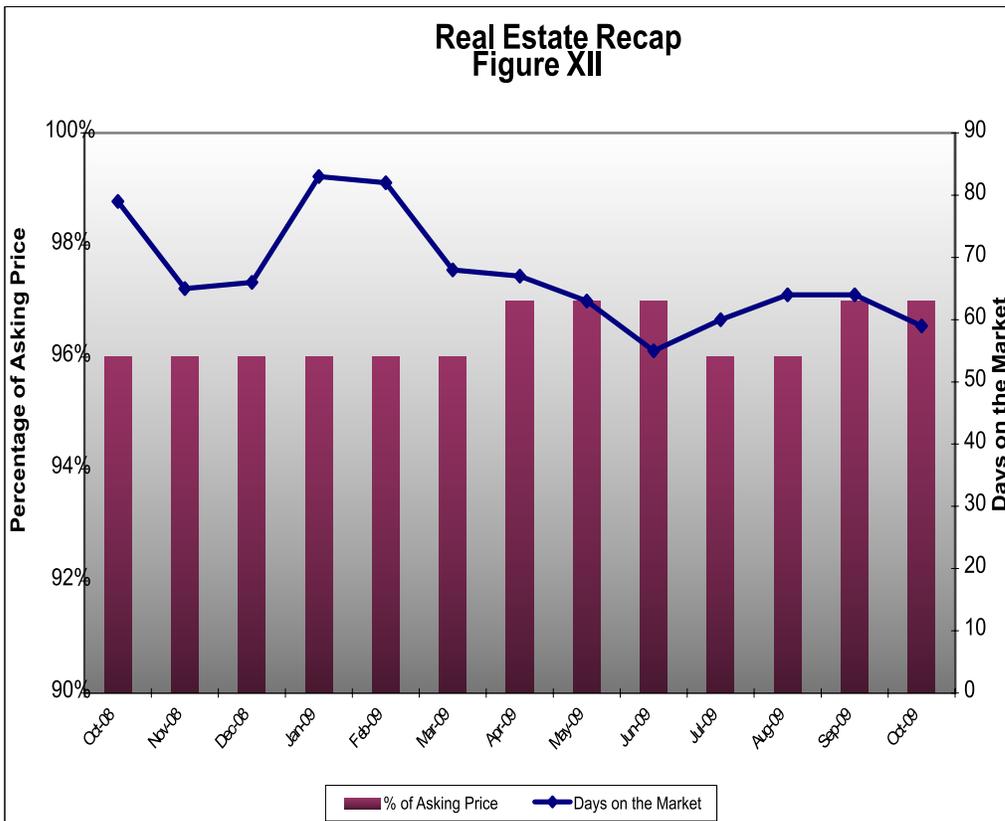
Figure XI shows the average home selling price for the months of October 2008 and October 2009 for the City of Plano and four area cities. The average price per square foot is also included for each city for the



month of October 2009. The average sales price in Plano has decreased \$49,038 from October 2009 to October 2008.

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

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



October 2009 at 97%. Days on the market has decreased from 65 days in October 2008 to 62 days in October 2009.

ECONOMIC ANALYSIS

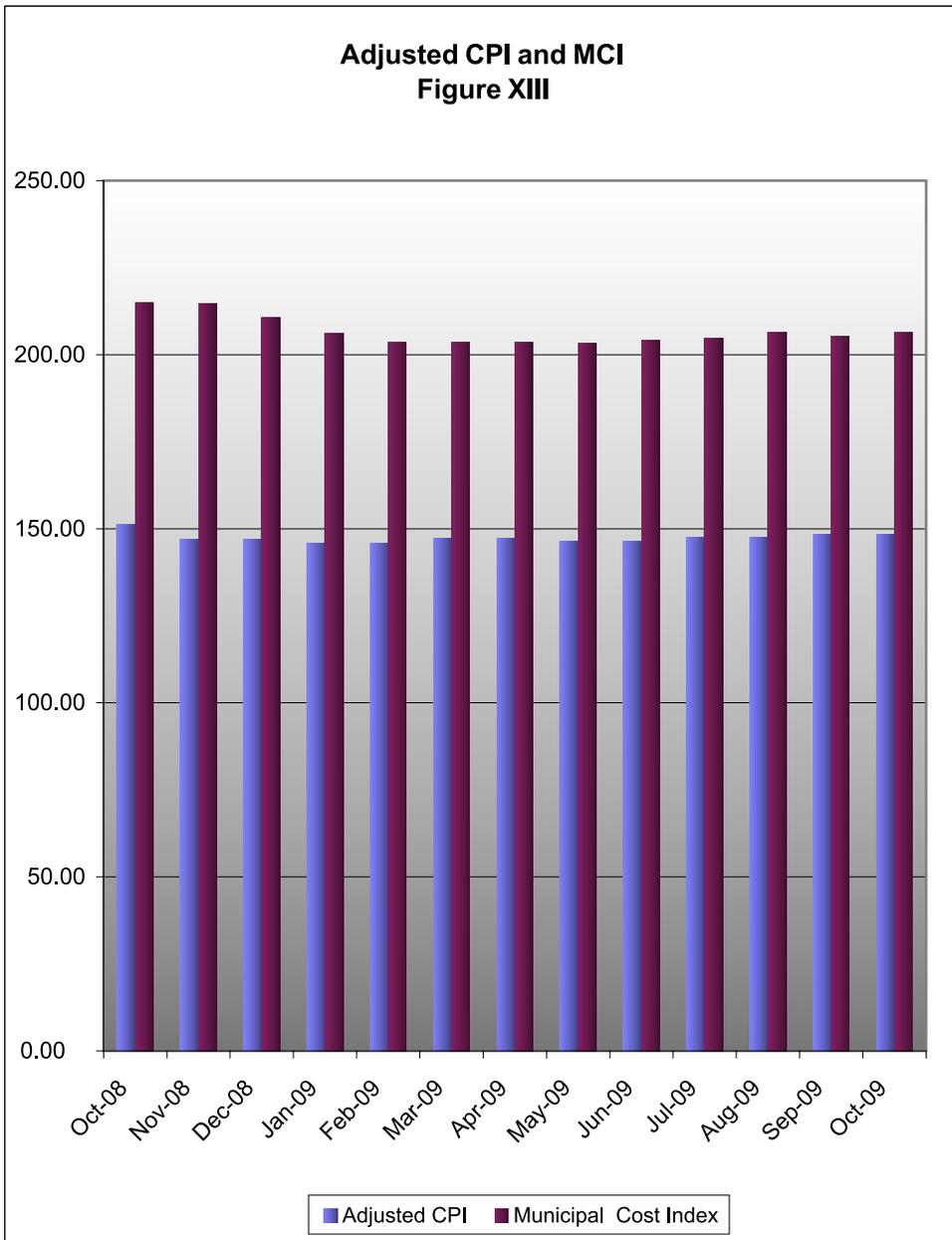


Figure XIII, left, tracks the Dallas-area CPI, using 1982-84 as the base period and the Municipal Cost Index (MCI). For October 2009, the adjusted CPI and MCI were 148.2 and 206.5, respectively.

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

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

ECONOMIC ANALYSIS

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SECTION 3

INVESTMENT REPORT

City of Plano
Comprehensive Monthly Finance Report

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

INVESTMENT REPORT

OCTOBER, 2009

Interest received during October totaled \$544,084 and represents interest paid on maturing investments and coupon payments on investments. Interest allocation is based on average balances within each fund during the month. The two-year Treasury note yield increased throughout the month of October, starting at .87% and ending at .90%.

As of October 31, a total of \$290.6 million was invested in the Treasury Fund. Of this amount, \$53.8 million was General Obligation Bond Funds, \$5.5 million was Municipal Drainage Revenue Bond Funds, and \$231.3 million was in the remaining funds.

Metrics	Current Month Actual	Fiscal YTD	Prior Fiscal YTD	Prior Fiscal Year Total
Funds Invested ¹	\$ 245,000	\$ 245,000	\$ -	\$ 361,486,327
Interest Received ²	\$ 544,084	\$ 544,084	\$ 584,567	\$ 4,622,227
Weighted Average Maturity (in days) ³	288		90	
Modified Duration ⁴	0.8300		0.2300	
Average 2-Year T-Note Yield ⁵	0.95%		1.61%	

* See interest allocation footnote on Page C-3.

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

Month-to-Month Comparison

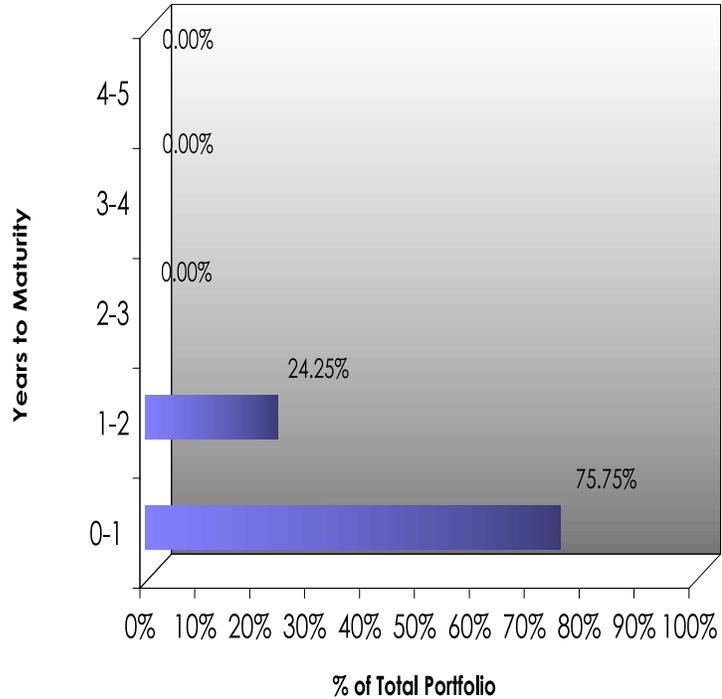
Metrics	Sep-09	Oct-09	Difference
Portfolio Holding Period Yield	1.16%	1.19%	+0.03% (+3 Basis Points)
Average 2-Year T-Note Yield	0.96%	0.95%	-0.01% (-1 Basis Points)

INVESTMENT REPORT

Portfolio Maturity Schedule

Figure I

Years to Maturity*	Book Value	% Total
0-1	\$ 228,456,507	75.75%
1-2	73,140,240	24.25%
2-3	0	0.00%
3-4	0	0.00%
4-5	0	0.00%
Total	\$ 301,596,747	100.00%

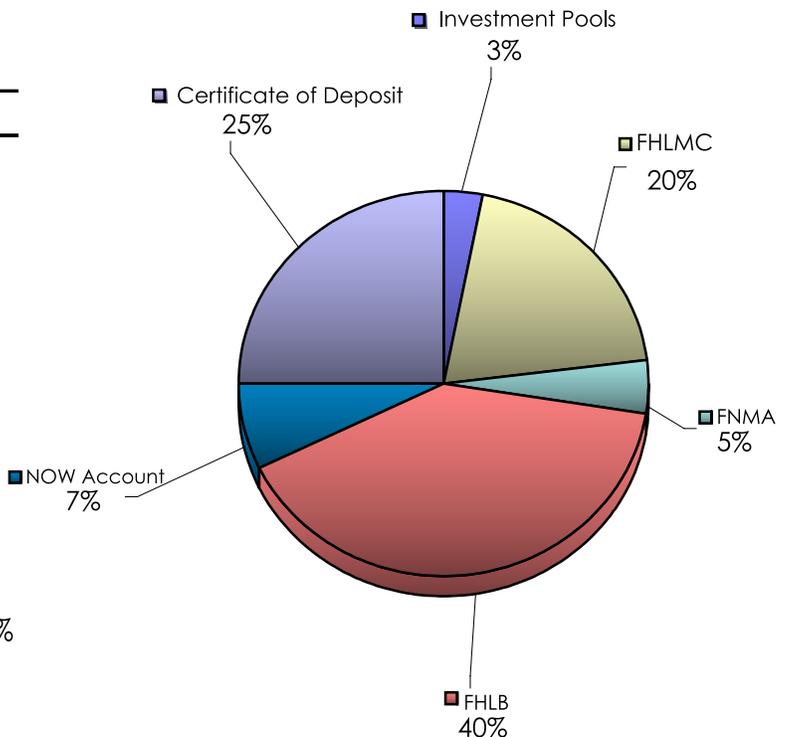


*Does not take into consideration callable issues that can, if called, significantly shorten the Weighted Average Maturity.

Portfolio Diversification

Figure II

Type	Book Value	% Total
Investment Pools	\$ 9,478,513	3.14%
Commercial Paper	0	0.00%
FHLMC	60,312,100	20.00%
FNMA	13,425,318	4.45%
FFCB	0	0.00%
FHLB	120,816,319	40.06%
NOW Account	22,365,497	7.42%
Certificate of Deposit	75,199,000	24.93%
Total	\$ 301,596,747	100.00%



INVESTMENT REPORT

Allocated Interest/Fund Balances October 2009

Fund	Beginning Fund Balance 10/31/2009	Allocated Interest Current Month	Fiscal Y-T-D	Ending Fund Balance 10/31/2009	% of Total
General	24,137,324	43,051	43,051	24,180,375	8.32%
G. O. Debt Services	3,277,961	4,555	4,555	3,282,516	1.13%
Street & Drainage Improvements	6,394,203	10,999	10,999	6,405,202	2.20%
Sewer CIP	10,773,642	15,027	15,027	10,788,669	3.71%
Capital Reserve	40,007,889	55,433	55,433	40,063,322	13.79%
Water & Sewer Operating	(837,387)	534	534	(836,853)	-0.29%
Water & Sewer Debt Service	512,124	584	584	512,708	0.18%
Park Service Area Fees	5,621,640	7,806	7,806	5,629,446	1.94%
Property/ Liability Loss	4,521,669	6,215	6,215	4,527,884	1.56%
Information Services	6,732,357	9,423	9,423	6,741,780	2.32%
Equipment Replacement	15,929,708	21,966	21,966	15,951,674	5.49%
Developer's Escrow	2,429,847	3,396	3,396	2,433,243	0.84%
G. O. Bond Funds	53,796,681	76,874	76,874	53,873,555	18.54%
Municipal Drainage Bond Clearing	5,499,751	7,646	7,646	5,507,397	1.90%
Grants - TXDOT	10,194,607	15,202	15,202	10,209,809	3.51%
Other	101,165,050	138,981	138,981	101,304,031	34.86%
Total	290,157,066	417,692	417,692	290,574,758	100%

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

Portfolio Statistics

Month	Total Invested (End of Month)	Portfolio Yield	# of Securities Purchased*	Maturities/ Sold/ Called	Weighted Ave. Mat. (Days)	# of Securities
May, 2008	\$ 372,129,934	2.87%	3	1	154	25
June, 2008	\$ 359,631,853	2.80%	3	10	89	18
July, 2008	\$ 336,029,216	2.83%	5	4	114	19
August, 2008	\$ 335,093,919	2.69%	7	6	119	20
September, 2008	\$ 300,699,562	2.55%	1	5	104	16
October, 2008	\$ 288,885,757	2.73%	1	4	266	13
November, 2008	\$ 283,603,783	1.90%	1	5	82	9
December, 2008	\$ 309,132,350	1.49%	2	2	67	9
January, 2009	\$ 337,564,218	1.09%	7	3	98	13
February, 2009	\$ 355,625,399	0.82%	5	2	64	16
March, 2009	\$ 380,327,932	1.00%	4	1	112	19
April, 2009	\$ 364,025,210	1.01%	7	4	153	22
May, 2009	\$ 356,669,678	0.87%	12	3	194	31
June, 2009	\$ 347,628,523	1.07%	8	0	221	39
July, 2009	\$ 339,056,884	1.15%	6	3	289	42
August, 2009	\$ 339,629,101	1.11%	2	4	292	40
September, 2009	\$ 318,909,436	1.16%	1	0	298	41
October, 2009	\$ 301,596,747	1.19%	1	2	288	40

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

INVESTMENT REPORT

Equity in Treasury Pool
By Major Category

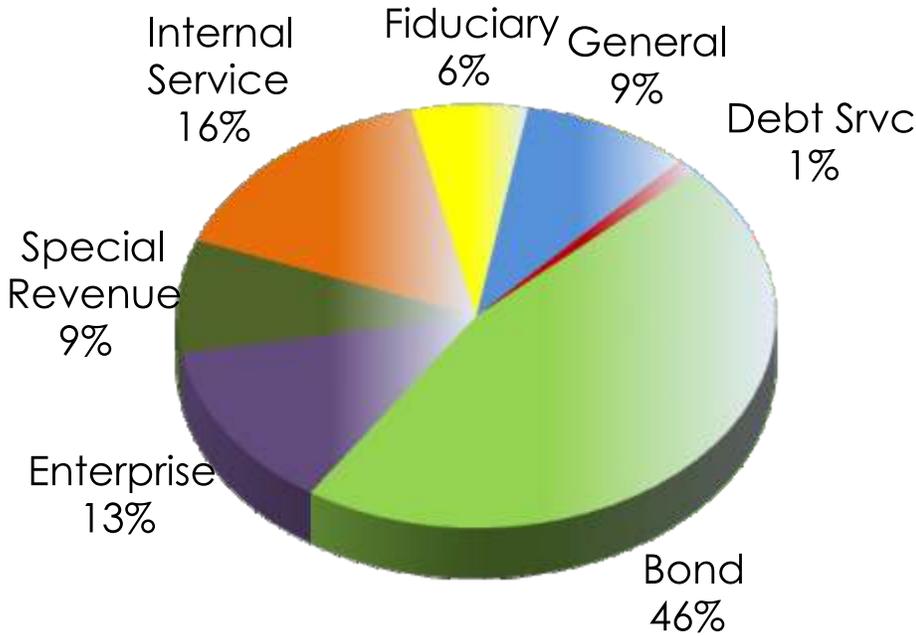
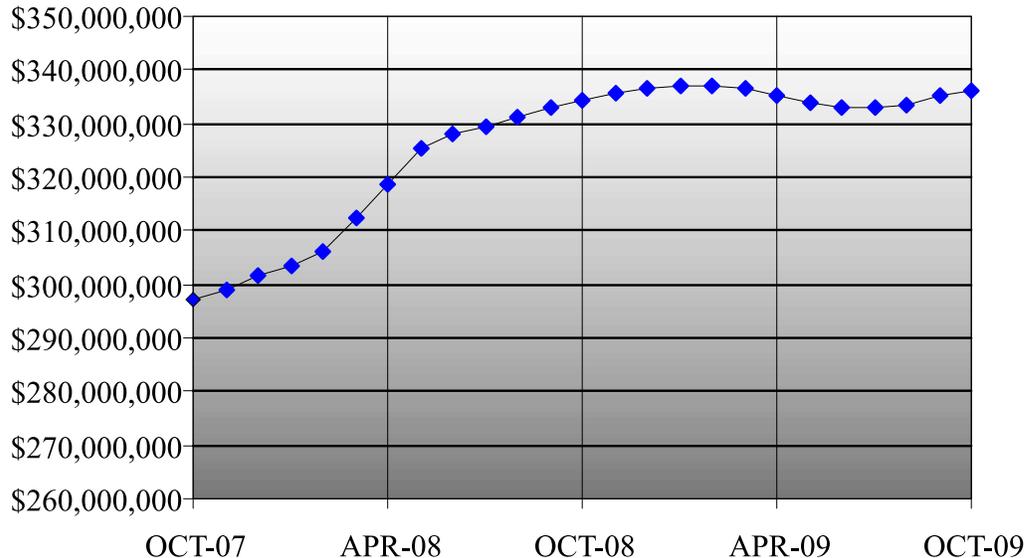


Figure IV shows a breakdown of the various sources of funds for the City's Treasury Pool as of October 31, 2009. The largest category is the Bond Fund in the amount of \$138.8 million. Closest behind is the Internal Service Fund with a total of \$46.9 million, and the Enterprise Fund with \$38.6 million.

Annualized Average Portfolio
Figure V

The annualized average portfolio for October 31, 2009 was \$336,147,438. This is an increase of \$1,847,056 when compared to the October 2008 average of \$334,300,382.





SECTION 4

QUARTERLY HOTEL/ MOTEL REPORT

City of Plano
Comprehensive Monthly Finance Report

HOTEL/MOTEL OCCUPANCY TAX REVENUE REPORT

Comparative Quarterly Statistics Quarter Ending 9/30/09 Table I

	2006-07 Fourth	2007-08 First	2007-08 Second	2007-08 Third	2007-08 Fourth	2008-09 First	2008-09 Second	2008-09 Third	2008-09 Fourth
Quarterly Total (Actual)*	\$1,240,115	\$1,123,539	\$1,174,333	\$1,231,418	\$1,292,456	\$1,111,115	\$986,391	\$1,047,284	\$1,020,149
Number of Rooms	3,798	3,972	3,972	4,048	4,048	4,184	4,184	4,184	4,276
Average Daily Occupancy	2,534	2,368	2,254	2,575	2,524	2,201	1,889	2,111	2,079
Actual Revenue per Room	\$327	\$283	\$296	\$304	\$319	\$266	\$236	\$250	\$239
Annualized Revenue	\$4,637,408	\$4,657,321	\$4,733,749	\$4,769,406	\$4,821,747	\$4,809,322	\$4,621,380	\$4,437,246	\$4,164,939
Average Room Rate	\$92	\$90	\$93	\$86	\$90	\$89	\$91	\$89	\$85
Average Occupancy Rate	60.92%	56.08%	56.11%	64.43%	63.02%	54.24%	46.90%	51.60%	50.21%

QUARTERLY HOTEL/MOTEL TAX REVENUE

Total tax receipts of \$1,020,149 were received for the 3 months ending September 30, 2009. The number of rooms available in Plano increased by 92 rooms in this quarter due to the addition of a new hotel. Occupancy tax revenues decreased by 21.07% when compared to the fourth quarter of fiscal year 2007-2008. This data excludes revenues and room data for Best Western Hotel for one month and Candlewood (E-190) for two months due to untimely payment at the time of CMFR deadline.

Table I contains the actual quarterly occupancy tax revenue and data for the fourth quarter of fiscal year 2006-07 through the fourth quarter of fiscal year 2008-09.

* Quarterly totals may be adjusted at a later date for exemption audit payments.

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Discussion/Action Items for Future Council Agendas

November 26-27 – Thanksgiving Holidays

December 7 – City Council Core Business Worksession – 8:30 am

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

December 10 – District 2 Roundtable, TMC, 7 pm

December 14

Departmental Briefing – Building Inspections

Zoning Case 2009-19 - Request for a Specific Use Permit for Day Care Center on 3.0± acres located on the south side of McDermott Road, 800± feet east of Independence Parkway. Zoned Single-Family Residence-7.

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

December 22

ACC Report (Quarterly)
Comprehensive Monthly Financial Report
Paperless Agenda

December 24 & 25 – Winter Holidays

January 1 – New Year’s Holiday

January 11

Departmental Briefing – Planning

January 18 – MLK Holiday

January 25

DART Report
Comprehensive Monthly Financial Report



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			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:		11/23/09	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>JM</i>	<i>11/23/09</i>
Agenda Coordinator (include phone #):			Sharon Wright ext. 7107		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER					
CAPTION					
Special Recognition: Plano ISD Council of PTAs					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS	
Budget	0	0	0	0	
Encumbered/Expended Amount	0	0	0	0	
This Item	0	0	0	0	
BALANCE	0	0	0	0	
FUND(S):					
COMMENTS:					
SUMMARY OF ITEM					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:	11/23/09	Purchasing		
Department:	City Manager's Office	Budget		
Department Head	Tom Muehlenbeck	Legal		
Dept Signature:		Assistant City Manager		
		Deputy City Manager		
		City Manager	<i>[Signature]</i> 11/16/09	
Agenda Coordinator (include phone #): Sharon Wright ext. 7107				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER				
CAPTION				
Presentation: To City of Plano - 9 th Place in Digital Cities Survey				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing		
Council Meeting Date: 11/23/09		Budget		
Department:	City Manager's Office	Legal		
Department Head	Tom Muehlenbeck	Assistant City Manager		
Dept Signature:		Deputy City Manager		
		City Manager	<i>[Signature]</i>	11/18/09
Agenda Coordinator (include phone #): Sharon Wright ext. 7107				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER				
CAPTION				
Presentation: To City of Plano Parks and Recreation Department for 15 Year Accreditation from National Recreation and Parks Association				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
November 9, 2009**

COUNCIL MEMBERS

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

STAFF

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

Mayor Dyer called the meeting to order at 5:10 p.m., Monday, November 9, 2009, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Council Member Callison arrived at 5:12 p.m. Mayor Dyer then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice/Litigation, Section 551.071; Economic Development, Section 551.087; and discuss Personnel, Section 551.074 for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Dyer reconvened the meeting back into the Preliminary Open Meeting at 6:14 p.m. in the Council Chambers where the following matters were discussed:

Consideration and Action Resulting From Executive Session: Appointments

Personnel Appointments

Upon a motion made by Council Member Miner and seconded by Council Member Harris, the Council voted 8-0 to appoint Mayor Dyer, Mayor Pro Tem LaRosiliere and Deputy Mayor Pro Tem Dunlap as Directors to the Plano Health Facilities Development Corporation.

Personnel Appointments

Upon a motion made by Council Member Harris and seconded by Council Member Callison, the Council voted 8-0 to appoint John J. Pfister to the Senior Citizens Advisory Board.

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Callison, the Council voted 8-0 to appoint Margaret S.C. Tsai as the ex-officio member of the Public Arts Committee.

Departmental Briefing – Property Standards

Director of Property Standards O'Banner spoke to the wide range of properties reviewed by Staff utilizing guidelines to protect health, safety and welfare; preserve property; prevent blight; and promote voluntary compliance. She spoke to utilizing effective communication, documentation, observation, and safety while having a familiarity with legal/courtroom aspects of code compliance. Ms. O'Banner spoke to education, engagement, empathy and enforcement, and reviewed the compliance process. She advised that the use of technology has increased inspector time in the field and provided for more efficiency. Ms. O'Banner spoke to the most common violations, range of inspections, reviewed the growth of the Rental Registration & Inspection (RRIP) Program, and advised the Council of departmental activities and collaborative efforts. She responded to the Council regarding consideration of properties approaching the heritage category, coordination with other departments and notification of lien holders.

Discussion and Direction Regarding the City Council - Preliminary Open Meeting Agenda Content

City Manager Muehlenbeck spoke to reports included on the Preliminary Open Meeting Agenda and Council consideration of their frequency. He advised regarding circumstances related to the DART report and proposed moving it to a quarterly presentation. Council Member Smith spoke to receiving written materials including minutes. The Council concurred to receive the DART report on a quarterly basis. Mr. Muehlenbeck recommended continuing the monthly written Mobility Reports and making presentations when new activity arises and the Council concurred with these recommendations. Mr. Muehlenbeck spoke to quarterly receipt of the Arts of Collin County Report, Deputy Mayor Pro Tem Dunlap requested more frequent updates as the project progresses and the Council concurred with these recommendations. Mr. Muehlenbeck spoke to continuing monthly Comprehensive Monthly Financial Reports to advise the Council regarding budget and economic conditions to which the Council concurred. Mr. Muehlenbeck recommended continuing the monthly departmental briefings. Mayor Dyer recommended increasing their frequency in order to receive information from every department within one year to which the Council concurred.

Council items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agenda

Council Member Jackson requested Consent Agenda Item “C,” approving a Premier Support Services contract in the amount of \$68,310 from Microsoft Corporation be removed for individual consideration due to a possible conflict of interest.

Deputy Mayor Pro Tem Dunlap requested Consent Agenda Item “D,” to Jim Bowman Construction Company, LP, increasing the contract by \$39,207 for Alley Reconstruction – Prairie Creek, be removed for individual consideration due to a possible conflict of interest.

Council Member Smith requested Consent Agenda Item “F,” to adopt the City Council Strategic Plan for 2009-2024 be removed for individual consideration.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:45 p.m.

Phil Dyer, Mayor

ATTEST

Diane Zucco, City Secretary

PLANO CITY COUNCIL
November 9, 2009

COUNCIL MEMBERS

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

STAFF

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

Mayor Dyer convened the Council into the Regular Session on Monday, November 9, 2009, at 7:03 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Associate Pastor Jessie Prince of Grace Outreach Center and the Pledge of Allegiance was led by Mayor Dyer with presentation from the American Legion Honor Guard Post 321 from Plano.

Mayor Dyer presented proclamations recognizing Veterans Day – 2009; Salvation Army of Plano – Red Kettle Kick-Off; and Plano Arbor Day – 2009. He further received a presentation from the Friends of the Plano Public Library and noted Special Recognition received for the Public Art Committee and Cultural Programs Coordinator Christine Eubanks.

Mayor Dyer administered oaths of office to incoming board and commission members and recognized Brian L. Eisenrich who was not in attendance to receive his certificate of appreciation.

COMMENTS OF PUBLIC INTEREST

Citizen Scott Holloway spoke to the negative impacts of a proposed feeder alignment for the Plano Independent Schools including the effect on property values and opportunities for students attending Williams High School.

Mike Pettit requested consideration of his company providing a curb-painting program in the City and spoke to the benefits of providing clear addresses for emergency personnel and visitors. City Attorney Wetherbee advised that the City does not require curb markings and that numerous businesses provide these services.

CONSENT AGENDA

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

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

Upon the request of Council Member Smith, Consent Agenda Item "F" was removed for individual consideration.

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

Approval of Minutes (Consent Agenda Item "A")

October 26, 2009

Approval of Expenditures

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

Bid No. 2009-198-P for the 2009-2010 Traffic Signal Construction and Maintenance Requirements Contract to Republic Intelligent Transportation Services, Inc. in the amount of \$493,515. This contract is for the construction of new signals at six intersections. It also provides for the modernization of existing signals including the removal of left turn signals in the medians mounted to the new support masts, new wiring, new support poles and masts at six intersections. This will establish a fixed price requirements contract with two optional renewals. (Consent Agenda Item "B")

Approval of Change Order

To SmithGroup/F&S (formerly F&S Partners) decreasing the Architectural Services Contract by \$160,084 for the Carpenter Park Recreation Center Renovation and Expansion. Contract Modification No. 1 deletes the pool from the scope of work. (Consent Agenda Item "E")

Adoption of Resolutions

Resolution No. 2009-11-1(R): To approve the submission of a grant application to the Texas Department of Transportation for funding assistance through the 2009 Texas Transportation Enhancement Program; certifying that the City is eligible to receive financial assistance under the program; certifying that the City's matching share is readily available; authorizing the Director of Parks and Recreation to execute all documents necessary to effectuate the grant; and providing an effective date. (Consent Agenda Item "G")

Resolution No. 2009-11-2(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and the University of Texas at Dallas for training program, providing terms and conditions for educational services, authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "H")

Resolution No. 2009-11-3(R): To authorize the purchase of street light standards and associated equipment for Ridgeview Drive from Independence Parkway to Coit Road from CoServ Electric Company, who is the selected provider of electric service and the selected provider of such equipment; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "I")

Resolution No. 2009-11-4(R): To approve the terms and conditions of a Real Estate Contract by and between the City of Plano, Texas, and Betty Jean Morris for the purchase of 0.491 acres of right of way and 0.029 acres of temporary construction easement, situated in the Dyer Survey, Abstract No. 360, Denton County, Texas, to be used for Marsh Lane widening; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "J")

Resolution No. 2009-11-5(R): To find LaShon Ross, Dan Thompson, and Hugo Esparza are entitled to defense representation pursuant to City Code of Ordinances in connection with the matter of Bobby Cole, Lance Haynes, and Allen West v. Brenda Mammel, LaShon Ross, Dan Thompson and Hugo Esparza; and providing an effective date. (Consent Agenda Item "K")

Adoption of Ordinances

Ordinance No. 2009-11-6: To vacate Ordinance No. 2009-10-17, and adopting this ordinance to correct a clerical error, amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to grant Specific Use Permit No. 601 so as to allow the additional use of Public Storage/Mini-Warehouse on 3.1± acres of land located on the west side of Preston Park Boulevard, 550± feet south of Park Boulevard, in the City of Plano, Collin County, Texas, presently zoned Planned Development-189-Retail/General Office; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. (Consent Agenda Item "L")

Ordinance No. 2009-11-7: To amend Section 6-3(c)(1) of Chapter 6, Buildings and Building Regulations of the Code of Ordinances of the City of Plano by adding a new subsection “f”; and amending Section 6-3(c)(2) of Chapter 6, Buildings and Building Regulations of the Code of Ordinances of the City of Plano by adding a new subsection “i”; and amending Section 6-3(c)(3)(a)(2) of Chapter 6, Buildings and Building Regulations of the Code of Ordinances of the City of Plano by adding additional language; providing a repealer clause, a savings clause; a severability clause; and an effective date. (Consent Agenda Item “M”)

END OF CONSENT

Due to a possible conflict of interest Council Member Jackson stepped down from the bench on the following item.

Purchase from an Existing Contract - To approve an expenditure of a Premier Support Services contract in the amount of \$68,310 from Microsoft Corporation through a State of Texas Department of Information Resources (DIR) contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-821). (Consent Agenda Item “C”)

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Callison, the Council voted 7-0 to approve a Premier Support Services contract in the amount of \$68,310 from Microsoft Corporation.

Council Member Jackson resumed her place at the bench.

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

Approval of Change Order - To Jim Bowman Construction Company, LP, increasing the contract by \$39,207 for Alley Reconstruction – Prairie Creek, Change Order No. 1. Original Bid No. 2007-230-B. (Consent Agenda Item “D”)

Upon a motion made by Council Member Jackson and seconded by Mayor Pro Tem LaRosiliere the Council voted 7-0 to approve a change order to Jim Bowman Construction Company increasing the contract by \$39,207 for alley reconstruction – Prairie Creek.

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

Adoption of Strategic Plan - To adopt the City Council Strategic Plan for 2009-2024 (Consent Agenda Item "F")

Deputy City Manager Glasscock spoke to the Strategic Plan in place since 2001 establishing a roadmap for Council and Staff in achieving goals and objectives by reaffirming the City's mission to provide outstanding services and facilities, opportunities for community input, working cooperatively in achieving the mission of the City, and contributing to the quality of life. He spoke to Council's identification of six major goals with approximately 37 objectives, prioritization of items to be achieved in 12-18 months, and Staff's actions following the plan's adoption. Mr. Glasscock spoke to the Council's goals guiding each agenda item, the core budget matrix and the operations of each department.

Upon a motion made by Council Member Jackson and seconded by Council Member Smith, the Council voted 8-0 to adopt the City Council Strategic Plan for 2009-2024.

Public Hearing and adoption of Ordinance No. 2009-11-8 as requested in Zoning Case 2009-18 – to amend subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses), subsection 2.825 (RE-Regional Employment) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses); and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, pertaining to restaurants/cafeterias and independent living facility, assisted living facility, long-term care facility, and continuing care facility uses, and related development standards within the Regional Employment Zoning District; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano (Regular Agenda Item "1")

Director of Planning Jarrell advised that the Planning and Zoning Commission called a Public Hearing to consider amendments to the regulations of retirement housing and restaurants/cafeterias in the Regional Employment (RE) and Regional Commercial (RC) zoning districts. She spoke to retirement housing being appropriate at some locations in these districts and to retaining a specific use permit for this use. Ms. Jarrell spoke to removing the requirement in RE districts that restaurants/cafeterias not exceed ten percent of the combined floor area of all buildings since they are used by office workers and neighborhoods, are consistent with the RE district, will reduce vehicle trips, and allow a larger percentage for other users. She further advised that the Planning and Zoning Commission recommended approval as follows (additions are indicated by underlined text and deletions are indicated by strike-through text).

1. Amend Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses) allowing independent living facility, assisted living facility, long-term care facility, and continuing care facility uses with a specific use permit as follows:

Ordinance No. 2009-11-8 (cont'd)

Permitted Use	Category	Category												
		O-1 - Neighborhood Office	O-2 - General Office	R - Retail	BG - Downtown Business/Government	LC - Light Commercial	CE - Commercial Employment	CB-1 - Central Business-1	LJ-1 - Light Industrial-1	LJ-2 - Light Industrial-2	RE - Regional Employment	RC - Regional Commercial	RT - Research/Technology Center	CC - Corridor Commercial
Independent Living Facility	Educ., Inst., Public, & Special	P	P	P	P		P	P			S	S		S
Assisted Living Facility	Educ., Inst., Public, & Special	P	P	P	P		P	P			S	S		S
Long-term Care Facility	Educ., Inst., Public, & Special	P	P	P	P		P	P			S	S		S
Continuing Care Facility	Educ., Inst., Public, & Special	P	P	P	P		P	P			S	S		S

Ordinance No. 2009-11-8 (cont'd)

2. Amend Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses) to allow restaurant/cafeteria use by right in the Regional Employment zoning district without the ten percent restriction, and adding End Note 43 as follows:

3.

Permitted Use	Category														
		O-1 - Neighborhood Office													
		O-2 - General Office	S												
		R - Retail	P												
		BG -- Downtown Business/Government	P												
		LC - Light Commercial	P												
		CE - Commercial Employment	P												
		CB-1 - Central Business-1	P												
		LI-1 - Light Industrial-1	P												
		LI-2 - Light Industrial-2	P												
		RE - Regional Employment	<u>P</u> 43												
		RC - Regional Commercial	P												
		RT - Research/Technology Center	*												
		CC - Corridor Commercial	P												
Restaurant/ Cafeteria	Service														

End Note: 43 - See Subsection 2.825 (6)(c)

4. Amend Subsection 2.825 (RE - Regional Employment) (6) (Special District Requirements) (c) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses) to read as follows:

“A freestanding (sole use and occupant) restaurant/cafeteria is permitted in an RE district ~~as part of the ten percent allowance described above~~ if it has a minimum of 5,000 square feet of gross floor area** and no drive-in window.

** “Gross Floor Area” means the total floor area of a building from the exterior face of a building or from the centerline of a wall separating two buildings, but shall exclude any space where the floor-to-ceiling height is less than six feet and all patios, balconies, and parking facilities.”

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

Ordinance No. 2009-11-8 (cont'd)

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Jackson, the Council voted 8-0 to amend subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses), subsection 2.825 (RE-Regional Employment) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses); and related sections of the Comprehensive Zoning Ordinance of the City pertaining to restaurants/cafeterias and independent living facility, assisted living facility, long-term care facility, and continuing care facility uses, and related development standards within the Regional Employment Zoning District as requested in Zoning Case 2009-18 and as recommended by the Planning and Zoning Commission; and further to adopt Ordinance No. 2009-11-8.

Resolution No. 2009-11-9(R): To approve the Investment Portfolio Summary for the quarter ending September 30, 2009 and providing an effective date. (Regular Agenda Item "2")

Treasurer Conklin advised that the quarterly investment report must be formally presented on an annual basis to comply with the Texas Public Funds Investment Act. She spoke to maintaining a market value greater than the book value of assets, the fluctuation of assets over the fiscal year as ad valorem taxes flow into the City and expenses occur, diversification of assets and maturities and comparison of the portfolio to benchmarks. Ms. Conklin spoke to the City's yield in the quarter and fiscal year as higher than the two-year treasuries.

Upon a motion made by Council Member Miner and seconded by Council Member Callison, the Council voted 8-0 to approve the Investment Portfolio Summary for the quarter ending September 30, 2009; and further to adopt Resolution No. 2009-11-9(R).

Resolution No. 2009-11-10(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Futurewei Technologies, Inc. a Texas corporation d/b/a Huawei Technologies (USA); authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item "3")

Director of Finance Tacke advised that Huawei Technologies would occupy no less than 75,000 square feet of office space and create 376 job equivalents by July 31, 2010, occupy at least 25,000 additional square feet of office space on or before July 31, 2012 and may add up to a maximum of 218 additional job equivalents by December 31, 2012. She advised that the terms of the agreement run from the date of occupancy or July 31, 2010 (whichever occurs first – June 30, 2017) for a grant in the amount of \$451,200 with an additional \$261,600 for additional jobs.

Upon a motion made by Council Member Miner and seconded by Council Member Harris, the Council voted 8-0 to approve an Economic Development Incentive Agreement between the City and Futurewei Technologies (Huawei Technologies) and further to adopt Resolution No. 2009-11-10(R).

Resolution No. 2009-11-11(R): To cast its ballot for the election of members to the Collin County Central Appraisal District Board of Directors under the provision of the Property Tax Code; authorizing the Mayor to execute the ballot for and on behalf of the City of Plano; and providing an effective date. (Regular Agenda Item “4”)

City Manager Muehlenbeck advised that the recommendation is to cast the City’s votes for nominee Roy Wilshire.

Upon a motion made by Council Member Jackson and seconded by Council Member Smith the Council voted 8-0 to cast the City of Plano’s 382 Collin County Appraisal District votes for Roy Wilshire and further to adopt Resolution No. 2009-11-11(R).

Resolution No. 2009-11-12(R): To cast its ballot for the election of members to the Denton Central Appraisal District Board of Directors under the provision of the Property Tax Code; authorizing the Mayor to execute the ballot for and on behalf of the City of Plano; and providing an effective date. (Regular Agenda Item “5”)

City Manager Muehlenbeck advised that the recommendation is to cast the City’s votes for nominee Pearl Ford.

Upon a motion made by Council Member Miner and seconded by Council Member Jackson, the Council voted 8-0 to cast the City’s 19 Denton County Appraisal District votes for Pearl Ford and further to adopt Resolution No. 2009-11-12(R).

There being no further discussion, Mayor Dyer adjourned the meeting at 8:01 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>MR</i> 11/10/09	
Council Meeting Date:	11/23/2009	Budget	<i>C.S.</i> 11-12-09	
Department:	Purchasing	Legal		
Department Head	Mike Ryan	Assistant City Manager	<i>SR</i> 11-12-09	
Dept Signature:	<i>Mike Ryan</i>	Deputy City Manager	<i>DS</i> 11-15-09	
		City Manager	<i>JM</i> 11/19/09	
Agenda Coordinator (include phone #): Aimee Storm Ext 7248				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER EXISTING CONTRACT				
CAPTION				
Award of Bid No. 2009-181-C for Median and Right of Way Landscape Maintenance-Variou Locations- Group A, in the amount of \$112,091.40 for Option 1 to SLM Landscape and Maintenance, and authorizing the City Manager or his designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 09/10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	1,066,765	0	1,066,765
Encumbered/Expended Amount	0	-16,791	0	-16,791
This Item	0	-112,091	0	-112,091
BALANCE	0	937,883	0	937,883
FUND(S): GENERAL FUND				
COMMENTS: Funds are included in the FY 2009-10 adopted budget to provide Median and Right of Way Landscape Maintenance Services. The remaining balance of funds will be used for other contractual expenditures. STRATEGIC PLAN GOAL: Providing Landscape Maintenance Services relates to the City's Goal of "Service Excellence".				
SUMMARY OF ITEM				
ANNUAL CONTRACT WITH RENEWALS				
Staff recommends the Competitive Sealed Bid of SLM Landscape and Maintenance, in the estimated annual amount of \$112,091.40 be accepted as the lowest responsive responsible bidder, and conditioned upon timely execution of any necessary contract documents. This is for the purchase of Median and Right of Way Landscape Maintenance- Various Locations- Group A. This will establish an annual fixed price contract with three optional one-year renewals.				
List of Supporting Documents: Memorandums Bid Recap		Other Departments, Boards, Commissions or Agencies N/A		

MEMORANDUM

DATE: October 29, 2009
TO: Diane Palmer, Purchasing
FROM: Jim Fox, Park Services Manager
SUBJECT: *Median and Right-of-Way Landscape Maintenance Bid*

A contract to maintain over 226 acres of median and right-of-ways was awarded at the City Council meeting on May 26, 2009. A competitive seal proposal process was used to evaluate and award this Proposal #2009-94-C. Due to irregularities in the evaluation process, the original proposal #2009-94-C was rescinded on July 27, 2009

Park staff then restructured the single contract, and created two smaller contracts, Bid # 2009-181-C and Bid # 2009-182-C. A significant reason for restructuring was to include three options for a contractor to provide various levels of service. The optional service level criteria for the contractor has not been a common practice in bidding; however, due to budget reductions, and impending budget shortfalls, staff is trying to provide options to reduce costs if needed and without rebidding on an annual basis. Option 1 is for 18 mowing cycles per year (or approximately one mowing every two weeks during the 8 month growing season). Option 2 reduces the number of cycles to 12 times (or approximately one mowing every three weeks), and Option 3 further reduces the number cycles to 8 times (or approximately one mowing every month). Staff can change the level of service after the annual contract expires and the optional one year renewal is implemented. After the first annual contract, there are three additional one year renewals. The process was also restructured to award the contract to the lowest responsible bidder instead of using the evaluative process in Proposal #2009-94-C.

Proposal #2006-94-C was awarded to VMC Landscape Maintenance in May. Issues with the award of a proposal were brought to City Council's attention by Texas Tree and Turf (TTA is now called Lillards) at the City Council meeting on July 27 when the Proposal was rescinded. TTA had the lowest price in the proposal, but did not score as high in the evaluation process as VMC. They also expressed concern with the integrity and use of the competitive sealed proposal process. Following is a comparison of awards and costs:

Date	Contractor	Proposal #2009-94-C	Bid 2009-181/182-C
May 26	VMC	\$209,748 (awarded)	\$474,840
November 7	SLM	\$257,551	\$239,223 (to be awarded)
Proposal / Bid	TTA (Lillards)	\$185,016	\$271,381

The budget for the (two) contracts is \$250,000. While the amount of the award increased since the proposal was submitted, the cost is well within budget.

Staff recommends award to SLM Landscape Maintenance for both Competitive Sealed Bids # 2009-181-C and 2009-182-C.

MEMO

TO: PURCHASING DEPARTMENT, AIMEE STORM
FROM: MATTHEW SIMMONS, PARKS FIELD SERVICES SUPERVISOR
DATE: 10/15/2009
RE: **AWARD RECOMMENDATION 2009-181-C MEDIAN AND RIGHT OF WAY
LANDSCAPE MAINTENANCE- GROUP A**

It is the recommendation of Parks and Recreation Department to award options 1,2, and 3 for **bid 2009-181-C MEDIAN AND RIGHT OF WAY LANDSCAPE MAINTENANCE to SLM**. SLM appears capable of meeting the requirements of the aforementioned maintenance contract. As stated in the bid documentation, this contract is to be awarded to the lowest responsive and responsible bidder. As shown in the bid re-cap, SLM was the lowest responsive bidder for all 3 options listed.

It is the intention of the Parks Department to use option 1 (18 cycles) during fiscal year 2009-10. Options 2 (12 cycles) and 3 (8 cycles) are provided in case service reductions or budget cuts become necessary in subsequent years.

2 bidders were deemed non responsive for failure to properly fill out all of the bid documents. Those bidders were: Mr. G's and Carruther's.

Total annual amount awarded for option 1 is \$112,091.40. Total annual amount awarded for option 2 is \$79,630.80. Total annual amount awarded for option 3 is \$56,356.00.

Please review and begin the necessary steps for award of this contract.

Attachments:
Vendor Bid Recap

CITY OF PLANO

BID NO. 2009-181-C FOR MEDIAN AND RIGHT OF WAY LANDSCAPE MAINTENANCE- GROUP A BID RECAP

Bid opening Date/Time: September 4, 2009 @ 3:00PM

Number of Vendors Notified: 1167

Vendors Submitting "No Bids": 2

Number of Bids Submitted: 10

BIDDER:	OPT 1	OPT 2	OPT 3
SLM LANDSCAPING & MAINT.	\$112,091.40	\$79,630.80	\$56,356.00
WEISZ SELECTION, INC.	\$112,462.20	\$85,272.00	\$64,433.60
DAL TECHNOLOGIES, INC.	\$113,599.29	\$104,913.22	\$115,165.83
LILLARD LAWN & LANDSCAPING	\$125,682.30	\$135,496.80	\$132,878.40
SIGNATURE CONTRACTING	\$149,521.50	\$125,206.50	\$108,055.56
VMC LANDSCAPE SERVICES	\$196,794.00	\$195,864.00	\$174,656.00
TRUGREEN LANDCARE, LLC	\$252,209.16	\$168,135.84	\$112,092.96
FORREST HILS LAWN SERVICE	\$319,122.00	\$249,276.00	\$200,032.00

Vendors Evaluated Non-Responsive to Specification: 2

Mr. G's Lawn Service, Inc.
Carruthers Landscape Management, Inc.

Recommended Vendor(s):

SLM Landscape Maintenance

Aimee Storm

October 7, 2009

Aimee Storm, Buyer

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	11/12/09
Council Meeting Date:	11/23/2009	Budget	C.S. 11-12-09
Department:	Purchasing	Legal	
Department Head	Mike Ryan	Assistant City Manager	11-12-09
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	11-12-09
		City Manager	11/16/09
Agenda Coordinator (include phone #): Aimee Storm Ext 7248			
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER EXISTING CONTRACT			
CAPTION			
Award of Bid No. 2009-182-C for Median and Right of Way Landscape Maintenance-Variou Locations- Group B, in the amount of \$127,132.92 for Option 1 to SLM Landscape and Maintenance, and authorizing the City Manager or his designee to execute all necessary documents.			
FINANCIAL SUMMARY			
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP			
FISCAL YEAR: 09/10	Prior Year (CIP Only)	Current Year	Future Years
Budget	0	1,066,765	0
Encumbered/Expended Amount	0	-16,791	0
This Item	0	-127,133	0
BALANCE	0	922,842	0
FUND(S): GENERAL FUND			
COMMENTS: Funds are included in the FY 2009-10 adopted budget to provide Median and Right of Way Landscape Maintenance Services. The remaining balance of funds will be used for other contractual expenditures. STRATEGIC PLAN GOAL: Providing Landscape Maintenance Services relates to the City's Goal of "Service Excellence".			
SUMMARY OF ITEM			
ANNUAL CONTRACT WITH RENEWALS			
Staff recommends the Competitive Sealed Bid of SLM Landscape and Maintenance, in the annual estimated amount of \$127,132.92 be accepted as the lowest responsive responsible bidder, and conditioned upon timely execution of any necessary contract documents. This is for the purchase of Median and Right of Way Landscape Maintenance- Various Locations- Group B. This will establish an annual fixed price contract with three optional one-year renewals.			
List of Supporting Documents: Memorandums Bid Recap		Other Departments, Boards, Commissions or Agencies N/A	

MEMORANDUM

DATE: October 29, 2009
TO: Diane Palmer, Purchasing
FROM: Jim Fox, Park Services Manager
SUBJECT: *Median and Right-of-Way Landscape Maintenance Bid*

A contract to maintain over 226 acres of median and right-of-ways was awarded at the City Council meeting on May 26, 2009. A competitive seal proposal process was used to evaluate and award this Proposal #2009-94-C. Due to irregularities in the evaluation process, the original proposal #2009-94-C was rescinded on July 27, 2009

Park staff then restructured the single contract, and created two smaller contracts, Bid # 2009-181-C and Bid # 2009-182-C. A significant reason for restructuring was to include three options for a contractor to provide various levels of service. The optional service level criteria for the contractor has not been a common practice in bidding; however, due to budget reductions, and impending budget shortfalls, staff is trying to provide options to reduce costs if needed and without rebidding on an annual basis. Option 1 is for 18 mowing cycles per year (or approximately one mowing every two weeks during the 8 month growing season). Option 2 reduces the number of cycles to 12 times (or approximately one mowing every three weeks), and Option 3 further reduces the number cycles to 8 times (or approximately one mowing every month). Staff can change the level of service after the annual contract expires and the optional one year renewal is implemented. After the first annual contract, there are three additional one year renewals. The process was also restructured to award the contract to the lowest responsible bidder instead of using the evaluative process in Proposal #2009-94-C.

Proposal #2006-94-C was awarded to VMC Landscape Maintenance in May. Issues with the award of a proposal were brought to City Council's attention by Texas Tree and Turf (TTA is now called Lillards) at the City Council meeting on July 27 when the Proposal was rescinded. TTA had the lowest price in the proposal, but did not score as high in the evaluation process as VMC. They also expressed concern with the integrity and use of the competitive sealed proposal process. Following is a comparison of awards and costs:

Date	Contractor	Proposal #2009-94-C	Bid 2009-181/182-C
May 26	VMC	\$209,748 (awarded)	\$474,840
November 7	SLM	\$257,551	\$239,223 (to be awarded)
Proposal / Bid	TTA (Lillards)	\$185,016	\$271,381

The budget for the (two) contracts is \$250,000. While the amount of the award increased since the proposal was submitted, the cost is well within budget.

Staff recommends award to SLM Landscape Maintenance for both Competitive Sealed Bids # 2009-181-C and 2009-182-C.

MEMO

TO: PURCHASING DEPARTMENT, AIMEE STORM
FROM: MATTHEW SIMMONS, PARKS FIELD SERVICES SUPERVISOR
DATE: 11/17/2009
RE: **AWARD RECOMMENDATION 2009-182-C MEDIAN AND RIGHT OF WAY
LANDSCAPE MAINTENANCE- GROUP B**

It is the recommendation of Parks and Recreation Department to award options 1,2, and 3 for **bid 2009-182-C MEDIAN AND RIGHT OF WAY LANDSCAPE MAINTENANCE to SLM**. SLM appears capable of meeting the requirements of the aforementioned maintenance contract. As stated in the bid documentation, this contract is to be awarded to the lowest responsive, responsible bidder. SLM was the lowest responsive, responsible bidder for all 3 options listed.

4 bidders were deemed non responsive for failure to properly fill out all of the bid documents. Those bidders were: Mr. G's, Superscapes, Weiz, and Carruther's.

Total annual amount awarded for option 1 is \$127,133. Total annual amount awarded for option 2 is \$90,434. Total annual amount awarded for option 3 is \$64,075.

Please review and begin the necessary steps for award of this contract.

Attachments:
Vendor Bid Recap

CITY OF PLANO

BID NO. 2009-182-C FOR MEDIAN AND RIGHT OF WAY LANDSCAPE MAINTENANCE- GROUP B BID RECAP

Bid opening Date/Time: September 11, 2009 @ 3:30PM

Number of Vendors Notified: 1171

Vendors Submitting "No Bids": 2

Number of Bids Submitted: 10

BIDDER:	OPT 1	OPT 2	OPT 3
SLM LANDSCAPING & MAINTENANCE	\$127,132.92	\$90,434.16	\$64,075.36
JBA LANSCAPE MAINTENANCE	\$131,544.00	\$95,465.28	\$72,122.64
LILLARD LAWN & LANDSCAPING	\$145,699.56	\$156,654.72	\$154,076.16
VMC LANDSCAPE SERVICES	\$278,046.00	\$254,412.00	\$229,024.00
TRUGREEN LANDCARE, LLC	\$290,894.22	\$193,929.48	\$129,286.32
FORREST HILS LAWN SERVICE, INC.	\$370,780.00	\$289,404.00	\$228,660.00

Vendors Evaluated Non-Responsive to Specification: 4

Mr. G's Lawn Service, Inc.
Carruthers Landscape Management, Inc.
Superscapes Landscapes
Weisz Selection, Inc.

Recommended Vendor(s):

SLM Landscape Maintenance

Aimee Storm

October 7, 2009

Aimee Storm, Buyer

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>[Signature]</i> 11-13-09	
Council Meeting Date: 11/23/09		Budget	<i>[Signature]</i> 11-13-09	
Department: Technology Services		Legal	<i>[Signature]</i> 11-13-09	
Department Head: David Stephens		Assistant City Manager	<i>[Signature]</i> 11-13-2009	
Dept Signature: <i>[Signature]</i>		Deputy City Manager	<i>[Signature]</i> 11/16	
		City Manager	<i>[Signature]</i> 11/16	
Agenda Coordinator (include phone #): Amy Powell X7342				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER EXISTING CONTRACT				
CAPTION				
Purchase from an existing contract/agreement, authorizing the maintenance renewal for CommVault Backup Software, in the amount of \$115,812.00, from Dell Corporation, through a State of Texas Department of Information Resources (DIR) contract, and authorizing the City Manager or his designee to execute all necessary documents. (DIR-SDD-890).				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	2,815,114	0	2,815,114
Encumbered/Expended Amount	0	-472,777	0	-472,777
This Item	0	-115,812	0	-115,812
BALANCE	0	2,226,525	0	2,226,525
FUND(s): TECHNOLOGY SERVICES FUND (066)				
COMMENTS: Funds are included in the 2009-10 Technology Services budget for this maintenance agreement. The remaining balance will be used throughout the year for other maintenance agreements.				
STRATEGIC PLAN GOAL: Maintenance agreements relate to the City's Goal of "Financially Strong City with Service Excellence".				
SUMMARY OF ITEM				
Technology Services recommends Council approve expenditure for the renewal of CommVault Maintenance Software to backup the City's network, through Dell, in the amount of \$115,812.00 through a Department of Information Resources, State of Texas (DIR) contract, for a one-year maintenance agreement. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so, satisfies any State Law requiring local government to seek competitive bids for items. (Contract No. DIR-SDD-890)				
List of Supporting Documents: Contract & Staff Memo		Other Departments, Boards, Commissions or Agencies		

Interoffice Memo

Date: 11/3/09
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Annual Maintenance for Commvault Backup Software

We must renew our maintenance for our Commvault backup software we use the software to backup the City's network. We recommend purchasing this maintenance from Dell for a price of \$ 115,812.48 from their State of Texas Department of Information Resources contract DIR_SDD_890-TX. The term of maintenance will run through December 27, 2010.

We added to the software covered by this maintenance this last year. We added the new email archiving software that accounted for approximately \$ 40,000.00 of the difference between last year's maintenance and this year's new cost. We also added a significant backup software component accounting for the other \$ 20,000.00 of difference.

Commvault is our major component of software we currently use to assure compliance with any legal discoveries and to also provide business continuity for critical City data and applications.

We recommend purchasing this maintenance from Dell as stated above.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND DELL CORPORATION
FOR COMMVAULT MAINTENANCE SOFTWARE**

THIS CONTRACT is made and entered into by and between **DELL CORPORATION**, whose address is One Dell Way, Round Rock, Texas, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide maintenance for CommVault Backup Software. These services shall be provided in accordance with this Contract and with The Department of Information Resources Contract No. DIR-SDD-890, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) The Department of Information Resources Contract No. DIR-SDD-890 on file with the City of Plano Technology Services Department;
- (b) This Contract;
- (c) Dell Corporation's Statement of Work (Exhibit "A") and;
- (d) Affidavit of No Prohibited Interest (Exhibit "B").

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

**II.
TERM OF CONTRACT**

The term of this Contract shall be a period of twelve (12) months commencing upon the effective date hereof.

**III.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **ONE HUNDRED FIFTEEN THOUSAND EIGHT HUNDRED TWELVE AND 00/100 DOLLARS (\$115,812.00)**.

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

IV. DESCRIPTION OF SERVICES

Contractor will provide the support services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under The Department of Information Resources Contract No. DIR-SDD-890, or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

V. CITY CONTACT

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

VI. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

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

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

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

**VIII.
LIMITATION OF LIABILITY**

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

**IX.
COMPLIANCE WITH APPLICABLE LAWS**

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

**X.
VENUE**

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

**XI.
ASSIGNMENT AND SUBLETTING**

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

**XII.
INDEPENDENT CONTRACTOR**

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

**XIII.
HINDRANCES AND DELAYS**

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

**XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**XV.
DEFAULT/TERMINATION**

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

Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by City to Contractor will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

**XVI.
SEVERABILITY**

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

**XVII.
TERMINATION**

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

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

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

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

**XIX.
ENTIRE AGREEMENT**

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

City agrees to reference this Agreement and The Department of Information Resources Contract No. DIR-SDD-980 on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such

purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XX.
SUCCESSORS AND ASSIGNS**

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

**XXI.
HEADINGS**

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

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

DELL CORPORATION

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

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 _____, 2009 by _____ of **DELL CORPORATION**, a _____ corporation on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2009 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas



QUOTATION

QUOTE #: 512718132
 Customer #: 360554
 Contract #: 48ABO

Customer Agreement #: DIR-SDD-890-TX

Quote Date: 10/27/09

Date: 10/27/09 4:18:48 PM

Customer Name: CITY OF PLANO

TOTAL QUOTE AMOUNT:		\$115,812.48	
Product Subtotal:	\$115,812.48		
Tax:	\$0.00		
Shipping & Handling:	\$0.00		
Shipping Method:	Ground	Total Number of System Groups:	0

SOFTWARE & ACCESSORIES			
Product	Quantity	Unit Price	Total
ML-CommVault Maint Renewal - 1000 (A0581629)	118	\$980.00	\$115,640.00
ML-CommVault Maint Renewal - 100 (A0581617)	1	\$98.00	\$98.00
ML-CommVault Maint Renewal - 10 (A0581616)	7	\$9.80	\$68.60
ML-CommVault Maint Renewal - 1 (A0581571)	6	\$0.98	\$5.88
Number of S & A Items: 4		S&A Total Amount: \$115,812.48	

SALES REP:	Duane Pond	PHONE:	1-866-537-0706
Email Address:	Duane_Pond@Dell.com	Phone Ext:	7263732

Please review this quote carefully. If complete and accurate, you may place your order online at www.dell.com/qto (use quote number above). POs and payments should be made to *Dell Marketing L.P.*

If you do not have a separate agreement with Dell that applies to your order, please refer to www.dell.com/terms as follows:

If purchasing for your internal use, your order will be subject to *Dell's Terms and Conditions of Sale-Direct* including Dell's U.S. Return Policy, at www.dell.com/returnpolicy#total. If purchasing for resale, your order will be subject to *Dell's Terms and Condition of Sale for Persons or Entities Purchasing to Resell*, and other terms of Dell's PartnerDirect program at www.dell.com/partner. If your order includes services, visit www.dell.com/servicecontracts for service descriptions and terms.

Quote information is valid for U.S. customers and U.S. addresses only, and is subject to change. Sales tax on products shipped is based on "Ship To" address, and for downloads is based on "Bill To" address. Please indicate any tax-exempt status on your PO, and fax your exemption certificate, with seller listed as *Dell Marketing L.P.*, to Dell's Tax Department at 800-433-9023.

d-10

EXHIBIT A
 PAGE 1 OF 3

Please include your Customer Number.

For certain products shipped to end-users in California, a State Environmental Fee will be applied.
For Asset Recovery/Recycling Services, visit www.dell.com/assetrecovery.

EXHIBIT A
PAGE 2 OF 3

d-11

11/9/2009

From: Duane_Pond@Dell.com [mailto:Duane_Pond@Dell.com]
Sent: Tuesday, October 27, 2009 4:20 PM
To: Gary Pedersen
Cc: cwillingham@commvault.com
Subject: FW: Standard Maintenance

Here you go, Premier and Standard quotes that you needed.
Thanks,
Duane

Licensed Products
F51C4

- 1 Admin /Web Server Node
 - 15 AFP-GRDMA
 - 1 AFP-GRIDS
 - 1 AFP-VAULT
 - 15 AFP-Vault Tracker Enterprise Enabler MA-level
 - 2500 CAL-Universal
 - 2500 CAL-Universal Discovery Client
 - 3 CIE-Content Indexing Enabler for Offline Data
 - 1 CommServe StorageMgr
 - 4 CSS-CommVault Snapshot-Windows
 - 4 DA-Active Directory
 - 3 DA-DataArchiver Exchange
 - 6 DA-DataMigrator Windows
 - 4 DA-Exch MB/DB/PF/WF
 - 3 DA-Exchange Public Folder Archiver
 - 4 DA-Image (Windows)
 - 1 DA-Linux Server
 - 1 DA-Notes (DB/Doc Win)
 - 2 DA-SharePoint Archiver
 - 1 DA-SharePoint Portal
 - 2 DA-SharePoint Services
 - 60 DA-SQL
 - 60 DA-VCB Combo Client
 - 20 DA-Windows 64 bit Server
 - 201 DA-Windows Server
 - 19 DataClass Enabler
 - 3 DDO
 - 1 Disk LMS
 - 5 Drive Management Software
 - 1 DSK
 - 3 Index Node
 - 7 Library Management Software
 - 7 Media Agent (Windows)
 - 8 SAN MediaAgent (Windows)
 - 1 Shared Library Mgmt Software (Robotics)
 - 8 Shared Storage with iDDs
 - 1 Single Instance Storage for Disk
 - 8 SNMP Extension
 - 1 SNMP Integration
- F7214**
- 1 CommNet Server
 - 10 QL-Managed Media Agent

Term Date: 12/28/2009 - 12/27/2010



Chad Willingham
CommVault
Dell Account Manager - Central US
Direct: 512-583-5763
Cell: 512-468-7972
Email: cwillingham@commvault.com

Learn more at www.dell.com/commvault

For a Live Demo, please call 1-888-304-3008

Feedback? Please contact my manager, Danny Bielss (dbielss@commvault.com). Phone 512-633-3569.

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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 B d-13
PAGE 1 OF 1



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date: 11/23/09		Purchasing	<i>Def</i> 11-13-09	
Department: Technology Services		Budget	<i>KM</i> 11-13-09	
Department Head: David Stephens		Legal	<i>[Signature]</i> 11-13-09	
Dept Signature: <i>David Stephens</i>		Assistant City Manager	<i>[Signature]</i> 11-13-2009	
		Deputy City Manager	<i>[Signature]</i>	
		City Manager	<i>[Signature]</i>	
Agenda Coordinator (include phone #): Amy Powell X7342				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER EXISTING CONTRACT				
CAPTION				
Purchase from an existing Contract/Agreement authorizing the purchase of maintenance support for network infrastructure switches in the amount of \$232,546 from INX, Inc. through a Department of Information Resources (DIR) Contract, and authorizing the City Manager or his designee to execute all necessary documents. (DIR-SDD-239).				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	2,815,114	0	2,815,114
Encumbered/Expended Amount	0	-472,777	0	-472,777
This Item	0	-232,546	0	-232,546
BALANCE	0	2,109,791	0	2,109,791
FUND(S): TECHNOLOGY SERVICES FUND (66.395)				
COMMENTS: Funds are included in the 2009-10 Technology Services budget for annual maintenance on the Cisco switches. The remaining balance will be used throughout the year for other maintenance agreements.				
STRATEGIC PLAN GOAL: Network switches and other infrastructure support services relate to the City's Goal of "Financially Strong City with Service Excellence".				
SUMMARY OF ITEM				
Technology Services recommends Council approve an expenditure of \$232,546 to INX, Inc. through the Department of Information Resources (DIR) Contract for maintenance support on network infrastructure switches. We are recommending Option 2 on quote since it includes the equipment connecting the City of Plano to the Collin County fiber network which enables the network to share court information with the District Attorney's Office. 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 the local government to seek competitive bids for items. (DIR-SDD-239).				



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Contract & Staff Memo	

Interoffice Memo

Date: 11/09/2009
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Cisco Switch Maintenance

We are recommending that the attached Cisco Maintenance be acquired as listed in the attached document from Internetwork Experts. This maintenance is for a one year term and provides us on-site support for our Cisco Equipment should we have any hardware outages.

We are recommending purchasing this maintenance from Internetworking Experts from their State of Texas contract DIR No. SDD-239 for the amount of \$232,546.02. We are recommending the option 2 since it includes the equipment connecting the City to the Collin County fiber network. We are using this network to share court information with the District Attorney's office.

We are choosing INX due to their being our incumbent vendor for the maintenance and their excellent support they provide aiding us in supporting our network devices and expediting support to aid in minimizing outage times for our switches and firewalls. In addition as you can see from the second quote from ATT(\$279,128.99, Mixed SNTP, SU2 option), they would be significantly more expensive if we were to change vendors.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND INX, INC.
FOR MAINTENANCE SUPPORT FOR
NETWORK INFRASTRUCTURE SWITCHES**

THIS CONTRACT is made and entered into by and between **INX, INC.**, whose address is 1955 Lakeway Drive, Suite 220, Lewisville, Texas, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide maintenance support for network infrastructure switches. These services shall be provided in accordance with this Contract and with The Department of Information Resources Contract No. DIR-SDD-239, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) The Department of Information Resources Contract No. DIR-SDD-239 on file with the City of Plano Technology Services Department;
- (b) This Contract;
- (c) Dell Corporation's Statement of Work (Exhibit "A") and;
- (d) Affidavit of No Prohibited Interest (Exhibit "B").

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

**II.
TERM OF CONTRACT**

The term of this Contract shall be a period of twelve (12) months commencing upon the effective date hereof.

**III.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **TWO HUNDRED THIRTY-TWO THOUSAND FIVE HUNDRED FORTY-SIX AND 00/100 DOLLARS (\$232,546.00)**.

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

**IV.
DESCRIPTION OF SERVICES**

Contractor will provide the support services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under The Department of Information Resources Contract No. DIR-SDD-239, or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

**V.
CITY CONTACT**

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

**VI.
PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC**

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

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

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

**VIII.
LIMITATION OF LIABILITY**

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

**IX.
COMPLIANCE WITH APPLICABLE LAWS**

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

**X.
VENUE**

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

**XI.
ASSIGNMENT AND SUBLETTING**

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

**XII.
INDEPENDENT CONTRACTOR**

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

**XIII.
HINDRANCES AND DELAYS**

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

**XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**XV.
DEFAULT/TERMINATION**

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

Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by City to Contractor will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

**XVI.
SEVERABILITY**

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

**XVII.
TERMINATION**

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

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

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

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

**XIX.
ENTIRE AGREEMENT**

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

City agrees to reference this Agreement and The Department of Information Resources Contract No. DIR-SDD-239 on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such

purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XX.
SUCCESSORS AND ASSIGNS**

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

**XXI.
HEADINGS**

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

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

INX, INC.

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

CITY OF PLANO, TEXAS

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

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

ea

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2009 by _____ of **INX, INC.**, a _____ corporation on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2009 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas



INX Inc.
 1955 Lakeway Drive, Suite 220
 Lewisville, TX 75057
 Traci Chrisman
 Ph: 469-549-3841
 Fax: 469-549-3871

City of Plano
Pricing Summary for Cisco Maintenance Renewal

DIR Discount Applied		
	Option 1	\$ 197,135.34
Quote 1077375		
Quote 1200863 (SNT - Added)	CCECC	\$ 9,569.50
Quote 1200863 (SU1 - Added)	CCECC	\$ 14,038.96
Cisco Renewal Total Option 1:		\$ 220,743.80
Option 2		
Quote 1077375		\$ 197,135.34
Quote 1201209 (SNTP - Added)	CCECC	\$ 15,026.68
Quote 1201209 (SU2 - Added)	CCECC	\$ 20,384.00
Cisco Renewal Total Option 2:		\$ 232,546.02

e-12

INX Inc.
1955 Lakeway Drive
Suite 220
Lewisville, TX 75057
CISV# 1-76-051-5249-906

Ground Freight Included
Quote valid for 30 days
Terms are Net 30
Lead times subject to change

Customer Signature of Acceptance Date



City of Plano

Quote #: 1077375
Quote Name: City of Plano

DIR Discount: \$197,135.34
List Price \$246,419.18

PRODUCT NUMBER	CONTRACT	SERVICE	LI	SERIAL NUMBER	BEGIN DATE	END DATE	PRORATED LIST	DIR	DIR	DISCOUNT	DIR
										Total	Total
WS-C2960G-24TC-L	1501956	SNTP		FOC1224V69W	2009-11-01	2010-10-31	\$ 605.00	20%	\$	\$ 484.00	\$
WS-C2960G-8TC-L	1501956	SNTP		FOC1221U03M	2009-11-01	2010-10-31	\$ 130.00	20%	\$	\$ 104.00	\$
VS-C6509E-S720-10G	1501956	SNTP		SMG1226N10H	2009-11-01	2010-10-31	\$ 10,920.00	20%	\$	\$ 8,736.00	\$
VS-C6509E-S720-10G	1501956	SNTP		SMG1226N103	2009-11-01	2010-10-31	\$ 10,920.00	20%	\$	\$ 8,736.00	\$
VS-C6509E-S720-10G	1501956	SNTP		SMG1226N10J	2009-11-01	2010-10-31	\$ 10,920.00	20%	\$	\$ 8,736.00	\$
VS-C6509E-S720-10G	1501956	SNTP		SMG1226N03W	2009-11-01	2010-10-31	\$ 10,920.00	20%	\$	\$ 8,736.00	\$
WS-C3560G-48TS-S	1501956	SNTP		FOC1223W5UG	2009-11-01	2010-10-31	\$ 826.00	20%	\$	\$ 660.80	\$
WS-C3560G-48TS-S	1501956	SNTP		FOC1223W5TY	2009-11-01	2010-10-31	\$ 826.00	20%	\$	\$ 660.80	\$
ASA5520-BUN-K9	1501956	SNTP		JMX1319L0LD	2010-06-09	2010-10-31	\$ 533.52	20%	\$	\$ 426.82	\$
ASA5520-BUN-K9	1501956	SNTP		JMX1319L0LE	2010-06-09	2010-10-31	\$ 533.52	20%	\$	\$ 426.82	\$
WS-C2960G-24TC-L	1501956	SNTP		FOC1320Z2V3	2010-07-03	2010-10-31	\$ 200.56	20%	\$	\$ 160.45	\$
WS-C2960G-24TC-L	1501956	SNTP		FOC1320Z2V5	2010-07-03	2010-10-31	\$ 200.56	20%	\$	\$ 160.45	\$
WS-C2960G-8TC-L	1501956	SNTP		FOC1327V4K4	2010-08-26	2010-10-31	\$ 23.86	20%	\$	\$ 19.09	\$
WS-C3750E-48TD-S	1501956	SNTP		FDO1304R00C	2010-04-02	2010-10-31	\$ 1,419.22	20%	\$	\$ 1,135.38	\$
WS-C3750E-48TD-S	1501956	SNTP		FDO1304R00E	2010-04-02	2010-10-31	\$ 1,419.22	20%	\$	\$ 1,135.38	\$
WS-C3750E-48TD-S	1501956	SNTP		FDO1303R1DC	2010-04-02	2010-10-31	\$ 1,419.22	20%	\$	\$ 1,135.38	\$
WS-C3750E-48TD-S	1501956	SNTP		FDO1304R00J	2010-04-02	2010-10-31	\$ 1,419.22	20%	\$	\$ 1,135.38	\$
WS-C3750E-48TD-S	1501956	SNTP		FDO1303R1EE	2010-04-02	2010-10-31	\$ 1,419.22	20%	\$	\$ 1,135.38	\$
WS-C3750E-48TD-S	1501956	SNTP		FDO1303R1D9	2010-04-02	2010-10-31	\$ 1,419.22	20%	\$	\$ 1,135.38	\$
WS-C3750E-48TD-S	1501956	SNTP		FDO1303R1DV	2010-04-02	2010-10-31	\$ 1,419.22	20%	\$	\$ 1,135.38	\$
WS-C3750E-48TD-S	1501956	SNTP		FDO1303R1E4	2010-04-02	2010-10-31	\$ 1,419.22	20%	\$	\$ 1,135.38	\$

WS-C3750E-48TD-S	1501956	SNTP	FDO1303R1EB	2010-04-02	2010-10-31	\$	1,419.22	20%	\$	1,135.38
WS-C3750E-48TD-S	1501956	SNTP	FDO1303R1E2	2010-04-02	2010-10-31	\$	1,419.22	20%	\$	1,135.38
WS-C2960-24-S	1501956	SNTP	FOC1329Y2L9	2010-09-01	2010-10-31	\$	12.37	20%	\$	9.90
ASA5505-BUN-K9	1501956	SNTP	JMX1246Z35V	2009-12-21	2010-10-31	\$	86.30	20%	\$	69.04
ASA5505-50-BUN-K9	1501956	SNTP	JMX1246Z1P9	2009-12-21	2010-10-31	\$	122.55	20%	\$	98.04
ASA5505-UL-BUN-K9	1501956	SNTP	JMX1246Z35U	2009-12-21	2010-10-31	\$	144.12	20%	\$	115.30
ASA5505-50-BUN-K8	1501956	SNTP	JMX1228Z026	2009-12-21	2010-10-31	\$	122.55	20%	\$	98.04
ASA5520-AIP20-K9	2787071	SU3	JMX1131L14R	2009-11-01	2010-10-31	\$	3,487.00	20%	\$	2,789.60
WCS-APLOC-100	3550569	SAU		2009-11-01	2010-10-31	\$	1,799.00	20%	\$	1,439.20
WCS-APLOC-100	3550569	SAU		2009-11-01	2010-10-31	\$	1,799.00	20%	\$	1,439.20
WCS-APLOC-100	3550569	SAU		2009-11-01	2010-10-31	\$	1,799.00	20%	\$	1,439.20
7606-SUP7203B-PS	3768781	C4P		2009-11-01	2010-10-31	\$	6,301.00	20%	\$	5,040.80
WS-SVC-ADM-1-K9	3768781	C4P	SAD11320324	2009-11-01	2010-10-31	\$	7,000.00	20%	\$	5,600.00
WS-SVC-AGM-1-K9	3768781	C4P	SAD11320338	2009-11-01	2010-10-31	\$	16,000.00	20%	\$	12,800.00
ASA5520-K8	NEW	S2P	JMW1009K0T0	2009-11-01	2010-10-31	\$	1,679.00	20%	\$	1,343.20
7206VXR/NPE-G1	1501956	SNTP	72800027	2009-11-01	2010-10-31	\$	5,293.00	20%	\$	4,234.40
WS-C6509	1501956	SNTP	SAL0730H29R	2009-11-01	2010-10-31	\$	10,920.00	20%	\$	8,736.00
WS-C6509	1501956	SNTP	SAL09391E8X	2009-11-01	2010-10-31	\$	10,920.00	20%	\$	8,736.00
WS-C2950-24	1501956	SNTP	FOC1027Z31P	2009-11-01	2010-10-31	\$	93.00	20%	\$	74.40
WS-C2950-24	1501956	SNTP	FOC1030Z896	2009-11-01	2010-10-31	\$	93.00	20%	\$	74.40
WS-C2950-24	1501956	SNTP	FOC1031W0DT	2009-11-01	2010-10-31	\$	93.00	20%	\$	74.40
WS-C2950-24	1501956	SNTP	FOC1045Z61J	2009-11-01	2010-10-31	\$	93.00	20%	\$	74.40
WS-C2950-24	1501956	SNTP	FOC1051Y191	2009-11-01	2010-10-31	\$	83.00	20%	\$	66.40
WS-C2950-12	1501956	SNTP	FOC1031W13Q	2009-11-01	2010-10-31	\$	2,822.00	20%	\$	2,257.60
WS-C4503	1501956	SNTP	FOX102706VG	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506	1501956	SNTP	FOX101501JM	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506	1501956	SNTP	FOX11270JVB	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506	1501956	SNTP	FOX11270KYM	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506	1501956	SNTP	FOX10510R0T	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506	1501956	SNTP	FOX11270JVC	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506	1501956	SNTP	FOX111006BC	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506	1501956	SNTP	FOX11270KZ0	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506	1501956	SNTP	FOX10460PGD	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506	1501956	SNTP	FOX11270JV9	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506	1501956	SNTP	FOX11270JV7	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506	1501956	SNTP	FOX11140DCG	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4507R	1501956	SNTP	FOX11460U4J	2009-11-01	2010-10-31	\$	4,432.00	20%	\$	3,545.60
WS-C4507R	1501956	SNTP	FOX10460U4J	2009-11-01	2010-10-31	\$	4,432.00	20%	\$	3,545.60

WS-C3750-48TS-S	1501956	SNTP	CAT0920K2MZ	2009-11-01	2010-10-31	\$	806.00	20%	\$	644.80
WS-C3750-48TS-S	1501956	SNTP	CAT0920K2CC	2009-11-01	2010-10-31	\$	806.00	20%	\$	644.80
WS-C3750-48TS-S	1501956	SNTP	CAT0920K2MH	2009-11-01	2010-10-31	\$	806.00	20%	\$	644.80
WS-C3750-48PS-S	1501956	SNTP	FDO1120Y2U0	2009-11-01	2010-10-31	\$	806.00	20%	\$	644.80
WS-C3560-24PS-S	1501956	SNTP	FDO1119Z13X	2009-11-01	2010-10-31	\$	422.00	20%	\$	337.60
WS-C2950SX-48-SI	1501956	SNTP	FOC1049Y0Z6	2009-11-01	2010-10-31	\$	370.00	20%	\$	296.00
WS-C2950SX-48-SI	1501956	SNTP	FOC1049Y0Z4	2009-11-01	2010-10-31	\$	370.00	20%	\$	296.00
WS-C2950SX-48-SI	1501956	SNTP	FOC1146X1Y9	2009-11-01	2010-10-31	\$	370.00	20%	\$	296.00
WS-C2950SX-48-SI	1501956	SNTP	FOC1143X27S	2009-11-01	2010-10-31	\$	370.00	20%	\$	296.00
WS-C6509-E	1501956	SNTP	SMG1102N0L5	2009-11-01	2010-10-31	\$	10,920.00	20%	\$	8,736.00
WS-C3560G-48TS-S	1501956	SNTP	FOC1109Y0F3	2009-11-01	2010-10-31	\$	826.00	20%	\$	660.80
WS-C3560G-48TS-S	1501956	SNTP	FOC1049Y6F7	2009-11-01	2010-10-31	\$	826.00	20%	\$	660.80
WS-C3560G-48TS-S	1501956	SNTP	FOC1049Y6D0	2009-11-01	2010-10-31	\$	826.00	20%	\$	660.80
WS-C3560G-48TS-S	1501956	SNTP	FOC1049Y6F2	2009-11-01	2010-10-31	\$	826.00	20%	\$	660.80
WS-C3560G-48TS-S	1501956	SNTP	FOC1049Y6FL	2009-11-01	2010-10-31	\$	826.00	20%	\$	660.80
WS-C3560G-48TS-S	1501956	SNTP	FOC1128Y4NM	2009-11-01	2010-10-31	\$	826.00	20%	\$	660.80
WS-C3560G-48TS-E	1501956	SNTP	FOC1150Y2UX	2009-11-01	2010-10-31	\$	1,210.00	20%	\$	968.00
WS-C3560G-48TS-E	1501956	SNTP	FOC1150Y2VT	2009-11-01	2010-10-31	\$	1,210.00	20%	\$	968.00
WS-C3750G-48TS-S	1501956	SNTP	FOC1119Y108	2009-11-01	2010-10-31	\$	1,611.00	20%	\$	1,288.80
WS-C3750G-48TS-S	1501956	SNTP	FOC1119Y104	2009-11-01	2010-10-31	\$	1,611.00	20%	\$	1,288.80
WS-C3750G-48TS-S	1501956	SNTP	FOC1119Y469	2009-11-01	2010-10-31	\$	1,611.00	20%	\$	1,288.80
WS-C3750G-48TS-S	1501956	SNTP	FOC1119Y109	2009-11-01	2010-10-31	\$	1,611.00	20%	\$	1,288.80
WS-C3750G-48TS-S	1501956	SNTP	FOC1119Y16Y	2009-11-01	2010-10-31	\$	1,611.00	20%	\$	1,288.80
WS-C3750G-48TS-S	1501956	SNTP	FOC1119Y0ZZ	2009-11-01	2010-10-31	\$	534.00	20%	\$	427.20
WS-C3560G-24TS-S	1501956	SNTP	FOC1128Y2VA	2009-11-01	2010-10-31	\$	534.00	20%	\$	427.20
WS-C3560G-24TS-S	1501956	SNTP	FOC1128Y2VC	2009-11-01	2010-10-31	\$	922.00	20%	\$	737.60
WS-C3560G-24TS-E	1501956	SNTP	FOC1112Z57P	2009-11-01	2010-10-31	\$	587.00	20%	\$	469.60
ASA5510-BUN-K9	1501956	SNTP	JMX1203L1VW	2009-11-01	2010-10-31	\$	755.00	20%	\$	604.00
ASA5510-SEC-BUN-K9	1501956	SNTP	JMX1201L0V6	2009-11-01	2010-10-31	\$	755.00	20%	\$	604.00
ASA5510-SEC-BUN-K9	1501956	SNTP	JMX1201L0V5	2009-11-01	2010-10-31	\$	120.00	20%	\$	96.00
WS-C2960-24TT-L	1501956	SNTP	FOC1029Z7TE	2009-11-01	2010-10-31	\$	130.00	20%	\$	104.00
WS-C2960G-8TC-L	1501956	SNTP	FOC1215V4ZY	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506-E	1501956	SNTP	FOX114608CU	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506-E	1501956	SNTP	FOX114608FP	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506-E	1501956	SNTP	FOX11460839	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4506-E	1501956	SNTP	FOX114608CG	2009-11-01	2010-10-31	\$	2,957.00	20%	\$	2,365.60
WS-C4503-E	1501956	SNTP	SPE114000JK	2009-11-01	2010-10-31	\$	2,822.00	20%	\$	2,257.60

WS-C2950SX-48-SI	1501956	SNTP	FOC1211Z0U0	2009-11-01	2010-10-31	\$	370.00	20%	\$	296.00
WS-C2960G-24TC-L	1501956	SNTP	FOC1225V4Q7	2009-11-01	2010-10-31	\$	605.00	20%	\$	484.00
WS-C2960G-8TC-L	1501956	SNTP	FOC1221U03K	2009-11-01	2010-10-31	\$	130.00	20%	\$	104.00
WS-C2960G-8TC-L	1501956	SNTP	FOC1221U05L	2009-11-01	2010-10-31	\$	130.00	20%	\$	104.00
WS-C2960G-8TC-L	1501956	SNTP	FOC1221U00S	2009-11-01	2010-10-31	\$	130.00	20%	\$	104.00
WS-C3750G-24T-S	1431340	SNT	CAT0830Y1EQ	2009-11-01	2010-10-31	\$	504.00	20%	\$	403.20
WS-C3750G-24T-S	1431340	SNT	CAT0832Z07P	2009-11-01	2010-10-31	\$	504.00	20%	\$	403.20
ASA5520-BUN-K9	1431340	SNT	JMX1037K0CX	2009-11-01	2010-10-31	\$	959.00	20%	\$	767.20
AIR-WLC4402-25-K9	1431340	SNT	FOC1251F0K8	2010-02-20	2010-10-31	\$	801.67	20%	\$	641.34
CSACSE-1113-UP-K9	1431340	SNT	QCN1230000X	2010-02-12	2010-10-31	\$	229.70	20%	\$	183.76
CSACSE-1113-UP-K9	1431340	SNT	QCN12300019	2010-02-12	2010-10-31	\$	229.70	20%	\$	183.76
WS-C3750-24PS-S	1431340	SNT	CAT0812Z1MH	2009-11-01	2010-10-31	\$	336.00	20%	\$	268.80
WS-C3750-48PS-S	1431340	SNT	CAT0814Z1VX	2009-11-01	2010-10-31	\$	504.00	20%	\$	403.20
WS-C2950-24	1431340	SNT	FOC0825W1T5	2009-11-01	2010-10-31	\$	58.00	20%	\$	46.40
WS-C2950-24	1431340	SNT	FOC1111W45Z	2009-11-01	2010-10-31	\$	58.00	20%	\$	46.40
WS-C2950-24	1431340	SNT	FOC1111W34V	2009-11-01	2010-10-31	\$	58.00	20%	\$	46.40
WS-C2950-24	1431340	SNT	FOC1111W497	2009-11-01	2010-10-31	\$	58.00	20%	\$	46.40
WS-C2950-12	1431340	SNT	FHK0624X0VW	2009-11-01	2010-10-31	\$	52.00	20%	\$	41.60
WS-SVC-WISM-1-K9=	1431340	SNT	SAD122804E7	2009-11-01	2010-10-31	\$	3,680.00	20%	\$	2,944.00
WS-SVC-WISM-1-K9=	1431340	SNT	SAD122804DH	2009-11-01	2010-10-31	\$	3,680.00	20%	\$	2,944.00
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1244N2WD	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1B8	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1AU	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1AW	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1AS	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1BG	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1B3	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
WS-C3508G-XL-EN	1431340	SNT	CSG0730P0FN	2009-11-01	2010-10-31	\$	575.00	20%	\$	460.00
WS-C2950-12	1431340	SNT	FHK0623Z038	2009-11-01	2010-10-31	\$	52.00	20%	\$	41.60
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1BA	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1BF	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1B1	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1BD	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1B9	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1B2	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1AX	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1AZ	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80

AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1BC	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1B5	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
WS-C2950-12	1431340	SNT	FOC0921Y037	2009-11-01	2010-10-31	\$	52.00	20%	\$	41.60
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1B6	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1B7	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1B0	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1B4	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1AT	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1AY	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1BE	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
AIR-LAP1131AG-A-K9	1431340	SNT	FTX1229T1AV	2009-11-01	2010-10-31	\$	56.00	20%	\$	44.80
ASA550-BUN-K9	1431340	SNT	JMX1229L0Q8	2009-11-01	2010-10-31	\$	2,399.00	20%	\$	1,919.20
ASA550-BUN-K9	1431340	SNT	JMX1229L0Q7	2009-11-01	2010-10-31	\$	2,399.00	20%	\$	1,919.20
WS-C3750E-24TD-E	1431340	SNT	FDO1229V10A	2009-11-01	2010-10-31	\$	1,079.00	20%	\$	863.20
WS-C3750E-24TD-E	1431340	SNT	FDO1229V122	2009-11-01	2010-10-31	\$	1,079.00	20%	\$	863.20
WS-C2950-12	1431340	SNT	FOC1217Y5XJ	2009-11-01	2010-10-31	\$	52.00	20%	\$	41.60
WS-C2950-12	1431340	SNT	FOC1217Y5U9	2009-11-01	2010-10-31	\$	52.00	20%	\$	41.60
WS-C3508G-XL-EN	1431340	SNT	CSG0735P0WU	2009-11-01	2010-10-31	\$	575.00	20%	\$	460.00
WS-C3750-24PS-S	1431340	SNT	CAT0818Z04X	2009-11-01	2010-10-31	\$	336.00	20%	\$	268.80
WS-C2950G-12-EI	1431340	SNT	FHK0550Y0DN	2009-11-01	2010-10-31	\$	177.00	20%	\$	141.60
						\$	246,419.18		\$	197,135.34

Ground Freight Included
Quote valid for 30 days
Terms are Net 30
Lead times subject to change

INX Inc.
1955 Lakeway Drive
Suite 220
Lewisville, TX 75057
CISV# 1-76-051-5249-906

Customer Signature of Acceptance _____ Date _____

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Quotation

Quote #: 1200863
 Contract #: NEW
 Service Level: SMARTnet 8x5xNBD (SNT)

Date: 6-Oct-06

From: Tamsi New
 SMARTnet Sales Support
 Phone: P: 469.548.9854
 Fax: F: 972.956.9529
 Email: tamsi.new@inx.com

To: City of Plano

DIR Discount: \$9,569.50
 List Price: \$11,961.87

Target Contract	Customer Name	Install Site ID	Address 1	City	State	ZIP	Country	Product Number	SN	Begin Date	End Date	Prorated List Price	DIR Disc	DIR Total
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	CISCO3845-V/K9	FTX1044A47A	2010-01-01	2010-10-31	\$ 1,256.81	20%	\$ 1,005.45
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	WS-C6504E-S32-GE	FOX104203U1	2009-10-06	2010-10-31	\$ 1,889.65	20%	\$ 1,511.72
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	WS-C6504E-S32-GE	FOX104203U1	2009-10-06	2010-10-31	\$ 1,889.65	20%	\$ 1,511.72
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	WS-C6504E-S32-GE	FOX104203SH	2009-10-06	2010-10-31	\$ 1,889.65	20%	\$ 1,511.72
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	WS-C6504E-S32-GE	FOX104802N1	2009-10-06	2010-10-31	\$ 1,889.65	20%	\$ 1,511.72
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	CISCO3845-V/K9	FTX1044A47D	2010-01-01	2010-10-31	\$ 1,256.81	20%	\$ 1,005.45
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	WS-C6504E-S32-GE	FOX104203TD	2009-10-06	2010-10-31	\$ 1,889.65	20%	\$ 1,511.72
Total Maintenance Price:												\$ 11,961.87		\$ 9,569.50

INX Inc.
 1955 Lakeway Drive
 Suite 220
 Lewisville, TX 75057
 SV# 1-76-051-5248-908

Ground Freight Included
 Quote valid for 30 days
 Terms are Net 30
 Lead times subject to change

Customer Signature of Acceptance _____ Date _____



Date: 6-Oct-09

To: City of Plano

DIR Discount: \$14,038.96

List Price: \$17,548.70

Target Contract	Customer Name	Install Site ID	Address 1	City
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO

INX Inc.
1955 Lakeway Drive
Suite 220
Lewisville, TX 75057
SV# 1-76-051-5249-906

Ground Freight Included
Quote valid for 30 days
Terms are Net 30
Lead times subject to change

Customer Sign

EXHIBIT A e-19
PAGE 9 OF 15

Quotation

Quote #:
Contract #:
Service Level:

From:

Phone:

Fax:

Email:

State	ZIP	Country	Product Number	S/N	Begin Date
TX	75074	US	ASA5540-AIP20-K9	JMX1052K11W	2010-01-01
TX	75074	US	ASA5540-AIP20-K9	JMX1052K11S	2010-01-01
TX	75074	US	ASA5540-AIP20-K9	JMX1051K1G4	2010-01-01
TX	75074	US	ASA5540-AIP20-K9	JMX1052K0L3	2010-01-01
TX	75074	US	ASA5540-AIP20-K9	JMX1052K11T	2010-01-01

Total Maintenance

Signature of Acceptance Date

e-20

EXHIBIT A
PAGE 10 OF 15

1200863

NEW

IPS Svc, AR NBD 8X5XNBD (SU1)

Tamsi New

SMARTnet Sales Support

P: 469.549.9854

F: 972.956.9529

tamsi.new@inxi.com

Prorated List				
End Date	Price	DIR Disc	DIR Price	
2010-10-31	\$ 3,509.74	20%	\$ 2,807.79	
2010-10-31	\$ 3,509.74	20%	\$ 2,807.79	
2010-10-31	\$ 3,509.74	20%	\$ 2,807.79	
2010-10-31	\$ 3,509.74	20%	\$ 2,807.79	
2010-10-31	\$ 3,509.74	20%	\$ 2,807.79	
ce Price:	\$ 17,548.70		\$ 14,038.96	

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Quotation

Quote #: 1201209
 Contract #: NEW
 Service Level: SMARTnet Premium 24x7x4 (SNTP)

Date: 6-Oct-09

To: City of Plano

From: Tamsi New
 SMARTnet Sales Support
 Phone: P: 469.548.9854
 Fax: F: 972.956.9529
 Email: tamsi.new@inx.com

DIR Discount: \$ 15,026.68
 List Price: \$ 18,783.35

Target Contract	Customer Name	Initial Site ID	Address 1	City	State	ZIP	Country	Product Number	SN	Begin Date	End Date	Provised List Price	DIR Disc	DIR Price
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	CISCO3845-V/K9	FTX1044A47A	2010-01-01	2010-10-31	\$ 2,414.00	20%	\$ 1,931.20
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	WS-C6504E-S32-GE	FOX104203U1	2009-11-05	2010-10-31	\$ 2,791.07	20%	\$ 2,232.86
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	WS-C6504E-S32-GE	FOX104802NY	2009-11-05	2010-10-31	\$ 2,791.07	20%	\$ 2,232.86
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	WS-C6504E-S32-GE	FOX104802NY	2009-11-05	2010-10-31	\$ 2,791.07	20%	\$ 2,232.86
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	WS-C6504E-S32-GE	FOX104802NY	2009-11-05	2010-10-31	\$ 2,791.07	20%	\$ 2,232.86
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	CISCO3845-V/K9	FTX1044A47D	2010-01-01	2010-10-31	\$ 2,414.00	20%	\$ 1,931.20
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET	PLANO	TX	75074	US	WS-C6504E-S32-GE	FOX104203TD	2009-11-05	2010-10-31	\$ 2,791.07	20%	\$ 2,232.86
Total Maintenance Price: \$ 18,783.35													\$ 15,026.68	

Ground Freight Included
 Quots valid for 30 days
 Terms are Net 30
 Lead times subject to change

INX Inc.
 1955 Lakeway Drive
 Suite 220
 Lewisville, TX 75057
 SV# 1-76-051-5249-906

Customer Signature of Acceptance _____ Date _____



Date: 6-Oct-09

To: City of Plano

DIR Discount:
List Price:

Target Contract	Customer Name	Install Site ID	Address 1
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET
NEW	CITY OF PLANO	1018798	1117 EAST 15TH STREET

INX Inc.
1955 Lakeway Drive
Suite 220
Lewisville, TX 75057
SV# 1-76-051-5249-906

Ground Freight Included
Quote valid for 30 days
Terms are Net 30
Lead times subject to change

Quotation

\$20,384.00
\$25,480.00

City	State	ZIP	Country	Product Number	S/N
PLANO	TX	75074	US	ASA5540-AIP20-K9	JMX1052K11W
PLANO	TX	75074	US	ASA5540-AIP20-K9	JMX1052K11S
PLANO	TX	75074	US	ASA5540-AIP20-K9	JMX1051K1G4
PLANO	TX	75074	US	ASA5540-AIP20-K9	JMX1052K0L3
PLANO	TX	75074	US	ASA5540-AIP20-K9	JMX1052K11T

Customer Signature of Acceptance

Date

e24

EXHIBIT A
PAGE 14 OF 15

Quote #: 1201209
 Contract #: NEW
 Service Level: Cisco Services for IPS 8x5x4 (SU2)

From: Tamsi New
 SMARTnet Sales Support
 Phone: P: 469.549.9854
 Fax: F: 972.956.9529
 Email: tamsi.new@inxi.com

Begin Date	End Date	Prorated List Price	DIR Disc	DIR Price
2010-01-01	2010-10-31	\$ 5,096.00	20%	\$ 4,076.80
2010-01-01	2010-10-31	\$ 5,096.00	20%	\$ 4,076.80
2010-01-01	2010-10-31	\$ 5,096.00	20%	\$ 4,076.80
2010-01-01	2010-10-31	\$ 5,096.00	20%	\$ 4,076.80
2010-01-01	2010-10-31	\$ 5,096.00	20%	\$ 4,076.80
Total Maintenance Price:		\$ 25,480.00		\$ 20,384.00



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:	11/23/09	Purchasing	<i>POP</i> 11-13-09	
Department:	Public Works & Engineering	Budget	<i>C.S.</i> 11-13-09	
Department Head	Alan L. Upchurch	Legal <i>(W)</i>	<i>DW</i> 11/14/09	
Dept Signature:	<i>Alan L. Upchurch</i>	Assistant City Manager		
		Deputy City Manager	<i>RA</i> 11-16-09	
		City Manager	<i>[Signature]</i> 11/16/09	
Agenda Coordinator (include phone #): Irene Pegues (7198) <i>[Signature]</i>		Project No. 5556		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input checked="" type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
To Liberty Mutual Insurance Company, as takeover contractor for Hisaw and Associates General Contractors, Inc., whose contract was called into default and terminated, increasing the contract amount for Plano Fire Station No. 12/Emergency Operations Center Complex, Change Order No. 5, adding electric panel and receptacles and relocating racks in the EOC Server Room, and authorizing the City Manager or his authorized designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	261,774	938,226	0	1,200,000
Encumbered/Expended Amount	-261,774	-6,194	0	-267,968
This Item	0	-45,294	0	-45,294
BALANCE	0	886,738	0	886,738
FUND(S): TECHNOLOGY FUND (62.62350)				
COMMENTS: Funds are included in the 2009-10 Technology Fund budget for the EOC Server Room Equipment. STRATEGIC PLAN GOAL: Electrical installations and construction changes at new city facilities relates to the City's Goals of "Safe Large City" and "Financially Strong City with Service Excellence".				
SUMMARY OF ITEM				
Final configuration of the server racks resulted in additional electrical requirements, as well as a new layout that will optimize cooling air flow (with the intent to reduce energy costs). This change order increased the current contract amount by \$45,294.00, to \$12,020,645.55. Changes to date total a decrease of \$87,633.00 (-0.72%) from the original contract.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Change Order No. 5		N/A		

CHANGE ORDER NO. 5

**PLANO FIRE STATION NO. 12/EMERGENCY OPERATIONS CENTER COMPLEX
PROJECT NO. 5556
PURCHASE ORDER NO. 369954
CIP NO. 10211**

**TEXAS INTERLOCAL PURCHASING SYSTEM AND
TEXAS-ARKANSAS PURCHASING SYSTEM CONTRACT NO. 0105207-05**

A. INTENT OF CHANGE ORDER

The intent of this change order is to modify the provisions of the contract originally entered into by the **CITY OF PLANO, TEXAS**, and **HISAW AND ASSOCIATES GENERAL CONTRACTORS, INC.**, for the **FIRE STATION NO. 12/EMERGENCY OPERATIONS CENTER COMPLEX PROJECT**, dated December 18, 2007, and which was subsequently taken over by the Bond Surety, **LIBERTY MUTUAL INSURANCE COMPANY**, on June 22, 2009.

B. DESCRIPTION OF CHANGE

The change order is for relocating IT racks to optimize air flow, adding an electrical panel and adding receptacles.

C. EFFECT OF CHANGE

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

ITEM NO.	ITEM DESCRIPTION	AMOUNT OF CHANGE
1	Reconfigure racks in EOC Server Room, add an electrical panel and provide equipment receptacles	\$45,294.00
	TOTAL:	\$45,294.00

Original Contract Amount	\$ 12,108,279.00
Contract Amount (Including Previous Change Orders)	\$ 11,975,351.55
Amount, Change Order No. 5	\$ 45,294.00
Revised Contract Amount	\$ 12,020,645.55
Total Percent Increase Including Previous Change Orders	-0.72%

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add **-0-** day(s) to this project:

Original Contract Time	<u>353 working days</u>
Amount (Including Previous Change Orders)	<u>393 working days</u>
Amount, Change Order No. 5	<u>0 working days</u>
Revised Contract Time	<u>393 working days</u>
Total Percent Increase Including Previous Change Orders	<u>11.33%</u>

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **LIBERTY MUTUAL INSURANCE COMPANY** do hereby agree to append this Change Order No. 5 to the original contract between themselves, dated June 22, 2009.

OWNER: CITY OF PLANO

**TAKEOVER CONTRACTOR: LIBERTY
MUTUAL INSURANCE COMPANY**

(CONTRACTOR: HISAW AND
ASSOCIATES GENERAL
CONTRACTORS, INC.)

By: _____
(signature)

By: _____
(signature)

Print Name: Thomas H. Muehlenbeck

Print Name: Frank Hucks

Print Title: City Manager

Print Title: Sr. Surety Counsel

Date: _____

Date: _____

APPROVED AS TO FORM:

By: 
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF PENNSYLVANIA §
§
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the _____ day of November, 2009, by **FRANK HUCKS, SR. SURETY COUNSEL OF LIBERTY MUTUAL INSURANCE COMPANY**, a **PENNSYLVANIA** insurance company, on behalf of said insurance company.

Notary Public, State of Pennsylvania

STATE OF TEXAS §
§
COUNTY OF COLLIN §

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

Notary Public, State of Texas

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CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory			
Council Meeting Date: 11/23/09		Purchasing	MR 11/16/09
Department: Purchasing		Budget	C.S. 11-16-09
Department Head: Mike Ryan		Legal	DM 11-17-09
Dept Signature:		Assistant City Manager	SL 11-17-09
		Deputy City Manager	11-17-09
		City Manager	11/17/09
Agenda Coordinator (include phone #): Sharron Mason x7247			
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER			

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN MOTOROLA, INC., A SOLE SOURCE PROVIDER, AND THE CITY OF PLANO FOR TECHNICAL SUPPORT SERVICES FOR CENTRALIZED REMOTE TELEPHONE SUPPORT ON TECHNICAL ISSUES IN AN AMOUNT NOT TO EXCEED EIGHTY-THREE THOUSAND SIX HUNDRED NINETY-FIVE AND 92/100 DOLLARS (\$83,695.92); AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	164,616	0	164,616
Encumbered/Expended Amount	0	-3,408	0	-3,408
This Item	0	-83,696	0	-83,696
BALANCE	0	77,512	0	77,512

FUND(s): **GENERAL FUND**

COMMENTS: Funds are included in the FY 2009-10 adopted budget to provide technical support services between the City of Plano and Motorola. The remaining balance of funds will be used for other support services or technical issues.

STRATEGIC PLAN GOAL: Providing technical support services for the Radio Shop relates to a "Financially Strong City with Service Excellence."

SUMMARY OF ITEM

Staff requests Council approval of a resolution, the sole source provider for the service contract S00001002526 covering the City of Plano's Simulcast Smartnet Communications System and DataTAC Systems in the amount of \$83,696. City of Plano assigned Contract No. 2009-185-C.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Resolution, Sole Source Letter and City Contract	Other Departments, Boards, Commissions or Agencies



1507 LBJ Freeway, Suite 700
Farmers Branch, TX. 75234

July 27, 2009

Mr. Ron Goldsmith
Mr. Jim Raney
City of Plano
925 22nd St
Suite 100C
Plano, TX 75074

This letter is to inform you that Motorola Inc. should be considered the sole source provider for the service contract S00001002526 covering the City of Plano's Simulcast Smartnet Communications System and DataTAC Systems. Many of the circuits and protocol components of your Motorola Simulcast Communications System are patented and proprietary. Motorola is also the only vendor that can make factory certified modification or enhancements to the hardware or software for the City of Plano's system.

Furthermore, Motorola provides service solutions that will help maximize the performance of your network and provide optimal efficiency. Our comprehensive suite of services follows a total lifecycle framework which means complete end-to-end coverage of your network when used in conjunction with the city of Plano's on-site technical expertise.

We will work with you in a flexible manner that is appropriate to meet your needs and goals — ultimate control always remains with you.

Contracting directly with Motorola will assure the City of Plano that it's Simulcast Smartnet Communications System and DataTAC Systems will continue to operate properly today and in the future.

Best Regards,

A handwritten signature in black ink that reads 'John Martin'. The signature is written in a cursive style with a large, looping 'J' and 'M'.

John Martin
Customer Support Manager
Motorola
972-277-4608

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN MOTOROLA, INC., A SOLE SOURCE PROVIDER, AND THE CITY OF PLANO FOR TECHNICAL SUPPORT SERVICES FOR CENTRALIZED REMOTE TELEPHONE SUPPORT ON TECHNICAL ISSUES IN AN AMOUNT NOT TO EXCEED EIGHTY-THREE THOUSAND SIX HUNDRED NINETY-FIVE AND 92/100 DOLLARS (\$83,695.92); AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed agreement for technical support services for centralized remote telephone support on technical issues between Motorola, Inc. and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

Section I. The City Council hereby finds and determines that Motorola, Inc. is the sole source provider for technical support service and radio repair service for the City's Simulcast Smartnet Communications System and Data TAC Systems, and is exempt from the competitive bid requirements as provided in the Texas Local Government Code, Section 252.022(a)(7).

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

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

DULY PASSED AND APPROVED this the 23rd day of November, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**CONTRACT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND
MOTOROLA, INC.**

THIS CONTRACT is made and entered by and between **MOTOROLA, INC.**, a Delaware corporation, whose address is 1309 East Algonquin Road, Schaumburg, Illinois 60196, hereinafter referred to as "Contractor" and the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", to be effective upon approval of the Plano City Council and subsequent execution of this Contract by the Plano City Managers or his duly authorized designee.

MOTOROLA, INC. is the sole source provider of services and products to be provided for technical support services and this purchase is exempt from competitive bid as provided for in V. T.C.A., *Local Government Code, Section 252.022(a)(7)*.

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

**I.
SCOPE OF SERVICES**

The parties agree that Contractor shall perform such services as are further described in the Statement of Work attached hereto and incorporated herein as **Exhibit "A"**. The parties understand and agree that deviations or modifications in the Statement of Work may be authorized from time to time by the City, but said authorization must be made in writing and signed by all parties.

The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Statement of Work (**Exhibit "A"**);
- (b) Service Agreement (**Exhibit "B"**);
- (c) Service Terms and Conditions (**Exhibit "C"**);
- (d) Insurance Requirements (**Exhibit "D"**); and
- (e) Affidavit of No Prohibited Interest (**Exhibit "E"**).

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

II.
TIME OF COMPLETION

Contractor agrees and covenants that all work hereunder shall be completed in accordance with the terms set out in the Service Agreement document dated March 24, 2009, attached hereto as **Exhibit "B"** and made a part hereof.

III.
WARRANTY

Contractor warrants and covenants to City that all goods and services provided by Contractor, Contractor's subcontractors, and agents under the Agreement shall be free of defects and produced and performed in a skillful and workmanlike manner and shall comply with the specifications for said goods and services as set forth in this Agreement and **Exhibit "A"**. Contractor warrants that the goods and services provided to City under this Agreement shall be free from defects in material and workmanship, for a period of one (1) year commencing on the date that the City issue final written acceptance of the project.

IV.
PAYMENT

Total compensation for Contractor's work on the Project shall be in an amount not to exceed the sum of **EIGHTY THREE THOUSAND SIX HUNDRED NINETY FIVE AND 92/100 DOLLAS (\$83,695.92)** as set out in **Exhibit "B"**.

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

V.
PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws. The safety precautions actually taken and the adequacy thereof shall be the sole responsibility of the Contractor. Contractor shall indemnify City for any and all losses arising out of or related to a

breach of this duty by Contractor pursuant to paragraph VII. INDEMNIFICATION and paragraph VIII. COMPLIANCE WITH APPLICABLE LAWS set forth herein.

VI.
LOSSES FROM NATURAL CAUSES

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

VII.
INDEMNIFICATION

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

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

RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

**VIII.
COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Contractor or the work, and **SHALL INDEMNIFY AND SAVE HARMLESS CITY AGAINST ANY CLAIM RELATED TO OR ARISING FROM THE VIOLATION OF ANY SUCH LAWS, ORDINANCES AND REGULATIONS WHETHER BY CONTRACTOR, ITS EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS, OR REPRESENTATIVES.** If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**IX.
VENUE**

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

**X.
ASSIGNMENT AND SUBLETTING**

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract shall not be assigned or sublet without the prior written consent of City, and that no part or feature of the work will be sublet to anyone objectionable to City. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract.

**XI.
INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and

consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

**XII.
INSURANCE AND CERTIFICATES OF INSURANCE**

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

**XIII.
HINDRANCES AND DELAYS**

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

**XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**XV.
SEVERABILITY**

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

**XVI.
TERMINATION**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this contract, in whole or in part by giving at least thirty (30) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the date such notice is received.

**XVII.
ENTIRE AGREEMENT**

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

**XVIII.
CONTRACT INTERPRETATION**

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

**XIX.
SUCCESSORS AND ASSIGNS**

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

**XX.
HEADINGS**

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



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 municipal corporation.

Notary Public, State of Texas



Statement of Work
Prepared For :

PLANO, CITY OF
925 22ND ST STE 100C
PLANO, TX 75074



Statement of Work

Technical Support Service

1.0 Description of Services

The Technical Support service provides centralized remote telephone support for technical issues that require a high level of communications systems expertise or troubleshooting on Equipment. The Motorola System Support Center's (SSC) Technical Support Operation is staffed with technologists who specialize in the diagnosis and resolution of system performance issues. Technical Support Service (i) does not include software upgrades that may be required for issue resolution; and (ii) does not include Customer training (iii) is only available for those system types supported and approved by Technical Support Operations.

Technical Support is applicable to the following system types: ASTRO®, ASTRO® 25, ARC 4000, SmartZone® v2.0.3 and higher, SmartZone®/OmniLink®, E911, Private Data v2.0.3 and higher, SmartNet®, Conventional Two-Way, and Wireless Broadband.

The terms and conditions of this Statement of Work (SOW) are an integral part of Motorola's Service Terms and Conditions or other applicable Agreement to which it is attached and made a part thereof by this reference.

2.0 Motorola has the following responsibilities:

- 2.1. Respond to requests for Technical Support for the Restoration of failed Systems and diagnosis of operation problems in accordance with the response times set forth in the Remote Technical Support Response Times Table and the Severity Level defined in the Severity Definitions Table.
- 2.2. Advise caller of procedure for determining any additional requirements for issue characterization, Restoration, including providing a known fix for issue resolution when available.
- 2.3. Attempt remote access to System for remote diagnostics, when possible.
- 2.4. Maintain communication with the Servicer or Customer in the field until close of the Case, as needed.
- 2.5. Coordinate technical resolutions with agreed upon third party vendor(s), as needed.
- 2.6. Escalate and manage support issues, including Systemic issues, to Motorola engineering and product groups, as applicable.
- 2.7. Escalate the Case to the appropriate party upon expiration of a Response time.
- 2.8. Provide Configuration Change Support and Work Flow changes to Systems that have dial in or remote access capability.
- 2.9. Determine, in its sole discretion, when a Case requires more than the Technical Support services described in this SOW and notify Customer of an alternative course of action.

3.0 Customer has the following responsibilities:

- 3.1. Provide Motorola with pre-defined information prior to Start Date necessary to complete Customer Support Plan.
 - 3.1.1. Submit changes in any information supplied in the Customer Support Plan to the Customer Support Manager.
- 3.2. Contact the SSC in order to access the Technical Support Operation, provide name of caller, name of Customer, System ID number, Service Agreement number, site(s) in questions, and brief description of the problem.
- 3.3. Supply on-site presence when requested by System Support Center.

- 3.4. Validate issue resolution prior to close of the Case.
- 3.5. Allow Motorola remote access to the System by equipping the System with the necessary Connectivity.
- 3.6. Acknowledge that Cases will be handled in accordance with the times and priorities as defined in Remote Technical Support Response Times Table and the Severity Level defined in the Severity Definitions Table.
- 3.7. Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide the Technical Support service to Customer.

9-16

Severity Definitions Table

Severity Level	Problem Types
Severity 1	<ul style="list-style-type: none"> • Response is provided Continuously • Major System failure • 33% of System down • 33% of Site channels down • Site Environment alarms (smoke, access, temp, AC power. • This level is meant to represent a major issue that results in an unusable system, sub-system, Product, or critical features from the Customer's perspective. No Work-around or immediate solution is available.
Severity 2	<ul style="list-style-type: none"> • Response during Standard Business Day • Significant System Impairment not to exceed 33% of system down • System problems presently being monitored • This level is meant to represent a moderate issue that limits a Customer's normal use of the system, sub-system, product, or major non-critical features from a Customer's perspective
Severity 3	<ul style="list-style-type: none"> • Response during Standard Business Day • Intermittent system issues • Information questions • Upgrades/preventative maintenance • This level is meant to represent a minor issue that does not preclude use of the system, sub-system, product, or critical features from a Customer's perspective. It may also represent a cosmetic issue, including documentation errors, general usage questions, recommendations for product enhancements or modifications, and scheduled events such as preventative maintenance or product/system upgrades.

Remote Technical Support Response Times Table

SEVERITY	RESPONSE
Severity 1	Within 1 Hour from receipt of Notification, Continuously
Severity 2	Within 4 Hours from receipt of Notification, Standard Business Day
Severity 3	Within next Business Day, Standard Business Day

Legal Approval
February 28, 2008



Statement of Work

Repair Service Advantage (Service Agreement) End Users

1.0 Description

Repair Service Advantage provides board level service for the Equipment that is specifically named in the applicable agreement to which this Statement of Work (SOW) is attached or any of the agreement's subsequent revisions. Services are performed at the Radio Support Center (RSC), or Federal Technical Support Center.

In addition to Equipment specifically named in the applicable agreement to which this Statement of Work is attached, Repair Service Advantage includes service on standard mobile palm microphones and single mobile control heads provided that they are required for normal operation of the Equipment and are included at the point of manufacture.

Repair Service Advantage excludes repairs to: optional accessories; non-standard mobile microphones; iDEN accessories; iDEN mobile microphones; portable remote speaker microphones; optional or additional control heads; mobile external speakers; single and multiple unit portable chargers; batteries; mobile power and antenna cables; mobile antennas; portable antennas, and power supplies. Engraving service is not covered under standard Repair Service Advantage.

Repair Service Advantage is non-cancelable and non-refundable. If Equipment is added to the agreement subsequent to the Start Date, these units are also non-cancelable and non-refundable for the agreement duration. All Equipment must be in good working order on the Start Date or when additional Equipment is added to the agreement. Equipment may only be added to the agreement, via a customer signed or emailed Motorola Inventory Adjustment Form (IAF). Complete and accurate serial numbers and model descriptions must be supplied.

All inventory adjustment requests for add-on subscriber units received prior to the 15th of the month will be effective the 1st of the following month. Equipment add-on requests received after the 15th of the month will be effective the 1st of the next succeeding month.

Equipment deletions from the agreement may only be deleted under the following limited conditions:

- a) Equipment was stolen and proof of theft is provided to Motorola; or
- b) Motorola determines Equipment is damaged beyond repair; or
- c) Motorola determines Equipment is no longer supportable or is obsolete; or
- d) Equipment had already been under a previous contract for at least the twelve month requirement.

Equipment deletions, where applicable, will be effective at the end of the month in which the request was received.

The terms and conditions of this Statement of Work are an integral part of the Motorola service agreement or other applicable agreement to which it is attached and made a part thereof by this reference. If there are any inconsistencies between the provisions of the Motorola service agreement or other applicable agreement and this Statement of Work, the provisions of this Statement of Work shall prevail.

- 2.0 Motorola has the following responsibilities:
- 2.1 Test and Restore the Equipment to Motorola factory specifications, including Factory Mutual (FM), and Mine Hazard Safety Association (MHSA).
 - 2.2 Reprogram Equipment to original operating parameters based on the Customer template, if retrievable, or from a Customer supplied backup diskette. If the Customer template or code plug is not usable, a generic template or code plug utilizing the latest Radio Service Software (RSS) or Customer Programming Software (CPS) version for that Equipment will be used. The Equipment will require additional programming by the Customer to Restore the original template. All Firmware is upgraded to the latest release for each individual product line.
 - 2.3 Clean external housing of the Equipment. External components of unit will only be replaced when functionality has been diminished.
 - 2.4 Pay the outbound freight charges. Motorola will pay the inbound freight charges if the Customer uses the Motorola designated delivery service.
 - 2.5 Provide the Motorola repair request and Inventory Adjustment Form (IAF) via Motorola On Line (MOL).
 - 2.6 Process inventory adjustment requests received by email or fax from Customer. If the request is received by email, Motorola will email an acknowledgement to the sender.
 - 2.7 Perform covered services as requested by Customer on the Motorola repair request form.
 - 2.8 If applicable, notify Customer of changes in Motorola designated inventory adjustment email address or fax number.
- 3.0 Customer has the following Responsibilities:
- 3.1 Supply Motorola complete and accurate serial numbers and model description.
 - 3.2 Utilize the Motorola designated delivery service program to obtain Motorola payment for inbound shipping
 - 3.3 Access the Motorola repair request form and Inventory Adjustment Form (IAF) through Motorola On Line (MOL).
 - 3.4 Initiate service request via Motorola On Line (MOL) or complete a Motorola repair request form with contract number referenced, and submit with each unit of Equipment sent in for service. Mobile control heads or accessory items sent in must reference the serial number of the main unit.
 - 3.5 If desired, supply Motorola with a 3.5" backup diskette with the Software template or programming in order to assist in returning the Equipment to original operating parameters. This step must be completed for Equipment that will not power up. If applicable, record the current flashcode for each radio.
 - 3.6 If Motorola must utilize a generic template or code plug to Restore Equipment to operating condition, Customer is responsible for any programming required to Restore Equipment to desired parameters.
 - 3.7 Provide a signed or emailed Motorola Inventory Adjustment Form (IAF) for all Equipment additions.
 - 3.8 Local services or annual maintenance required for maintaining normal operation of the equipment, unless specified on the service agreement.

Repair Service Advantage – Updated on 02-2007

Reviewed August 2007

Inventory Management Service



Statement of Work

Definitions

1.0 Definitions

These defined terms might not apply to every Statement of Work. Capitalized terms below and not otherwise defined within the Statement of Work, or in the Communications System Agreement or other applicable agreement (collectively, "Agreement") have the following meanings:

- 1.1 **Box Unit Test:** Unit is tested in a fixture that simulates the functions for which it was designed, engineered, or manufactured to insure that it meets manufacturer specifications.
- 1.2 **Case:** Electronic tracking document for requests for service through the System Support Center.
- 1.3 **Case Status:** Identifier of the status of a Case from beginning to end.
- 1.4 **Component(s):** Motorola new or refurbished parts of equal quality.
- 1.5 **Configuration Change Support:** A change in a user-defined parameter, which may include a change in the placement of a dispatch console talkgroup window, Fleetmapping is not included in Configuration Change Support.
- 1.6 **Connectivity:** Establishment of remote access to the System via dial up or fixed dedicated links.
- 1.7 **Continuously/Continuous:** Seven (7) days per week, twenty-four (24) hours a day, including holidays.
- 1.8 **Customer:** The end-user Customer as identified in the Agreement.
- 1.9 **Customer Support Plan:** A document mutually developed by Motorola and the Customer that provides information about the Customer and the System and describes the specific processes by which Motorola will deliver and the Customer will receive the services described in this Statement of Work.
- 1.10 **Elements:** Those device types present on the Customer's System whose status may be communicated to the SSC.
- 1.11 **Equipment:** The equipment specified in the Equipment List as set forth in the Agreement, including any additions to the Equipment List during the Warranty Period.
- 1.12 **Enhanced System Support (ESS) Period:** The 12 month period commencing at the start of the Warranty Period for Equipment and Software as defined by the Agreement.
- 1.13 **Event:** An alarm or informational notification received by Motorola through the Network Management tools.
- 1.14 **Feature:** A Software functionality
- 1.15 **Federal Technical Center:** A Motorola facility located in Lanham, Maryland, the purpose of which is to serve as Motorola's centralized location for radio repair for United States Federal Government Customers.
- 1.16 **Firmware:** Software in object code form that is implanted or embedded in hardware.
- 1.17 **FRU:** Field Replaceable Unit, typically a board or module, contained within the Infrastructure.
- 1.18 **Infrastructure:** The fixed Equipment excluding mobiles, portables, and accessories.
- 1.19 **Infrastructure Depot Operations (IDO):** A Motorola facility, which serves as Motorola's centralized location for infrastructure repair.
- 1.20 **Loaner:** Infrastructure that is owned by Motorola and serves as a temporary replacement while the Customer's Infrastructure is being repaired.
- 1.21 **Maintenance:** The process for determining the cause of Equipment failure, removing, repairing, or replacing Components necessary to conform the Equipment with the manufacturer's specifications along with system-specific specifications, delivering and reinstalling the Components,, and placing the Equipment back into operation.

- 1.22 MCNS: Mission Critical Network Services
- 1.23 Motorola Software: Software whose copyright is owned by Motorola or its affiliated company
- 1.24 Non-Motorola Software: Software whose copyright is owned by a party other than Motorola or its affiliated company.
- 1.25 Notification: The point in time when the Customer contacts Motorola and requests service.
- 1.26 Optional Feature: An additional Feature issued with a System Release that is available to Customer at additional cost.
- 1.27 Radio Support Center (RSC): A Motorola facility which serves as Motorola's centralized location for radio repair.
- 1.28 Response: The event when a technician, a remote systems technologist or a remote network specialist begins actively to work on the technical issue, remotely or on-site, as determined by Motorola.
- 1.29 Restore/Restoration/Restoral: The effort required to bring Equipment to the level for which it was designed, engineered and adjusted for performance in accordance with the manufacturer's published specifications, although such Equipment may not necessarily be malfunctioning.
- 1.30 Servicer: A Motorola Authorized Service Station or Motorola Field Service personnel.
- 1.31 Severity Level: The degree of adverse impact of an issue or Event.
- 1.32 Software: The software furnished with the System, including any Motorola Software and Non-Motorola Software.
- 1.33 Software License Agreement: The agreement or portion of an agreement pursuant to which Motorola licenses Software to Customer, including System Releases.
- 1.34 Special Product Feature: A Feature that is specially developed for Customer and which contains a functionality that is unique to Customer.
- 1.35 Standard Business Day: Monday through Friday, 8:30 a.m. to 4:30 p.m., local time, excluding Motorola holidays.
- 1.36 Standard Feature: A software functionality for components of Customer's System that is available to Customer in the standard software release
- 1.37 Start Date: Effective start date as listed on the Agreement.
- 1.38 System: The communications system as defined in the Communications System Agreement or other applicable Agreement.
- 1.39 System Acceptance: Unless otherwise defined in the Communications System Agreement, the date upon which Motorola has successfully completed all of the System Tests as described in the acceptance test plan.
- 1.40 System Support Center (SSC): A Motorola facility which serves as Motorola's centralized system support facility to compliment the field support resources
- 1.41 System Release: One software version release on a particular platform. ASTRO 25 6.3 example is where 6 is the platform indicator and .3 is software version release indicator.
- 1.42. System Test: Unit is tested in a Motorola manufactured system of similar type from which the unit was designed to test all functionality of the unit to insure that it meets manufacturer specifications.
- 1.43 Systemic: A recurring Software or hardware defect that significantly affects the operation of the System.
- 1.44 Technical Support Operations (TSO): A centralized telephone support help desk that provides technical support for Motorola customers who have purchased products from Motorola (Networks & Enterprise) or who have a contract for technical support services.
- 1.45 Vendor: Any manufacturer (other than Motorola) or third party that services or repairs Infrastructure or subscriber equipment
- 1.46 Verification: Contacting the appropriate designated person to verify the System is operational (original problem resolved) and closing the Case.
- 1.47 Work-around: A change in the followed procedures or data supplied by Vendor to avoid error without substantially impairing use of the Equipment.
- 1.48 Work Flow: A step-by-step process including instruction or direction for routing.

handling, and processing information at a given agency.

Definitions

Approved by Motorola Contracts & Compliance 10-31-2006

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SERVICE AGREEMENT

Attn: National Service Support
 1309 East Algonquin Road
 Schaumburg, IL 60196
 (800) 247-2346

Contract Number: S00001002526
 Contract Modifier: RN20-MAR-09 09:05:21
 Supercedes Agreement(s):

Date: 03/24/2009

Company Name: PLANO, CITY OF
 Attn: DIANE DUNBAR
 Billing Address: 925 22nd St Ste 100c
 City, State, Zip: Plano, TX 75074
 Customer Contact:
 Phone:
 Fax:

Required P.O.: No
 Customer #: 1011267912
 Bill to Tag #: 0001
 Contract Start Date: 11/01/2009
 Contract End Date: 09/30/2010
 Anniversary Day: Oct 31st
 Payment Cycle: ANNUAL
 Tax Exempt: Exempt From All Taxes
 PO #:

Qty	Model/Option	Description	Monthly Ext	Extended
***** Recurring Services *****				
4	SVC01SVC1104C	TECHNICAL SUPPORT SERVICE		
	SVC135AA	ENH: SMARTNET SITE	\$ 450.16	\$ 4,951.76
4	SVC143AA	ENH: DATATAC 2.02 SITE		
1	SVC147AA	ENH: SMARTNET SYSTEM		
1	SVC149AA	ENH: DATATAC 2.02 SYSTEM		
1	SVC455AE	ENH: DISPATCH SITE		
159	SVC01SVC1220C	RADIO REPAIR SERVICE	\$ 7,158.56	\$ 78,744.16
	SVC27AA	ENH: XTS5000		
761	SVC469AA	ENH: RADIO REPAIR MTS2000		
80	SVC26AA	ENH: XTS2500		
402	SVC467AA	ENH: RADIO REPAIR MCS2000		
80	SVC522AA	ENH: RADIO REPAIR XTS3000		
62	SVC551AB	ML900 LAPTOP		
45	SVC495AB	XTL5000 - MOBILE		
83	SVC545AB	MW800 (INC CPU,DISPLAY,KEYBOARD)		
12	SVC549AB	VRM850		
33	SVC680AD	XTL5000 CONSOLETTA-END USER		
23	SVC408AE	MW810 CPU W OR W/O RADIO		

SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS	Subtotal - Recurring Services	\$ 7,608.72	\$ 83,695.92
	Subtotal - One-Time Event Services	\$.00	\$.00
	Total	\$ 7,608.72	\$ 83,695.92
	Taxes	-	-
	Grand Total	\$ 7,608.72	\$ 83,695.92
THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE. TO BE VERIFIED BY MOTOROLA.			

Subcontractor(s)	City	State
MOTOROLA RADIO SUPPORT CENTER	ELGIN	IL
MOTOROLA SYSTEM SUPPORT-TECHNICAL SUPPORT D0068	SCHAUMBURG	IL

EXHIBIT B
 PAGE 1 OF 2
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Service Terms and Conditions

Motorola, Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

Section 1 APPLICABILITY

These Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2 DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3 ACCEPTANCE

Reserved.

Section 4 SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request and written approval, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement by written modification and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

EXHIBIT C
PAGE 1 OF 4

4.6. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, the parties may by written agreement modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

Section 5 EXCLUDED SERVICES

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

Section 6 TIME AND PLACE OF SERVICE

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

Section 7 CUSTOMER CONTACT

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

Section 8 PAYMENT

Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date. Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity. If Customer is an exempt entity, Customer will provide Motorola with proof of exemption in writing within thirty (30) days of Motorola's written request of such proof.

Section 9 WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-

perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. To the extent allowed by law, MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 DEFAULT/TERMINATION

Reserved.

Section 11 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed two (2) times the price of the Services provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12 EXCLUSIVE TERMS AND CONDITIONS

12.1. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

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

13.2. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

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PAGE 3 OF 4

Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

Section 15 COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

Section 16 MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, and return it to Motorola upon request.

Section 17 GENERAL TERMS

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.3. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

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City of Plano
Contractor Insurance Requirements and Agreement
Requirements

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

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

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

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

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

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

AGREEMENT

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

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

EXHIBIT D
 PAGE 1 OF 2
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ACORD **CERTIFICATE OF LIABILITY INSURANCE** DATE (MM/DD/YY) 07/24/2009

PRODUCER
 AON RISK SERVICES CENTRAL, INC.
 CHICAGO IL OFFICE
 1000 NORTH MILWAUKEE AVENUE
 GLENVIEW, ILLINOIS 60025
 ATTN: INSURANCE VERIFICATION CENTER
 PH: 1-800-4-VERIFY/ FAX: 1-847-953-5341

Serial # 0416

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

COMPANIES AFFORDING COVERAGE

COMPANY A	LIBERTY MUTUAL FIRE INSURANCE COMPANY	A
COMPANY B	LIBERTY INSURANCE CORPORATION	A
COMPANY C		
COMPANY D		

INSURED
 MOTOROLA INC. AND ITS SUBSIDIARIES
 1303 EAST ALGONQUIN ROAD
 SCHAUMBURG IL 60196 USA

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

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR OWNER'S & CONTRACTOR'S PROT	TB2-641-005169-079	7/1/2009	7/1/2010	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ INCLUDED PERSONAL & ADV INJURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 250,000 MED EXP (Any one person) \$ 10,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	AS2-641-005169-019	7/1/2009	7/1/2010	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
B	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY WA7-64D-005169-099 (ALL OTHER STATES) WC7-641-005169-099 (OR & WI)		7/1/2009	7/1/2010	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000
B	THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL				
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
 RE: SERVICE CONTRACT NO. S00001002526. CITY OF PLANO, TEXAS IS LISTED AS ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY POLICY. WAIVER OF SUBROGATION WITH RESPECT TO THE WORKERS' COMPENSATION POLICY IN FAVOR OF THE CITY OF PLANO.

CERTIFICATE HOLDER	CANCELLATION
CITY OF PLANO 1520 AVENUE K, SUITE 370 PLANO TX 75074 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Aon Risk Services Central, Inc.

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AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

MOTOROLA, INC., a Delaware corporation

By: _____
Signature

Print Name

Title

Date

STATE OF _____ §
 §
COUNTY OF _____ §

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

Notary Public, State of _____

EXHIBIT E
PAGE 1 OF 1

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>DP</i>	11-12-09
Council Meeting Date:	11/23/09	Budget	<i>MS</i>	11-13-09
Department:	Technology Services	Legal	<i>MS</i>	11-13-09
Department Head	David Stephens	Assistant City Manager	<i>MS</i>	11-13-2009
Dept Signature:	<i>David Stephens</i>	Deputy City Manager	<i>MS</i>	11/16
		City Manager	<i>MS</i>	11/16/09
Agenda Coordinator (include phone #):		Amy Powell X7342		

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A SUPPORT AND MAINTENANCE AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND BIO-KEY INTERNATIONAL, INC., THE SOLE SOURCE PROVIDER OF BIO-KEY SOFTWARE APPLICATIONS, IN AN AMOUNT NOT TO EXCEED \$57,544.00; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	2009-10, 2010-11, 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	823,633	0	823,633
Encumbered/Expended Amount		0	0	0	0
This Item		0	-57,544	0	-57,544
BALANCE		0	766,089	0	766,089

FUND(S): **TECHNOLOGY SERVICES FUND (66.696)**

COMMENTS: Funds for maintenance agreements and support are included in the 2009-10 Public Safety Support budget. This item is for a three (3) year maintenance and support agreement with Bio-key, subject to funding and budget appropriations in future years. The remaining balance will be used throughout the year for other Public Safety Support maintenance agreements.

STRATEGIC PLAN GOAL: This item relates to the City's Goal of "Financially Strong City with Service Excellence" and "Safe Large City".

SUMMARY OF ITEM

Technology Services recommends Council approve software support services with Bio-key International for three (3) years for a sum of \$57,544.00 for the first year and the fee in subsequent years will be the fee in effect during previous year plus an increase, if any, not to exceed 10 percent (10%) subject to the availability and appropriation of funds after the first year. Maintenance and support for the Bio-key applications are only available from one source, Bio-key International and therefore is exempt from competitive bid as provided for in Section 252.022(a)(7) of the Texas Local Government Code.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Staff memo and Resolution	Other Departments, Boards, Commissions or Agencies

MEMORANDUM

Date: November 10, 2009

To: David Stephens, Director of Technology Services

From: Earl Atencio, Public Safety Support Manager

Subject: BIO-key International, Inc. Support and Maintenance

Council approval is requested to purchase the annual software maintenance support for BIO-key International, Inc. PacketCluster suite of mobile software products and FireRMS suite of software products. The PacketCluster suite of mobile software products is a wireless query and messaging solution that provides law enforcement officers in the field with direct access to motor vehicle and warrant information within seconds. The FireRMS suite of software products is an enterprise-class, NFIS 5.0 compliant Fire Records Management System (FRMS). These software packages are part of the comprehensive public safety technology improvement project. BIO-key International, Inc. is the sole source provider for this maintenance and support.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A SUPPORT AND MAINTENANCE AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND BIO-KEY INTERNATIONAL, INC., THE SOLE SOURCE PROVIDER OF BIO-KEY SOFTWARE APPLICATIONS, IN AN AMOUNT NOT TO EXCEED \$57,544.00; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Technology Services Department of the City of Plano utilizes a software application developed by BIO-key International, Inc.; and

WHEREAS, the maintenance and support for the BIO-key software applications is only available from one source, BIO-key International, Inc., and, therefore, is exempt from competitive bid as provided for in Section 252.022.(a)(7) of the Texas Local Government Code; and

WHEREAS, the City Council has been presented a proposed support and maintenance agreement between the City of Plano and BIO-key International, Inc., a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

Section I. The City Council hereby finds and determines that BIO-key International, Inc. is the sole source provider for the BIO-key software applications and, thus, the purchase of such is exempt from competitive bid as provided for in V.T.C.A., Local Government Code, Section 252.022(a)(7).

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

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

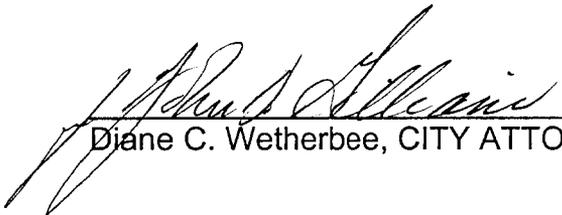
DULY PASSED AND APPROVED this 23rd day of November, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

**CONTRACT BY AND BETWEEN
CITY OF PLANO, TEXAS AND
BIO-KEY INTERNATIONAL, INC.**

THIS CONTRACT is made and entered into by and between **BIO-KEY INTERNATIONAL, INC.**, a _____ corporation, whose address is 300 Nickerson Road, Marlborough, MA., hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Plano City Council and subsequent execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

The parties agree that Contractor shall perform such services as are further described in the proposal attached hereto and incorporated herein as Exhibit "A". The parties understand and agree that deviations or modifications in the scope of services may be authorized from time to time by the City, but said authorization must be made in writing. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Proposal of Contractor for maintenance and support of BIO-key software applications (**Exhibit "A"**);
- (b) Affidavit of No Prohibited Interest (**Exhibit "B"**).

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

**II.
TERM OF CONTRACT**

The initial term of this Contract shall be a period of twelve (12) months commencing upon the effective date hereof.

**III.
WARRANTY**

Contractor warrants and covenants to City that all goods and services provided by Contractor, Contractor's subcontractors, and agents under the Agreement shall be free of defects and produced and performed in a skillful and workmanlike manner and shall comply with the specifications for said goods and services as set forth in this Agreement and the Proposal attached hereto and incorporated herein as **Exhibit "A"**. Contractor warrants that the goods and services provided to City under this Agreement shall be free from defects in material and workmanship, for a period of one (1) year commencing on the date that City issues final written acceptance of the project.

**IV.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **FIFTY-SEVEN THOUSAND FIVE HUNDRED FORTY-THREE AND 60/100 DOLLARS (\$57,543.60)**.

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

**V.
PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC**

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws. The safety precautions actually taken and the adequacy thereof shall be the sole responsibility of the Contractor. Contractor shall indemnify City for any and all losses arising out of or related to a breach of this duty by Contractor pursuant to paragraph **VII. INDEMNIFICATION** and paragraph **VIII. COMPLIANCE WITH APPLICABLE LAWS** set forth herein.

**VI.
LOSSES FROM NATURAL CAUSES**

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

**VII.
INDEMNIFICATION**

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

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

VIII.
COMPLIANCE WITH APPLICABLE LAWS

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

IX.
VENUE

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

X.
ASSIGNMENT AND SUBLETTING

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract shall not be assigned or sublet without the prior written consent of City, and that no part or feature of the work will be sublet to anyone objectionable to City. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract.

XI.
INDEPENDENT CONTRACTOR

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

**XII.
HINDRANCES AND DELAYS**

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

**XIII.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**XIV.
SEVERABILITY**

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

**XV.
TERMINATION**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this contract, in whole or in part by giving at least thirty (30) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the date such notice is received.

**XVI.
ENTIRE AGREEMENT**

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

**XVII.
CONTRACT INTERPRETATION**

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

**XVIII.
SUCCESSORS AND ASSIGNS**

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

**XIX.
HEADINGS**

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

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

BIO-KEY INTERNATIONAL, INC.

Date: _____

By: _____
Name: _____
Title: _____

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 _____, 20__ by _____, _____ of **BIO-KEY INTERNATIONAL, INC.**, a _____, 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 _____, 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, State of Texas

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**INSTRUCTIONS FOR COMPLETING BIO-KEY INTERNATIONAL, INC.
SUPPORT AND MAINTENANCE AGREEMENT**

This Agreement should be used for SUPPORT AND MAINTENANCE only and must be completed prior to delivering SUPPORT AND MAINTENANCE to any Customer.

The file is partially protected so information can be filled in electronically in the appropriate sections provided and forwarded electronically or by hard copy to participant.

Instructions:

1. If filling out manually, go to number 2. If filling out electronically: fill in all information requested in the Agreement below. All required information may be electronically filled in by selecting the gray shaded areas and typing in the applicable information. If desired, delete this instruction sheet before forwarding Agreement to Company.
2. Upon completion as in 1, above, or if filling out manually, **print two originals of the Agreement for signatures to be distributed as listed in number 5, below.**
3. Obtain Customer's signatures. Customer should sign both originals and forward to BIO-key for countersignature, via fax first, then mail to the address below. Additionally, the Customer should include the name of their BIO-key contact on any correspondence with BIO-key.
4. Obtain BIO-key countersignatures. This Agreement shall be signed by Contract Manager or the CFO on behalf of BIO-key.
5. Fully executed Agreements will be distributed as follows:

Original #1	BIO-key International, Inc. 300 Nickerson Road Marlborough, MA 01752 Attn: Karen Hicks, Director, Contracts Tel: 508-460-4012 Fax: 508-460-4098
-------------	--

Original #2	Customer
-------------	----------

Copy	BIO-key Representative
------	------------------------

**PLEASE CONTACT BIO-KEY CONTRACT ADMINISTRATION DEPARTMENT (Karen.hicks@bio-key.com)
WITH ANY QUESTIONS REGARDING THIS PROCEDURE.**

EXHIBIT A
PAGE 1 OF 7
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BIO-key International, Inc.

SUPPORT AND MAINTENANCE AGREEMENT

This agreement ("Agreement") is made by and between BIO-key International, Inc. ("BIO-key") and the City of Plano, TX, whose principal place of business is located at 1520 Avenue K, P.O. Box 860358, Plano, TX 75086-0358, ("Customer") and is dated as of the Effective Date, as defined herein.

Recitals.

A. Customer has licensed and/or purchased the Product(s) (as defined below) from BIO-key under separate agreement (the "Purchase Agreement") and desires to obtain support and maintenance services for such Products.

B. BIO-key desires to provide such support and maintenance services for such Product(s) upon the terms and conditions set forth in this agreement.

Therefore, for good and valuable consideration BIO-key and Customer agree as follows:

Section 1. Definitions.

1.1 "Error" means any failure of a Product(s) to conform in any material respects to its published and/or provided documentation.

1.2 "Product(s)" means the BIO-key Product(s) listed on Exhibit A. The Product(s) includes any and all Enhancement Releases, Maintenance Releases or Patches delivered to Customer under this Agreement or the Purchase Agreement. Items not supplied by BIO-key do not qualify as Products hereunder.

1.3 "Enhancement Release" means a new release of a Product with new features and/or functionality or improved performance for which a separate new version upgrade fee is not charged.

1.4 "Maintenance Release" means a new release of a Product that incorporates Patches and/or other maintenance changes.

1.5 "Patch" means an interim piece of code released to supplement a Product that typically fixes High Priority Errors between Maintenance Releases.

1.6 "Workaround" typically means a set of procedures that a Customer follows to circumvent or mitigate the impact of an Error. The Error still exists. A Workaround may be provided at BIO-key's discretion in lieu of a Patch for a specific Error.

1.7 "Other Defined Terms." Except as expressly defined in this Agreement, capitalized terms shall have the meaning ascribed to them in the Purchase Agreement.

Section 2. Scope of Support And Maintenance Services.

2.1 "Services Provided." During the term of this Agreement, for so long as Customer subscribes to the applicable BIO-key Product maintenance program and timely pays therefore, and for so long as BIO-key makes support and maintenance services for the Product(s) generally available to its customers, BIO-key shall support the Product(s) by providing the services described in the following paragraphs of this Section 2. Support and maintenance services are subject to change at BIO-key's option provided that support and maintenance terms are so modified for all similarly situated Product maintenance subscribers. BIO-key has no obligation to correct or support Errors arising from Customer's misuse, improper use, alteration (other than by a BIO-key representative), or damage to the Product(s) including, without limitation, by electrical power failures or surges, or Customer's combining or merging the Product(s) with any hardware or software not identified as compatible by BIO-key, or any other Errors not resulting from normal wear and tear.

2.2 "Technical Support." BIO-key will provide telephone technical support regarding use of the Product(s) and response to Errors to Customer's Support Contacts designated under Section 2.7.2. BIO-key technical support representatives will be available by telephone Monday through Friday from 8:00 a.m. to 8:00 p.m. ET. During off-hours, in connection with High Priority situations as described in Section 2.3 below, a BIO-key technical support representative will endeavor to return Customer's call within four (4) hours.

2.3 "Response Priorities." BIO-key will assign all Customer requests for Error support one of two response priorities that will dictate the timing of the response as follows:

"High Priority." A major feature/function of the Product(s) is not working or the system integrity is at risk. BIO-key will attempt to provide a Workaround or Patch within three (3) business days of Customer's report of the problem. If the Workaround or Patch cannot be provided within the three (3) business days, BIO-key will dedicate resources to the problem resolution and will inform Customer on a periodic basis of the resolution status.

"Low Priority." The Customer has a problem that is not seriously impacting the Customer's workflow, i.e., any problem that does not meet the above standard for "High Priority". BIO-key will assess, in good faith, the timing for the provision of a Workaround or Patch for such problem, whether in a future Maintenance Release, Enhancement Release or earlier. When such determination is made, BIO-key will notify Customer of the results of the status evaluation, which could include delaying repair of the error until a future planned release.

2.4 "Subsequent Release(s)." During the term of this Agreement, BIO-key will send Enhancement Releases and Maintenance Releases to Customer when made generally commercially available by BIO-key to its customers. Each Enhancement Release, Maintenance Release and Patch delivered by BIO-key under this Agreement is subject to the provisions of the Purchase Agreement and shall be automatically deemed to be covered by all applicable Product license terms.

2.5 "Preventative Maintenance." BIO-key may, at its sole option, schedule technical service telephone calls or visits for the purpose of Product inspection or preventative maintenance.

2.6 "Customer Notification." BIO-key's obligations to provide the assistance specified in this Section 2 are conditioned on Customer's prompt notification to BIO-key of the problem that provides BIO-key with information sufficient to identify the problem. Such information may include, but not be limited to, error diagnostic messages, diagnostic memory dumps, operator console logs, data file dumps, application program listings, and a written explanation of the problem.

2.7 "Customer Cooperation and Support Contacts."

2.7.1 "Customer Cooperation." Customer acknowledges that BIO-key may not be able to resolve an Error if Customer does not cooperate with and assist BIO-key in resolving the Error.

2.7.2 "Support Contacts." BIO-key shall only be required to receive communication from a Customer designated Support contact. Customer will designate three (3) authorized Support Contacts and agrees that each Support Contact will be knowledgeable in all aspects of the Customer's operating environment in which the Product(s) are being used. Customer will provide all requested information about each of its Support Contacts by completing an Authorized Support Contacts form, but may change designation of the contacts in writing.

EXHIBIT A
PAGE 2 OF 7

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Section 3. Support And Maintenance Fees.

3.1 Required Coverage. All Product(s) to be covered by this Agreement on the effective date of this Agreement must be the then current Product(s) furnished by BIO-key. Thereafter, Customer must remain within at least one new Release of the Product.

3.2 Annual Support and Maintenance Fee. Customer shall pay an annual support and maintenance Fee at BIO-key's rate in effect at the beginning of this Agreement. The annual support and maintenance Fee in effect as of the effective date of this Agreement is set forth in Exhibit A hereto. Payment shall be due within thirty (30) days of receipt of invoice by Customer. If Customer fails to pay such invoice within thirty (30) days, or the support and maintenance agreement lapses for any other reason, a reinstatement fee may be charged in addition to the annual support and maintenance fee. If this Agreement terminates or Customer discontinues maintenance for any reason, and then subsequently desires (with BIO-key's permission) to purchase or reactivate maintenance in the future, such repurchase or reactivation will be at the prevailing charges at the time of repurchase or reactivation. However, in the event that the Product has been updated or replaced by BIO-key in the interim period, BIO-key will have to install the new/updated Product for which the Customer could incur an installation charge and a license charge.

3.3 Additional Support and Maintenance Fees. If after the effective date of this Agreement, Customer either purchases additional Products or Product licenses from BIO-key, Customer shall pay the applicable additional support and maintenance fee, pro-rated in order to reflect how much is then remaining in the current one year term.

Section 4. Disclaimer Of Warranties. THIS IS A SERVICES AGREEMENT. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTY ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

Section 5. Term and Termination.

5.1 Term. The effective date of this Agreement shall be the first date of the Coverage Period as referenced on Exhibit A. If Customer does not execute the Agreement before such date, BIO-key shall have the right to inspect the Product(s) at Customer's expense to insure it is in good operating order, or impose other reasonable conditions, before re-offering this Agreement. The term of this

Agreement shall be one year. No Agreement will become effective until countersigned by BIO-key.

5.2 Renewal. This Agreement shall automatically renew for successive one-year terms commencing on the anniversary date of the effective date, unless either party provides the other with thirty (30) days prior written notice of its decision to not renew this Agreement. All annual support and maintenance fees are subject to change at BIO-key's option.

5.3 Termination. This Agreement will terminate: 1) upon the expiration of the then current term of this Agreement and timely receipt by one party of the other's decision to not renew this Agreement; 2) at BIO-key's election, upon failure of Customer to pay support and maintenance fees when due; or 3) upon thirty (30) days prior written notice if either party has materially breached the provisions of this Agreement and has not cured such breach within such notice period. Termination of this Agreement for any reason shall not relieve Customer from any remaining obligations under this Agreement, including but not limited to, the payment of any amounts due nor shall it affect any additional remedies that BIO-key may have at law or in equity. Upon termination of this Agreement, BIO-key may, at its option, declare the entire amount of the unpaid balance due under this Agreement to be immediately due and payable.

Section 6. Miscellaneous.

6.1 Miscellaneous Provisions. Dispute resolution and other provisions are contained in Schedule 1 to this Agreement.

6.2 Schedules And Exhibits. Each of the exhibits and schedules listed below shall be incorporated into and shall for all purposes be deemed a part of this Agreement:

- Exhibit A - Support and Maintenance Fee Schedule
- Schedule 1 - Dispute Resolution and Other Provisions

Section 7. Entire Agreement; Amendments. This Agreement, along with its Exhibits and Schedules, constitutes and embodies the entire Agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written, electronic or oral communications, agreements or understandings between the parties with respect thereto. This Agreement may not be modified or amended except by a written instrument executed by the parties.

IN WITNESS WHEREOF, the parties herelo each acting with proper authority have executed this Agreement as indicated below.

BIO-KEY INTERNATIONAL, INC.	CUSTOMER: City of Plano
300 Nickerson Road	1520 Avenue K, P.O. Box 860358
Marlborough, MA 01752	Plano, TX 75086-0358

By:	By:
Name: (Print) Karen Hicks	Name: (Print)
Title: Director, Contracts	Title:
Date:	Date:

EXHIBIT A
PAGE 3 OF 7
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SUPPORT AND MAINTENANCE AGREEMENT

EXHIBIT A
SUPPORT AND MAINTENANCE FEE SCHEDULE

Coverage Period: December 1, 2009 – November 30, 2010

PRODUCT	QUANTITY	UNIT LIST PRICE AT TIME OF PRODUCT PURCHASE	MAINTENANCE UNIT PRICE	MAINTENANCE EXTENDED PRICE
InfoServer Software - 100	1	87,000.00	15,660.00	\$15,660.00
State/NCIC Interface >=100	1	14,700.00	2,646.00	\$2,646.00
SNA Server SW TLETS Connection	1	1,666.67	300.00	\$ 300.00
CAD/RMS Multiple API	1	20,000.00	3,600.00	\$3,600.00
MobileCop 200 to 599	160	595.00	107.10	\$17,136.00
MobileRescue 1 to 49	32	995.00	179.10	\$5,731.20
FireRMS Mobile Interface for PacketCluster	32	525.00	94.50	\$3,024.00
Client Mag Stripe Reader License	160	50.00	9.00	\$1,440.00
EPM Command Server	1	8,000.00	1,440.00	\$1,440.00
EPM Endpoint Policy Management	192	190.00	34.20	\$6,566.40
TOTAL				\$57,543.60

Customer shall pay the Support and Maintenance Fees to BIO-key within thirty (30) days of execution of this Agreement.

Support and Maintenance Fees are subject to change annually.

The above fees do not include any applicable taxes levied or imposed now or hereafter by any governmental authority on the services to be provided hereunder or any component thereof (such as the Releases), which taxes shall be paid by Customer.

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SUPPORT AND MAINTENANCE AGREEMENT

SCHEDULE 1 DISPUTE RESOLUTION AND OTHER PROVISIONS

1. Dispute Resolution.

1.1 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of Texas, without regard to conflicts of laws principles.

1.2 Mediation. In the event of any controversy or claim arising out of or relating to this Agreement or the breach or interpretation thereof, the parties shall, upon five days notice from either one to the other, submit themselves and the subject-matter of the dispute to mediation before an independent mediator to be appointed by the American Arbitration Association. Costs of mediation shall be borne equally between the parties.

1.3 Conduct. Each party shall ensure that any mediation or litigation is conducted as speedily as is reasonably possible, and that all and any information disclosed during or in connection with the mediation or litigation is treated by each party with the strictest confidence.

1.4 Interim and Permanent Relief. Upon the application of either party to this Agreement, and whether or not a mediation provision has yet been initiated, all courts having jurisdiction over one or more of the parties are authorized to: (i) issue and enforce in any lawful manner such temporary restraining orders, preliminary injunctions and other interim measures of relief as may be necessary to prevent harm to a party's interests or as otherwise may be appropriate pending the conclusion of mediation proceedings pursuant to this Agreement; and (ii) enter and enforce in any lawful manner such judgments for permanent equitable relief as may be necessary to prevent harm to a party's interests or as otherwise may be appropriate following the issuance of awards pursuant to this Agreement.

1.5 Venue. Any mediation or litigation under or in connection with this Agreement shall take place in Collin County, Texas at a time and location to be determined by the mediator or arbitrator, as the case may be.

1.6 Legal Expenses. If any proceeding is brought by either party to enforce or interpret any term or provision of this Agreement, the substantially prevailing party in such proceeding shall be entitled to recover, in addition to all other relief arising out of this Agreement, such party's reasonable attorneys' and other experts' (including without limitation accountants) fees and expenses.

2. Excused Performance; Force Majeure. If the performance of this Agreement is adversely restricted by reason of any circumstances beyond the reasonable control and without the fault or negligence of the party affected, then the party affected, upon giving prompt written notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such restriction; provided, however, that the party so affected shall use all commercially reasonable efforts to avoid or remove such causes of non-performance and both parties shall proceed whenever such causes are removed or cease.

3. Exclusion of Certain Claims. IN NO EVENT SHALL BIO-KEY BE LIABLE (WHETHER IN TORT OR CONTRACT, UNDER STATUTE OR OTHERWISE) FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION AND THE LIKE, ARISING OUT OF ITS PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT OR THE USE, INABILITY TO USE OR RESULTS OF USE OF THE PRODUCTS, EVEN IF BIO-KEY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4. Limitation of Liability. BIO-key's liability (whether in tort or contract, under statute or otherwise) with regard to this Agreement or any Product(s) or other items furnished in connection with this

Agreement shall in no event exceed the Support And Maintenance Fees paid by Customer to BIO-key under this Agreement.

5. Equitable Relief. Each of Customer and BIO-key acknowledges that damages will be an inadequate remedy if the other violates the terms of this Agreement, or otherwise fails to perform its obligations hereunder. Accordingly, subject to Section 1 of this Schedule, each of them shall have the right, in addition to any other rights each of them may have, to obtain in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in this Agreement.

6. Waiver. No waiver of or with respect to any provision of this Agreement, nor consent by a party to the breach of or departure from any provision of this Agreement, shall in any event be binding on or effective against such party unless it be in writing and signed by such party, and then such waiver shall be effective only in the specific instance and for the purpose for which given.

7. Captions and Headings. The captions and headings are inserted in this Agreement for convenience only, and shall not be deemed to limit or describe the scope or intent of any provision of this Agreement.

8. Severability; Invalidity. If any provision of this Agreement is held to be invalid, such invalidity shall not render invalid the remainder of this Agreement or the remainder of which such invalid provision is a part. If any provision of this Agreement is so broad as to be held unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

9. Assignment. Customer shall not assign any of its rights under this Agreement without the prior written consent of BIO-key. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

10. Notices. Any notice or other communication under this Agreement given by either party to the other party shall be deemed to be properly given if given in writing and delivered (i) by facsimile transmission (receipt confirmed) or (ii) mailed (return receipt requested), properly addressed and stamped with the required postage, or (iii) sent by an overnight express courier, to the recipient at the address identified in its signature block to this Agreement or, if no such address is provided, as specified in writing by one party to the other. Either party may from time to time change its address by giving the other party notice of the change in accordance with this Section.

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EXHIBIT A
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BIO-key International
 300 Nickerson Road
 Marlborough, MA 01752

NOV - 2 2009
 ACCOUNTING DEPT.

INVOICE

Invoice No MA0002490
 Date 10/31/2009
 Order No MA0002686
 Shipper ID MA0002624
 Order Type Maint - Annubi
 Customer ID LW-PLAN01

SHIP TO:	BILL TO:
Epn Plano City of Plano 1520 Avenue K P.O. Box 680358 Plano, TX 75086-0358	Accounts Payable City of Plano 1520 Avenue K P.O. Box 680358 Plano, TX 75086-0358

Notes Maintenance for the period 12/1/09-11/30/10

Mark Fee: City of Plano
 Plano, TX 75086-0358

PAGE 1

F.O.B. POINT	SHIP VIA	ORDERED BY	CUSTOMER P.O. NO.
SHIPPING POINT	Not applicable		12/1/09-11/30/10
ORDER DATE	TERMS	SALES PERSON	SITE
10/15/2009	Net 30 days		42 BIO-key

PART NUMBER	QTY ORDERED	UNITS	QTY SHIPPED	QTY BD	PRICE	DISC %	EXT. PRICE
MA-1000060 Maintenance InfoServer Software - 100	1	EACH	1	0	15,660.00	0.00	15,660.00
MA-1000140 Maintenance State/NCIC Interface >=100	1	EACH	1	0	2,645.00	0.00	2,645.00
MA-1000197 Maintenance SNA Server SW TLETS Connection	1	EACH	1	0	300.00	0.00	300.00
MA-1000180 Maintenance CAD/RMS Multiple API	1	EACH	1	0	3,600.00	0.00	3,600.00
MA-1000020 Maintenance MobileCop 200 to 599	160	EACH	160	0	107.10	0.00	17,136.00
MA-1000600 Maintenance MobileRescue 1 to 49	32	EACH	32	0	179.10	0.00	5,731.20
MA-1000490 Maintenance FireRMS Mobile Interface for PacketCluster	32	EACH	32	0	94.50	0.00	3,024.00
MA-1500005 Maintenance Client Mag Single reader licenses	160	EACH	160	0	9.00	0.00	1,440.00
MA-1500015 Maintenance EPM Command Server	1	EACH	1	0	1,440.00	0.00	1,440.00

Please make checks Payable to: BIO-key International

All correspondence should be directed to:
 BIO-key International Inc.
 Dept. CH 19250
 Palatine, IL 60055-8250

Please direct billing inquiries to Charlene Lopes 508-466-4059

Continued

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Exhibit A
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BIO-key International
 300 Nickerson Road
 Marlborough, MA 01752

RECEIVED
 NOV - 2 2009
 ACCOUNTS DEPT

INVOICE

Invoice No: MA0002490
 Date: 10/31/2009
 Order No: MA0002686
 Shipper ID: MA0002624
 Order Type: Maint. - Annual
 Customer ID: LW-PLAN001

SHIP TO:	BILL TO:
Earl Atencio City of Plano 1520 Avenue K P.O. Box 860358 Plano, TX 75086-0358	Accounts Payable City of Plano 1520 Avenue K P.O. Box 860358 Plano, TX 75086-0358

Notes: Maintenance for the period 12/1/09-11/30/10

Mark For: City of Plano
 Plano, TX 75086-0358

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F.O.B. POINT	SHIP VIA	ORDERED BY	CUSTOMER P.O. NO.				
SHIPPING POINT	Not applicable		12/1/09-11/30/10				
ORDER DATE	TERMS	SALES PERSON	SITE				
10/15/2009	Net 30 days		42 BIO-key				
PART NUMBER	QTY ORDERED	UNITS	QTY SHIPPED	QTY BD	PRICE	DISC %	EXT. PRICE

MA-1500010	192	EACH	192	0	34.20	0.00	6,566.40
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Maintenance EPM Endpoint Policy Management

Earl Atencio

Please make checks Payable to: BIO-key International All correspondence should be directed to BIO-key International, Inc Dept. CH 18250 Palatine, IL 60055-0250 Please direct billing inquiries to Chantelle Lopes: 318-460-4088	Sales Total	57,543.60
	Shipping & Handling	0.00
	Misc. Charges	0.00
	Tax Total	0.00
	Less Paid Amount	0.00
	TOTAL	57,543.60

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Exhibit A
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CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>DP</i>	11-11-09
Council Meeting Date: 11/23/09		Budget	<i>C.S.</i>	11-11-09
Department:	Public Works & Engineering	Legal <i>JD</i>	<i>DeW</i>	11/11/09
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>RL</i>	11-13-09
		City Manager	<i>M. Gier</i>	11/19/09
Agenda Coordinator (include phone #): Irene Pegues (7198) <i>IP</i>				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Local Project Advance Funding Agreement by and between the City of Plano and Texas Department of Transportation for Citywide Off-peak Signal Retiming; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	116,863	0	116,863
BALANCE	0	116,863	0	116,863
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: This item approves a grant with TxDOT for the Computerized Signal System project. If this request is approved, TxDOT will reimburse the City, \$116,863 for Citywide Off-peak Signal Retiming.				
STRATEGIC PLAN GOAL: Signal retiming grants relate to the City's Goal of Safe, Efficient Travel				
SUMMARY OF ITEM				
The Texas Department of Transportation recently issued the Surface Transportation Program – Metropolitan Mobility (STP-MM) Call for Projects. Eligible projects include traffic signal retiming projects that reduce stops, delays, and fuel consumption on a roadway system. This project will be a Citywide Off-peak Signal Retiming effort. The STP-MM program requires a 40% local funding match with the remaining 60% of the funding coming from the Texas Department of Transportation Grant. All of the City of Plano's match (\$76,800) will be through the City's staff time expended on this retiming project, except for \$1,505.83 which is the State's direct cost for review and processing. Plano will be reimbursed approximately \$116,862.83 for this project. Funding is available in the 2009-2010 Street Community Investment Program.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
		N/A		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A LOCAL PROJECT ADVANCE FUNDING AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND TEXAS DEPARTMENT OF TRANSPORTATION FOR CITYWIDE OFF-PEAK SIGNAL RETIMING; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the City Council has been presented a proposed Local Project Advance Funding Agreement by and between the City of Plano, Texas, and Texas Department of Transportation providing terms and conditions for Citywide Off-peak Signal Retiming, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

DULY PASSED AND APPROVED the 23rd day of November, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

District # 18 -- Dallas
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 CFDA #20.205

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
 NON-CONSTRUCTION ADVANCE FUNDING AGREEMENT
 for a
 SURFACE TRANSPORTATION PROGRAM METROPOLITAN MOBILITY
 "OFF SYSTEM"**

THIS Local Project Advance Funding Agreement for Non-Construction (LPAFA-NonCST) is made by and between the State of Texas, acting by and through the Texas Department of Transportation (State), and **City of Plano** (Local Government).

BACKGROUND

A Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA-NonCST.

Federal law establishes federally funded programs for transportation improvements to implement its public purposes, including the **Surface Transportation Program Metropolitan Mobility**. Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds. The Texas Transportation Commission passed Minute Order **111552**, which provides for development of and funding for the Project identified in this LPAFA-NonCST. The Governing Body of the Local Government has approved entering into this LPAFA-NonCST by resolution or ordinance dated _____, which is attached and is made part of the LPAFA-NonCST as Attachment A.

THEREFORE, in consideration of the mutual promises contained in this LPAFA-NonCST, the parties agree to the following.

LPAFA-NONCST

1. Period of the Agreement

The period of this LPAFA-NonCST is as stated in the Master Agreement, without exception.

2. Scope of Work

The scope of work is the Project as detailed in Attachment B, which is attached and made part of this LPAFA-NonCST.

3. Local Project Sources and Uses of Funds

- a. The total estimated cost of the Project is shown in Attachment C, which is attached and made part of this LPAFA-NonCST. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before the issuance of a formal Letter of Authority by the Federal Highway

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- Administration. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal Letter of Authority is formally issued.
- b. The State will be responsible for securing the Federal and State share of the funding required for the Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis. The Local Government will be responsible for all non-federal and non-State participation costs associated with the Project, including any overruns in excess of the approved local Project budget. If the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification. The State will not pay interest on any funds provided by the Local Government.
 - c. The Local Government shall request payment by submitting the original of an itemized invoice in a form acceptable to the State. The Local Government may submit an invoice no more frequently than monthly and no later than ninety days after incurring a cost. Each invoice shall itemize charges and shall attach documentation showing the name, hourly rate, and number of hours worked for all labor charges, the basis for allocation of any indirect costs, and copies of invoices for any direct costs over \$1,000.
 - d. Whenever funds are paid by the Local Government to the State under this LPAFA-NonCST, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. These funds may only be applied to the Project. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal government will be promptly paid by the owing party. After final Project accounting, if excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.
 - e. If the Project has been approved for a fixed price or incremental payments under 43 TAC §15.52, Attachment C will clearly state the amount of the fixed price or the incremental payment schedule. If the Local government is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, Attachment C will reflect those adjustments.
 - f. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the LPAFA-NonCST or indirectly through a subcontract under the LPAFA-NonCST. Acceptance of funds directly under the LPAFA-NonCST or indirectly through a subcontract under this LPAFA-NonCST acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
 - g. In accordance with Section 902 of the American Recovery and Reinvestment Act of 2009 (ARRA), should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:
 - a. examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and

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- b. interview any officer or employee of the contractor or any of its subcontractors, or any State or local agency administering the contract regarding such contracts.

Nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of the Comptroller General.

In accordance with Section 1515(a) of the ARRA, with respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- a. to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to and involve transactions relating to the contract, subcontract, grant, or subgrant; and
- b. to interview any officer or employee of the contractor, grantee or subgrantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of an inspector general.

The ARRA requires that the Contractor report monthly employment information for its firm as well as that of all of its subcontractors. The Contractor, similarly, shall include this reporting requirement in all of its subcontracts. Failing to include the requirement in agreements with subcontractors can serve as grounds for contract termination.

Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

In order to meet any other FHWA and ARRA reporting requirements, the LG shall provide to the State all information requested by the State, including data or information in possession of contractors and subcontractors for completing other necessary reporting forms, and the information shall be submitted in the manner required and according to all due dates as set by the State.

Furthermore, the ARRA mandates that the U.S. Comptroller General's Office shall have authority to examine the records of the contractor, subcontractor, or local agency relating to the project at any time.

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4. Notices

All notices to either party by the other under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

Local Government:	State:
<u>City of Plano</u> <u>Attn: Transportation Engineering Manager</u> <u>PO Box 860358</u> <u>Plano, TX 75086-0358</u>	<u>Texas Department of Transportation</u> <u>Attn: Director of Operations</u> <u>PO Box 133067</u> <u>Dallas, TX 75313-3067</u>

All notices shall be deemed given on the date delivered or deposited in the mail. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and the request shall be carried out by the other party.

5. Termination

Termination of this LPAFA-NonCST shall be under the conditions as stated in the Master Agreement, without exception.

6. Amendments

Amendments to this LPAFA-NonCST shall be made as described in the Master Agreement, without exception.

7. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed project time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider.

8. Incorporation of Master Agreement Provisions

This LPAFA Non-CST incorporates all of the governing provisions of the Master Funding Agreement in effect on the date of final execution of this LPAFA Non-CST, unless an exception has been made in this agreement.

9. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the [Contractor, Local Government, Engineer, or whatever] certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

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CFDA #20.205

10. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this LPAFA-NonCST on behalf of the entity represented.

THEREFORE, the parties have executed this LPAFA-NonCST in duplicate originals.

THE LOCAL GOVERNMENT – CITY OF PLANO

Name

Printed Name and Title

Date

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

Janice Mullenix,
Director of Contract Services
Texas Department of Transportation

Date

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District # 18 -- Dallas
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CFDA #20.205

ATTACHMENT A

Resolution or Ordinance

**ATTACHMENT B
SCOPE OF WORK**

1. Conduct off-peak turning movement counts at approximately 210 signal-controlled intersections in Plano, Texas
2. Conduct existing travel time studies for each of the seventeen arterial streets in the Plano roadway system
3. Construct city-wide Synchro™ model to reflect the Plano signal system
4. Using the off-peak turning movement counts, perform analysis of existing signal operation (using the model developed in task 3)
5. Estimate existing operating costs and MOEs (stops, delay, fuel consumption) using the Synchro model
6. Perform optimization of signal operation
7. Implement optimized signal operation in the City of Plano 2070 controller network
8. Evaluate quality of new signal operation by observing the operation of signals at critical locations and identifying opportunities for further reducing delay and congestion
9. Perform quality-control of newly implemented operation by making additional minor adjustments to the new operation where needed
10. Conduct travel time studies for newly optimized signal operation for each of the streets studied in task 2.
11. Estimate optimized operating costs and MOEs (stops, delay, and fuel consumption)
12. Prepare a report documenting benefits of optimized operation compared with existing and summarizing findings based on MOEs identified in task 11.

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ATTACHMENT C PROJECT BUDGET

The following are estimated Project costs and their allocation between the parties.

	Total Estimate Cost	Federal Participation	State Participation	Local Participation
	100%	60.82%	0%	39.18%
Signal Timing	\$192,157.00	\$116,862.83		\$75,294.17
SUBTOTAL	\$192,157.00	\$116,862.83		\$75,294.17
State's direct costs for review and processing (Estimated 2% of Subtotal)	\$3,843.00	\$2337.17		\$1505.83
TOTAL	\$196,000.00	\$119,200.00		\$76,800.00
<i>Payment due prior to notice to proceed</i>				\$1505.83
<i>State reimbursements to Local Government for the project</i>		\$116,862.83		

Local Government's Participation = \$76,800.00

This is an estimate only. Final participation amounts, including State direct costs, will be based on actual charges to the Project.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>KCP</i>	11-13-09
Council Meeting Date:	11/23/09	Budget	<i>KM</i>	11-13-09
Department:	Finance	Legal	<i>gms</i>	11-13-09
Department Head	Denise Tacke	Assistant City Manager	<i>DT</i>	11-16-09
Dept Signature:	<i>Denise Tacke</i>	Deputy City Manager	<i>[Signature]</i>	11/17/09
		City Manager	<i>JRM</i>	11/16/09
Agenda Coordinator (include phone #): Katherine Crumbley - 7479 <i>ka</i>				
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER PUBLIC HEARING				
CAPTION				
AN ORDINANCE OF THE CITY OF PLANO, TEXAS, DESIGNATING A CERTAIN AREA WITHIN THE CITY OF PLANO AS REINVESTMENT ZONE NO. 120 FOR A TAX ABATEMENT CONSISTING OF A 20.54 ACRE TRACT OF LAND LOCATED 500 FEET NORTH OF TENNYSON PARKWAY AND EAST OF CORPORATE DRIVE, IN THE CITY OF PLANO, TEXAS ESTABLISHING THE BOUNDARIES OF SUCH ZONE; ORDAINING OTHER MATTERS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: Notice of public hearing published on November 15, 2009 to create reinvestment zone 120. The real property improvements amount is \$10,000,000 while the business personal property amount to be maintained is \$5,000,000.				
SUMMARY OF ITEM				
This is related to Pizza Hut of America, Inc., a Delaware Corporation, request for tax abatement on reinvestment zone 120 and creation of the zone.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Tax Abatement Agreement				

INTEROFFICE MEMORANDUM

TO: Thomas H. Muehlenbeck
City Manager

DATE: November 13, 2009

FROM: Denise Tacke
Director of Finance

CC: Cindy Pierce
Exec. Admin. Asst.

SUBJECT: Tax Abatement for Pizza Hut of America, Inc. - Reinvestment Zone 120

Pizza Hut of America will complete construction of improvements and/or repairs to the Real Property of not less than 160,000 sq. ft. of office space. The tax abatement will be based on the following values; the real property improvements will have an approximate taxable value of not less than \$10,000,000 by 1/1/12 and the business personal property will have an approximate taxable value of not less than \$5,000,000 for a total of \$15,000,000. Reinvestment Zone 120 will consist of a 20.54.36 acre tract of land located 500 feet north of Tennyson parkway and East of Corporated Drive in the City of Plano, Texas. Pizza Hut of America agrees to retain, transfer or create 450 full time jobs by 12/31/2011

The term of this tax abatement will be 10 years beginning January 1, 2012 and ending on December 31, 2021 and shall be based on amounts equal to 50% for real property and 50% for business personal property which is a savings of \$24,430 annually for real property and \$12,215 annually for business personal property, at the current rate of .4886.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, DESIGNATING A CERTAIN AREA WITHIN THE CITY OF PLANO AS REINVESTMENT ZONE NO. 120 FOR A TAX ABATEMENT CONSISTING OF A 20.54 ACRE TRACT OF LAND LOCATED 500 FEET NORTH OF TENNYSON PARKWAY AND EAST OF CORPORATE DRIVE, IN THE CITY OF PLANO, TEXAS ESTABLISHING THE BOUNDARIES OF SUCH ZONE; ORDAINING OTHER MATTERS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano, Texas (the "City"), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a reinvestment zone for retail tax abatement, as authorized by V.T.C.A. Tax Code Chapter 312 (referred to as the "Property Redevelopment and Tax Abatement Act" or the "Act"); and

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 23rd day of November, 2009, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

WHEREAS, the City held such public hearing after giving written notice of said hearing to all taxing units overlapping the territory inside the proposed reinvestment zone; and

WHEREAS, the City at such hearing invited any interested person or his representative to appear for or against the creation of the reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory described in the notice calling such public hearing should be included in such proposed reinvestment zone, and the concept of tax abatement; and

WHEREAS, the proponents of the reinvestment zone offered evidence, both oral and documentary, in favor of all matters relating to the creation of the reinvestment zone.

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

Section I. The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct.

Section II. Definitions. For the purposes of this Ordinance, the following terms and phrases shall have the following meanings ascribed to them:

- a) Improvements - Improvements shall include, for the purpose of establishing eligibility under the Act, any activity at the location, including, but not limited to, new construction.
- b) Taxable Real Property - Taxable real property shall be as defined in the Texas Property Tax Code and shall not include personal property as defined in said code, nor shall it include land.
- c) Taxable Tangible Personal Property - Shall be defined, for purposes of this Ordinance, as tangible personal property, such as office machines and office furnishings, but shall specifically exclude inventory or supplies.
- d) Base Year - The base year for determining increased value shall be the taxable real property value assessed the year in which the agreement is executed.

Section III. The City, after conducting the above-mentioned hearing and having heard such evidence and testimony, has made the following findings and determinations based on the testimony presented to it:

- a) That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone; and
- b) That the boundaries of the reinvestment zone should be the area as described in the metes and bounds description attached hereto as Exhibit "A"; and
- c) That creation of the reinvestment zone for commercial/industrial tax abatement with boundaries as described in Exhibit "A" will result in benefits to the City and

to the land included in the zone and the improvements sought are feasible and practical; and

- d) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Act in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City"; and
- e) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in the City of Plano Revised Policy Statement for Tax Abatement.

Section IV. Pursuant to Section 312.201 of the Act, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by metes and bounds in Exhibit "A" attached hereto and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. 120, City of Plano, Texas.

Section V. The zone shall be effective as of January 1, 2012.

Section VI. To be eligible for tax abatement a retail project shall:

- a) Be located wholly within the zone as established herein.
- b) Not include property that is owned or leased by a member of the City Council of the City of Plano or by a member of the Planning and Zoning Commission.
- c) Conform to the requirements of the City's Zoning Ordinance and all other applicable laws and regulations.
- d) Have and maintain all land located within the designated zone, appraised at market value for tax purposes.

Section VII. Written tax abatement agreements with property owner(s) located within the zone shall provide the terms regarding duration of exemption and share of taxable real property (and personalty) value from taxation as approved hereunder as shown below:

- a) Duration of Exemption – ten (10) consecutive tax years beginning with and including the January 1, 2012 assessment date.
- b) Share of taxes abated - percentage of taxes on total value of appraised Personal Property and Improvements at the rate of 50% for the years 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 and 2021.

Section VIII. Any written agreements authorized under this Ordinance must include provisions for:

- a) Listing the kind, number and location of all proposed improvements of the property;
- b) Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specification and conditions of the agreements;
- c) Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; and
- d) Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement.

Section IX. If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof.

Section X. This Ordinance shall become effective from and after its date of passage.

DULY PASSED AND APPROVED this 23rd day of November, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 120
Real Property
Metes and Bounds

BEING a 20.54 acre tract of land in the Collin County School Survey, Abstract No. 150, situated in the City of Plano, Collin County, Texas, and being a portion of that tract of land described as Tract 13 in Special Warranty Deed to West Plano Land Company, L.P., as recorded in Document No. 20060920001358250, of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being more particularly described by metes and bounds as follows:

BEGINNING at a point for corner on the southeast right-of-way line of Corporate Drive (85 foot right-of-way), said point being the northernmost corner of said Tract 13 and the westernmost northwest corner of Lot 1, Block A, of Ericsson Village, as recorded in Document No. 20081202010004190, O.P.R.C.C.T., from which a 1-inch found iron rod bears North 77 degrees 58 minutes 52 seconds East, a distance of 4.94 feet;

THENCE South 38 degrees 02 minutes 02 seconds East, departing said south right-of-way line AND ALONG THE COMMON LINE BETWEEN SAID Tract 13 and said Lot 1, a distance of 384.27 feet to a 5/8-inch found iron for corner;

THENCE South 00 degrees 32 minutes 02 seconds East, continuing along said common line, a distance of 192.88 feet to a 5/8-inch found iron rod with "KHA" cap for corner;

THENCE South 37 degrees 01 minute 18 seconds East continuing along said common line, a distance of 298.16 feet to a point for corner in a pond;

THENCE South 53 degrees 00 minutes 07 seconds East, departing said common line over and across said Tract 13, a distance of 140.75 feet to a point for corner in a pond;

THENCE South 23 degrees 00 minutes 07 seconds East, continuing across said Tract 13, a distance of 616.59 feet to a point for corner in a pond;

THENCE South 41 degrees 51 minutes 32 seconds West, continuing across said Tract 13, a distance of 283.88 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALF ASSOC." (hereinafter referred to as "with cap") for corner on the east right-of-way line of said Corporate Drive;

THENCE North 48 degrees 08 minutes 28 seconds West, along said east right-of-way line, a distance of 192.00 feet to 1" found iron rod for the point of curvature of a circular curve to the right having a radius of 807.50 feet and whose chord bears North 29 degrees 48 minutes 29 seconds West, a distance of 507.95 feet;

THENCE Northwesterly, continuing along said east right-of-way line and said curve, through a central angle of 36 degrees 39 minutes 49 seconds, an arc distance of 516.72 feet to a found City of Plano monument for the point of reverse curvature of a non-tangent circular curve to the left having a radius of 69.50 feet and whose chord bears North 00 degrees 08 minutes 42 seconds West, a distance of 77.96 feet;

THENCE Northerly, continuing along said east right-of-way line and along said curve, through a central angle of 68 degrees 13 minutes 52 seconds, an arc distance of 82.76 feet to a ½-inch set iron rod with cap for the point of reverse curvature of a non-tangent circular curve to the right having a radius of 90.50 feet and whose chord bears North 17 degrees 22 minutes 32 seconds West, a distance of 54.70 feet; from which a 1-inch found iron rod bears South 53 degrees 43 minutes 03 seconds East, a distance of 2.82 feet;

THENCE Northerly, continuing along said east right-of-way line and along said curve, through a central angle of 33 degrees 46 minutes 08 seconds, an arc distance of 53.34 feet to a ½-inch set iron rod with cap for corner;

THENCE North 00 degrees 27 minutes 27 seconds West, departing said curve and along said east right-of-way line, a distance of 25.63 feet to a 1/2-inch set iron rod with cap for the point of curvature of a non-tangent circular curve to the right having a radius of 807.50 feet and whose chord bears North 22 degrees 24 minutes 10 seconds East, a distance of 628.27 feet;

THENCE Northeasterly, continuing along said east right-of-way line and along said curve through a central angle of 45 degrees 47 minutes 14 seconds, an arc distance of 645.30 feet to a 1-inch found iron rod for corner;

THENCE North 45 degrees 17 minutes 48 seconds East, departing said curve and along said southeast right-of-way line, a distance of 417.67 feet to the POINT OF BEGINNING AND CONTAINING 894.720 square feet or 20.54 acres of land, more or less.



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>Dep</i>	11-18-09
Council Meeting Date: 11/23/09		Budget	<i>PL</i>	11-18-09
Department: Finance		Legal	<i>PL</i>	11-13-09
Department Head: Denise Tacke		Assistant City Manager	<i>PL</i>	11-16-09
Dept Signature: <i>Denise Tacke</i>		Deputy City Manager	<i>PL</i>	11-17-09
		City Manager	<i>Jan</i>	11/16/09
Agenda Coordinator (include phone #): Katherine Crumbley - 7479 <i>LC</i>				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND PIZZA HUT OF AMERICA, INC., A DELAWARE CORPORATION, PROVIDING FOR A REAL AND BUSINESS PERSONAL PROPERTY TAX ABATEMENT AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: Notice of public hearing published on November 15, 2009 to create reinvestment zone 120. The real property improvements amount is \$10,000,000 while the business personal property amount to be maintained is \$5,000,000.				
SUMMARY OF ITEM				
This is related to Pizza Hut of America, Inc. a Delaware Corporation, request for tax abatement on reinvestment zone 120 and creation of the zone.				
List of Supporting Documents: Tax Abatement Agreement		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND PIZZA HUT OF AMERICA, INC., A DELAWARE CORPORATION, PROVIDING FOR A REAL AND BUSINESS PERSONAL PROPERTY TAX ABATEMENT AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, and Pizza Hut of America, Inc., a Delaware Corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

DULY PASSED AND APPROVED this the 23rd day November, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

TAX ABATEMENT AGREEMENT

This Agreement is entered into by and between the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "City" and Pizza Hut of America, Inc., a Delaware Corporation duly acting by and through their officers, hereinafter referred to as "Owner."

WITNESSETH:

WHEREAS, on the ____ day of _____, 2009, the City Council of the City of Plano, Texas, passed Ordinance No. _____ establishing Reinvestment Zone No. 120, for commercial/industrial tax abatement, hereinafter referred to as the "Ordinance," as authorized by V.T.C.A. Tax Code, Chapter 312.001, et seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as "Act"; and

WHEREAS, the City has adopted a revised policy statement for Tax Abatement by Resolution No. 2009-9-21 (R) stating that it elects to be eligible to participate in tax abatement (the "Policy Statement"); and

WHEREAS, the Policy Statement sets forth appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Act; and

WHEREAS, the tax abatement will maintain and enhance the commercial/industrial economic and employment base of the Plano area thereby benefiting the City in accordance with the said Ordinance and Act; and

WHEREAS, the contemplated use of the Real Property, as hereinafter defined, the contemplated improvements to the Real Property in the amount as set forth in this Agreement and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 120 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law.

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. The real property subject to this Agreement is described by metes and bounds in **EXHIBIT "A"** (the "Real Property") and the Improvements as shown on **EXHIBIT "B"** thereon (the "Development") attached hereto and made a part hereof.

2-4

2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No.120, which shall be hereinafter referred to as the "Personalty." The Personalty will have a Taxable Value of not less than **Five Million Dollars (\$5,000,000.00)** and is or will be owned by the Owner and/or their affiliates. Owner shall timely render their personal property value each year to the Central Appraisal District. The term Taxable Value as used in this agreement shall mean the assessed value for tax purposes as determined by the Collin County Appraisal District.

3. Owner may not relocate, for purposes of maintaining taxable situs of tangible personal property, the Personalty on the Real Property in other Reinvestment Zones in the City.

JOBS

4. The Owner estimates the proposed development of the Real Property as shown in **EXHIBIT "B"** (the "Development") is estimated to result in approximately 450 full-time jobs at the Development when the new office building is completed.

IMPROVEMENTS

5. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as Improvements) to include a not less than 160,000 gross square feet office complex on or before January 1, 2012 with a Taxable Value of not less than **Ten Million Dollars (\$10,000,000.00)** provided that Owner shall have such additional time to complete the Improvements as may be required in the event of "force majeure," if Owner is diligently and faithfully pursuing the completion of the Improvements, or if in the reasonable opinion of the City, the Owner has made substantial progress toward completion of the initial phase of the Improvements. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of Owner including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of Owner), fire, shortages of material and/or labor, explosion or flood, and labor disturbances. The date of completion of the Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano.

6. The Owner agrees and covenants that it will diligently and faithfully in a good and workmanlike manner pursue the substantial completion of the Improvements as a good and valuable consideration of this Agreement. Owner further covenants and agrees that all construction of the Improvements will be in accordance with all applicable federal, state and local laws and regulations or valid waiver thereof.

7. The Owner agrees and covenants that it shall occupy office space on the Real Property and there shall be approximately 450 full time jobs located in the Development, referred to herein as the "Purposes."

DEFAULT

8. Any of the following events shall be deemed a breach of this agreement resulting in default:

(a) The Improvements are not completed in accordance with this Agreement;

(b) Owner allows its real or personal property taxes owed the City on the Real Property, Improvements, or Personalty to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes;

(c) Owner fails to occupy the Improvements for the Purposes set forth in paragraph 7 above on or before December 31, 2011;

(d) The initial Taxable Value of the Improvements to Real Property and the initial Taxable Value of Personalty placed on the improved Real Property on or before January 1, 2012 and maintained on the Real Property during the term of this Agreement is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(e) Owner fails to provide at least 75% of the employee commitment on or before December 31, 2011 as provided in paragraph 4 above;

(f) Owner fails to provide annual certification as required in paragraph 11 below; or

(g) Owner has been convicted of a violation under 8 U.S.C. Section 1324a (f) regarding the unlawful employment of aliens.

9. In the event that the Owner defaults under this Agreement then the City shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City; provided, however, that such 30 day period shall be extended if the default is of a nature that cannot be cured within such 30-day period and Owner is diligently pursuing such remedy. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraph 8(b) or 8(g) above and after Owner fails to cure same in accordance herewith, this Agreement shall immediately terminate and all taxes due after the event of default shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

10. Upon the occurrence of an event of default under Paragraph 8(b) above or upon the occurrence of an event of default under Paragraph 8(g), then the City shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver

thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

11. On or before the 1st day of November of each calendar year during the term of this Agreement, the Owner, or its successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

12. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by Owner unless written permission is first granted by City, which permission shall be at the reasonable discretion of the City, except under the following conditions:

(a) Assignment to an affiliate of Owner is permissible;

(b) A transfer or assignment of the Real Property and Improvements, or an assignment of this Agreement, by Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Owner shall continue to conduct business on the Real Property.

However, Owner agrees to give written notice to the City of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

ABATEMENT PROVISIONS

13. Subject to the terms and conditions of this Agreement, a portion of ad valorem real and personal property taxes from the Real Property, Improvements, and Personalty otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to the Real Property, Improvements, and Personalty, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2012, through December 31, 2021.

(b) In accordance with all applicable federal, state, and local laws and regulations, the City's abatement shall be based on amounts equal to fifty percent (50%) of the improved value of the Real Property and Improvements and fifty percent (50%) of the Personalty for each tax year from January 1, 2012, through December 31, 2021.

(c) The Owner shall have the right to protest and/or contest any assessment of the Real Property, Improvements or Personalty, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest.

NOTICE

14. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Thomas H. Muehlenbeck
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Owner by notice to:

Pizza Hut of America, Inc.,
Attention: John J. Murphy
President
14841 North Dallas Parkway
Dallas, Texas 75254

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

MISCELLANEOUS PROVISIONS

15. The Owner further agrees that the City, its agents and employees, shall have reasonable right (upon reasonable prior notice to Owner) to access the Real Property to inspect the Improvements and Personalty in order to insure that the construction of the Improvements and locations of the Personalty are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. After completion of the Improvements, the City shall have the continuing right (upon reasonable prior notice to Owner) to inspect the Real Property and Personalty to insure that the Real Property and Personalty is thereafter maintained, operated and occupied in accordance with this Agreement.

16. It is understood and agreed between the parties that the Owner, in performing its obligations hereunder, is acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties and Owner agrees to indemnify and hold harmless City from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of Owner's default of its obligations hereunder.

17. The City represents and warrants that the Real Property, Improvements and Personalty do not include any property that is owned by a member of its governing body approving or having responsibility for the approval of this Agreement.

18. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 23rd day of November, 2009, authorizing the City Manager to execute the Agreement on behalf of the City.

19. This Agreement was entered into by an officer of Owner with authority to execute this Agreement on behalf of Owner.

20. This instrument shall constitute a valid and binding agreement between the City and Owner when executed in accordance herewith.

21. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

This Agreement is performable in Collin County, Texas. Signed this 23rd day of November, 2009.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule municipal corporation

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck,
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

PIZZA HUT OF AMERICA, INC.,
a Delaware Corporation

By: _____
John J. Murphy, PRESIDENT

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 120
Real Property
Metes and Bounds

BEING a 20.54 acre tract of land in the Collin County School Survey, Abstract No. 150, situated in the City of Plano, Collin County, Texas, and being a portion of that tract of land described as Tract 13 in Special Warranty Deed to West Plano Land Company, L.P., as recorded in Document No. 20060920001358250, of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being more particularly described by metes and bounds as follows:

BEGINNING at a point for corner on the southeast right-of-way line of Corporate Drive (85 foot right-of-way), said point being the northernmost corner of said Tract 13 and the westernmost northwest corner of Lot 1, Block A, of Ericsson Village, as recorded in Document No. 20081202010004190, O.P.R.C.C.T., from which a 1-inch found iron rod bears North 77 degrees 58 minutes 52 seconds East, a distance of 4.94 feet;

THENCE South 38 degrees 02 minutes 02 seconds East, departing said south right-of-way line AND ALONG THE COMMON LINE BETWEEN SAID Tract 13 and said Lot 1, a distance of 384.27 feet to a 5/8-inch found iron for corner;

THENCE South 00 degrees 32 minutes 02 seconds East, continuing along said common line, a distance of 192.88 feet to a 5/8-inch found iron rod with "KHA" cap for corner;

THENCE South 37 degrees 01 minute 18 seconds East continuing along said common line, a distance of 298.16 feet to a point for corner in a pond;

THENCE South 53 degrees 00 minutes 07 seconds East, departing said common line over and across said Tract 13, a distance of 140.75 feet to a point for corner in a pond;

THENCE South 23 degrees 00 minutes 07 seconds East, continuing across said Tract 13, a distance of 616.59 feet to a point for corner in a pond;

THENCE South 41 degrees 51 minutes 32 seconds West, continuing across said Tract 13, a distance of 283.88 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALF ASSOC." (hereinafter referred to as "with cap") for corner on the east right-of-way line of said Corporate Drive;

THENCE North 48 degrees 08 minutes 28 seconds West, along said east right-of-way line, a distance of 192.00 feet to 1" found iron rod for the point of curvature of a circular curve to the

right having a radius of 807.50 feet and whose chord bears North 29 degrees 48 minutes 29 seconds West, a distance of 507.95 feet;

THENCE Northwesterly, continuing along said east right-of-way line and said curve, through a central angle of 36 degrees 39 minutes 49 seconds, an arc distance of 516.72 feet to a found City of Plano monument for the point of reverse curvature of a non-tangent circular curve to the left having a radius of 69.50 feet and whose chord bears North 00 degrees 08 minutes 42 seconds West, a distance of 77.96 feet;

THENCE Northerly, continuing along said east right-of-way line and along said curve, through a central angle of 68 degrees 13 minutes 52 seconds, an arc distance of 82.76 feet to a ½-inch set iron rod with cap for the point of reverse curvature of a non-tangent circular curve to the right having a radius of 90.50 feet and whose chord bears North 17 degrees 22 minutes 32 seconds West, a distance of 54.70 feet; from which a 1-inch found iron rod bears South 53 degrees 43 minutes 03 seconds East, a distance of 2.82 feet;

THENCE Northerly, continuing along said east right-of-way line and along said curve, through a central angle of 33 degrees 46 minutes 08 seconds, an arc distance of 53.34 feet to a ½-inch set iron rod with cap for corner;

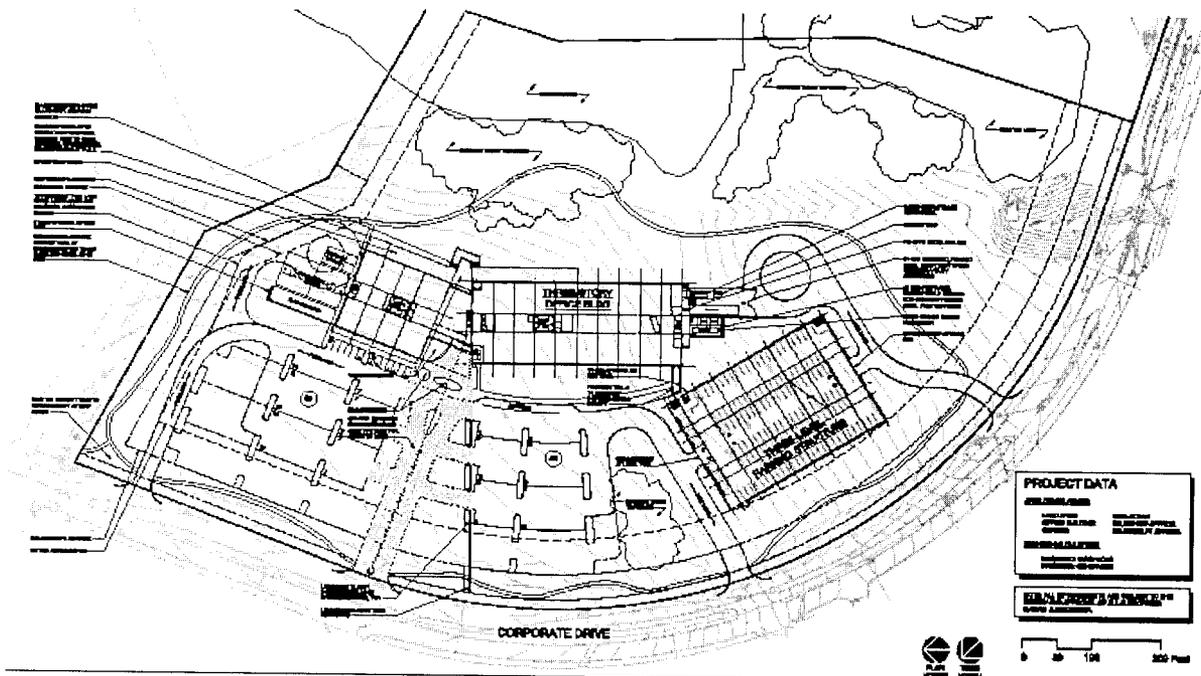
THENCE North 00 degrees 27 minutes 27 seconds West, departing said curve and along said east right-of-way line, a distance of 25.63 feet to a 1/2-inch set iron rod with cap for the point of curvature of a non-tangent circular curve to the right having a radius of 807.50 feet and whose chord bears North 22 degrees 24 minutes 10 seconds East, a distance of 628.27 feet;

THENCE Northeasterly, continuing along said east right-of-way line and along said curve through a central angle of 45 degrees 47 minutes 14 seconds, an arc distance of 645.30 feet to a 1-inch found iron rod for corner;

THENCE North 45 degrees 17 minutes 48 seconds East, departing said curve and along said southeast right-of-way line, a distance of 417.67 feet to the POINT OF BEGINNING AND CONTAINING 894.720 square feet or 20.54 acres of land, more or less.

EXHIBIT "B" THE DEVELOPMENT REINVESTMENT ZONE NO. 120

Site Plan/Map of Project



PROJECT DATA

DEVELOPER:
 Pizza Hut of America, Inc.
 10000 Corporate Drive
 Dallas, Texas 75243

DESIGNER:
 Gensler
 10000 Corporate Drive
 Dallas, Texas 75243

DATE:
 11/11/11

SCALE:
 1" = 100'

PRELIMINARY SITE PLAN
 For Pizza Hut of America, Inc.
 Dallas, Texas

JOB NO. 11000000
 PREPARED BY: GENS
 DATE: 11/11/11
 DRAWN BY: GENS



Gensler
 10000 Corporate Drive
 Dallas, Texas 75243
 Phone: 214.223.1111



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>Dep</i>	11-13-09
Council Meeting Date: 11/23/09		Budget	<i>KV</i>	11/13/09
Department: Finance		Legal	<i>WJ</i>	11-13-09
Department Head: Denise Tacke		Assistant City Manager	<i>DR</i>	11-16-09
Dept Signature: <i>Denise Tacke</i>		Deputy City Manager	<i>DR</i>	11-17-09
		City Manager	<i>JRW</i>	11/16/09
Agenda Coordinator (include phone #): Katherine Crumbley - x7479				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND PIZZA HUT OF AMERICA, INC.; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		12,391,869	0	12,391,869
Encumbered/Expended Amount		-3,111,048	-3,774,677	-6,885,725
This Item	0	-1,850,000	-250,000	-2,100,000
BALANCE	0	7,430,821	-4,024,677	3,406,144
FUND(S):				
COMMENTS: STRATEGIC PLAN GOAL: PROVIDING ECONOMIC DEVELOPMENT INCENTIVES RELATES TO THE CITY'S GOAL OF DIVERSE BUSINESS CENTER				
SUMMARY OF ITEM				
A request from Pizza Hut of America, Inc. for an Economic Development incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Pizza Hut of America agrees to construct and occupy an office complex of not less than 160,000 sq. ft with a taxable value of not less than \$10 million on the property by 1/1/12, add business personal property with a minimum taxable value of not less than \$5 million by 1/1/12 and create or transfer 450 jobs by 12/31/11.				
List of Supporting Documents: Economic Development Incentive Agreement		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND PIZZA HUT OF AMERICA, INC.; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement By and Between the City of Plano, Texas and Pizza Hut of America, Inc., a Delaware corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

DULY PASSED AND APPROVED this the 23rd day of November, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City"), and Pizza Hut of America, Inc., a Delaware Corporation, ("Company") acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is an American restaurant chain and international franchise operating more than 10,000 restaurants in hundreds of countries; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate its headquarters and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company agrees to construct and occupy a minimum 160,000 square foot office complex on 20.54 acres fronting Corporate Drive and approximately ¼ mile south of Legacy Drive, Plano, Texas (the "Property"); construct real property improvements with a minimum Taxable Value of Ten Million Dollars (\$10,000,000.00); add business personal property to the Property with a minimum Taxable Value of not less than Five Million Dollars (\$5,000,000.00); transfer or create at least 450 Job Equivalents on the Property; and maintain occupancy of the Property and the Job Equivalents for the remainder of the term of this Agreement; and

WHEREAS, the construction and occupancy of a Ten Million Dollar office complex at the Property; addition of Five Million Dollars of business personalty; and the creation or transfer of not less than 450 Job Equivalents to the Property will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I
Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Commencement Date" shall mean the earlier of the date of occupancy of the Property by the Company or December 31, 2011, whichever occurs first.

"Effective Date" shall mean the last date on which all of the parties hereto have executed this Agreement.

"Event of Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

"Job Equivalent" shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours (inclusive of holidays, vacation and sick leave) annually. This term is restricted to Plano based employees and excludes remote employees or contract employees. For the purposes of this definition only, Company shall include Pizza Hut of America, Inc., United Food Purchasing Co-op, PepsiCo Inc., Pizza Hut Inc., Pizza Hut of North America, Inc., Pizza Hut Ltd. (a limited partnership), Yum Restaurants International Inc., Yum Brands Inc., Yum Restaurants Services Group Inc., KFC, LJS Restaurants, and Taco Bell America.

"Taxable Value" shall mean the assessed value of real and personal property improvements for tax purposes as determined by the Collin County Appraisal District.

Article II
Term

The term of this Agreement shall begin on the Commencement Date and continue until December 31, 2021, unless sooner terminated as provided herein.

**Article III
Obligations of Company**

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- (a) Construct and occupy (with affiliates and companies listed under the definition of Job Equivalents) an office complex of not less than 160,000 gross square feet on or before January 1, 2012 with a Taxable Value of not less than Ten Million Dollars (\$10,000,000.00) on the Property;
- (b) Add business personal property to the Property with a minimum Taxable Value of not less than Five Million Dollars (\$5,000,000.00) by January 1, 2012;
- (c) Create or transfer 450 Job Equivalents to the Property on or before December 31, 2011;
- (d) Maintain occupancy and the Job Equivalents created in Article III (a), (b) and (c) above for the remainder of the term of this Agreement; and
- (e) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

**Article IV
Obligations of the City**

4.01 **Grant.**

(a) The City agrees to provide the Company a cash grant of One Million Three Hundred Fifty Thousand Dollars (\$1,350,000.00) for the creation or transfer of 450 Job Equivalents to the Property; the construction and occupancy of a minimum 160,000 gross square feet office complex on the Property with a minimum Taxable Value of Ten Million Dollars (\$10,000,000.00); and the addition of business personal property of Taxable Value of not less than Five Million Dollars (\$5,000,000.00) to the Property, all in accordance with the provisions of Article III (a), (b) and (c) above. The Company agrees to maintain the occupancy and transferred or created Job Equivalents on the Property throughout the term of this Agreement as provided in Section 5.01 below;

(b) The City agrees to provide the Company a grant of up to Two Hundred and Fifty Thousand Dollars (\$250,000.00) for permit, building inspection, engineering and planning fees paid to the City by Company for the construction of real property improvements to the Property; and

(c) The City agrees to provide the Company a grant of Five Hundred Thousand Dollars (\$500,000.00) for relocation expenses and occupancy costs associated with relocating its Headquarters to the Property.

4.02 Grant Payments.

(a) Except as otherwise indicated, the Company shall be entitled to a payment of One Million Eight Hundred and Fifty Thousand Dollars (\$1,850,000.00) from the City under this Agreement within thirty (30) days after the Company verifies to the City using the Initial Certification form attached hereto as Exhibit "A" that the Company has met its obligations as set forth in Article III (a), (b) and (c) above. In order to receive payment under this Agreement, Company's initial certification verifying compliance with Article III (a), (b) and (c) above must be filed with the City no later than April 1, 2012.

(b) The Company shall be entitled to receive reimbursement for permit, building inspection, engineering and planning fees paid to the city by Company for the construction of real property improvements to the Property with reimbursement not to exceed a total of Two Hundred and Fifty Thousand Dollars (\$250,000.00). In order to receive reimbursement for these fees, Company must submit an invoice with receipts to the City by April 1, 2012.

**Article V
Refunds****5.01 Refunds.**

(a) In the event the Company ceases to occupy the Property prior to the expiration of this Agreement or allows the Company's Job Equivalents at the Property to fall below 450 for more than 180 consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Three Thousand and No/100 Dollars (\$3,000.00) for each lost Job Equivalent. For the purposes of determining whether the City is due a refund under this section, an officer of the Company shall certify to the City by January 31, 2012 and by January 31 of each year thereafter during the term of this Agreement the continued occupancy of the Property in accordance with Article III (a) and the actual number of Job Equivalents at the Property for the preceding calendar year using the Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30 days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

**Article VI
Termination**

6.01 This Agreement terminates upon any one or more of the following:

- (a) By mutual written agreement of the parties;
- (b) Upon expiration of the term of this Agreement;
- (c) By either party upon written notice to the other, if the other party defaults or breaches any of the material terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and
- (d) By either party upon written notice to the other if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

6.02 **Effect of Termination.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above in this Section 6.02 shall survive the termination of this Agreement.

Article VII Miscellaneous

7.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

7.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

7.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck, City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee, City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
Pizza Hut of America, Inc.,
Attention: John J. Murphy, President
14841 North Dallas Parkway
Dallas, Texas 75254

7.05 **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

7.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

7.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

7.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

7.09 **Recitals.** The recitals to this Agreement are incorporated herein.

7.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

7.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

7.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. Each party shall bear its own costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this 23rd day of November, 2009.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

PIZZA HUT OF AMERICA, INC.,
a Delaware Corporation

By: _____
John J. Murphy, President

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE*

I hereby certify that PIZZA HUT OF AMERICA, INC. (and those companies listed under the definition of Job Equivalent), have occupied not less than 160,000 gross square feet of commercial space on the Property and have retained, transferred or added 450 new Job Equivalent positions to the Property. PIZZA HUT OF AMERICA, INC., is in compliance with subsections (a), (b) and (c) of Article III of the Agreement to Resolution No. _____(R) as of _____, and is entitled to receive payment under the terms of that Agreement.

PIZZA HUT OF AMERICA, INC.,
a Delaware Corporation

By: _____
Name:
Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

*This form may be modified as appropriate for an additional initial certification.

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that PIZZA HUT OF AMERICA, INC., is in compliance with each applicable term as set forth in Article III of the Agreement as of _____. The term of the Agreement is December 31, 2011 through December 31, 2021. The number of new, transferred or retained Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below _____ for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance. If the number herein reported is below the number required to be maintained pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 5.01 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

PIZZA HUT OF AMERICA, INC.,
a Delaware Corporation

By: _____
Name:
Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing	<i>CS</i>	11-17-09
Council Meeting Date: 11/23/09		Budget	<i>C.S.</i>	11-17-09
Department: City Secretary's Office		Legal	<i>DW</i>	11/17/09
Department Head: Diane Zucco		Assistant City Manager		
Dept Signature: <i>[Signature]</i>		Deputy City Manager		
		City Manager	<i>[Signature]</i>	11/18/09
Agenda Coordinator (include phone #): Alice Snyder X7515				
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
To accept the resignation of a Council Member and consider an ordinance of the City Council of the City of Plano, ordering a Special Election to be held on January 30, 2010 for the purpose of electing one (1) member of Council, Place No. 3 (District 3), to fill a vacancy until the May 2011 General Election; designating locations of polling places; ordering notices of election to be given as prescribed by law in connection with such election; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: Costs to be brought forward with Election Contract.				
SUMMARY OF ITEM				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Ordinance				

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, ORDERING A SPECIAL ELECTION TO BE HELD ON JANUARY 30, 2010 FOR THE PURPOSE OF ELECTING ONE (1) MEMBER OF COUNCIL, PLACE NO. 3 (DISTRICT 3), TO FILL A VACANCY UNTIL THE MAY 2011 GENERAL ELECTION; DESIGNATING LOCATIONS OF POLLING PLACES; ORDERING NOTICES OF ELECTION TO BE GIVEN AS PRESCRIBED BY LAW IN CONNECTION WITH SUCH ELECTION; AND PROVIDING AN EFFECTIVE DATE.

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

Section I. A Special Election be and is hereby ordered to be held on Saturday, January 30, 2010, for the purpose of electing one (1) City Council Member to fill the following interim term on the Plano City Council: Place No. 3 (District 3) such interim term being until the May 2011 General Election.

Section II. The filing deadline for candidates for Place No. 3 (District 3) shall be December 30, 2009.

Section III. The polling places and the county election precincts whose qualified voters shall cast ballots at such locations in the City of Plano for the Special Election are as follows:

COLLIN COUNTY ELECTION PRECINCTS	POLLING PLACE
52, 61, 68, 103 and 141;	Armstrong Middle School 3805 Timberline Drive, Plano, TX 75074
34, 107, 119, 121, 135 and 139;	Bethany Elementary School 2418 Micarta Drive, Plano, TX 75025
23, 46, 47, 50, 51, 152 and 158;	Bowman Middle School 2501 Jupiter Road, Plano, TX 75074
90, 116, 137 and 176;	Brinker Elementary School 3800 John Clark Parkway, Plano, TX 75093
21, 54, 62 and 66;	Carpenter Middle School 1501 Cross Bend Road, Plano, TX 75023
109 and 123;	Christopher A. Parr Library 6200 Windhaven Parkway, Plano, TX 75093
15, 19, 53, 65, 70 and 71;	Haggard Middle School 2401 Westside Drive, Plano, TX 75075
58, 77 and 91;	Hendrick Middle School 7400 Red River Drive, Plano, TX 75025
31, 32, 63 and 76;	Hughston Elementary School 2601 Cross Bend Road, Plano, TX 75023

14, 81, 86, 89, 108, 112, 124 and 167;	Robinson Middle School 6701 Preston Meadow Drive, Plano, TX 75024
64 and 69;	Schimelpfenig Middle School 2400 Maumelle Drive, Plano, TX 75023
28, 75, 105 and 143;	Shepton High School 5505 Plano Parkway, Plano, TX 75093
39 and 85;	Thomas Elementary School 6537 Blue Ridge Trail, Plano, TX 75023
26, 49, 67, 72 and 138.	Wilson Middle School 1001 Custer Road, Plano, TX 75075
DENTON COUNTY ELECTION PRECINCTS	POLLING PLACE
226	Christopher A. Parr Library 6200 Windhaven Parkway, Plano, TX 75093

Polling places on January 30, 2010 shall be open from 7:00 a.m. until 7:00 p.m.

Section IV. Votes for said election shall be cast utilizing touch-screen devices with Diebold's ACCUVOTE TS R6v.4.6.4 direct recording devices (DRE's) for early voting and election day and optical-scan ballots with Diebold's ACCUVOTE OS ROM v.2.0.12 for early voting by mail.

Section V. Early voting by personal appearance for the above-designated election shall be conducted at the following locations on the following dates and times:

- January 13, 2010 through January 15, 2010 8:00 a.m. – 5:00 p.m.
- January 19, 2010 through January 23, 2010 8:00 a.m. – 5:00 p.m.
- January 25, 2010 and January 26, 2010 7:00 a.m. – 7:00 p.m.

Main Early Voting Location		
Collin County Elections Department	2010 Redbud Boulevard Suite 102	McKinney, TX 75069
Temporary Branch Early Voting Locations		
Carpenter Park Recreation Center	6701 Coit Road	Plano, TX 75024
Christopher A. Parr Library	6200 Windhaven Parkway	Plano, TX 75093
Collin County Community College - Spring Creek Campus	2800 E. Spring Creek Parkway	Plano, TX 75074
Haggard Library	2501 Coit Road	Plano, TX 75075
Harrington Library	1501 18 th Street	Plano, TX 75074
Plano Independent School District Administration Center	2700 West 15 th Street	Plano, TX 75075

Applications for ballots by mail shall be mailed to:

Sharon Rowe, Elections Administrator
Collin County Elections Department
2010 Redbud Boulevard
Suite 102
McKinney, TX 75069

Applications for ballots by mail must be received no later than the close of business on Friday, January 22, 2010.

Section VI. The recommendations of the City will be the accepted guidelines of four (4) clerks to be secured to work in each polling place. The presiding election judge of each polling place, however, will use his/her discretion to determine when additional manpower is needed during peak voting hours.

Section VII. The City Secretary is hereby authorized and directed to publish and/or post, in the time and manner prescribed by law, all notices required to be so published and/or posted in connection with the conduct of this election.

Section VIII. This ordinance shall become effective immediately upon its passage.

Duly passed and approved this the 23rd day of November, 2009.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY