

## PLANO CITY COUNCIL

**WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON DECEMBER 8, 2008, FOLLOWED BY PRELIMINARY OPEN MEETING IN THE PLANO MUNICIPAL BUILDING, 1520 K AVENUE, IN COMPLIANCE WITH VERNON'S TEXAS CODES ANNOTATED, GOVERNMENT CODE CHAPTER 551 (OPEN MEETINGS ACT), AS FOLLOWS:**

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

### **EXECUTIVE SESSION**

- |      |   |              |         |
|------|---|--------------|---------|
| I.   | Legal Advice  | Wetherbee    | 5 min.  |
| A.   | Respond to questions and receive legal advice on agenda items   |              |         |
| II.  | Litigation  | Wetherbee    | 5 min.  |
| A.   | Ash Grove, Texas L.P. v. City of Dallas, City of Ft. Worth, City of Arlington, City of Plano, Dallas County Schools and Tarrant County  |              |         |
| B.   | City of Plano v. Technology Properties Inc.   | John Gilliam | 10 min. |
| III. | Economic Development  | Muehlenbeck  | 10 min. |
| A.   | Discuss a financial offer or other incentive to a business prospect to locate, stay, or expand in Plano and consider any commercial and financial information from the business prospect. |              |         |
| IV.  | Personnel   | Council      | 10 min. |
| A.   | Reappointments/Appointments<br>Board of Adjustment<br>Building Standards Commission   |              |         |
| B.   | Evaluation of Council Appointees  |              |         |

**PRELIMINARY OPEN MEETING**

I.	Consideration and action resulting from Executive Session discussion: Personnel Reappointments/Appointments Board of Adjustment Building Standards Commission	Council	5 min.
II.	Personnel Appointments Public Arts Committee	Council	10 min.
III.	DART Parking Proposal	Turner	10 min.
IV.	Council items for discussion/action on future agendas	Council	5 min.
V.	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: December 8, 2008

CALL TO ORDER: 7:00 p.m.

INVOCATION: Associate Pastor Pete Kralyevich  
Four Corners Church

PLEDGE OF ALLEGIANCE: Tiger Cub Scout Pack 283, Den 2  
Brinker Elementary School  
\*Men of Note\*

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><b><u>PROCLAMATIONS &amp; SPECIAL RECOGNITION</u></b></p> <p>Presentation: Alan Upchurch, City Engineer – 25 Year Service Award</p> <p><b><u>OATHS OF OFFICE</u></b></p> <p><b><u>Cultural Affairs Commission</u></b> Stephanie Ward</p> <p><b><u>Library Advisory Board</u></b> Robert R. Marquardt</p> <p><b><u>Public Arts Committee</u></b> Richard E. Allison</p> <p><b><u>Senior Citizens Advisory Board</u></b> Marilyn R. Pauly</p> <p><b><u>COMMENTS OF PUBLIC INTEREST</u></b></p> <p><b><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></b></p> <p><b><u>CONSENT AGENDA</u></b></p> <p><b><u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></b></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	<p><b><u>Approval of Minutes</u></b></p> <p>November 20, 2008 November 24, 2008 (Budget Retreat) November 24, 2008</p> <p><b><u>Approval of Expenditures</u></b></p> <p><b>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</b></p>	
(b)	<p><b>Bid No. 2009-7-B</b> for Communications Parkway – Parker Road to Spring Creek Parkway to Glenn Thurman, Inc., in the amount of \$2,412,005. The project consists of the widening of Communications Parkway from a four lane to a six lane divided thoroughfare from Parker Road to Windhaven Parkway and widening from a two lane to a six lane divided thoroughfare from Windhaven Parkway to Spring Creek Parkway. This project also includes storm drainage, landscaping, irrigation, street lighting and traffic signal construction.</p>	
(c)	<p><b>Bid No. 2009-5-B</b> for Median Tree Replacement at multiple locations to Wall Enterprises in the amount of \$120,925.</p> <p><b>Purchase from an Existing Contract</b></p>	
(d)	<p>To approve the purchase of eighteen Chevrolet Police PPV Tahoes in the amount of \$467,550 from Caldwell Country through an existing contract/agreement with Tarrant County Interlocal Contract and authorizing the City Manager to execute all necessary documents. These will be scheduled replacements in the FY 08-09 ERF for replacement to be determined for Department 532/Police. (#2005-180)</p> <p><b>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</b></p>	
(e)	<p>To approve of a Surveying Contract by and between the City of Plano and Gorrondona &amp; Associates in the amount of \$64,795 for Project No. 5843 – Geodetic Monumentation and authorizing the City Manager to execute all necessary documents. (2008-34-B)</p>	
(f)	<p>To approve an Engineering Contract by and between the City of Plano and C &amp; P Engineering, LTD., in the amount of \$261,200 for Meadows Addition, and authorizing the City Manager to execute all necessary documents.</p> <p><b>Approval of Change Order</b></p>	
(g)	<p>To Jim Bowman Construction Company, L.P., increasing the contract by \$74,060 for the 2007–2008 Arterial Concrete Pavement Rehabilitation Project, Park Boulevard – Alma Road to Shiloh Road, Project No. 5915, Change Order No. 1, Bid No. 2008-180-B.</p>	
(h)	<p>To Hencie International, Inc., increasing the contract by \$93,293 for the 2007-2008 Residential Concrete Pavement Rehabilitation Project, Zone I8, Project No. 5890, Change Order No. 1, Bid No. 2008-95-B.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><b><u>Adoption of Resolutions</u></b></p> <p>(i) To approve the terms and conditions of a Texas Traffic Safety Program Grant Agreement by and between the State of Texas and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date.</p> <p>(j) To approve the terms and conditions of a Real Estate Contract by and between Bank of Texas, N.A. and the City of Plano; authorizing its execution by the City Manager; and providing an effective date.</p> <p><b><u>Adoption of Ordinances</u></b></p> <p>(k) To amend Article III, Property Maintenance Code, Division 3, Registration and Inspection of Multi-Family Dwelling Complexes of Chapter 6, Buildings and Building Regulations, of the Code of Ordinances of the City of Plano by amending Sections 6-61, 6-63(a) and 6-70(a) to revise the definition and lower the age requirement of a Multi-Family Dwelling/Building/Residence for registration purposes; providing a penalty clause; a savings clause; a severability clause; a repealing clause; a publication clause; and an effective date.</p> <p>(l) To amend Chapter Six, Building and Building Regulations, with the addition of Article XIII, Irrigation Systems, to establish the minimum standards for installation of irrigation systems within the City limits of the City; and providing a repealer clause, a severability clause, a penalty clause and an effective date.</p> <p><b><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></b></p> <p><b><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></b></p> <p><b><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></b></p> <p>(1) <b>Public Hearing and consideration of an Ordinance as requested in Zoning Case 2008-72</b> to amend Section 6.200 (Board of Adjustments) of Article 6 (Procedures and Administration) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to amend the duties and administrative procedures of the Board of Adjustment; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(2)	<p><b>An Ordinance</b> to add Article V, Board of Adjustment, to Chapter 16, Planning and Development, of the Code of Ordinances of the City of Plano to relocate the provisions related to the Board of Adjustment for appointing and removing members from the City of Plano Comprehensive Zoning Ordinance to the City of Plano Code of Ordinances, and providing a repealer clause, a severability clause, a savings clause, and an effective date.</p>	
(3)	<p><b>Public Hearing and consideration of an Ordinance as requested in Zoning Case 2008-80</b> to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 6.1± acres located at the northwest corner of Bourbon Street and Cousteau Court in the City of Plano, Denton County, Texas, from Single-Family Residence Attached and Patio Home with Specific Use Permit #594 for Private Street Development to Single-Family Residence-9 with Specific Use Permit #594 for Private Street Development; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: HW Spring Creek Partners, L.P.</p>	
(4)	<p><b>Public Hearing and consideration of an Ordinance as requested in Zoning Case 2008-81</b> to amend Section 1.600 (Definitions) of Article 1 (General Regulations) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to modify the definition for Automobile Repair – Minor /Service Station; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano</p>	
(5)	<p><b>Public Hearing and consideration of Ordinances as requested in Zoning Cases 2008-75 – 2008-79</b> all of which are limited to the repeal of certain Specific Use Permits for Private Clubs. The following ordinances are proposed to be repealed which, if approved, will result in the rescission of the Specific Use Permit for an additional use of a Private Club and the applicant is the City of Plano.</p>	
(5a)	<p><b>Consideration of an Ordinance as requested in Zoning Case 2008-75</b> – Request to rescind Specific Use Permit #259 for Private Club on 0.1± acre located at the southwest corner of U.S. Highway 75 and Enterprise Drive. Zoned Corridor Commercial.</p>	
(5b)	<p><b>Consideration of an Ordinance as requested in Zoning Case 2008-76</b> – Request to rescind Specific Use Permit #278 for Private Club on 0.1± acre located 180± feet north of Park Boulevard and 550± feet west of Ohio Drive. Zoned Retail.</p>	
(5c)	<p><b>Consideration of an Ordinance as requested in Zoning Case 2008-77</b> – Request to rescind Specific Use Permit #279 for Private Club on 0.1± acre located 130± feet east of Independence Parkway and 485± feet north of Parker Road. Zoned Retail.</p>	
(5d)	<p><b>Consideration of an Ordinance as requested in Zoning Case 2008-78</b> – Request to rescind Specific Use Permit #282 for Private Club on 0.1± acre located 90± feet west of Preston Road and 370± feet north of Plano Parkway. Zoned Planned Development-457-Retail/General Office.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(5e)	<p><b>Consideration of an Ordinance as requested in Zoning Case 2008-79</b> – Request to rescind Specific Use Permit #360 for Private Club on 3.8± acres located on the east side of Dallas North Tollway, 470± feet north of Democracy Drive. Zoned Commercial Employment.</p> <p>All of the above locations are located within the City of Plano, Collin County, Texas, and the repeal of each ordinance will amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to reflect such action; 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.</p> <p><u><b>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</b></u></p>	



**Pat Evans**  
Mayor

**Jean Callison**  
Mayor Pro Tem

**Harry LaRosiliere**  
Deputy Mayor Pro Tem

**Pat Miner**  
Place 1

**Scott Johnson**  
Place 2

**Mabrie Jackson**  
Place 3

**Sally Magnuson**  
Place 4

**Lee Dunlap**  
Place 8

December 4, 2008

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

Honorable Mayor and City Council:

We will begin our meeting on Monday with Executive Session where we will receive legal advice from the City Attorney and hear two items relating to litigation. Under Item III, potential economic development prospects may be discussed. Item IV consists of two personnel appointments and the opportunity for you to provide evaluation feedback to each of the Council Appointees.

The Preliminary Open Meeting will begin with consideration of the two personnel appointments discussed in Executive Session. One additional personnel appointment will be considered under Item II. In conclusion, Frank Turner will make a presentation regarding the DART Parking Proposal.

I look forward to seeing you Monday.

Sincerely yours,

Thomas H. Muehlenbeck

**Thomas H. Muehlenbeck**  
City Manager

# MEMO

**DATE:** December 4, 2008

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

**FROM:** Alice Snyder, Assistant City Secretary

**RE:** Personnel Appointments – Executive and Worksession Meetings

The following appointments will be considered at the December 8, 2008 Council Meeting.

<b><u>Executive Session</u></b>	<b><u>Worksession Meeting</u></b>
<u>Reappointments/Appointments:</u> Board of Adjustment + Chair Building Standards Commission + Chair	<u>Appointments:</u> Public Arts Committee - Chair



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

## MEMORANDUM

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DATE: December 3, 2008

TO: Thomas H. Muehlenbeck, City Manager

FROM: Frank F. Turner, Executive Director

SUBJECT: Possible Expansion of Parking at Parker Road DART Station

City staff has been working with DART and NCTCOG to explore the potential use of the City of Plano's 4.6 acre site located at the northwest corner of Park Boulevard and Avenue K for paid parking. While further study is needed, the staff of all three governmental entities believes developing parking at the site as an interim use would offer significant benefits. Below is background information about the Parker Road Station, the city's site, and a possible partnership among DART, NCTCOG and the City of Plano to develop and operate the parking. I would like the opportunity to brief Council at their December 8<sup>th</sup> meeting about the proposal and receive their direction.

### Parker Road Station Parking

Parker Road Station is the northern terminus of the DART light rail Red Line. The Red Line has been highly successful, carrying more than 43,000 daily weekday riders. The Parker Road Station is the fourth most heavily used station in the DART system. Approximately 3,600 riders use the station on weekdays. Currently, the Parker Road Station has 1,555 parking spaces, with an additional 585 spaces to be added by spring 2009. Ridership continues to grow at the Parker Road Station and demand for parking will likely exceed available supply, including the planned parking expansion. Approximately 45% of the Parker Road Station commuters reside north of Plano and outside the DART service area. Collin County's rapid growth and increasing commuting cost ensure increasing ridership and parking demand at Parker Road.

Further expansion of parking at the Parker Road Station requires acquiring additional land or developing of parking garages on existing DART property. Most adjacent property is either developed or is valued at more than \$10 per square foot. Parking garages are expensive (\$7,000 - \$10,000 per space).

### Paid Parking

Charging for parking could help pay the cost of parking expansion, operation and maintenance. Currently, DART does not charge a separate fee for parking but the agency is considering charging for parking to increase revenue and as a means of managing parking demand. Plano has opposed parking fees for its residents because of the sales tax collected in Plano in support of DART. While Plano does not oppose charging a parking fee to out of service area riders, state law prevents DART from applying a differential fee structure. Staff believes parking fees may be appropriate for "premium services" that

riders may voluntarily elect to use. Such services might include reserved parking, close proximity parking and covered parking.

### Opportunity for Paid Parking

Plano owns 4.589 acres of land at the northwest corner of Park Boulevard and Avenue K that may be well suited for interim use as paid parking. The west side of the site is adjacent to the DART Light Rail Transit (LRT) Red Line and is less than 100 feet from the Parker Road Station platform. The site could accommodate approximately 400 surface parking spaces.

The city acquired the site in 2002 to hold for future redevelopment, ideally as a part of a larger transit-oriented development. The site cost \$1,675,000 and clearance and environmental remediation cost \$166,000. The city's total cost per square foot is approximately \$9.21. The property has not been recently appraised but it is likely worth more than \$10 per square foot. Current market conditions will likely delay development, but the site should be retained for redevelopment as an urban mixed-use project. Interim use of the property for parking could be an ideal low-cost alternative.

### Parking Concept

The city's 4.589 acre site could be developed as 400 spaces of parking with direct access to the DART platform. All spaces would be in close proximity to the platform, with no street to cross. Some portion of the parking could be covered to protect vehicles from the sun and inclement weather. Reserved parking is another service option. Parking access could be restricted to vehicles having toll-tags. Charges could be structured based on the service category and whether or not the user is a city resident. During weekends, when parking demand is low, the parking facility could be transformed into an outdoor market. Covered spaces could be used by vendors offering a wide variety of food, flowers, arts, and other products.

### Development Partnership Responsibilities and Conditions

The development of the proposed parking lot/market place would be a joint project of the City of Plano, DART and the NCTCOG. Below is an outline of suggested responsibilities:

Land – The City of Plano would provide the site for a guaranteed period of not less than 10 years. In exchange for the use of the property, the city would pay no development cost, and have free use of the site for the weekend market. Parking by City of Plano residents for non-premium spaces would be free. Plano would participate in the determination of charges for premium spaces.

Platform Access - DART would construct the platform extensions, walkways and ramps required to link the parking lot to the platform. DART riders using the city lot would pay the standard fare box rates.

Development Cost – The NCTCOG would pay the full cost of the design and construction of the parking facility, including reasonable improvements required for its use as a market place.

Design and Construction – Other than the improvement constructed by DART, Plano would have full responsibility for the management of design and construction on the facility.

Operation – Management and operation of the facility would be determined jointly by the City of Plano and NCTCOG. Possible operators include the NTTA or a private parking management company. It is anticipated that Toll-Tag technology will be used to control access and collect parking fees.

Profits – Profits from the parking operation would flow to a maintenance reserve fund managed by the City of Plano. Periodically, the City of Plano and NCTCOG would determine if there are excess funds and distribute them equally.

#### Steps for Approval and Development

Resolution Approving Preliminary Development Concept – Plano would draft a resolution in cooperation with DART and NCTCOG for the approval of the governing bodies. The resolution would outline the partnership responsibilities and provide a grant of seed funding from NCTCOG for preliminary design and development of a business plan.

Preliminary Development Plan and Business Plan, including preliminary cost estimates – Plano would select and direct consultants to prepare the preliminary plans. Preparation of a business plan will be coordinated with DART's study of paid parking.

Identification and Preliminary Agreement with Parking Operator – Plano in association with NCTCOG would select a parking operator and negotiate the terms of an operation agreement. The agreement will most likely involve the use of NTTA toll tag technology.

Interlocal Agreement among Plano, DART and NCTCOG, including funding – Plano, DART and NCTCOG will draft an interlocal agreement for development and operation of the parking facility.

Design, Bidding, Construction – Plano would manage the design, bidding and construction process.

Final agreement with operator – Plano would finalize and execute the agreement with the parking operator.

Opening/Operation – Plano would monitor operations and manage finances of the parking facility.

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

**2008**

***December 18 – Employee Holiday Luncheon, Plano Centre, 11 a – 1:30 p***

**December 22**

Mobility Report

DART Report

Comprehensive Monthly Financial Report

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

**2009**

***January 1 – New Year's Day***

**January 12**

***January 19 – MLK Holiday***

**January 26**

Mobility Report

DART Report

Comprehensive Monthly Financial Report

**February 17**

**February 23**

Mobility Report

DART Report

Comprehensive Monthly Financial Report

**March 9**

**March 23**

Mobility Report

DART Report

Comprehensive Monthly Financial Report



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	<b>12/8/08</b>	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	City Manager's Office	Initials	Date	
Department Head	Tom Muehlenbeck	Executive Director		
Dept Signature:		City Manager	<i>[Signature]</i>	<i>12/1/08</i>
Agenda Coordinator (include phone #): <b>Sharon Wright ext. 7107</b>				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER				
<b>CAPTION</b>				
Presentation: Alan Upchurch, City Engineer - 25 Year Service Award				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
<b>SUMMARY OF ITEM</b>				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

**PLANO CITY COUNCIL  
NEIGHBORHOOD ROUNDTABLE  
DISTRICT TWO  
NOVEMBER 20, 2008**

**COUNCIL MEMBERS**

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

**STAFF**

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

The Plano City Council met informally at 7:07 p.m. on Thursday, November 20, 2008, at the Tom Muehlenbeck Recreation Center, 5801 West Parker Road, Plano, Texas. All Council Members were present with the exception of Council Member Magnuson. Mayor Evans arrived at 7:13 p.m. Deputy Mayor Pro Tem LaRosiliere welcomed those in attendance and introduced Council and Staff.

**FY 2008-2009 Budget Presentation/FY 2008-2009 Community Investment Program Presentation**

Director of Budget and Research Rhodes-Whitley spoke to the 2009 Preliminary Bond Referendum, monies needed for streets and a \$164 million package recommended including funding for public safety facilities, library improvements, Plano Centre expansion, park improvements, recreation center, and street improvements. She spoke to receiving outside street improvement funding once a bond is passed, reviewed the location of projects, and spoke to the steady ad valorem tax rate in the City with a two-cent increase passed in 2006-07 for economic development. Ms. Rhodes-Whitley spoke to commercial properties contributing 55% and 45% coming from residential properties, Plano having one of the lowest tax rates in the Metroplex and the effect of the 20% homestead exemption. She advised regarding the impact of bond passage, and the need for 1.97 cents to cover existing debt and 1.85 cents for operation/maintenance. Ms. Rhodes-Whitley reviewed prior bond election results and provided information regarding a calendar of upcoming events. She responded to questions from citizens, advising that the funds are needed for infrastructure and facilities, that there are no extra monies available in the budget, and spoke regarding the purchase of bonds and interest rates. Mr. Muehlenbeck advised that two cents of property tax dedicated to economic development is a policy decision made by the Council, spoke to matching funds that could be received from the County and stated if proposals fail projects will not be constructed.

### **North Texas Tollway Authority Update – GBT Ramps; NTTA North Extension/121 Update.**

Tom Diamond with HNTB, representing the NTTA spoke to the traffic counts on the Dallas North Tollway (DNT), possible improvements, public meetings and looking at alternatives for northbound/southbound traffic north of S.H. 190 including ramping improvements. He spoke to initiation of all-electronic tolling by the first quarter of 2010 and the impact of a proposed S.H. 121 interchange. Mr. Diamond spoke to focusing on implementation of projects, value engineering, workshops to review projects and determine impact and a presentation in January 2009. Steve Hankins with HNTB, spoke to S.H. 121, its costs and segments completed and under construction.

City Engineer Upchurch responded to an audience question and spoke to the final authority of NTTA following Council consideration and input. He spoke to City participation related to ramps and Mr. Diamond spoke to consideration of improvements on S.H. 190 to I-635 and responded regarding collection of tolls from vehicles without tags. Mr. Hankins spoke to the airport being the western end of S.H. 121 and it being a bond-financed project.

### **Community Investment Projects – District 2/Street Repairs/Improvements/Resurfacing**

City Engineer Upchurch spoke regarding improvements at Coit Road/Legacy Drive intersection; a widening of McDermott Road from Ohio Drive to Coit Road and projects at the intersection of McDermott Road and Robinson Road; left-turn lanes (Michigan style) at the intersection of Legacy Drive and Preston Road; near completion of the widening of Parkwood Boulevard, work on Rasor Road from Hedgcoxe Road to Ohio Drive and widening of Communications Parkway from Parker Road to Spring Creek Parkway. He spoke to environmental issues at Communications Parkway north of Spring Creek Parkway, intersection improvements at Parker Road/Marsh Lane, work on Marsh lane south of Parker Road and on Plano Parkway from Midway Road to the western City Limits. Mr. Upchurch responded to questions, advising that Parkwood Boulevard has always been planned as a Type D thoroughfare south of Parker Road and stated Staff will review street signs at Parker Road/Marsh Lane.

Operations Manager Falls spoke to construction projects including Parker Road from Preston Road to the Dallas North Tollway, Legacy Drive from Preston Road to S.H. 121; Parker Road from Coit Road to Preston Road, Ohio Drive northbound and Preston Meadow Drive from Spring Creek Parkway to Legacy Drive. He spoke to street/alley repair in the residential zone bounded by Spring Creek Parkway, Preston Road, Hedgcoxe Road and Coit Road and to a study of the conditions of trunk lines within the creek basin. Mr. Upchurch advised that construction management on Parkwood Boulevard from Plano Parkway to Windhaven Parkway is related to utility factors. Traffic Engineering Manager Neal responded to question regarding the synchronization of traffic signals.

### **Arts of Collin County Update**

ACC Commission President, Steve Matthews spoke to the vision of the Arts of Collin County to create an environment where all residents can share and enjoy in the full diversity and vitality of the arts and the goals to create the finest regional arts center in America, establish an art park, create a community focus and pedestrian environment.

Mr. Matthews spoke to the donation of 126 acres in 2005 with a value of \$22 million, the construction of Exchange Parkway and design changes. He spoke to the Master Plan (Phase One) including a 2,100 seat multi-purpose hall, learning room, art gallery, multi-purpose classroom, meeting/event facilities, restaurants and *The Meadows* (event terrace, sculpture garden, creek walk and hike/bike trails). He spoke to twelve acres reserved for commercial development anticipated on S.H. 121 and to offering a venue for school, community and road house groups, along with arts education and reviewed major donors.

Mr. Matthews advised regarding the amount of monies raised through the foundation, the broad-based goals to raise funding through the private sector, estimated costs for operation/maintenance, and splitting any short fall among cities based on their population. Mayor Evans spoke to operations costing less than a branch library. She spoke to the need to have all funding in place for public buildings prior to ground breaking, monies for a price guarantee not being spent as yet and to the guarantee only being effective for 60 days following acceptance. Mr. Muehlenbeck advised that Plano Centre has different uses than the arts hall and that additional operation costs for the Centre are provided by hotel/motel taxes. Mr. Matthews spoke to discussions with other arts facilities that see ACC as a complementary use. He further responded regarding the advantages of a partnership among cities for the ACC and the model it sets for other regions.

Mayor Evans opened the floor and Mr. Upchurch responded that Staff will look into ribbons on trees at Parker Road/Marsh Lane. Police Chief Rushin spoke to the high resolution rate for burglary crimes; Plano's crime rate being one of the lowest in the state; work to educate citizens; and the use of statistics to guide strategies. He spoke to the Citizens Police Academy and Citizens Assisting Plano Police (CAPP) Program. City Attorney Wetherbee responded to a question regarding the complaint process for solicitors. Mayor Evans spoke to the importance of "Shop Plano First" and its impact on the property tax rate. Members of the audience complimented Staff and the Council on the tax rate and services provided. An audience member spoke to considering facilities/programs for those with physical and developmental disabilities.

Council Member Jackson invited citizens to *Council Office Hours* held the first Monday of each month.

Mayor Evans thanked those in attendance. Nothing further was discussed and the meeting was closed at 8:55 p.m.

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**Harry LaRosiliere, Deputy Mayor Pro Tem**

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**Pat Evans, Mayor**

ATTEST:

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Diane Zucco, City Secretary

**PLANO CITY COUNCIL**  
**Budget Retreat**  
**November 24, 2008**

**COUNCIL MEMBERS**

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

**STAFF**

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

Mayor Evans convened the Council into the open session at 8:30 a.m. on Monday, November 24, 2008, in Training Room A of the Plano Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Council Member Magnuson.

**Discussion and Direction regarding future City Budget issues to include review and prioritization of City Core Businesses**

City Manager Muehlenbeck spoke to staying ahead of concerns regarding the City's budget, work done by department and executive directors in putting together estimates of services provided and ideas regarding whether or not they are done by choice. He spoke to becoming more familiar with all the services provided by the City, validating or changing Staff priorities and categories of "no choice" (mandated), "choice" (may do but other service options are possible), "quality of life" (distinguishes Plano), and "add-ons" (recommendations of citizens).

Lyle Sumek, of Lyle Sumek Associates, Inc. facilitated the worksession and spoke to the Mayor and Council determining areas of importance and prioritization, recognizing the interrelationship between services and value added to the lives of residents along with expectations. He spoke to the Council as a board of directors who set a vision for the future and direct how the budget will apply and what goals to address in the next five years. Mr. Sumek spoke to the model of a sustainable city which is a balance of environmental quality, economic opportunity, and the opportunity to grow and the impact of the quality of life. He spoke to social equity, Plano as a community and balancing areas in the future. Mr. Sumek spoke to the categories of "no choice," "choice," "quality of life," and "add-ons" for services and a foundation made up of the Finance, Human Resources and Technology departments. He spoke to consideration of services rather than departments as a whole, the value contributed to residents' lives, and balancing sustainability. Mr. Sumek spoke to thinking about the future and the possibility that taxes may need to be increased to meet the vision and determining the value to citizens in terms of time, safety and aesthetics.

Executive Director Glasscock spoke to the Public Safety Services/Technology Business Center, administration, community outreach and legislative functions and the Sister Cities as "choice" programs. He responded to the Council that costs for the Multi-Cultural Outreach Roundtable (MCOR) are related to printing and minimal Staff time for meetings and the value is a "best guess."

Director of Health Collins spoke to Animal Services, whose primary purpose is rabies control. He spoke regarding the number of service calls and animals taken in and adopted, and to the number of visitors to the shelter. Mr. Collins spoke to completion of an addition by Summer 2009 and responded to the Council regarding the cost for traps and their administration along with issues related to requiring micro-chipping of animals in the City. He spoke to becoming more proactive in registering animals in the City and issues of receiving paperwork verifying care by a veterinarian. Mr. Collins responded to Council Member LaRosiliere regarding the City's low euthanasia rate and advised regarding Staff openings. The Council concurred to accept the core business matrix and priorities.

Director of Health Collins spoke to Environmental Health and its primary purpose to prevent disease and pollution and cost centers including Environmental Health, Water Quality, and Storm Water Quality. He spoke to staying competitive with other cities with regard to fees, addressing issues of noise along with the Police Department and administrative costs. Mr. Collins advised that if services were cut, the state would assume functions but there may be citizen frustration and spoke to regulation of body art. Mr. Collins advised that if the cost for food establishment inspections were increased, there may be some migration out of the City. Mr. Glasscock advised that the removal of add-on programs would result in some fluid movement of dollars and may move employee costs to another program. Mr. Collins spoke to his office dealing with issues of pandemics.

Director of Emergency/Disaster Response Stovall spoke to preparedness, response and recovery and hazard mitigation coordinating across the City. He spoke to work among Staff and citizen volunteers and improvements made following Hurricane Katrina. Mr. Stovall spoke to community outreach, the importance of response efforts to save money, and seeking reimbursement. He spoke to possible grants and income that may be accrued to other departments. Mr. Muehlenbeck spoke to this department being an outgrowth of the Fire Department and Mr. Stovall responded to Council Member Jackson regarding certifications and services to be provided by the county if not by the City. Council Member Johnson spoke to the importance of tracking recoverable expenses and Mr. Muehlenbeck spoke to Federal Disaster Mitigation as a "no choice" service. Mr. Glasscock spoke to the need for a department outside of the Fire Department to address issues and to centralize costs and coordination. Mr. Stovall responded regarding the City's actions during the storms in April 2008 and advised that no additional Staff will be required when the new center opens.

Fire Chief Esparza spoke to protecting and enhancing the quality of life through a comprehensive program of services and public education, aligning functions and determining priorities. He responded to the Council that ambulance service could be contracted out but it may affect the quality of response. He spoke to the breakdown of services between fire and health, items covered by "technical rescue," inclusion of grant monies, and educational programs.

Chief Esparza stated that while the school district is a partner, they do not participate in funding educational programs and spoke to grants that may offset costs. City Manager Muehlenbeck spoke to Council's direction to preserve the ISO I rating and associated costs and a review planned for April, 2009. He spoke to the difference in insurance rates based on an ISO rating and the Council concurred to accept the core business matrix and priorities.

Police Chief Rushin thanked Staff for their efforts in preparing the matrix, spoke to citizen prioritization of needs and core "choice" functions of patrol/response, investigative services, traffic enforcement and professional standards. He responded to the Council that the school district is unable to contribute any further to the school liaison program and spoke to officer pay incentives. Chief Rushin spoke to the cooperative efforts between the Police and Emergency Services Departments and Mr. Sumek spoke to revising the "Emergency Services and Homeland Security" category to "choice" so that it is in line with Mr. Stovall's department. The Council concurred to accept the core business matrix and priorities with one revision.

The Council took a break at 10:08 a.m. and resumed discussions at 10:20 a.m.

Executive Director Glasscock spoke regarding Public Information and functions including records management ("no choice"), mail processing, web site coordination, PTN Cable, and Print Shop. He provided background regarding the Print Shop, the movement to more electronic materials for the Council packet and provision of Staff support. Council Member Jackson spoke to opening up studios for local businesses in exchange for revenue and Council Member Dunlap spoke to revenue that could be generated from outside print jobs. The Council concurred regarding the business matrix and priorities.

Director of Public Safety Timmons spoke to emergency and dispatch as core functions, public alerting responsibility, radio/data network and regional collaboration with other municipalities. He spoke to revenue, and the quality of life provided by public education and the *Are You Okay* program that checks on homebound and mobility impaired individuals. Mr. Timmons responded regarding 9-1-1 revenues being included on telephone bills, and Executive Director Glasscock responded to Council Member Dunlap regarding the Fusion Center providing integration to other agency information and which is funded through homeland security grants. The Council concurred regarding the core business matrix and priorities.

Director of Technology Services Stephens spoke to services provided to all departments, network security and integrity, stability of infrastructure, reliability and application uses. He spoke to purchasing applications that fit the needs of the City and costs including software/maintenance, operational management and the possible expansion of the data center. Mr. Stephens spoke to desk-top support, implementation of the mesh network and support for Staff connectivity. Director of Budget and Research Rhodes-Whitley advised that funding comes from both the General and Water/Sewer funds and to future chargebacks. Mr. Stephens spoke to the need for desk-lines, and costs included in support and services. Council Member LaRosiliere spoke to "Cellular Phone and Wireless Data Services" as being a "choice" program. The Council concurred regarding the core business matrix and priorities with one revision.

Executive Director Hogan spoke regarding Public Services/Operations Business Center, administration, the large enterprise fund and the retirement of the Director of Public Works.

Director of Customer Utility Services Israelson spoke to services being provided by choice including field services, billing and collections, quality control and implementation of a new reading system with future payback. He spoke to Intergovernmental Relations work with franchise utility companies in collection of revenues and addressing rate cases. Council Member Jackson recommended moving this item up in priority as it is a revenue producer. Mr. Israelson spoke to implementation of a utility kiosk at the Municipal Center with possible expansion, electronic collections, the number of citizens who pay-in-person, and replacement of meters. He spoke to his department responding to citizen calls as necessary and Mr. Hogan spoke to reviewing a customer relations management system to direct incoming calls.

Director of Human Resources Ross spoke to compliance with work-related regulations (“choice”), “no choice” items including recruitment and retention, and “quality of life” issues including employee development and management preparation. She spoke to the use of technology in recruiting, electronic records, changes in staffing needs and responded that educational costs are in-house classes. City Manager Muehlenbeck spoke to the educational opportunities provided by the management preparation program and Ms. Ross responded to the Council regarding interlocal agreements with area institutions to provide courses. The Council concurred regarding the core business matrix and priorities.

Director of Libraries Baumbach spoke to circulation, collection management, computer access, self-check machines, children’s outreach and to providing basic library functions. She spoke to programs including genealogy, municipal reference library, Literacy for Life and Adult Outreach and responded regarding Staffing levels for the genealogy area limiting hours of operation and it’s growth from an “add-on” to a “quality of life” category. Ms. Baumbach spoke to increased usage of computers at the libraries, and Mayor Evans spoke to the Adult Outreach Program as an “add-on.” Ms. Baumbach spoke to the challenges when requesting private funding and Mr. Muehlenbeck spoke to funding received from Collin County for use of libraries by those in unincorporated areas.

The Council took a break at 11:30 a.m. and resumed discussions at 11:38 a.m.

Director of Parks and Recreation Wendell spoke to diverse facilities and programs offered a majority of which are “quality of life.” He spoke to the importance of both fields and recreation centers, maintenance of assets, operations/maintenance, providing programs to diverse groups, and planning and development including land acquisition. Mr. Wendell spoke to the golf course fund, public arts fund and Plano Centre which is funded through revenues generated by the facility and the hotel/motel tax fund. He responded regarding maintenance of fields internally to meet expectations of sports groups and preparation of reports for the hospitality community to encourage use of Plano Centre. Mr. Muehlenbeck advised Staff would review alcohol/concessions revenues. Council Member Dunlap spoke to programs becoming “choice” once a decision is made to provide park services. Council Member Jackson spoke to determining the Centre’s cost for equipment replacement, breaking out the costs for operation/maintenance and to following up with the school district regarding the cost for the summer lunch program. Mr. Wendell spoke to the General and Recreation Revolving funds covering different services. The Council discussed the difference between programs provided by “choice” and those that are “quality of life” (mowing of rights-of way versus care of fields).

Director of Sustainability and Environmental Services Nevil spoke to being fee-based, comparisons of rates and services to other municipalities, and cost of service analysis. She spoke regarding the goals for *Texas Pure*, including processing trimmings from other cities and marketing goals. Council Member Jackson spoke to making promotion a priority to increase revenues. The Council concurred with the core business matrix and priorities.

The Council took a recess for lunch at 12:27 p.m. and resumed discussion at 12:55 p.m.

Executive Director Hogan spoke regarding the programs of the Public Works Department-Utility Operations and those recommended as “no choice” (water and sewer main repair, meter installation, utility cut service, fire hydrant metering, inspections and reviews, costs estimates and compliance efforts along with contracting with the North Texas Municipal Water District). He spoke to “quality of life” areas and advised that revenues are generated through the Water and Sewer Fund. He spoke to the use of contractual labor for areas utilizing the Capital Reserve Fund to maintain a low staffing level. Council Member Dunlap spoke to areas that may be “no choice” once a decision is made to provide a service. Ms. Rhodes-Whitley spoke to proportionally moving Water and Sewer revenues from Customer Utility Services to Public Works. The Council discussed revising the categories of all functions under Utility Operations with the exception of Community Outreach to “no choice.”

Mr. Hogan spoke regarding pumping facilities and the ramifications if left in disrepair and responded regarding the choice to have Staff provide water flow testing services to ensure accuracy. He spoke to municipal drainage and the need for mowing and sweeping as “quality of life” issues. Ms. Rhodes-Whitley spoke to the need to reflect revenues in the municipal drainage account. City Engineer Upchurch spoke to sweeping as “no choice” and mowing as “choice” items and City Manager Muehlenbeck requested expansion of the description of storm water pipe and bridge repairs. Mr. Hogan responded to the Council regarding the use of permitted herbicides for grass control.

Mr. Hogan spoke regarding street operations (1,000 lane miles and 517 alley miles) with a the majority of maintenance accomplished through the Capital Reserve Fund. He spoke to retaining a core Staff to respond to emergencies and spoke regarding traffic signals, signs and markings as “no choice” areas along with administration. Council Member Dunlap requested clarification that pot hole patching refers to City-owned property and City Manager Muehlenbeck spoke to alley, sidewalk, pavement undersealing and pothole patching as areas of “choice.” Mr. Dunlap spoke to inclusion of all items under street operations, traffic signals and administration as “choice.” Mr. Hogan spoke to fleet and equipment services as “choice” and regarding the levels of certification for vehicle technicians. Fleet & Equipment Services Manager Choat spoke to contracting out some of the maintenance and cutting back on services offered to other municipalities and Ms. Rhodes-Whitley advised that maintenance is included within different department budgets.

Executive Director Turner spoke regarding the Development Business Center administration and legislative functions to communicate goals and act as a liaison. He spoke to oversight of operations, project and personnel management, strategic planning, budgeting, customer service and special projects. Ms. Rhodes-Whitley spoke to the standardization of expenses between the business centers responsible for legislative functions.

Chief Building Official Mata advised that the department's purpose is the protection of life and property through administration and enforcement of codes and to the department acting as "first preventers." He spoke to auxiliary services and inspections as "no choice" being mandated by the state. Mr. Mata spoke to the choice of operational procedures and quality of life issues related to records and information management, sign enforcement, and committee management and "add-ons" represented by investigation/arbitration and community education. He responded to the Council that sign enforcement revenues would be seen in the Municipal Court funds, and spoke to the movement towards arbitration, and expenses of builder's luncheons hosted by the City. Mr. Mata spoke to the level of inspections done by the City, services provided to smaller cities, and Council Member Dunlap spoke to records management as a "choice" rather than a "quality of life" program. Mr. Mata spoke to the reduction in the number of employees, utilization of part-time workers rather than full-time and the impact single-family rental inspections will have on the department. He spoke to services provided with a permit and Council Member Jackson requested citizens be provided with information defining the value of services.

Chief Engineer Upchurch spoke to Storm Water as a "no choice" category followed by "choice" areas of maintenance and operations, transportation systems and traffic management, private development and CIP inspections, facilities, and regional transportation. Council Member Dunlap spoke to the Safe Streets Program as an "add-on" rather than a "quality of life" program.

Director of Planning Jarrell spoke to areas of "choice" including development review, Geographic Information Systems, long-range planning and CDBG/HOME Grant programs. She spoke to "quality of life" areas including Heritage Preservation, Buffington Community Services Grant Program, Day Labor Center, Neighborhood Planning and Downtown Plano. Ms. Jarrell spoke to providing assistance to Downtown merchant groups and tenants and Mr. Sumek recommended including this information in the item description. Executive Director Turner spoke to items added over the years including addressing neighborhood revitalization, Day Labor Center and Heritage Preservation and the impact should they be discontinued. In response to City Manager Muehlenbeck, Ms. Jarrell spoke to tampering down expectations of those participating in the Neighborhood Planning Program and to the knowledge gained by citizens. The Council concurred to revise the program's name to "Community Building." Following discussion the Council concurred to leave the Buffington Grant Program, Day Laborer Center, Community Building and Downtown Plano as "quality of life" issues and revise Heritage Preservation to "choice."

Director of Property Standards O'Banner spoke to public nuisance and substandard structure inspections and neighborhood assessments as areas of "choice" along with judicial hearings. She advised that an "add-on" was professional development curriculum and providing in-house sessions. Council Member Jackson spoke to opening training to other municipalities as a revenue source and Council Member Dunlap spoke to the possible combination of resources between the Building Inspections and Property Standards Departments for overlapping services. Ms. O'Banner spoke to the costs incurred with enforcement of abandoned shopping carts and the Council discussed fees and the value of keeping the City free of unsightly items. Mayor Evans spoke to the importance of Community Service Spruce-Up and moving the item up to number nine in priority.

The Council took a recess at 2:42 p.m. and resumed discussion at 2:55 p.m.

Municipal Court Judge Stevenson spoke to the case load for judges, the number of magistrate warrants issued per year and categorization as "choice." He spoke to the downside should services not be provided including issues of enforcement and lost revenues. Judge Stevenson spoke to administration of the Building Security Fund for the Justice Center which is covered by fees added to fines. He spoke regarding the technology fund as an area of "choice" with no personnel costs and covered by a fee paid with fines and programs for juveniles and teens listed as "quality of life" areas provided at no cost to the City. Ms. Rhodes-Whitley advised that court cost revenues appear in the Finance Department budget.

City Attorney Wetherbee spoke to charter requirements for a City Attorney, services provided for litigation, the outsourcing of some cases, and participation in the Loaner Attorney Program. She spoke to legal advise provided to departments and boards/commissions. Ms. Wetherbee spoke to services provided as "quality of life" including collection of monies for property damage and personal injury, external work for other organizations, and initiation of litigation to recover potential sums. Council Member Jackson spoke to litigation initiation as a "choice" and Ms. Wetherbee spoke to consideration of legislative assessment as an "add-on."

City Manager Muehlenbeck spoke to the his role of oversight and management of all City operations, project management, personnel management, strategic planning, budgeting, customer service and advising the Council as a "choice."

Director of Budget and Research Rhodes-Whitley spoke to programs provided by choice including customer services, financial forecasting, and tax assessor services. Council Member Miner spoke to revising the area of property tax to a "no choice" item. Ms. Rhodes-Whitley spoke to special projects, including ICMA Performance Measurement and development of the Core Matrix document and the workload managed by Staff.

City Secretary Zucco spoke to "no choice" programs required by state statute or the City's charter including preparation of Council agendas and packets, legal publications, coordination of elections, alcohol beverage permitting, codification of ordinances, annexation processing, and records management and support provided to boards and commissions.

City Manager Muehlenbeck spoke regarding economic development adding to the quality of life in attracting, retaining and expanding businesses and to technology marketing and redevelopment.

Director of Finance Tacke spoke regarding federal regulations that require functions to be "no choice" and the City as the best provider of some services including court's administration and general accounting. City Manager Muehlenbeck requested the area of accounting be changed from "no choice" to "choice." Ms. Tacke spoke regarding the Youth Advisory Committee as an add-on program and personnel cost, purchasing operations as a "no choice, asset management and treasury functions as "choice" items. She spoke to finance systems administration and its costs and Ms. Rhodes-Whitley spoke to addition of risk management functions. Mr. Sumek spoke to the need for an infrastructure guided by a legal framework.

City Manager Muehlenbeck spoke regarding the choice to perform audits/reviews and special projects through the Internal Audit Department.

Director of Budget and Research Rhodes-Whitley spoke to the projected shortfall for 2009-10 of \$22 million, the importance of sales tax revenues during the holiday season and preliminary appraisal district information received in February. Deputy Mayor Pro Tem LaRosiliere spoke to making decisions regarding the quality of life in the City and the need for Staff to prioritize. Mr. Muehlenbeck advised that Staff will be preparing the three-year look ahead in April and the possibility of providing two budgets (one reflecting many cuts and the other increased revenues with fewer cuts). Council Member Jackson spoke to receiving revenues on services currently provided at no cost. Mr. Sumek responded to Mayor Pro Tem Callison, advising that he would provide alternative models as a follow up to the worksession and spoke to relationships among departments. Council Member Dunlap spoke to areas that might be considered "no choice" once services are provided and City Manager Muehlenbeck responded to Mayor Pro Tem Callison regarding balancing the quality of life issues with the budget and to a future session following receipt of information regarding sales tax receipts and property tax projections. Mr. Sumek spoke to the relationships among departments.

Nothing further was discussed. Mayor Evans adjourned the meeting at 3:52 p.m.

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**Pat Evans, MAYOR**

ATTEST:

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**Diane Zucco, City Secretary**

**PLANO CITY COUNCIL  
PRELIMINARY OPEN MEETING AND REGULAR MEETING  
November 24, 2008**

**COUNCIL MEMBERS**

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

**STAFF**

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

Mayor Evans called the meeting to order at 5:13 p.m., Monday, November 24, 2008, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Mayor Evans then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney to receive Legal Advice and discuss Litigation, Section 551.071, to discuss Real Estate, Section 551.072, to discuss Economic Development, Section 551.087 and to further 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 Evans reconvened the meeting back into the Preliminary Open Meeting and Regular Meeting at 7:05 p.m. in the Council Chambers where the following matters were discussed:

The invocation was led by Rabbi Stefan Weinberg of Congregation Ansai Torah.

The pledge was led by Representatives of the Boys and Girls Club of Collin County Plano.

The oaths of office were passed over and Mayor Evans presented a certificate of appreciation to Gregory J. Myer for his service on the Library Advisory Board.

## COMMENTS OF PUBLIC INTEREST

Citizen Jack Lagos requested information regarding the cost to build the arts center and past fund-raising efforts.

## CONSENT AGENDA

Upon a motion made by Deputy Mayor LaRosiliere and seconded by Council Member Dunlap, the Council voted 7-0 to approve and adopt the Consent Agenda as recommended and as follows:

**Approval of Minutes** [Consent Agenda Item (A)]  
November 10, 2008

### **Approval of Expenditures**

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

**Bid No. 2008-234-B** for Russell Creek Park and Carpenter Park Improvements to Core Construction Services of Texas, Inc. in the amount of \$841,566. Russell Creek Park improvements include bleacher shade structures, signage, gate renovations, player bench renovations and spectator seating enhancements. Carpenter Park improvements include 85 space parking lot, backstop and dugout renovations, bleacher shade, renovation of an existing shade structure and baseball fields, improvements to the baseball plaza (south fields), and signage. (Project No. 5891) [Consent Agenda Item (B)] (See Exhibit "A")

**Bid No. 2008-214-B** for the purchase of Hardware and Software, including upgrade and installation to AT&T in the amount of \$425,484 for Emergency Call Center System Upgrade. [Consent Agenda Item (C)] (See Exhibit "B")

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

To authorize a contract in the amount of \$239,270 from Centennial Contractors Enterprises, Inc. for labor, material and installation of bullet-resistant windows and panels and related work through The Cooperative Purchasing Network (TCPN) contract, and authorizing the City Manager to execute all necessary documents. (TCPN Contract No. R4538) [Consent Agenda Item (D)]

To authorize the purchase of City Hall – Paint Existing Ceiling Tiles in the amount of \$115,903 from Centennial Contractors Enterprises, Inc., through The Cooperative Purchasing Network (TCPN) contract, and authorizing the City Manager to execute all necessary documents. (TCPN Contract No. R4538) [Consent Agenda Item (E)]

To approve the purchase of five Spartan/Rosenbauer Pumpers and two Spartan/Rosenbauer 109' Aerial Ladders in the amount of \$3,953,539 from Emergency Vehicles of Texas through an existing contract/agreement with H-GAC Cooperative Purchase Program and authorizing the City Manager to execute all necessary documents. (#FS-1207) [Consent Agenda Item (F)]

To authorize the renewal of the Maintenance Agreement for CommVault Backup Software in the amount of \$79,263 from Dell through a Department of Information Resources (DIR) contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-192) [Consent Agenda Item (G)]

To approve an expenditure for upgrading the Sun StorageTek Storage Area Network XL700 Tape Library to a Sun StorageTek IBM LTO4 System, in the amount of \$229,528 from Sigma Solutions, Incorporated through an existing contract with the Department of Information Resources (DIR), and authorizing the City Manager to execute all necessary documents. (DIR-SDD-503) [Consent Agenda Item (H)]

#### **Adoption of Strategic Plan**

To adopt the City Council Strategic Plan for 2008-2023 [Consent Agenda Item (I)]

#### **Adoption of Resolutions**

**Resolution No. 2008-11-23(R):** To adopt a 2009 State Legislative Program for the City of Plano; directing the City Manager or his designee to act with regard to the City's Legislative Program; and providing an effective date. [Consent Agenda Item (J)]

**Resolution No. 2008-11-24(R):** To approve receipt of funds in the amount of \$124,866 from the Texas State Library and Archives Commission – Loan Star Libraries to fund the following for Plano Public Library System (PPLS): three (3) SelfCheck™ machines, English and Spanish Microsoft computer classes with instructors; large print books, Overdrive titles, World Language materials including Spanish, and a subscription to an online homework help service; and authorizing the City Manager to execute all necessary documents for receipt of the funding. [Consent Agenda Item (K)]

#### **Adoption of Ordinances**

**Ordinance No. 2008-11-25:** To repeal Ordinance No. 2008-10-19; establishing the number of certain classifications within the Police and Fire Departments for Fiscal Year 2008-09; establishing the authorized number and effective dates of such positions for each classification effective October 1, 2008 and November 24, 2008 respectively; establishing a new salary plan for the Police and Fire Departments effective October 27, 2008; and providing a repealer clause, a severability clause and an effective date. [Consent Agenda Item (L)]

**Ordinance No. 2008-11-26:** To amend Section 12-101 of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances to prohibit stopping, standing, or parking of motor vehicles on certain sections of Banner Elk Circle, within the city limits of the City of Plano; declaring it unlawful and a misdemeanor to park motor vehicles upon such sections of such roadway within the limits herein defined; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, and an effective date. [Consent Agenda Item (M)]

**Ordinance No. 2008-11-27:** To amend Section 12-137 of Chapter 12 (Traffic Code) of the Code of Ordinances to prohibit the operation of trucks or motorized vehicles with three axles or more, and with a payload weight in excess of two (2) tons on certain specified streets within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, and an effective date. [Consent Agenda Item (N)]

**Ordinance No. 2008-11-28:** To repeal in its entirety Ordinance No. 2007-10-33, codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas and enacting this new Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, establishing a revised schedule of rates and charges for solid waste disposal and collection applicable to commercial accounts; providing a repealer clause, a severability clause, and providing an effective date. [Consent Agenda Item (O)]

The Council resumed discussion of the Preliminary Open Meeting agenda.

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

No items were brought forward.

**Personnel Reappointments/Appointments**

Cultural Affairs Commission

Upon a motion made by Deputy Mayor Pro Tem LaRosiliere and seconded by Council Member Dunlap, the Council voted 7-0 to appoint Stephanie Ward to a term expiring October 2010.

Library Advisory Board

Upon a motion made by Council Member Dunlap and seconded by Deputy Mayor Pro Tem LaRosiliere, the Council voted 7-0 to appoint Debra Conway Benton as Chair and to further appoint Robert R. Marquardt to an interim term expiring October 2009.

### Public Arts Committee

Upon a motion made by Deputy Mayor Pro Tem LaRosiliere and seconded by Council Member Dunlap, the Council voted 7-0 to appoint Richard E. Allison to an interim term expiring October 2009 and to appoint Andrea Stroh as the ex-officio member from the Cultural Affairs Commission. The Council further deferred consideration of a Chair.

### Senior Citizens Advisory Board

Upon a motion made by Council Member Johnson and seconded by Mayor Pro Tem Callison, the Council voted 7-0 to appoint Marilyn R. Pauly to a term expiring October 2010.

### **DART Report**

The DART Report was deferred.

### **Mobility Report**

Transportation Engineering Manager Neal spoke to updating the list of red-light cameras reflecting new locations, considering the impact of yellow light timing on intersections and working with police utilizing speed trailers. He spoke to receipt of a *Traffic Demand Award*. City Manager Muehlenbeck requested information be brought forward to the next Council meeting regarding the need for a committee to review red-light cameras.

### **Comprehensive Monthly Financial Report**

Director of Finance Tacke spoke to the October 2008, report advising that General Fund revenues are down slightly compared to the prior year and that expenditures in the General and Water/Sewer Funds are up slightly. She advised that the annualized sales tax trend continues and unemployment is up but still below 5%. Ms. Tacke spoke to the increase in price of single-family homes, stated there are no significant changes in hotel/motel taxes, and spoke to the liquidity of investments. She responded to City Manager Muehlenbeck, advising that sales tax from this report will be credited to the previous fiscal year.

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

Long Range Planning Manager Zimmerman spoke regarding the subcommittee appointed on September 22, 2008, recommendation of the need to create a committee and its proposed composition. He spoke to a committee forming a partnership with the Census Bureau, utilizing local leaders' knowledge of the community, starting local promotion efforts early, stressing the impact of accurate counts, and connecting with historically undercounted groups.

Mr. Zimmerman spoke to the impact of the census count in areas of elected representation at the state, federal and city levels; funding; and planning/implementing City programs and services. He spoke to proposed committee composition ranging in size from 21-24 individuals representing a broad base and allowing for the formation of subcommittees. Mr. Zimmerman requested Council's direction in forming a 2010 Census Complete Count Committee including the composition and initiation of contacts. He spoke to development of a "framework" to guide committee efforts and returning to Council for member appointments and approval of direction.

Mr. Zimmerman responded to Council Member Dunlap, advising that Staff foresees the need for \$30,000 for expenses and that \$9,000 will come from the 2008-09 budget and City Manager Muehlenbeck advised that this item is not included and further spoke to benefits. Upon a motion made by Council Member Dunlap and seconded by Council Member Jackson, the Council voted 7-0 giving direction to move forward as recommended.

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

Council Member Dunlap requested information come forward regarding the requirement that developers bury power lines and requests for exceptions brought to the Board of Adjustment.

### **Consent and Regular Agenda**

No items were removed from the Consent Agenda.

The Council resumed discussion of the Regular Agenda.

### **END OF CONSENT**

**Public Hearing** to provide citizens and residents with the opportunity to review and provide comment on the projects for the proposed 2009 Bond Referendum. [Regular Agenda Item (1)]

Mayor Evans opened the Public Hearing. Citizen Jack Lagos spoke to economic times, in support of the street bonds, focusing attention on bonds for areas that are needed and postponing some measures. No one else spoke for or against the item and the Public Hearing was closed.

**Public Hearing and adoption of Ordinance No. 2008-11-29** to designate a certain area within the City of Plano as Reinvestment Zone No. 115 for a Tax Abatement consisting of a 1.9268 acre tract of land located north of Technology Drive between Matrix Drive and Klein Road, in the City of Plano, Texas establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date. [Regular Agenda Item (2)]

**Ordinance No. 2008-11-29 (cont'd)**

Director of Finance Tacke spoke regarding requirements to establish a reinvestment zone. Mayor Evans opened the Public Hearing. No one spoke for or against the request and the Public Hearing was closed.

Upon a motion made by Council Member Jackson and seconded by Deputy Mayor Pro Tem LaRosiliere, the Council voted 7-0 to designate a certain area within the City of Plano as Reinvestment Zone No. 115 for a Tax Abatement consisting of a 1.9268 acre tract of land located north of Technology Drive between Matrix Drive and Klein Road, in the City of Plano, Texas establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date; and further to adopt Ordinance No. 2008-11-29.

**Resolution No. 2008-11-30(R):** To approve the terms and conditions of an Agreement by and between the City of Plano, Texas, the County of Collin, Texas, and Sigma Four, Inc., a Texas corporation, and providing for a Real and Business Personal Property Tax Abatement, and authorizing its execution by the City Manager; and providing an effective date. [Regular Agenda Item (3)]

Director of Finance Tacke advised that the abatement consists of an estimated \$1.1 million in real property and \$50,000 in business personal property, will run for five years from January 1, 2009 through December 31, 2013, and provide 50% abatement for both real and business personal properties.

Upon a motion made by Deputy Mayor Pro Tem LaRosiliere and seconded by Council Member Jackson, the Council voted 7-0 to approve the terms and conditions of an Agreement by and between the City of Plano, Texas, the County of Collin, Texas, and Sigma Four, Inc., a Texas corporation, and providing for a Real and Business Personal Property Tax Abatement, and authorizing its execution by the City Manager; and providing an effective date; and further to adopt Resolution No. 2008-11-30(R).

**Resolution No. 2008-11-31(R):** To approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Sigma Four, Inc., a Texas corporation; authorizing its execution by the City Manager; and providing an effective date. [Regular Agenda Item (4)]

Director of Finance Tacke advised regarding a grant for \$20,000 resulting in sixteen full-time jobs.

Upon a motion made by Deputy Mayor Pro Tem LaRosiliere and seconded by Council Member Miner, the Council voted 7-0 to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Sigma Four, Inc., a Texas corporation; authorizing its execution by the City Manager; and providing an effective date; and further to adopt Resolution No. 2008-11-31(R).

Nothing further was discussed. Mayor Evans adjourned the meeting at 7:48 p.m.

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**Pat Evans, MAYOR**

ATTEST

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**Diane Zucco, City Secretary**



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>11/24/08</b>		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Parks and Recreation		Initials	Date	
Department Head	Don Wendell		Executive Director	<i>[Signature]</i> 11-13-08	
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i> 11-13-08	
Agenda Coordinator (include phone #): <b>Susan Berger (7255)</b>					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT					
<input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
<b>CAPTION</b>					
Award/rejection of Bid/Proposal, conditional acceptance of lowest responsible Bid/Proposal, and designation of alternate lowest responsible Bid/Proposal for Russell Creek Park and Carpenter Park Improvements (Bid No. 2008-234-B) to Core Construction Services of Texas, Inc. in the amount of \$841,566.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS	
Budget	2,367,496	2,299,504	3,550,000	8,217,000	
Encumbered/Expended Amount	-2,367,496	-127,434	0	-2,494,930	
This Item	0	-841,566	0	-841,566	
<b>BALANCE</b>	<b>0</b>	<b>1,330,504</b>	<b>3,550,000</b>	<b>4,880,504</b>	
FUND(S): <b>PARK IMPROVEMENT CIP &amp; CAPITAL RESERVE</b>					
COMMENTS: Funds are included in the 2008-09 Park Improvement CIP & Capital Reserve. This item, in the amount of \$841,566, will leave a current year balance of \$1,330,504 for the Athletic Field Improvements and Athletic Field Renovation projects.					
STRATEGIC PLAN GOAL: Athletic field improvements and renovations relate to the City's Goal of Premier City in Which to Live.					
<b>SUMMARY OF ITEM</b>					
Staff recommends that the bid received from Core Construction Services of Texas, Inc. in the amount of \$841,566 be accepted as the lowest responsible bid conditioned upon timely execution of any necessary contract documents. This amount includes the base bid of \$673,097 and Alternates 1 through 11 in the total amount of \$168,469.					
The bid includes renovations at Russell Creek Park and Carpenter Park. Russell Creek Park improvements include bleacher shade structures, signage, gate renovations, player bench renovations, and spectator seating enhancements. Carpenter Park (South) improvements include an 85 space parking lot, backstop and dugout renovations, bleacher shade, renovation of an existing shade structure, improvements to the baseball plaza (south fields), and signage. The alternate bid items are for the renovations to the two baseball fields and baseball field plaza at Carpenter Park (South).					
The low bid is under the consultant's estimate of \$1,000,000.					



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>11/24/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Purchasing		Initials	Date	
Department Head	Mike Ryan		Executive Director		
Dept Signature:	<i>[Signature]</i>		City Manager <i>[Signature]</i>		
Agenda Coordinator (include phone #): <b>ZAHID KHAN / EXT. 7376</b>					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT					
<input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
<b>CAPTION</b>					
Award/Rejection of Bid/Proposal for CSP No. 2008-214-B for the purchase of Hardware and Software, including upgrade and Installation to AT&T in the amount of \$425,484.00.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2008-2009</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	400,000	0	400,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-425,484	0	-425,484
BALANCE		0	-25,484	0	-25,484
FUND(S):					
COMMENTS: Funds are included in the 2008-09 adopted budget for system upgrade of hardware and software. The additional funds of ((\$25,484) needed for 9-1-1 Call Center System will be funded through savings in the Wireline Fee Fund Balance.					
STRATEGIC PLAN GOAL: Providing updated Emergency call center Service relates to the City's Goal of "Service Excellence".					
<b>SUMMARY OF ITEM</b>					
Staff recommends CSP proposal of Emergency Call Center System Upgrade in the amount of \$425,484.00 be accepted based on competitive sealed proposal award criteria stated in the specifications conditioned upon timely execution of any necessary contract documents.					
List of Supporting Documents: Recommendation Memo and Recap			Other Departments, Boards, Commissions or Agencies		



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>12/08/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Engineering		Initials	Date	
Department Head	Upchurch		Executive Director	<i>[Signature]</i> 11/25/08	
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i> 11/25/08	
Agenda Coordinator (include phone #):		<b>Irene Peques (7198)</b>	<b>Project No. 5732</b>		

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

**CAPTION**

(Award/Rejection) of (Bid/Proposal) for Bid No. 2009-7-B for Communications Parkway – Parker Road to Spring Creek Parkway to Glenn Thurman, Inc., in the amount of \$2,412,005.10.

**FINANCIAL SUMMARY**

NOT APPLICABLE     OPERATING EXPENSE     REVENUE     CIP

FISCAL YEAR: <b>2008-09</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	204,378	2,567,622	0	<b>2,772,000</b>
Encumbered/Expended Amount	-204,378	-18,348	0	<b>-222,726</b>
This Item	0	-2,412,005	0	<b>-2,412,005</b>
BALANCE	0	137,269	0	<b>137,269</b>

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

**COMMENTS:** Funds are included in the 2008-09 Street Improvement CIP. This item, in the amount of \$2,412,005 will leave a current year balance of \$137,269 for the Communications - Parker to Spring Creek project.

**STRATEGIC PLAN GOAL:** Street widening relates to the City's Goals of Premier City in which to Live and Safe, Efficient Travel.

**SUMMARY OF ITEM**

Staff recommends the Alternate No. 2 Bid (low nitrous oxide dry kiln cement) of Glenn Thurman, Inc., in the amount of \$2,412,005.10 be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents.

The Base Bid (dry kiln cement) was for \$2,404,710.30. Alternate No. 1 (other type cement) was for 2,404,710.30. Alternate No. 2 (low nitrous oxide dry kiln cement) is less than 5% over the base bid price at 2,412,005.10 (0.6% over the dry kiln cement content cost). In keeping with the City's Green Purchasing Policy, staff recommends the award be based upon the low nitrous oxide dry kiln cement purchase.

The second vendor being recommended is McMahon Contracting, LP in the amount of \$2,477,608.17 (Base Bid) and \$2,560,543.81 (Alternate No. 2).

Engineers' estimate is \$2,870,000.

The project consists of the widening of Communications Parkway from a four (4) lane to a six (6) lane divided thoroughfare from Parker Road to Windhaven Parkway and widening from a two (2) lane to a six (6) lane divided thoroughfare from Windhaven Parkway to Spring Creek Parkway. This project also includes storm drainage, landscaping, irrigation, street lighting and traffic signal construction.



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

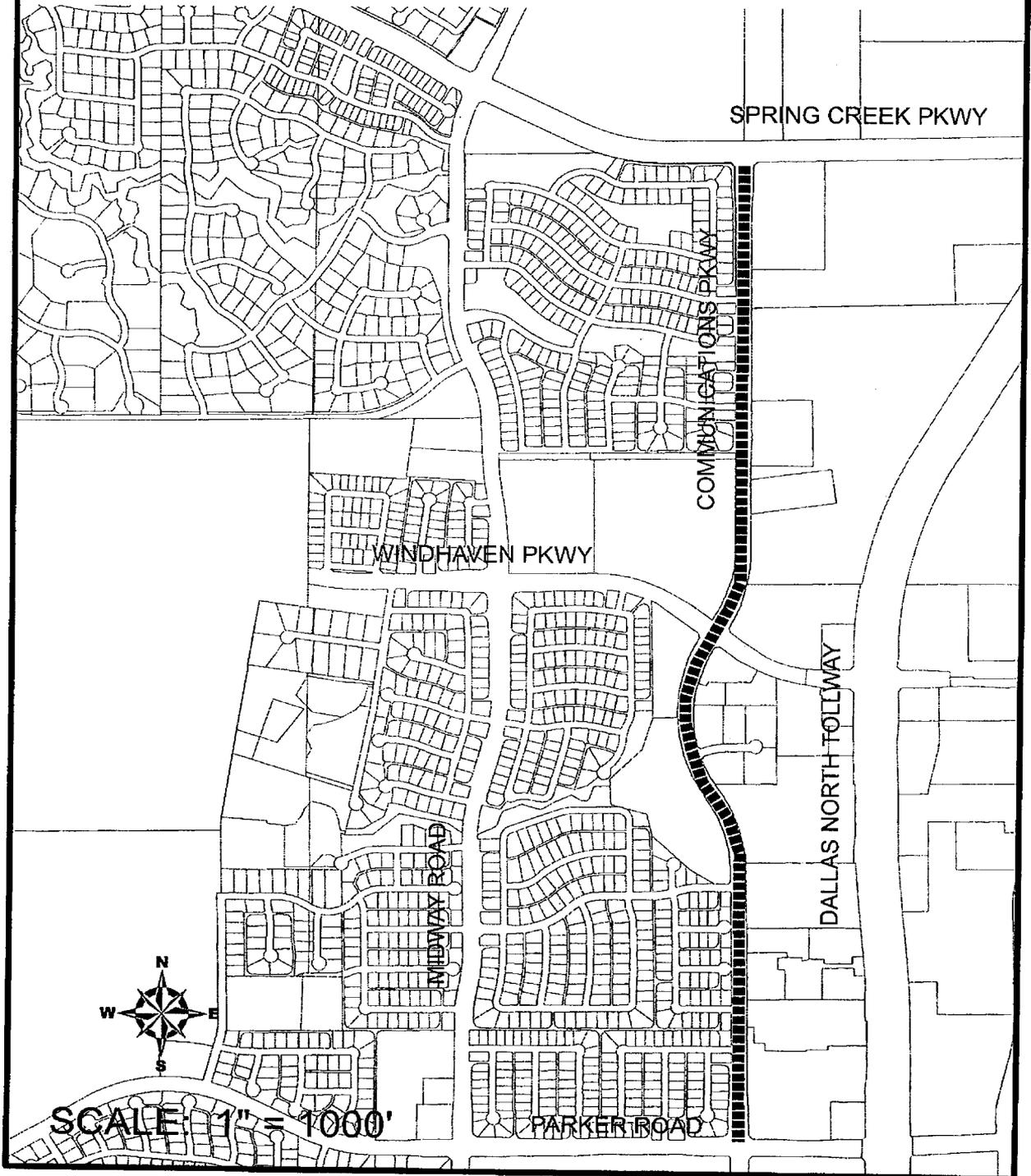
List of Supporting Documents: Bid Summary Location Map	Other Departments, Boards, Commissions or Agencies  N/A
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**BID SUMMARY**

**COMMUNICATIONS PARKWAY  
PARKER ROAD TO SPRING CREEK PARKWAY  
PROJECT NO. 5732  
BID NO. 2009-7-B**

<b>BID RANK</b>	<b>BIDDER</b>	<b>BASE BID</b>	<b>ALTERNATE 1</b>	<b>ALTERNATE 2</b>
1	Glenn Thurman, Inc.	\$2,404,710.30	\$2,404,710.30	\$2,412,005.10
2	McMahon Contracting, L.P.	\$2,477,608.17	\$2,477,608.17	\$2,560,543.81
3	JRJ Paving, L.P.	\$2,509,648.18	\$2,526,616.67	\$2,594,749.25
4	Tiseo Paving Co.	\$2,588,384.25	\$2,588,384.25	\$2,611,762.75
5	Austin Bridge & Road, L.P.	\$2,677,759.83	\$2,677,759.83	\$2,735,597.28
6	Tri-Con Services, Inc.	\$2,758,667.00	\$2,758,667.00	\$2,931,639.10
7	J & T Excavating, L.L.C.	\$2,906,401.00	\$2,869,893.00	\$2,953,529.50

COMMUNICATIONS PARKWAY  
PARKER ROAD TO SPRING CREEK PARKWAY  
PROJECT NO. 5732





## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>12/8/08</b>	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Parks and Recreation	Initials	Date	
Department Head	Don Wendell	Executive Director	<i>11-25-08</i> <i>11/25/08</i>	
Dept Signature:	<i>Don Wendell</i>	City Manager		
Agenda Coordinator (include phone #): <b>Susan Berger (7255)</b>				
<b>ACTION REQUESTED:</b> <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
<b>CAPTION</b>				
Award/rejection of Bid/Proposal, conditional acceptance of lowest responsible Bid/Proposal, and designation of alternate lowest responsible Bid/Proposal for Median Tree Replacement at Multiple Locations (Bid No. 2009-5-B) to Wall Enterprises in the amount of \$120,925.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: <b>2008-09</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	285,000	0	<b>285,000</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-120,925	0	<b>-120,925</b>
BALANCE	0	164,075	0	<b>164,075</b>
FUND(S): <b>CAPITAL RESERVE</b>				
<b>COMMENTS:</b> Funds are included in the 2008-09 Capital Reserve. This item, in the amount of \$120,925 will leave a current year balance of \$164,075 for the Drought Repair project. <b>STRATEGIC PLAN GOAL:</b> Drought repairs relate to the City's Goal of Premier City in Which to Live.				
<b>SUMMARY OF ITEM</b>				
<p>Staff recommends that the bid received from Wall Enterprises in the amount of \$120,925 be accepted as the lowest responsible bid conditioned upon timely execution of any necessary contract documents.</p> <p>The bid includes tree replacements, primarily resulting from drought conditions, on medians and right-of-ways at multiple locations throughout the City of Plano.</p> <p>In the event the low bidder cannot execute the contract documents, staff recommends that the project be awarded to the second low bidder, American Landscape in the amount of \$152,900,</p>				
List of Supporting Documents: Bid Tabulation		Other Departments, Boards, Commissions or Agencies		

**CITY OF PLANO**  
**CORRECTED BID TABULATION**  
**2009-5-B**  
**MEDIAN TREE REPLACEMENT – MULTIPLE LOCATIONS**  
**Project No. 5957**  
**TUESDAY, NOVEMBER 11, 2008 @ 3:00 PM (CST)**

<b>CONTRACTOR</b>	<b>BID BOND</b>	<b>TOTAL BASE</b>
Wall Enterprises	Yes	\$ 120,925.00
American Landscape	Yes	\$ 152,900.00
Texas Environmental	Yes	\$ 160,500.00
Fannin Tree Farm	Yes	\$ 173,250.00
Greenscaping	Yes	\$ 186,760.00

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

*Karen P. Neal-Core*

*November 14, 2008*

Karen P. Neal-Core, Buyer II

Date

**“BID TABULATION STATEMENT”**

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

PURCHASING DIVISION  
CITY OF PLANO TEXAS



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>12/8/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Fleet & Equipment Services Division			Initials	Date
Department Head	Reid Choate	Executive Director	<i>[Signature]</i>	<i>11-24-08</i>	
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	<i>11/25/08</i>	
Agenda Coordinator (include phone #): <b>Linda M. Robinson x4180</b>					

**ACTION REQUESTED:**

<input type="checkbox"/> ORDINANCE	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> CHANGE ORDER	<input type="checkbox"/> AGREEMENT
<input type="checkbox"/> APPROVAL OF BID	<input type="checkbox"/> AWARD OF CONTRACT	<input checked="" type="checkbox"/> OTHER PURCHASE OFF EXISTING CONTRACT	

**CAPTION**

Approval of the purchase of eighteen (18) Chevrolet Police PPV Tahoes in the amount of \$467,550.00 from Caldwell Country through an existing contract/agreement with Tarrant County Interlocal Contract and authorizing the City Manager or his designee to execute all necessary documents. (#2005-180)

**FINANCIAL SUMMARY**

NOT APPLICABLE     OPERATING EXPENSE     REVENUE     CIP

FISCAL YEAR:	08/09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	525,000	0	525,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-467,550	0	-467,550
BALANCE		0	57,450	0	57,450

**FUND(S) EQUIPMENT REPLACEMENT FUND (071)**

**COMMENTS:** Funds are included in the FY 2008-09 adopted budget for the purchase of Eighteen (18) Chevrolet Police Tahoe's. The remaining balance of funds will be used for other equipment and rolling stock purchases.

**STRATEGIC PLAN GOAL:** Replacement equipment purchases relates to the City's Goal of "Service Excellence".

**SUMMARY OF ITEM**

Equipment Services requests the purchase of eighteen (18) Chevrolet Police PPV Tahoes through the Tarrant County Interlocal Contract awarded to Caldwell Country. These will be scheduled replacements in the FY 08-09 ERF for replacement to be determined for Dept. 532/Police. Budget amount is \$525,000.00.

The City is authorized to purchase from a the State Contract list pursuant to Section 271, Subchapter F of the Texas Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (#2005-180).

Total purchase price of all 18 Chevrolet Police Tahoes is \$467,550.00.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Memo, Agenda, Vendor Quote Sheet, CRO	



## MEMORANDUM

Date: November 18, 2008  
To: Nancy Corwin, Senior Buyer  
From: Reid Choate, Fleet Manager  
Subject: Request to purchase eighteen (18) Chevrolet Police PPV Tahoes (CC10706) through Tarrant County Interlocal Contract #2005-180 awarded to Caldwell Country Chevrolet.

Base Price:	$\$25,755.00 \times 18 = \$463,590.00$
Published Options:	$\$ 970.00 \times 18 = \$ 17,460.00$
Special Quantity Discount:	$\$ -750.00 \times 18 = \$ -13,500.00$
	<b><u>\$467,550.00</u></b>

**BUDGET AMOUNT:** **\$525,000.00**

**NOTE:** These will be scheduled replacements in the FY 08-09 ERF for replacements to be determined for Department 532/Police.

Please reference CRO No. 374030.

Feel free to call me if you have any questions at extension 4182.

Cc: Glen Brashear  
Marty Childers  
Barbara Smith  
Pam Haines  
David Garza  
Diane Palmer

CITY OF PLANO

11/17/08

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P.O. Number 374030 OC

Cost Center 071

**Supplier** BABY JACK II AUTOMOTIVE LTD  
 CALDWELL COUNTRY CHEVROLET-PONTIAC  
 P O BOX 27  
 CALDWELL TX 77836

**Ship To** CITY OF PLANO  
 FLEET & EQUIPMENT SERVICES DIVISION  
 4200 W PLANO PARKWAY  
 PLANO TX 75093

**To ensure proper payment, remit invoice to:**  
 City of Plano - Accounts Payable  
 PO Box 860279  
 Plano, TX 75086-0279

Ordered 11/17/08      Freight  
 Requested 11/17/08      Order Taken By  
 Delivery

Description	Ordered	UOM	Unit Price	Extended Price	Request Date
2009 CHEV POLICE TAHOES	18	EA	25,755.0000	463,590.00	11/17/08

INVOICE TO FOLLOW  
 TARRANT COUNTY CONTRACT #2005-180

2009 CHEVROLET TAHOE PPV (CC10706)  
 IT IS THE RECOMMENDATION OF FLEET &  
 EQUIPMENT SERVICES TO PURCHASE (18)  
 POLICE PPV TAHOES IN THE AMOUNT OF  
 \$467,550.00

THESE ARE SCHEDULED REPLACEMENTS IN  
 FY 08-09 ERF FOR REPLACEMENT TO BE  
 DETERMINED FOR DEPT. 532/POLICE.

CRO REQUESTED BY DAVID GARZA & REID CHOATE.

PUBLISHED OPTIONS	18	EA	970.0000	17,460.00	11/17/08
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INVOICE TO FOLLOW  
 PUBLISHED OPTIONS AS FOLLOWS:

- 6N6 - INOP DOOR LOCKS (\$52)
- 6B2 - INOP REAR DOOR HANDLES \$52)
- 6N5 - INOP REAR WINDOW SWT (\$44)
- 7X6 - LH SPOTLIGHT (\$360)

d-3

CITY OF PLANO

11/17/08

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P.O. Number 374030 OC  
 Extended Price Request Date

Description	Ordered	UOM	Unit Price	Extended Price	Request Date
9G8 - DAYTIME HLAMP DELETE (INCL)					
6A6 - DUAL 770 CCA BATTERIES (\$90)					
6J4 - WIRING-HORN SIREN (INCL)					
PUSH - PB400 PUSH BUMPER (\$372)					
TOTAL COST IS \$970.00 PER VEHICLE					
UNPUBLISHED OPTIONS	18	EA	.0000		11/17/08
INVOICE TO FOLLOW					
UNPUBLISHED OPTIONS AS FOLLOWS:					
10 KEYS - INCLUDED					
DELETE ALARM FUNCTIONS &					
AUTOLOCK - INCLUDED					
SPECIAL QUANTITY DISCOUNT	18	EA	750.0000-	13,500.00-	11/17/08
				<b>Total Order</b>	
TermNet 30 Days				467,550.00	

d-4

QUOTE# 001  
WORKSHEET

CONTRACT PRICING

End User: CITY OF PLANO			Contractor: Baby Jack Auto Group		
Contact Name: DAVID GARZA			CALDWELL COUNTRY CHEVROLET		
Email: DAVIDGA@PLANO.GOV			Prepared By: Averyt Knapp		
Phone #: 972-769-4183			Email: aknapp@caldwellcountry.com		
Fax #: 972-461-6840			Phone #: 800-299-7283 or 979-567-6116		
Location City & State: PLANO, TX			Fax #: 979-567-0853		
Date Prepared: NOVEMBER 5, 2008			Address: P. O. Box 27, Caldwell, TX 77836		
Contract #: TARRANT INTERLOCAL #2005-180			Tax ID # 14-1856872		
Product Description: 2009 CHEVROLET TAHOE PPV CC10706					
A Base Price:					\$25,755 ✓
B Published Options					
Code	Description	Cost	Code	Description	Cost
6N6	INOP DOOR LOCKS	52 ✓		BABY JACK II AUTOMOTIVVE, LTD	
6B2	INOP REAR DOOR HANDLES	52 ✓			
6N5	INOP REAR WINDOW SWT	44 ✓			
7X6	LH SPOTLIGHT	360 ✓		CALDWELL COUNTRY CHEVROLET	
9G8	DAYTIME HLAMP DELETE	INCL ✓		PO BOX 27	
6A6	DUAL BATTERIES	90 ✓		CALDWELL, TEXAS 77836	
6J4	WIRING-HORN SIREN	INCL ✓			
PUSH	PB400 PUSH BUMPER	372 ✓			
Subtotal B					\$970
C Unpublished Options					
Code	Description	Cost	Code	Description	Cost
	10-KEYS	INCL			
	DELETE ALARM FUNCTIONS & AUTOLOCK	INCL			
Subtotal C					INCL
D Other Price Adjustments (Installation, Delivery, Etc...)					
Subtotal D SPECIAL QUANTITY DISCOUNT					-750
E Unit Cost Before Fee & Non-Equipment Charges (A+B+C+D)					\$25,975
Quantity Ordered					18
Subtotal E					\$467,550
F Non-Equipment Charges (Trade-In, Warranty, Etc...)					

G. Color of Vehicle: BLACK & WHITE SPECIAL		INCL
H. Total Purchase Price (E+F)		\$467,550
Estimated Delivery Date:		90-120 DAYS

d-6



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Council Meeting Date:	<b>12/08/08</b>	Reviewed by Legal <i>wj</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Engineering	Initials	Date		
Department Head	Alan J. Upchurch	Executive Director	<i>[Signature]</i>	12/1/08	
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	12/1/08	
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>[Signature]</i>	<b>Project No. 5843</b>		
<b>ACTION REQUESTED:</b> <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input checked="" type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
<b>CAPTION</b>					
Approval of a Surveying contract by and between the City and Gorrondona & Associates in the amount of \$64,795, for Project No. 5843 - Geodetic Monumentation and authorizing the City Manager or his designee to execute all necessary documents. (2008-34-B)					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
<b>FISCAL YEAR:</b>	<b>2008-2009</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		0	100,000	0	100,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-64,795	0	-65,795
<b>BALANCE</b>		0	35,205	0	35,205
<b>FUND(S):</b> STREET IMPROVEMENT CIP					
<b>COMMENTS:</b> Funds are included in the 2008-09 Street Improvement CIP. This item, in the amount of \$64,795, will leave a current year balance of \$35,205 for the Geodetic Monumentation project.					
<b>STRATEGIC PLAN GOAL:</b> Surveying for geodetic monumentation relates to the City's Goal of Safe, Efficient Travel.					
<b>SUMMARY OF ITEM</b>					
This agreement with Gorrondona & Associates, Inc. is for surveying for Project No. 5843 - Geodetic Monumentation to include reestablishment of Plano's geodetic monuments					
The contract fee is for \$64,795 and is detailed as follows:					
Planning meeting with city			\$960		
Presurvey planning & reconnaissance			\$14,280		
Field Investigations & data collection			\$31,060		
Data processing & analysis			\$2,880		
Network adjustments			\$1,920		



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

Datum conversions, Technical report	\$9,735
Submission of deliverables to the City of Plano	\$960
	\$3,000
<b>TOTAL</b>	<b>\$64,795</b>

Funding is available from the 2008-09 Street Improvement Community Investment Program.

List of Supporting Documents: Survey Services Agreement Location Map	Other Departments, Boards, Commissions or Agencies N/A
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*e-z*

# GEODETIC MONUMENTATION

PROJECT NO. 5843

## SURVEYING SERVICES AGREEMENT

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

### WITNESSETH:

**WHEREAS**, the City desires to engage the services of the Surveyor to prepare surveying documents and to perform other related surveying services in connection with the **GEODETIC MONUMENTATION** located in the City of Plano, Collin and Denton County, Texas, hereinafter referred to as the "Project"; and

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

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

#### I. Employment of the Surveyor

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

#### II. Scope of Services

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

### **III. Schedule of Work**

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

### **IV. Compensation and Method of Payment**

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

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

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

### **VI. Insurance**

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

### **VII. Indemnity**

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

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

### **VIII. Independent Contractor**

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

### **IX. Assignment and Subletting**

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

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

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

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

### **XI. Contract Termination**

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

### **XII. Ownership of Documents**

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

### **XIII. Complete Contract**

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

#### **XIV. Mailing of Notices**

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

City of Plano  
Engineering Department  
P.O. Box 860358  
Plano, Texas 75086-0358

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

Gorrondona & Associates, Inc.  
6707 Brentwood Stair Road, Suite 50  
Fort Worth, Texas 76112  
Attn: Brad Gorrondona

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

#### **XV. Miscellaneous**

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

**SIGNED** on the date indicated below.

**GORRONDONA & ASSOCIATES, INC.**  
A Texas Corporation

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

BY: \_\_\_\_\_  
Brad Gorrondona  
PRESIDENT

**CITY OF PLANO, TEXAS**

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

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

**APPROVED AS TO FORM:**

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

**ACKNOWLEDGMENTS**

**STATE OF TEXAS           §**  
  **§**  
**COUNTY OF TARRANT   §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by **BRAD GORRONDONA, PRESIDENT of GORRONDONA & ASSOCIATES, INC.**, a **TEXAS** corporation, on behalf of said corporation.

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

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

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by **THOMAS H. MUEHLENBECK, City Manager** of the **City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

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

**Exhibit A**  
**Scope of Services**  
**Geodetic Monumentation**  
**Project No. 5843**

**1. Introduction to Project**

Gorrondona & Associates, Inc. (G&A) has read the Request for Proposal for Project No. 5843 – Geodetic Monumentation. G&A understands that out of 90 elevated monuments, only 48 remain. In addition, some of the monuments that remain will be either destroyed by known future construction or the quality of the monument is such that it is not desirable to keep as a part of the primary network of City monuments. In this work effort, a total of 43 monuments will be either newly established in areas where additional monuments are required or re-established in approximately the same areas as the one's that were lost.

G&A has reviewed the following documents:

1. The map entitled "City of Plano Geodetic Monument Locations".
2. The Geodetic Monumentation Sheets
3. Albert H. Halff Associates, Inc. June 1987 Technical Report
4. Analytical Survey, Inc. March 1999 Technical Report
5. City of Plano Geodetic Monumentation – June 2005 Data Sheets with City comments

**2. Scope of Work**

G&A will re-establish a minimum of 43 monuments (noted as missing on the City of Plano Geodetic Monumentation Locations map dated January 25, 2007 and updated in our meeting May 13, 2008. The City may at its discretion add monuments to fill in any gaps that currently exist or in areas where it is known that existing stations will be destroyed by future planned development.

**Projects Standards:**

This survey will be performed utilizing dual frequency, full-wavelength Global Positioning System (GPS) receivers. The methods and procedures for collecting GPS data for this survey shall conform generally to the NOAA Technical Memorandum NOS NGS-58, Guidelines for Establishing GPS-Derived Ellipsoid Heights, v4.3, November 1997, 2cm Standard for the vertical standard, and the horizontal standard shall generally conform to the NGS Second Order, Class I standard as published in the Federal Geodetic Control Committee (FGCC) document entitled Geometric Geodetic Accuracy Standards and Specifications for Using GPS Relative Positioning Techniques, August 1, 1989. This network shall substantially meet the new National Geodetic Survey Accuracy Standard for Range VI positions. Range VI indicates that these positions meet the 0.02m-0.05m Accuracy Standard for Horizontal Position, Ellipsoidal Height, and Orthometric Height (elevation) at the 95% confidence level (m=meters).

**Monumentation Construction:**

G&A will set City of Plano domed 3 1/4" diameter aluminum disks stamped "City of Plano Survey Marker, Station \_\_\_" at agreed upon locations for the new stations. Their location will be determined by a field investigation and established in concrete structures such as bridge abutments, curb inlets, curbs, sidewalks, and/or concrete paving. Gorrondona & Associates, Inc., will provide the disks prior to commencement of the field investigations. Each disk will be set by drilling out a hole in the concrete and epoxy cementing the disk in place. A detailed sketch will be made of each new location and three ties will be made to the monument as a guide to recover the station at a future point in time.

### Survey Control Basis:

This survey shall be tied to the following stations provided that they still exist. As of 2005, all of the control still existed according to NGS records. In the event these stations do not exist, additional stations of a similar quality shall be recovered and utilized in order to sufficiently tie the network to the NGS control in the vicinity of the project area.

• ARP2 ADS	PID AB2786	H - B Order
• NEWSOME	PID DN0376	H - FIRST Order V - 2 <sup>nd</sup> Order Class 0
• M 1495	PID DN1023	H - B Order
• C 263	PID DN0276	V - 2 <sup>nd</sup> Order Class 0
• R 924	PID DN0436	V - 2 <sup>nd</sup> Order Class 0
• E 1045	PID CS1309	V - 2 <sup>nd</sup> Order Class 0
CORS Stations		
• DENTON CORS ARP	PID DF8986	H - A Order
• ARLINGTON RRP2 CORS ARP	PID DF5387	H - A Order
• DALLAS CORS ARP	PID DF8984	H - A Order
• COLLIN CORS ARP	PID DF8982	H - A Order

Approximately 15 existing City of Plano stations will be occupied to validate the previous surveys (individually as well as collectively) and provide network ties to the new stations. It is important to note that in the event that the present survey reveals non-uniform inconsistencies with the past survey, it may be required to resurvey the entire set of stations. This however, should be very unlikely since it appears that a high quality survey was previously performed.

### Issues to be Addressed in this Survey

1. All of the Geodetic Monumentation Sheets will be updated with the correct coordinate system which is Texas North Central Zone [Zone 4202].
2. Aerial photography views of the stations will be updated with new photography provided by the City of Plano; metadata statements will be added to define the specifics of how the NAD83, NAD27, NAVD88 and SLD29 data was developed; and the new position information will be added depicting the findings of the new survey.
3. Coordinates and geodetic positions for the NAD83 Datum will be based on NAD83/1993 Adjustment (HARN) and constrained to the following NGS Stations: ARP2 ADS (PID AB2786 - B Order), NEWSOME (PID DN0376 - FIRST Order), and M 1495 (PID DN1023 - B Order).
4. Coordinates for the NAD27 Datum will be based on the published values from the 1986 survey determined by Albert H. Half.
5. Elevations that are referenced to NAVD88 Vertical Datum will be constrained to NGS Station C 263 (PID DN0276 - 2<sup>nd</sup> Order Class 0), R 924 (PID DN0436 - 2<sup>nd</sup> Order Class 0) and possibly two additional stations.
6. Elevations will be derived by using the GEOID03 geopotential model and compared against the GEOID96 values from the 1999 survey.
7. Elevations that are referenced to Sea Level Datum of 1929 are the published values from the 1986 survey and were derived by differential leveling techniques according to the report. The elevation differences from the 1986 survey and the 1999 survey will be evaluated to understand the relationship between the GPS derived elevations and the differentially leveled elevations.

8. All stations will contain all information about the station from the 1986 survey to the present survey and will contain Metadata and notes explaining the origin and particulars of the database information. See the attached recommended example of how the new datasheets will look.
9. A surface coordinate will be given for each station and will be determined by dividing the northing by 0.99984579 and dividing the easting by 0.99984579. This will yield a surface coordinate for each station.

**Summary of Methodology:**

Equipment

- o Dual Frequency, full wavelength Global Positioning System receivers
- o GPS Antennae with Groundplanes and/or multipath mitigation technology
- o 2.0-Meter Fixed Height Tripods

Data Collection Requirements

- o Vertical Dilution of Precision < 6 for 90% or longer for 30-minute sessions
- o Primary Control Ties – Two 5-hour sessions separated by one day and 3 to 9 hours (Stations ARP2 ADS, NEWSOME, M 1495, C 263 and R 924.
- o Run a closed loop level circuit from E 1045 to ARP2 ADS
- o Remainder of station ties shall be 30-minute sessions
- o All stations shall be occupied a minimum of two times with a separation of a minimum of one day and 3 to 9 hours
- o Epoch data recording interval shall be 15-seconds for primary control and 5-seconds for secondary control
- o Track satellites down to 10-degrees above the horizon

Processing Requirements

- o Repeat baselines should compare less than or equal to 2.5cm.
- o Process Data Against Precise or Rapid Ephemeris
- o Perform a Free Adjustment
- o Perform a Minimally Constrained Adjustment
- o Compute differences between published values and measured values and show evaluation of results
- o Perform a Fully Constrained Horizontal Adjustment
- o Perform a Fully Constrained Vertical Adjustment

## Schedule of Events:

1. Planning meeting with the City of Plano and Gorrondona & Associates Project Manager.

After the contract has been signed and the Notice to Proceed has been given, the G&A Project Manager will arrange to meet with the City of Plano staff to obtain the following:

- a. Latest aerial photography on DVD;
  - b. Map showing location of new control;
  - c. Contact names and numbers for Police and other agencies that should be notified prior to commencement of field investigations
  - d. Any safety issues that G&A needs to follow (if none exist, G&A will follow normal procedures defined by TxDOT)
2. Presurvey Planning and Reconnaissance

The Project Manager will take the information from the Planning meeting and design the steps for the field crew(s) to recover the existing control and set the new control stations. After the plan has been designed, One or more two-person field crews will be sent to the project area to recover the existing control identified by the Project Manager; set the new stations; take photos and make field sketches of all of the locations; make three ties to natural or artificial features to enable future recovery of the stations; write "To Reach" descriptions and note any GPS skyward obstructions.

While the reconnaissance is going on, G&A will check the GPS equipment to be utilized; check the mechanical condition of the fixed height tripods to be utilized; and verify the heights of the fixed height tripods.

3. Field Investigations and Data Collection

On completion of the reconnaissance, the Project Manager will assemble and review the field data and create a GPS observation session plan. Four one (1) person GPS field crews will be utilized to complete the field investigations and data collection. Each crew will be equipped with a Trimble GNSS GPS dual frequency receiver and geodetic antenna; a 2.000 meter fixed height tripod; a digital camera; a dry erase board to write the station number, date and time for the photos; vehicle and personnel safety equipment; redundant power for the GPS equipment; a cell phone; a map of the project; GPS observation forms; and the session observation plan.

The four (4) GPS crews will observe the new and existing control a minimum of two times to insure quality results.

There will be a total of 24 monuments located in the City of Plano that exist and will not be surveyed in this project. These monuments will be checked using a GPS RTK VRS Rover to determine if the data presented in the previous surveys is accurate. A summary report of the VRS locations of these monuments will be included in the final deliverables. In the event any of the monuments appear to be in error, G&A will recommend that these monuments (if any) be added to the existing survey at an

additional cost of \$ 400/station. Prior written approval will be required by the City of Plano should this additional work be required.

4. Data Processing and Analysis

On completion of the field survey, the GPS data and field notes will be reduced and checked by the Project Manager. All GPS data will be processed with Trimble Geomatics Office™. Either Rapid or Precise Ephemeris orbit files will be used to maximize the quality of the GPS observations. There will be a sufficient number of checks built into the project to validate the quality of the original network. All baselines will be analyzed. Redundant baselines will be compared. Loop closure tests will be performed on all of the vectors collected in the project network. Reports will be generated for inclusion in the final Technical Report.

5. Network Adjustments

On completion of the baseline processing and analysis, several network adjustments will take place. They are as follows:

- a. WGS84 Free Adjustment (no stations fixed)
- b. NAD83/HARN-NAVD88 Minimally constrained adjustment (one station fixed horizontally and vertically)
- c. NAD83/HARN Fully Constrained Horizontal Adjustment
- d. NAVD88 Fully Constrained Vertical Adjustment

The network adjustments will be evaluated and the data will be compared with the previous survey. Comparison reports will be generated and the results discussed.

6. Datum Conversions, Technical Report and Deliverables Preparation

All data will be converted to the specified datums (e.g. NAD83/HARN, NSRS2007, NAD27, NAVD88, NGVD29[SLD1929]). A complete narrative will be written to discuss the project from beginning to end. Findings will be clearly discussed. There will be a Metadata statement written to enable future projects to be accurately tied to this network. Individual data sheets will be generated based on the desired content defined by the City of Plano.

7. Submission of Deliverables to the City of Plano

G&A's Project Manager will meet with the City of Plano and present the Technical Report, Control Diagram Map, and the individual Geodetic Monumentation Data Sheets along with a DVD or CD of all of the digital data generated for this project. The report, map and data sheets will be presented in their native form (e.g. .doc, .dwg, etc.) as well as in pdf format. Field notes generated for this project will be scanned and saved as pdf files and included with the final deliverables. The following is an example of how the datasheets will look.

**EXHIBIT B  
COMPLETION SCHEDULE**

**Geodetic Monumentation  
PROJECT NUMBER 5843**

<b>Activity</b>	<b>Completion Time (Calendar Days)</b>
1. Notice to Proceed	1
2. Planning	3
3. Field Investigations – Recover Control and VRS Verify	6
4. Field Investigations – Set and Reference New Control	7
5. Field Investigations – Survey Primary and Secondary Points	8
6. Process, Analyze and Adjust Data	5
7. Final Report and Deliverables Preparation	15
8. Submit Deliverables to City	1
Total Business Days	46

Exhibit C  
Project No. 5843

Budget for City of Plano Geodetic Monumentation  
G&A Project Number 0803-3163 Prepared May 20, 2008

Item	Milestone	Budget Amount
1	Planning meeting with the City of Plano and Gorrondona & Associates Project Manager	\$960.00
2	Presurvey Planning and Reconnaissance	\$14,280.00
3	Field Investigations and Data Collection	\$31,060.00
4	Data Processing and Analysis	\$2,880.00
5	Network Adjustments	\$1,920.00
6	Datum Conversions, Technical Report and Deliverables Preparation	\$9,735.00
7	Submission of Deliverables to the City of Plano	\$960.00
8	Additional work, if determined to be necessary, during the defined work effort	\$3,000.00
Contract Total		\$64,795.00

**EXHIBIT "D"**  
**SURVEYING**  
**INSURANCE**

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

**1. General Insurance Requirements:**

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

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

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

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

checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

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

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

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

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

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

2.2 Professional Errors and Omissions

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

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

# SURVEYING

## City of Plano - Insurance Checklist

("X" means the coverage is required.)

<u>Coverages Required</u>	<u>Limits (Figures Denote Minimums)</u>
<input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability	Statutory limits of State of Texas \$100,000 accident \$100,000 disease \$500,000 policy limit disease
<input type="checkbox"/> 2. For Future Use	
<input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program	\$150,000 medical, safety program
<input checked="" type="checkbox"/> 4. General Liability	Complete entry No. 26 Minimum \$500,000 each occurrence \$1,000,000 general aggregate
<input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)	
<input checked="" type="checkbox"/> 6. Premises/Operations	(Items No. 3-10 & 12 require)
<input checked="" type="checkbox"/> 7. Independent Contractors	<u>\$500,000</u> combined single limit for bodily injury and property damage
<input type="checkbox"/> 8. Products	damage each occurrence with
<input type="checkbox"/> 9. Completed Operations	\$1,000,000 general aggregate that applies to project under contract
<input checked="" type="checkbox"/> 10. Contractual Liability	
<input checked="" type="checkbox"/> 11. Personal Injury Liability	\$500,000 each offense & aggregate
<input type="checkbox"/> 12. XCU Coverages	
<input checked="" type="checkbox"/> 13. Automobile Liability	\$500,000 Bodily Injury & Property
<input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned	Damage each accident
<input type="checkbox"/> 15. Motor Carrier Act Endorsement	
<input checked="" type="checkbox"/> 16. Professional Liability	\$1,000,000 each claim and aggregate
<input type="checkbox"/> 17. Garage Liability	\$_____ BI & PD each occurrence
<input type="checkbox"/> 18. Garagekeepers' Legal	\$_____ - Comprehensive

\$\_\_\_\_\_ - Collision

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

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

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

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

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

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

X 25. Other Insurance Required:

INSURANCE AGENT'S STATEMENT

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

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

Full limits of coverage available for:

General Liability\_\_\_\_\_ Professional Liability\_\_\_\_\_

Automobile Liability\_\_\_\_\_

X 27. Liability policies are (indicate):

OCCURRENCE [ ]

CLAIMS MADE [ ]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Name of Insured

\_\_\_\_\_  
Date

**EXHIBIT "E"**

**AFFIDAVIT OF NO PROHIBITED INTEREST**

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

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

\_\_\_\_\_  
Name of Contractor

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**STATE OF TEXAS**                    §  
   §  
**COUNTY OF TARRANT**        §

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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

*e-22*



# City of Plano Geodetic Monument Locations

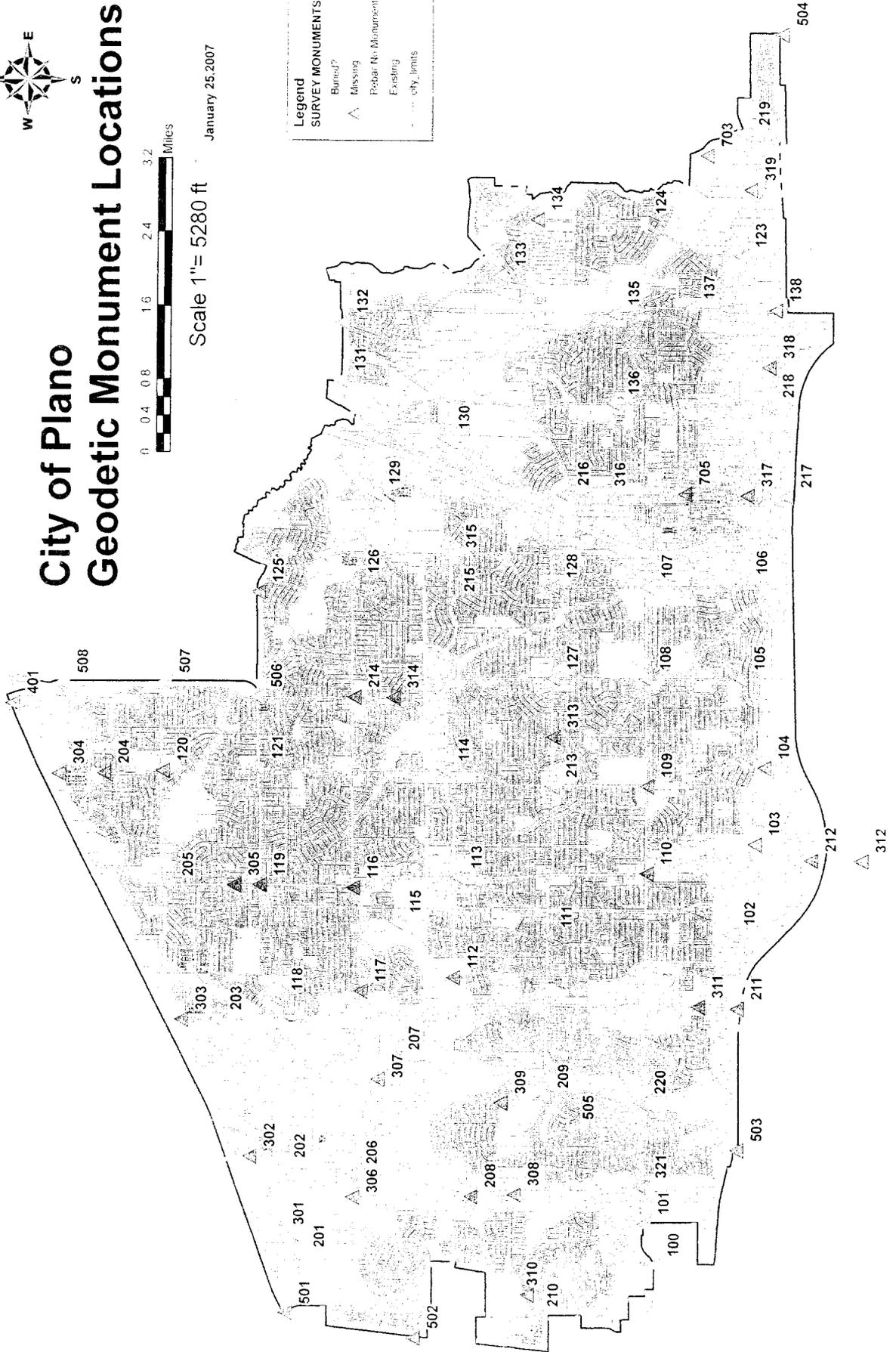


Scale 1" = 5280 ft

January 25, 2007

**Legend**  
**SURVEY MONUMENTS**

- ▲ Bureau?
- ▲ Missing
- ▲ Rodded N. Monument
- ▲ Existing
- city limits





**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>12/08/08</b>		Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering		Initials	Date	
Department Head	Alan L. Upchurch		Executive Director	<i>[Signature]</i>	12/1/08
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i>	12/1/08
Agenda Coordinator (include phone #):	<b>Irene Pegues (7198)</b>		<b>Project No. 5927</b>		

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

**CAPTION**

Approval of an engineering contract by and between the City and C&P Engineering, LTD., in the amount of \$261,200, for Meadows Addition, and authorizing the City Manager or his designee to execute all necessary documents.

**FINANCIAL SUMMARY**

NOT APPLICABLE     OPERATING EXPENSE     REVENUE     CIP

FISCAL YEAR: <b>2008-09</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	196,000	1,633,000	<b>1,829,000</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-261,200	0	<b>-261,200</b>
<b>BALANCE</b>	<b>0</b>	<b>-65,200</b>	<b>1,633,000</b>	<b>1,567,800</b>

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

**COMMENTS:** Funds are included in the 2008-09 Street Improvement CIP. This item, in the amount of \$261,200, will exceed the current year balance by \$65,200 for the Meadows Addition Street Improvements project. The overage will be funded through reallocation from the Redevelopment Street Improvements project.

**STRATEGIC PLAN GOAL:** Engineering design services for street reconstruction relates to the City's Goal of Safe, Efficient Travel.

**SUMMARY OF ITEM**

This agreement with C&P Engineering, Ltd. is for engineering design for Meadows Addition-reconstruction of residential street paving, sidewalks and waterlines.

The contract fee is for \$261,200 and is detailed as follows:

Research and data collection	\$4,000
Design Survey	\$32,500
Preliminary Design	\$152,000
Final Design	\$51,000
Bid Phase Services	\$6,500



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

Construction Phase Services	\$3,500
Construction Control Survey	<u>\$5,500</u>
<b>TOTAL BASIC FEE</b>	<b>\$255,000</b>
Special services:	
Permanent ROW Exhibit/Monumentation- per parcel	\$3,500
Temporary Construction Easement- per parcel	\$1,500
Permanent Easement Exhibit- per parcel	\$1,200
<b>Total Special Services</b>	<b>\$6,200</b>
 <b>TOTAL FEE</b>	 <b>\$261,200</b>
Staff feels the fee is reasonable for this project estimated to cost \$2,536,000.	
List of Supporting Documents: Engineering Services Agreement Location Map	Other Departments, Boards, Commissions or Agencies N/A

**MEADOWS ADDITION**

**PROJECT NO. 5927**

**ENGINEERING SERVICES AGREEMENT**

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

**WITNESSETH:**

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

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

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

**I. Employment of the Engineer**

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

**II. Scope of Services**

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

**III. Schedule of Work**

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the

reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

#### **IV. Compensation and Method of Payment**

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

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

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

#### **VI. Insurance**

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

#### **VII. Indemnity**

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

In its sole discretion, City shall have the right to approve defense counsel to be retained by Engineer in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Engineer's obligation to defend City or as a waiver of Engineer's obligation to indemnify City pursuant to this Agreement. Engineer shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Engineer fails to retain counsel within such time period, City

shall have the right to retain defense counsel on its own behalf, and Engineer shall be liable for all costs incurred by City.

### **VIII. Independent Contractor**

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

### **IX. Assignment and Subletting**

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

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

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

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

### **XI. Contract Termination**

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such

termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

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

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

## **XIII. Ownership of Documents**

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

## **XIV. Complete Contract**

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

## **XV. Mailing of Notices**

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

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

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

C & P Engineering, Ltd.  
1801 Gateway Boulevard, Suite 101  
Richardson, TX 75080  
Attn: Michael Cummings

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

#### **XVI. Miscellaneous**

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term,

condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

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

**SIGNED** on the date indicated below.

**C & P ENGINEERING, LTD.**  
A Texas Limited Partnership

**BY: PCCW, LLC, a Texas Limited Liability Company, General Partner**

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

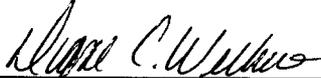
BY: \_\_\_\_\_  
Michael Cummings  
PRESIDENT

**CITY OF PLANO, TEXAS**

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

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

**APPROVED AS TO FORM:**



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

**ACKNOWLEDGMENTS**

**STATE OF TEXAS           §**  
  **§**  
**COUNTY OF DALLAS       §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by **MICHAEL CUMMINGS, President of PCCW, LLC -General Partner of C & P Engineering, Ltd.**, a Texas Limited Partnership, on behalf of said limited partnership.

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

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

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by **THOMAS H. MUEHLENBECK, City Manager of the City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

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

**EXHIBIT A  
SCOPE OF SERVICES**

**MEADOWS ADDITION**

**PROJECT NUMBER 5927**

**PROJECT DESCRIPTION:**

1. Reconstruction of multiple streets, sidewalks and water lines inside the Meadows addition. Streets included are:
  - Rigsbee Drive from 14<sup>th</sup> Street to Janet Way
  - Meadows Drive from Rigsbee to Price Drive
  - Ridgeway Drive from Rigsbee to Meadows Drive
  - 15<sup>th</sup> Street from Rigsbee Drive to Meadows Drive
  - Rice Drive from Meadows Drive to Sherrye Drive

All Street paving shall be 6" 3000 p.s.i.

Rigsbee Drive will be 37' wide (b-b); all other streets will be 27' wide (b-b).

Existing right-of-way (ROW) should be utilized. Storm Drainage will be installed as defined by an analysis of the related drainage areas and existing systems. A drainage analysis will be made and, if additional systems are required, design and plan preparation shall be by contract modification. If no systems are required, the drainage areas, calculations and analysis will not be included in the plans.

2. Replace existing 6" water lines with a new 8" mains.
3. Replacement of all existing sidewalks including barrier free ramps per City details. Sidewalks that are currently adjacent to the curb shall be reconstructed in the standard location (2.5' from the ROW).
4. Topographic Survey and cross-section work should extend approximately 50 feet lengthwise beyond the proposed construction area. Sufficient survey data shall be obtained so that a detailed Digital Terrain Model (DTM) may be prepared to provide existing and proposed grade Cross-sections at every driveway, spaced at a maximum of 50 foot intervals. Survey data will be collected to approximately 10 feet beyond the ROW. Additional data more than 10 feet beyond the ROW may be needed at driveways and leadwalks.

11/24/08

Page 1

**BASIC SERVICES:**

**A. Design Standards**

1. This project shall be designed in accordance with the following:

- Geodetic Monumentation Manual
- Manual for Right-of-Way Management
- Storm Drainage Design Manual
- Stream Bank Stabilization Manual
- Erosion & Sediment Control Manual
- Thorough Fare Standards Rules & Regulations
- Manual for the Design of Water & Sanitary Sewer Lines
- Standard Construction Details
- Barrier Free Ramp Details
- NCTCOG Standard Specifications for Public Works Construction
- Special Provisions to Standard Specifications for Public Works Construction
- Sample Plan Set
- Irrigation Details
- Irrigation System Technical Specs
- Trail and Tree Planting Details
- Tree Planting Specs

2. All plans submitted to the City shall be signed and sealed in accordance with state law.
3. The City shall also provide guidance regarding project specific design issues

**B. Research and Data Collection –**

1. Meet with City of Plano engineering staff and obtain design criteria, pertinent utility plans, street plans, plats and ROW maps, existing easement information, recent bid tabulations from projects similar in scope and other information available for the project area.
2. Meet with the City of Plano project manager and conduct an on-site review and walk through.

11/24/08

Page 2

### **C. Design Survey –**

1. Establish a horizontal and vertical control network and project control baseline for the project areas. The network and baseline are to be tied into the existing City of Plano control network.
2. Establish horizontal and vertical project control monumentation.
3. Tie ROW lines and corners that can be found via pin finder, property lines and corners/monuments, buildings, fence lines, trees 4-inches in diameter and larger, edges of pavements and all other visible surface features to the project control baseline. Existing visible above ground utility structures shall be located and referenced by utility name (i.e. Oncor Elec., Verizon Telephone, Atmos Gas, Etc.).
4. Vertical topographic information tying pavement, drives, walls, manholes (top and inverts), storm drain inlets (top and inverts), and other improvements as needed within the project areas for the design.
5. Sufficient survey data shall be obtained so that a detailed Digital Terrain Model (DTM) may be prepared to provide existing and proposed grade cross sections at a fifty-foot (50') interval relative to the project baseline and at all drives, street intersections, or other areas of significance. Cross sections are for project design review and quantity takeoffs and will be a part of plan review sets as well as the final construction plan set.
6. When underground utilities are exposed, tie to project control baseline.
7. Identify the street address of all adjacent properties to the proposed construction and show on drawings.

### **D. Right-of-way and Easement Requirements –**

1. Prepare Schematic Layout of paving improvements (1"= 20') for use in producing preliminary list of ROW parcels and easements required for project construction.
2. Prepare a preliminary list of ROW parcels and easements necessary to construct the project (if any). Submit to the City of Plano as soon as possible and prior to the preliminary plan submittal.

11/24/08

Page 3

3. Meet with the City of Plano Staff to determine easement and ROW requirements for preparation of field notes and exhibits.

#### **E. Preliminary Design –**

1. Prepare preliminary construction plans. Prepare the following sheets (22" x 34") at the engineering scale indicated:
  - Cover sheet.
  - General Notes Sheet
  - Project layout control sheet(s). Scale 1"= 100'.
  - Quantity sheet (sheet by sheet breakdown of all quantities).
  - Typical sections and detail sheets.
  - Construction phasing and temporary traffic control sheets. Scale 1"= 40 or larger.'
  - Paving plan & profile sheets for street improvements. The consultant will need to evaluate the existing street lights on the project streets to see that adequate lighting exists. The City will provide the criteria. If additional lights are needed, new conduit and street light foundations will be included in the project with the information shown on the paving plans. Scale 1"= 20'H;1"=5'V.
  - Water Utility Replacement Plans, Scale 1"=20'.
  - Drainage area maps (with drainage calculations) for street/drainage improvements. Scale 1"= 100'. The drainage analysis will include evaluation of street and inlet capacities for compliance with current City standards. Hydraulic analysis of existing storm drain system will be confined to existing project limits. Starting hydraulic grade elevations shall be based on existing as-built plans or other reasonable assumptions confirmed by the City. If hydraulic analysis is required outside of project limits, it shall be done by contract modification. (This information will be prepared but only included in plans if improvements are required. If required , it will be included by a contract modification)
  - Storm drain improvement plan & profile sheets. Scale 1"= 20'H;1"=5'V. (These improvements will be included if shown to be required as a result of the drainage area maps/drainage calculations. If improvements are required, the design/plan preparation shall be done under a contract modification).
  - SWPPP sheets meeting EPA and City of Plano requirements. Scale 1"= 40'. Include the City WORD file form, "City of Plano CIP Projects – SWPPP Operator Requirements" as a sheet in the

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plans as part of the SWPPP. Include erosion control details from City Standards as required.

- Final buttoning and signage plan sheets. Scale 1"= 40'.
- Cross -Sections. Scale 1"=20'H; 1"=2'V.

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

2. Coordinate with affected utilities such as water, gas, telephone, cable TV and electric to obtain available information for the location of their facilities. Coordination effort will include the following tasks: a) contact DigTess prior to topographic survey to request field locates of existing underground utilities within the project limits; b) contact utility companies using information provided by the city to request maps or other information showing the locations of their facilities; c) send preliminary and final plans to utility companies and request their review for possible conflicts with their facilities; c) if requested by the City, attend a utility coordination meeting with affected utilities to discuss project scope and any necessary relocation work; and d) send invitations to utility company representatives to a project pre-construction meeting. Other coordination efforts, if required, shall be additional services.
3. Prepare outline of any special technical specifications needed for the project (if any).
4. Prepare an estimate of construction quantities and develop the preliminary statement of probable construction cost.
5. Submit six (6) sets of preliminary plans, and one (1) set of outline of special technical specifications and preliminary statement of probable construction cost to the City for review.
  - Engineering
  - Public Works
  - Inspectors
  - Transportation
  - Parks Dept.
  - File Set
6. Meet with City of Plano staff to discuss City comments on preliminary plans, specifications and cost estimates.

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7. Distribute the preliminary plans and proposed schedule for bidding and start of construction to local utility companies to obtain information regarding impacts to their facilities.

**F. Final Design –**

1. Revise preliminary plans incorporating comments from the City of Plano.
2. Incorporate comments from the utility companies.
3. Finalize construction plans for proposed improvements.
4. Finalize special technical specifications and special conditions (if any).
5. Incorporate standard details (those not included in the City of Plano Standard Details) into the construction plans and prepare additional details as required.
6. Take off final construction quantities and prepare final construction cost estimates.
7. Submit six (6) sets of pre-final plans and one (1) set of special technical specifications, draft bid schedule and final statement of probable construction cost to the City for review.
8. Incorporate City final comments into the plans and bid documents.
9. Submit three (3) sets of final black/blue line prints, three (3) bound copies of the bid documents and one (1) unbound original bid document set to the City of Plano.
10. Attend a utility coordination meeting to start relocation process with affected franchise utilities. Distribute copy of final plans and proposed schedule for bid letting and construction to all affected franchise utilities.
11. Submit one (1) set of final black/blue line prints and one (1) bound copy of the bid documents to the designated Material Testing Laboratory.

**G. Bid Phase Services –**

1. Assist the City staff in advertising for bids.

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

#### **H. Construction Administration –**

1. Provide periodic site visits by the design engineer in response to questions during construction with a written inspection report submitted to the City for each visit.
2. Provide written responses to requests for information or clarifications.
3. Prepare plan and quantity revisions as required for change orders. The City of Plano will prepare the actual change order and get it executed by the contractor.
4. Assist the City staff in conducting the final inspection.

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5. Recommend final acceptance of work when acceptable.
6. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s). Submit one blackline set to the City and two (2) CD-ROM disks containing scanned images of the 22" x 34" final "as constructed" blackline drawings (with "record drawing stamps" bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order.

**I. Construction Control Survey –**

1. Set vertical and horizontal control stakes for construction at 500' intervals, and a minimum of one at each end of the project.

**SPECIAL SERVICES:**

**A. Right-of-Way and Easement Surveying –**

1. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for one (1) right-of-way parcel on a per tract basis. Deliver three (3) reviewed and approved originals to the City.
2. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for ten (10) temporary construction easements on a per tract basis. Deliver three (3) reviewed and approved originals to the City.
3. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for one (1) permanent easement on a per tract basis. Deliver three (3) reviewed and approved originals to the City.
4. Prepared exhibits with the field notes first and drawings second. Both the field notes and the drawing shall be labeled as Exhibit "A". Each parcel shall be assigned its own separate number.
5. Set new iron pins at all new corners, PC's and PT's of new ROW.

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**EXHIBIT B  
COMPLETION SCHEDULE**

**MEADOWS ADDITION  
PROJECT NUMBER 5927**

<b>Activity</b>	<b>Completion Time (Calendar Days)</b>
1. Notice to Proceed	1
2. Research and Data Collection	15
3. Design Survey	15
4. Preliminary Design /ROW & Easement Documents	110
5. City Review	30
6. Final Design (Pre-Final Submittal)	20
7. City Review	30
8. Final Design/Documents for Bidding	15
9. City Review	15
10. Advertise for Bids	21
11. Receive Bids	1
12. Recommendation	7
13. Prepare Council Agenda	10
14. Council Award	1
15. Prepare/Execute Contract	10
16. Schedule Preconstruction	7
17. Notice to Proceed	1
18. Construction	270
<b>TOTAL</b>	<b>579</b>

**EXHIBIT C  
PAYMENT SCHEDULE  
MEADOWS ADDITION**

**PROJECT NUMBER 5927**

**WORK STAGE SUBMITTAL  
OR COMPLETION**

1. Research & Data Collection	\$4,000.00
2. Design Survey	\$32,500.00
3. Preliminary Design	\$152,000.00
• Pavement	
• Water	
• Drainage analysis	
4. Final Design	\$51,000.00
• Pavement	
• Water	
5. Bid Phase	\$6,500.00
6. Construction Phase	\$3,500.00
7. Construction Control Survey	\$5,500.00
<b>Total Basic Fee</b>	<b>\$255,000.00</b>
8. Special Services –	
a. Perm. ROW Exhib./Mon. (per parcel)	\$3,500.00
b. Temp. Const. Esmt. Exhib. (per parcel)	\$1,500.00
c. Perm. Esmt. Exhib. (per parcel)	\$1,200.00
<b>Total Special Services</b>	<b>\$6,200.00</b>
<b>Total Fee</b>	<b>\$261,200.00</b>

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

**INSURANCE**

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

**1. General Insurance Requirements:**

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

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

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

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

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

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

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

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

2.2 Professional Errors and Omissions

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

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

# ENGINEERING

## City of Plano - Insurance Checklist

("X" means the coverage is required.)

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



**EXHIBIT "E"**

**AFFIDAVIT OF NO PROHIBITED INTEREST**

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

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

\_\_\_\_\_  
Name of Consultant

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

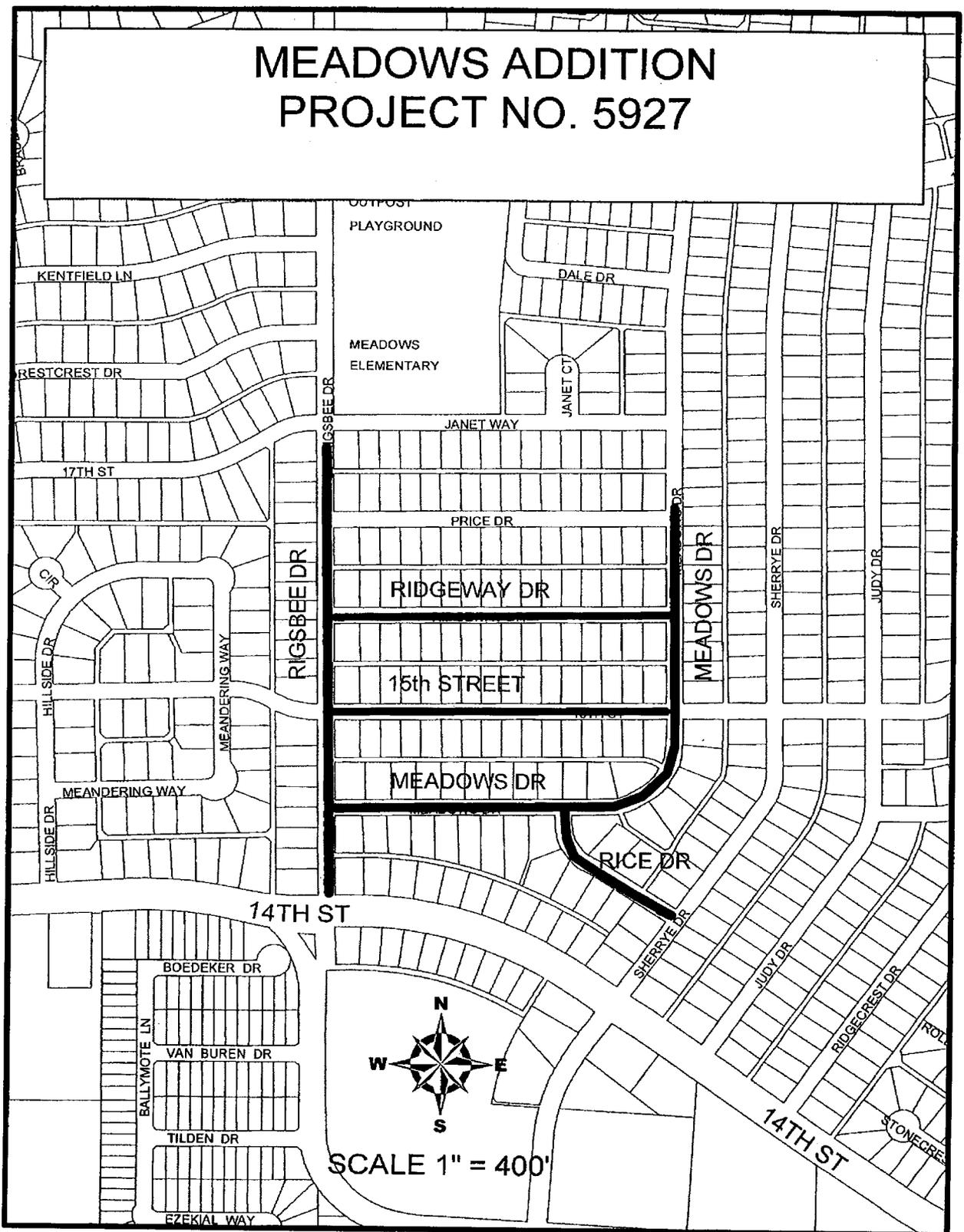
\_\_\_\_\_  
Date

**STATE OF TEXAS**           §  
  §  
**COUNTY OF DALLAS**    §

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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

# MEADOWS ADDITION PROJECT NO. 5927





**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>12/8/08</b>		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Public Works Administration / David Falls			Initials	Date
Department Head:				Executive Director	11-24-08
Dept Signature:				City Manager	
Agenda Coordinator (include phone #): <b>Margie Stephens (X4104)</b>					
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					
<b>CAPTION</b>					
<i>To Jim Bowman Construction Company, L.P. , increasing the contract by \$74,060.20 for the 2007 - 2008 Arterial Concrete Pavement Rehabilitation Project, Park Blvd – Alma Road to Shiloh Road, Project No. 5915, Change Order No. 1, Bid No. 2008-180 - B.</i>					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	<b>2008-09</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		2,504,325	4,316,675	2,300,000	<b>9,121,000</b>
Encumbered/Expended Amount		-2,504,325	-1,061,280	0	<b>-3,565,605</b>
This Item		0	-74,060	0	<b>-74,060</b>
BALANCE		0	3,181,335	2,300,000	<b>5,481,335</b>
FUND(s): <b>CAPITAL RESERVE</b>					
COMMENTS: Funds are included in the 2008-09 Capital Reserve. This item, in the amount of \$74,060, will leave a current year balance of \$3,181,335 for the Arterial Concrete Repair project.					
STRATEGIC PLAN GOAL: Arterial concrete repair relates to the City's Goals of Safe, Efficient Travel and Premier City in which to Live.					
<b>SUMMARY OF ITEM</b>					
This change order is for additional concrete street pavement repairs on Park Blvd. between Alma Road and Shiloh Road. As the contract progressed additional arterial pavement was found that needed repair.					
Staff recommends approval of Change Order No. 1. The total Contract will be \$613,602.85, which is a 13.73% increase of the original contract amount of \$539,542.65.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Change Order No. 1					

**CHANGE ORDER NO. 1  
 2007- 08 ARTERIAL CONCRETE PAVEMENT REHAB  
 PARK BLVD. – ALMA DR. TO SHILOH ROAD  
 PROJECT NO. 5915  
 PURCHASE ORDER NO. 103548  
 CIP NO. 35-51131  
 BID NO. 2008 - 180 - B**

**A. INTENT OF CHANGE ORDER**

The intent of this change order is to modify the provisions of the contract entered into by the **CITY OF PLANO, TEXAS** and **JIM BOWMAN CONSTRUCTION COMPANY, L.P.** for the **2007- 08 ARTERIAL CONCRETE PAVEMENT REHAB – PARK BLVD. – ALMA RD. TO SHILOH RD. PROJECT**, dated July 28, 2008.

**B. DESCRIPTION OF CHANGE**

The change order is for additional pavement repair and sidewalk replacement. As the contractor progressed on the project additional street pavement and sidewalk was found that needed to be repaired.

**C. EFFECT OF CHANGE**

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

ITEM NO.	ITEM DESCRIPTION	ORIGINAL QUANTITY	REVISED QUANTITY	UNIT	UNIT PRICE	AMOUNT OF CHANGE
100	F/I Full Depth Saw Cut	9482	11,502	LF	\$1.30	\$2,626.00
101	F/I Butt Joint	9482	10062	LF	\$2.50	\$1,450.00
103	R/D Existing Concrete Paving	6238	7000	SY	\$9.00	\$6,858.00
104	F/I 10" Reinf Concrete Paving	6238	7000	SY	\$56.35	\$42,938.70
105	F/I Monolithic curb	2238	3000	LF	\$2.25	\$1,714.50
116	R/R Existing Conc. Sidewalk	2256	3450	SF	\$4.50	\$5,373.00
117	F/I BFR Type A	1	2	Each	\$1,600.00	\$1,600.00
120	Furnish Conc Sidewalk	4600	7100	SF	\$4.60	\$11,500.00
	<b>TOTAL:</b>					<b>\$74,060.20</b>

Original Contract Amount	\$ 539,542.65
Contract Amount (Including Previous Change Orders)	\$ 539,542.65
<b>Amount, Change Order No. 1</b>	<b>\$ 74,060.20</b>
<b>Revised Contract Amount</b>	<b>\$ 613,602.85</b>
<b>Total Percent Increase Including Previous Change Orders</b>	<b>13.73%</b>

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**D. EFFECT OF CHANGE ON CONTRACT TIME**

The work required under this change order will add 10 day(s) to this project:

Original Contract Time	_____	60 working days
Amount (Including Previous Change Orders)	_____	60 working days
<b>Amount, Change Order No. 1</b>	_____	<b>9 working days</b>
<b>Revised Contract Time</b>	_____	<b>69 working days</b>
<b>Total Percent Increase Including Previous Change Orders</b>	_____	<b>15.00%</b>

**E. AGREEMENT**

By the signatures below, duly authorized agents of the City of Plano, Texas and Jim Bowman Construction Company, L.P., do hereby agree to append this Change Order No. 1 to the original contract between themselves, dated July 28, 2008.

**OWNER: CITY OF PLANO**

**CONTRACTOR: JIM BOWMAN  
CONSTRUCTION COMPANY, L.P., A  
TEXAS LIMITED PARTNERSHIP  
By: JIM BOWMAN GP, LLC, A TEXAS  
LIMITED LIABILITY COMPANY, ITS  
GENERAL PARTNER**

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Print  
Name: Thomas H. Muehlenbeck

Print  
Name: Jim Bowman

Print  
Title: City Manager

Print  
Title: Sole Manager

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

Date: 11/13/08

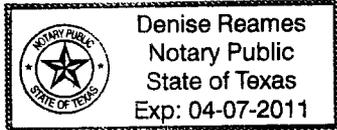
APPROVED AS TO FORM:

By: \_\_\_\_\_  
Diane C. Wetherbee, City Attorney

**ACKNOWLEDGMENTS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the 13<sup>th</sup> day of November, 2008, by **JIM BOWMAN, SOLE MANAGER**, of **JIM BOWMAN GP, LLC**, a Texas Limited Liability Company, General Partner of Jim **Bowman Construction Company, L.P.**, a Texas Limited Partnership, on behalf of said limited partnership.



Denise Reames  
Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by **THOMAS H. MUEHLENBECK**, **CITY MANAGER** of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

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



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	<b>12/8/08</b>	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Public Works Administration / David Falls		Initials	Date
Department Head		Executive Director	<i>[Signature]</i>	<i>11/24/08</i>
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	<i>11/24/08</i>
Agenda Coordinator (include phone #): <b>Margie Stephens (X4104)</b>				
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				
<b>CAPTION</b>				
<i>To Hencie International, Inc., increasing the contract by \$93,292.60 for the 2007-2008 Residential Concrete Pavement Rehabilitation Project, Zone 18, Project No. 5890, Change Order No. 1, Bid No. 2008-95- B.</i>				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	<b>2008-09</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
Budget		3,054,722	4,345,278	3,000,000
Encumbered/Expended Amount		-3,054,722	-1,346,363	0
This Item		0	-93,293	0
BALANCE		0	2,905,622	3,000,000
<b>FUND(S): CAPITAL RESERVE</b>				
<b>COMMENTS:</b> Funds are included in the 2008-09 Capital Reserve. This item, in the amount of \$93,293, will leave a current year balance of \$2,905,622 for the Residential Street & Alley Replacement project.				
<b>STRATEGIC PLAN GOAL:</b> Residential street and alley repairs relate to the City's Goal of Safe, Efficient Travel.				
<b>SUMMARY OF ITEM</b>				
This change order is for additional street, alley and sidewalk repairs in the Project area. As the Project progressed, repair areas became larger and new areas of deteriorated pavement and sidewalk were found in the project area that needed repair.				
Staff recommends approval of Change Order No. 1. The total Contract will be \$719,529.24, which is a 14.90% increase of the original contract amount of \$626,236.64.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Change Order No. 1				



D. EFFECT OF CHANGE ON CONTRACT TIME

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

Original Contract Time	<u>100 working days</u>
Amount (Including Previous Change Orders)	<u>100 working days</u>
<b>Amount, Change Order No. 1</b>	<u>15 working days</u>
<b>Revised Contract Time</b>	<u>115 working days</u>
<b>Total Percent Increase Including Previous Change Orders</b>	<u>15.00%</u>

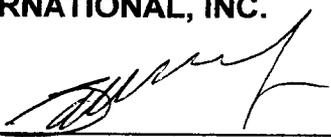
E. AGREEMENT

By the signatures below, duly authorized agents of the City of Plano, Texas and Hencie International, Inc. do hereby agree to append this Change Order No. 1 to the original contract between themselves, dated March 28, 2008.

**OWNER: CITY OF PLANO**

**CONTRACTOR: HENCIE INTERNATIONAL, INC.**

By: \_\_\_\_\_  
(signature)

By:   
\_\_\_\_\_  
(signature)

Print  
Name: Thomas H. Muehlenbeck  
\_\_\_\_\_

Print  
Name: Sabeel Fatehdin  
\_\_\_\_\_

Print  
Title: City Manager  
\_\_\_\_\_

Print  
Title: Vice President  
\_\_\_\_\_

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

Date: 11/17/08

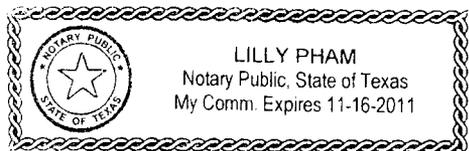
APPROVED AS TO FORM:

By: \_\_\_\_\_  
Diane C. Wetherbee, City Attorney

**ACKNOWLEDGMENTS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the 17 day of November, 2008, by **SABEEL FATEHDIN, VICE PRESIDENT** of **HENCIE INTERNATIONAL, INC.**, a Texas corporation, on behalf of said corporation.



*[Signature]*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by **THOMAS H. MUEHLENBECK, CITY MANAGER** of the **City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

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



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>12/8/08</b>		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Police Department		Initials	Date	
Department Head	Gregory W. Rushin	Executive Director	<i>[Signature]</i>	12-03-08	
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	12/2/08	
Agenda Coordinator (include phone #): <b>Pam Haines, Ext 2538</b>					

**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 Texas Traffic Safety Program Grant Agreement by and between the State of Texas and the City of Plano, Texas; authorizing its execution by the City Manager or, in his absence, an Executive Director; and providing an effective date.

**FINANCIAL SUMMARY**

NOT APPLICABLE     OPERATING EXPENSE     REVENUE     CIP

FISCAL YEAR: <b>2008-09</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	19,965	0	<b>19,965</b>
BALANCE	0	19,965	0	<b>19,965</b>

**FUND(S): GRANT FUND (13-255)**

**COMMENTS:** This grant contract, if approved, provides funding for overtime police Officers to enhance enforcement and conduct earned media activity through focused DWI Enforcement during holiday waves.

**STRATEGIC PLAN GOAL:** Acceptance of the Texas Department of Transportation grant funds relates to the City's Goals of "Premier City for Families" and "Service Excellence".

**SUMMARY OF ITEM**

The State of Texas, acting by and through the Texas Department of Transportation, offers the City of Plano a grant totaling \$19,965 for focused DWI Enforcement during holiday waves beginning December 1, 2008 through September 30, 2009 as part of the statewide "Drink, Drive, Go to Jail" campaign. The grant provides funding for overtime police officers to enhance enforcement and conduct earned media activity.

List of Supporting Documents: Resolution, Memo, Grant Agreement	Other Departments, Boards, Commissions or Agencies
--	--



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

## **MEMORANDUM**

**DATE:** November 24, 2008  
**TO:** Bruce D. Glasscock, Executive Director  
**FROM:**  Gregory W. Rushin, Chief of Police  
**SUBJECT:** DWI Grant

---

I am submitting a one-year State of Texas DWI Grant for consideration at the December 8, 2008 City Council meeting. This is a \$19,965 enforcement grant, with no city match, that pays for Officers to work DWI enforcement during the following holiday seasons:

Christmas / New Years	December 19, 2008 – January 4, 2009
Spring Break	March 2, 2009 – March 22, 2009
Independence Day	June 26, 2009 – July 5, 2009
Labor Day	August 21, 2009 – September 7, 2009

It should be noted that although the effective day of the grant is December 1, 2008 (or on the date of final signature of both parties), the enforcement period does not begin until December 19, 2008. The grant also requires pre- and post-media activities. There are no restrictions on enforcement locations.

Please advise if you have any questions. Thank you

Attachments

GWR/ph

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT BY AND BETWEEN THE STATE OF TEXAS AND THE CITY OF PLANO, TEXAS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has been presented a Texas Traffic Safety Program Grant Agreement between The State of Texas and the City of Plano, Texas, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

**DULY PASSED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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

# **Texas Traffic Safety eGrants**

## **Fiscal Year 2009**

**Organization Name:** City of Plano - Police Department

**Legal Name:** City of Plano

**Payee Identification Number:** 17560006409000

**Project Title:** FY 2009 STEP - Impaired Driving Mobilization

**ID:** 2009-PlanoPD-STEP IDM-00013

**Period:** 12/01/2008 to 09/30/2009

## TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT

THE STATE OF TEXAS  
THE COUNTY OF TRAVIS

THIS AGREEMENT IS MADE BY and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the Department and the, **City of Plano** hereinafter called the Subgrantee, and becomes effective then fully executed by both parties. For the purpose of this agreement, the Subgrantee is designated as a(n) **Local Government**.

AUTHORITY: Texas Transportation Code, Chapter 723, the Traffic Safety Act of 1967, and the Highway Safety Performance Plan for the Fiscal Year 2009.

Project Title: **FY 2009 STEP - Impaired Driving Mobilization**

Grant Period: This Grant becomes effective on or on the date of final signature of both parties, whichever is later, and ends on unless terminated or otherwise modified.

Total Awarded: **\$19,965.00**

Amount Eligible for Reimbursement: **\$19,965.00**

Match Amount: **\$0**

## TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT

The signatory of the Subgrantee hereby represents and warrants that she/he is an officer of the organization for which she/he has executed this agreement and that she/he has full and complete authority to enter into this agreement on behalf of the organization.

THE SUBGRANTEE

THE STATE OF TEXAS

**City of Plano**

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

[Legal Name of Agency]

By:

By:

\_\_\_\_\_  
[Authorized Signature]

\_\_\_\_\_  
[District Engineer Texas Department of  
Transportation]

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Title]

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

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

Under the authority of Ordinance or  
Resolution Number (for local government):  
(If Applicable)

By:

\_\_\_\_\_  
[Resolution Number]

\_\_\_\_\_  
Director, Traffic Operations Division Texas  
Department of Transportation (Not required  
for local project grants under \$100,000.00)  
Date: \_\_\_\_\_

### **General Information**

Project Title FY 2009 STEP - Impaired Driving Mobilization

Project Description To conduct DWI enforcement Waves during holiday periods to increase DWI arrests and earned media activity as part of the statewide "Drink. Drive. Go To Jail" campaign and in conjunction with the national Impaired Driving Mobilization campaign

How many years has your organization received funding for this project?  
This will be our second year.

**Texas Traffic Safety Program**

**GRANT AGREEMENT GENERAL TERMS AND CONDITIONS**

**ARTICLE 1. COMPLIANCE WITH LAWS**

The Subgrantee shall comply with all federal, state, and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination laws and regulations, and licensing laws and regulations. When required, the Subgrantee shall furnish the Department with satisfactory proof of its compliance therewith.

**ARTICLE 2. STANDARD ASSURANCES**

The Subgrantee hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements, including 49 CFR (Code of Federal Regulations), Part 18; 49 CFR, Part 19 (OMB [Office of Management and Budget] Circular A-110); OMB Circular A-87; OMB Circular A-102; OMB Circular A-21; OMB Circular A-122; OMB Circular A-133; and the Department's Traffic Safety Program Manual, as they relate to the application, acceptance, and use of federal or state funds for this project. Also, the Subgrantee assures and certifies that:

- A. It possesses legal authority to apply for the grant; and that a resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
- B. It and its subcontractors will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), as amended, and in accordance with that Act, no person shall discriminate, on the grounds of race, color, sex, national origin, age, religion, or disability.
- C. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970, as amended; 42 USC (United States Code) §§4601 et seq.; and United States Department of Transportation (USDOT) regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR, Part 24, which provide for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.
- D. It will comply with the provisions of the Hatch Political Activity Act, which limits the political activity of employees. (See also Article 25, Lobbying Certification.)
- E. It will comply with the federal Fair Labor Standards Act's minimum wage and overtime requirements for employees performing project work.
- F. It will establish safeguards to prohibit employees from using their positions for a

purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

- G. It will give the Department the access to and the right to examine all records, books, papers, or documents related to this Grant Agreement.
- H. It will comply with all requirements imposed by the Department concerning special requirements of law, program requirements, and other administrative requirements.
- I. It recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to this Grant Agreement. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy Act of 1969, as amended, 42 USC §§4321 et seq.; the Clean Air Act, as amended, 42 USC §§7401 et seq. and sections of 29 USC; the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et seq.; the Resource Conservation and Recovery Act, as amended, 42 USC §§6901 et seq.; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC §§9601 et seq. The Subgrantee also recognizes that the U.S. Environmental Protection Agency, USDOT, and other federal agencies have issued, and in the future are expected to issue, regulation, guidelines, standards, orders, directives, or other requirements that may affect this Project. Thus, it agrees to comply, and assures the compliance of each contractor and each subcontractor, with any such federal requirements as the federal government may now or in the future promulgate.
- J. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 USC §4012a(a). Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any form of direct or indirect federal assistance.
- K. It will assist the Department in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470 et seq.), Executive Order 11593, and the Antiquities Code of Texas (National Resources Code, Chapter 191).
- L. It will comply with Chapter 573 of the Texas Government Code by ensuring that no officer, employee, or member of the Subgrantee's governing board or the Subgrantee's subcontractors shall vote or confirm the employment of any person related within the second degree of affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person described in Section 573.062 of the Texas Government Code.
- M. It will ensure that all information collected, assembled, or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Chapter 552 of the Texas Government Code,

unless otherwise expressly provided by law.

- N. If applicable, it will comply with Chapter 551 of the Texas Government Code, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

### **ARTICLE 3. COMPENSATION**

- A. The method of payment for this Agreement will be based on actual costs incurred up to and not to exceed the limits specified in the Project Budget. The amount included in the Project Budget will be deemed to be an estimate only and a higher amount can be reimbursed, subject to the conditions specified in paragraph B hereunder. If the Project Budget specifies that costs are based on a specific rate, per-unit cost, or other method of payment, reimbursement will be based on the specified method.
- B. All payments will be made in accordance with the Project Budget.

The Subgrantee's expenditures may overrun a budget category (I, II, or III) in the approved Project Budget without a grant (budget) amendment, as long as the overrun does not exceed a total of five (5) percent per year of the maximum amount eligible for reimbursement (TxDOT) in the attached Project Budget for the current fiscal year. This overrun must be off-set by an equivalent underrun elsewhere in the Project Budget.

If the overrun is five (5) percent or less, the Subgrantee must provide written notification to the Department, through the TxDOT Electronic Grants Management System (eGrants) messaging system, prior to the Request for Reimbursement being approved. The notification must indicate the amount, the percent over, and the specific reason(s) for the overrun.

Any overrun of more than five (5) percent of the amount eligible for reimbursement (TxDOT) in the attached Project Budget requires an amendment of this Grant Agreement.

The maximum amount eligible for reimbursement shall not be increased above the Grand Total TxDOT Amount in the approved Project Budget, unless this Grant Agreement is amended, as described in Article 5 of this Agreement.

For Selective Traffic Enforcement Program (STEP) grants *only*: In the Project Budget, Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or B, "PI&E Activities," to exceed the TxDOT amount listed in Subcategory C, "Other." Also, Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or C, "Other," to exceed the TxDOT amount listed in Subcategory B, "PI&E Activities." The TxDOT amount for Subcategory B, "PI&E Activities," or C, "Other," can only be exceeded within the 5 percent flexibility, with

- underrun funds from Budget Categories II or III.
- C. To be eligible for reimbursement under this Agreement, a cost must be incurred in accordance with the Project Budget, within the time frame specified in the Grant Period of this Grant Agreement, attributable to work covered by this Agreement, and which has been completed in a manner satisfactory and acceptable to the Department.
- D. Federal or TxDOT funds cannot supplant (replace) funds from any other sources. The term "supplanting," refers to the use of federal or TxDOT funds to support personnel or an activity already supported by local or state funds.
- E. Payment of costs incurred under this Agreement is further governed by one of the following cost principles, as appropriate, outlined in the Federal Office of Management and Budget (OMB) Circulars:
- A-21, Cost Principles for Educational Institutions;
  - A-87, Cost Principles for State, Local, and Indian Tribal Governments; or,
  - A-122, Cost Principles for Nonprofit Organizations.
- F. The Subgrantee agrees to submit monthly or quarterly Requests for Reimbursement, as designated in this Grant Agreement, within thirty (30) days after the end of the billing period. The Request for Reimbursement and appropriate supporting documentation must be submitted through eGrants.
- G. The Subgrantee agrees to submit the final Request for Reimbursement under this Agreement within forty-five (45) days of the end of the grant period.
- H. Payments are contingent upon the availability of appropriated funds.
- I. Project agreements supported with federal or TxDOT funds are limited to the length of this Grant Period specified in this Grant Agreement. If the Department determines that the project has demonstrated merit or has potential long-range benefits, the Subgrantee may apply for funding assistance beyond the initial Agreement period. Preference for funding will be given to those projects for which the Subgrantee has assumed some cost sharing, those which propose to assume the largest percentage of subsequent project costs, and those which have demonstrated performance that is acceptable to the Department.

#### **ARTICLE 4. LIMITATION OF LIABILITY**

Payment of costs incurred hereunder is contingent upon the availability of funds. If at any time during this Grant Period, the Department determines that there is insufficient funding to continue the project, the Department shall so notify the Subgrantee, giving notice of intent to terminate this Agreement, as specified in Article 11 of this Agreement. If at the end of a federal fiscal year, the Department determines that there is sufficient funding and performance to continue the project, the Department may so notify the Subgrantee to continue this agreement.

#### **ARTICLE 5. AMENDMENTS**

This Agreement may be amended prior to its expiration by mutual written consent of both parties, utilizing the Grant Agreement Amendment in eGrants. Any amendment must be executed by the parties within the Grant Period, as specified in this Grant Agreement.

## **ARTICLE 6. ADDITIONAL WORK AND CHANGES IN WORK**

If the Subgrantee is of the opinion that any assigned work is beyond the scope of this Agreement and constitutes additional work, the Subgrantee shall promptly notify the Department in writing through eGrants system messaging. If the Department finds that such work does constitute additional work, the Department shall so advise the Subgrantee and a written amendment to this Agreement will be executed according to Article 5, Amendments, to provide compensation for doing this work on the same basis as the original work. If performance of the additional work will cause the maximum amount payable to be exceeded, the work will not be performed before a written grant amendment is executed.

If the Subgrantee has submitted work in accordance with the terms of this Agreement but the Department requests changes to the completed work or parts thereof which involve changes to the original scope of services or character of work under this Agreement, the Subgrantee shall make such revisions as requested and directed by the Department. This will be considered as additional work and will be paid for as specified in this Article.

If the Subgrantee submits work that does not comply with the terms of this Agreement, the Department shall instruct the Subgrantee to make such revisions as are necessary to bring the work into compliance with this Agreement. No additional compensation shall be paid for this work.

The Subgrantee shall make revisions to the work authorized in this Agreement, which are necessary to correct errors or omissions appearing therein, when required to do so by the Department. No additional compensation shall be paid for this work.

The Department shall not be responsible for actions by the Subgrantee or any costs incurred by the Subgrantee relating to additional work not directly associated with or prior to the execution of an amendment.

## **ARTICLE 7. REPORTING AND MONITORING**

Not later than thirty (30) days after the end of each reporting period, the Subgrantee shall submit a performance report through eGrants. For short-term projects, only one report submitted by the Subgrantee at the end of the project may be required. For longer projects, the Subgrantee will submit reports at least quarterly and preferably monthly. The frequency of the performance reports is established through negotiation between the Subgrantee and the program or project manager.

For Selective Traffic Enforcement Programs (STEPS), performance reports must be submitted monthly.

The performance report will include, as a minimum: (1) a comparison of actual accomplishments to the objectives established for the period, (2) reasons why established objectives and performance measures were not met, if appropriate, and (3) other pertinent information, including, when appropriate, an analysis and explanation of cost underruns,

overruns, or high unit costs.

The Subgrantee shall submit the Final Performance Report through eGrants within thirty (30) days after completion of the grant.

The Subgrantee shall promptly advise the Department in writing, through eGrants messaging, of events that will have a significant impact upon this Agreement, including:

- A. Problems, delays, or adverse conditions, including a change of project director or other changes in Subgrantee personnel, that will materially affect the ability to attain objectives and performance measures, prevent the meeting of time schedules and objectives, or preclude the attainment of project objectives or performance measures by the established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Department or federal assistance needed to resolve the situation.
- B. Favorable developments or events that enable meeting time schedules and objectives sooner than anticipated or achieving greater performance measure output than originally projected.

#### **ARTICLE 8. RECORDS**

The Subgrantee agrees to maintain all reports, documents, papers, accounting records, books, and other evidence pertaining to costs incurred and work performed hereunder, (hereinafter called the records), and shall make such records available at its office for the time period authorized within the Grant Period, as specified in this Grant Agreement. The Subgrantee further agrees to retain said records for four (4) years from the date of final payment under this Agreement, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

Duly authorized representatives of the Department, the USDOT, the Office of the Inspector General, Texas State Auditor, and the Comptroller General shall have access to the records. This right of access is not limited to the four (4) year period but shall last as long as the records are retained.

#### **ARTICLE 9. INDEMNIFICATION**

To the extent permitted by law, the Subgrantee, if other than a government entity, shall indemnify, hold, and save harmless the Department and its officers and employees from all claims and liability due to the acts or omissions of the Subgrantee, its agents, or employees. The Subgrantee also agrees, to the extent permitted by law, to indemnify, hold, and save harmless the Department from any and all expenses, including but not limited to attorney fees, all court costs and awards for damages incurred by the Department in litigation or otherwise resisting such claims or liabilities as a result of any activities of the Subgrantee, its agents, or employees.

Further, to the extent permitted by law, the Subgrantee, if other than a government entity, agrees to protect, indemnify, and save harmless the Department from and against all

claims, demands, and causes of action of every kind and character brought by any employee of the Subgrantee against the Department due to personal injuries or death to such employee resulting from any alleged negligent act, by either commission or omission on the part of the Subgrantee.

If the Subgrantee is a government entity, both parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.

#### **ARTICLE 10. DISPUTES AND REMEDIES**

This Agreement supercedes any prior oral or written agreements. If a conflict arises between this Agreement and the Traffic Safety Program Manual, this Agreement shall govern.

The Subgrantee shall be responsible for the settlement of all contractual and administrative issues arising out of procurement made by the Subgrantee in support of Agreement work. Disputes concerning performance or payment shall be submitted to the Department for settlement, with the Executive Director or his or her designee acting as final referee.

#### **ARTICLE 11. TERMINATION**

This Agreement shall remain in effect until the Subgrantee has satisfactorily completed all services and obligations described herein and these have been accepted by the Department, unless:

- This Agreement is terminated in writing with the mutual consent of both parties; or
- There is a written thirty (30) day notice by either party; or
- The Department determines that the performance of the project is not in the best interest of the Department and informs the Subgrantee that the project is terminated immediately.

The Department shall compensate the Subgrantee for only those eligible expenses incurred during the Grant Period specified in this Grant Agreement which are directly attributable to the completed portion of the work covered by this Agreement, provided that the work has been completed in a manner satisfactory and acceptable to the Department. The Subgrantee shall not incur nor be reimbursed for any new obligations after the effective date of termination.

#### **ARTICLE 12. INSPECTION OF WORK**

The Department and, when federal funds are involved, the US DOT, or any authorized representative thereof, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed.

If any inspection or evaluation is made on the premises of the Subgrantee or its subcontractor, the Subgrantee shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

### **ARTICLE 13. AUDIT**

The Subgrantee shall comply with the requirements of the Single Audit Act of 1984, Public Law (PL) 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133, "Audits of States, Local Governments, and Other Non-Profit Organizations."

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement 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.

### **ARTICLE 14. SUBCONTRACTS**

A subcontract in excess of \$25,000 may not be executed by the Subgrantee without prior written concurrence by the Department. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this Agreement. No subcontract will relieve the Subgrantee of its responsibility under this Agreement.

### **ARTICLE 15. GRATUITIES**

Texas Transportation Commission policy mandates that employees of the Department shall not accept any benefit, gift, or favor from any person doing business with or who, reasonably speaking, may do business with the Department under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Department's Executive Director.

Any person doing business with or who reasonably speaking may do business with the Department under this Agreement may not make any offer of benefits, gifts, or favors to Department employees, except as mentioned here above. Failure on the part of the Subgrantee to adhere to this policy may result in termination of this Agreement.

### **ARTICLE 16. NONCOLLUSION**

The Subgrantee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Subgrantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a

bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. If the Subgrantee breaches or violates this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, contingent fee, or gift.

#### **ARTICLE 17. CONFLICT OF INTEREST**

The Subgrantee represents that it or its employees have no conflict of interest that would in any way interfere with its or its employees' performance or which in any way conflicts with the interests of the Department. The Subgrantee shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the Department's interests.

#### **ARTICLE 18. SUBGRANTEE'S RESOURCES**

The Subgrantee certifies that it presently has adequate qualified personnel in its employment to perform the work required under this Agreement, or will be able to obtain such personnel from sources other than the Department.

All employees of the Subgrantee shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Subgrantee who, in the opinion of the Department, is incompetent or whose conduct becomes detrimental to the work, shall immediately be removed from association with the project.

Unless otherwise specified, the Subgrantee shall furnish all equipment, materials, supplies, and other resources required to perform the work.

#### **ARTICLE 19. PROCUREMENT AND PROPERTY MANAGEMENT**

The Subgrantee shall establish and administer a system to procure, control, protect, preserve, use, maintain, and dispose of any property furnished to it by the Department or purchased pursuant to this Agreement in accordance with its own property management procedures, provided that the procedures are not in conflict with the Department's property management procedures or property management standards and federal standards, as appropriate, in:

- 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or
- 49 CFR, Part 19 (OMB Circular A-110), "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

#### **ARTICLE 20. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Upon completion or termination of this Grant Agreement, whether for cause or at the convenience of the parties hereto, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc. prepared by the Subgrantee, and equipment and supplies purchased with grant funds shall, at the option of the Department, become the property of the Department. All sketches, photographs, calculations, and other data prepared under this Agreement shall be made available, upon request, to the Department without restriction or limitation of their further use.

- A. Intellectual property consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design, or other proprietary information in any form or medium.
- B. *All rights to Department.* The Department shall own all of the rights (including copyrights, copyright applications, copyright renewals, and copyright extensions), title and interests in and to all data, and other information developed under this contract and versions thereof unless otherwise agreed to in writing that there will be joint ownership.
- C. *All rights to Subgrantee.* Classes and materials initially developed by the Subgrantee without any type of funding or resource assistance from the Department remain the Subgrantee's intellectual property. For these classes and materials, the Department payment is limited to payment for attendance at classes.

## **ARTICLE 21. SUCCESSORS AND ASSIGNS**

The Department and the Subgrantee each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement. The Subgrantee shall not assign, sublet, or transfer interest and obligations in this Agreement without written consent of the Department through eGrants messaging.

## **ARTICLE 22. CIVIL RIGHTS COMPLIANCE**

- A. Compliance with regulations: The Subgrantee shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the USDOT: 49 CFR, Part 21; 23 CFR, Subchapter C; and 41 CFR, Parts 60-74, as they may be amended periodically (hereinafter referred to as the Regulations). The Subgrantee agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by the U.S. Department of Labor regulations (41 CFR, Part 60).
- B. Nondiscrimination: The Subgrantee, with regard to the work performed during the period of this Agreement, shall not discriminate on the grounds of race, color, sex, national origin, age, religion, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment.
- C. Solicitations for subcontracts, including procurement of materials and equipment: In all solicitations either by competitive bidding or negotiation made by the Subgrantee for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified

by the Subgrantee of the Subgrantee's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age, religion, or disability.

- D. Information and reports: The Subgrantee shall provide all information and reports required by the regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the USDOT to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the Subgrantee is in the exclusive possession of another who fails or refuses to furnish this information, the Subgrantee shall so certify to the Department or the US DOT, whichever is appropriate, and shall set forth what efforts the Subgrantee has made to obtain the requested information.
- E. Sanctions for noncompliance: In the event of the Subgrantee's noncompliance with the nondiscrimination provision of this Agreement, the Department shall impose such sanctions as it or the US DOT may determine to be appropriate.
- F. Incorporation of provisions: The Subgrantee shall include the provisions of paragraphs A. through E. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives. The Subgrantee shall take such action with respect to any subcontract or procurement as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. However, in the event a Subgrantee becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Subgrantee may request the Department to enter into litigation to protect the interests of the state; and in addition, the Subgrantee may request the United States to enter into such litigation to protect the interests of the United States.

## **ARTICLE 23. DISADVANTAGED BUSINESS ENTERPRISE**

It is the policy of the Department and the USDOT that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, shall have the opportunity to participate in the performance of agreements financed in whole or in part with federal funds. Consequently, the Disadvantaged Business Enterprise requirements of 49 CFR Part 26, apply to this Agreement as follows:

- The Subgrantee agrees to insure that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, have the opportunity to participate in the performance of agreements and subcontracts financed in whole or in part with federal funds. In this regard, the Subgrantee shall make good faith efforts in accordance with 49 CFR Part 26, to insure that Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements and subcontracts.
- The Subgrantee and any subcontractor shall not discriminate on the basis of race, color, sex, national origin, or disability in the award and performance of agreements funded in whole or in part with federal funds.

These requirements shall be included in any subcontract.

Failure to carry out the requirements set forth above shall constitute a breach of this Agreement and, after the notification of the Department, may result in termination of this Agreement by the Department, or other such remedy as the Department deems appropriate.

#### **ARTICLE 24. DEBARMENT/SUSPENSION**

- A. The Subgrantee certifies, to the best of its knowledge and belief, that it and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
  2. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local public transaction or contract under a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  3. Are not presently indicted or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph A. 2. of this Article; and
  4. Have not, within a three (3) year period preceding this Agreement, had one or more federal, state, or local public transactions terminated for cause or default.
- B. Where the Subgrantee is unable to certify to any of the statements in this Article, such Subgrantee shall attach an explanation to this Agreement.
- C. The Subgrantee is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension.
- D. The Subgrantee shall require any party to a subcontract or purchase order awarded under this Grant Agreement to certify its eligibility to receive federal grant funds, and, when requested by the Department, to furnish a copy of the certification.

#### **ARTICLE 25. LOBBYING CERTIFICATION**

The Subgrantee certifies to the best of his or her knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid by or on behalf of the

Subgrantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the party to this Agreement shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Subgrantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **ARTICLE 26. CHILD SUPPORT STATEMENT**

Unless the Subgrantee is a governmental or non-profit entity, the Subgrantee certifies that it either will go to the Department's website noted below and complete the Child Support Statement or already has a Child Support Statement on file with the Department . The Subgrantee is responsible for keeping the Child Support Statement current and on file with that office for the duration of this Agreement period. The Subgrantee further certifies that the Child Support Statement on file contains the child support information for the individuals or business entities named in this grant. Under Section 231.006, Family Code, the Subgrantee certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified grant or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

The form for the Child Support Statement is available on the Internet at:  
<http://www.dot.state.tx.us/cso/default.htm>.

**RESPONSIBILITIES OF THE SUBGRANTEE:**

A. Carry out all performance measures established in the grant, including fulfilling the law enforcement objectives by implementing the Operational Plan contained in this Grant Agreement.

B. Submit all required reports to the Department (TxDOT) fully completed with the most current information, and within the required times, as defined in Article 3 and Article 7 of the General Terms and Conditions of this Grant Agreement. This includes reporting to the Department on progress, achievements, and problems in monthly Performance Reports and attaching necessary source documentation to support all costs claimed in Requests for Reimbursement (RFR).

C. Attend Department-approved grant management training.

D. Attend meetings according to the following:

1. The Department will arrange for meetings with the Subgrantee to present status of activities and to discuss problems and the schedule for the following quarter's work.

2. The project director or other appropriate qualified persons will be available to represent the Subgrantee at meetings requested by the Department.

E. Support grant enforcement efforts with public information and education (PI&E) activities. Salaries being claimed for PI&E activities must be included in the budget.

F. When applicable, all newly developed PI&E materials must be submitted to the Department for written approval, through the TxDOT Electronic Grants Management System (eGrants) system messaging, prior to final production. Refer to the Traffic Safety Program Manual regarding PI&E procedures.

G. For out of state travel expenses to be reimbursable, the Subgrantee must have obtained the written approval of the Department, through eGrants system messaging, prior to the beginning of the trip. Grant approval does not satisfy this requirement. For Department district-managed grants, the Subgrantee must have obtained written Department district approval, through eGrants system messaging, for travel and related expenses if outside of the district boundaries.

H. Maintain verification that all expenses, including wages or salaries, for which reimbursement is requested is for work exclusively related to this project.

I. Ensure that this grant will in no way supplant (replace) funds from other sources. Supplanting refers to the use of federal funds to support personnel or any activity already supported by local or state funds.

J. Ensure that each officer working on the STEP project will complete an officer's daily

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report form. The form should include at a minimum: name, date, badge or identification number, type of grant worked, grant site number, mileage (including starting and ending mileage), hours worked, type of citation issued or arrest made, officer and supervisor signatures.

K. Ensure that no officer above the rank of Lieutenant (or equivalent title) will be reimbursed for enforcement duty, unless the Subgrantee received specific written authorization from the Department, through eGrants system messaging, prior to incurring costs.

L. Subgrantee may work additional STEP enforcement hours on holidays or special events not covered under the Operational Plan. However, additional work must be approved in writing by the Department, through eGrants system messaging, prior to enforcement. Additional hours must be reported in the Performance Report for the time period for which the additional hours were worked.

M. If an officer makes a STEP-related arrest during the shift, but does not complete the arrest before the shift is scheduled to end, the officer can continue working under the grant to complete that arrest.

N. Subgrantees with a traffic unit will utilize traffic personnel for this grant, unless such personnel are unavailable for assignment.

O. Prior to conducting speed enforcement, the Subgrantee must select and survey enforcement sites that comply with existing state mandated speed limits in accordance with the Texas Transportation Code, Sections 545.352 through 545.356.

P. Officers assigned to speed sites should be trained in the use of radar or laser speed measurement devices.

Q. The Subgrantee should have a safety belt use policy. If the Subgrantee does not have a safety belt use policy in place, a policy should be implemented, and a copy maintained for verification during the grant year.

R. Officers working DWI enforcement must be trained in the National Highway Traffic Safety Administration/International Association of Chiefs of Police Standardized Field Sobriety Testing (SFST). In the case of a first year subgrantee, the officers must be trained, or scheduled to be SFST trained, by the end of the grant year. For second or subsequent year grants, all officers working DWI enforcement must be SFST trained.

S. The Subgrantee should have a procedure in place for contacting and using drug recognition experts (DREs) when necessary.

T. The Subgrantee is encouraged to use the DWI On-line Reporting System available through the Buckle Up Texas Web site at [www.buckleuptexas.com](http://www.buckleuptexas.com).

**RESPONSIBILITIES OF THE DEPARTMENT:**

A. Monitor the Subgrantee's compliance with the performance obligations and fiscal requirements of this Grant Agreement using appropriate and necessary monitoring and inspections, including but not limited to:

- review of periodic reports
- physical inspection of project records and supporting documentation
- telephone conversations
- e-mails and letters
- quarterly review meetings
- eGrants system messaging

B. Provide program management and technical assistance.

C. Attend appropriate meetings.

D. Reimburse the Subgrantee for all eligible costs as defined in the project budget. Requests for Reimbursement will be processed up to the maximum amount payable as indicated in the project budget.

E. Perform an administrative review of the project at the close of the grant period to:

- Ascertain whether or not the project objectives were met
- Review project accomplishments (performance measures completed, targets achieved)
- Document any progress towards self-sufficiency
- Account for any approved Program Income earned and expended
- Identify exemplary performance or best practices

### Goals and Strategies

Goal: To increase effective enforcement and adjudication of traffic safety-related laws to reduce fatal and serious injury crashes

Strategies: Increase enforcement of traffic safety-related laws.  
Increase public education and information campaigns.

Goal: To reduce the number of DWI-related crashes, injuries, and fatalities

Strategy: Increase enforcement of DWI laws.

X I agree to the above goals and strategies.

### Law Enforcement Objective/Performance Measure

Note:

Nothing in this agreement shall be interpreted as a requirement, formal or informal, that a peace officer issue a specified or predetermined number of citations in pursuance of the Subgrantee's obligations hereunder.

In addition to the STEP enforcement activities, the subgrantee must maintain baseline non-STEP funded citation and arrest activity due to the prohibition of supplanting

1. Number and type citations/arrests to be issued under STEP	
a. Number of DWI arrests to be made during the Christmas/New Year's DWI Operation	15
b. Number of DWI arrests to be made during the Spring Break DWI Operation	15
c. Number of DWI arrests to be made during the Independence Day DWI Operation	15
d. Number of DWI arrests to be made during the Labor Day DWI Operation	15
2. Total Number of Enforcement Hours for Entire Grant Period	365
Step Indicator	2.96

**PI&E Objective/Performance Measure**

1. Complete administrative and general grant requirements
  - a. Number of Performance Reports to be submitted 4
  - b. Number of Requests for Reimbursement to be submitted 4
  
2. Support Grant efforts with a public information and education (PI&E) program
  - a. Conduct a minimum of one (1) presentation for each DWI operation period 4
  - b. Conduct a minimum of two (2) media exposures (e.g., news conferences, news releases, and interviews) for each DWI Operation period. 8
  - c. Conduct a minimum of one (1) community event (e.g., health fair, traffic safety booth) during the grant period 1
  - d. Produce the following number of public information and education materials if applicable. 0
  - e. Distribute the following number of public information and education materials if applicable. 500

**Budget Summary**

Budget Category		TxDOT	Match	Total
<b>Category I - Labor Costs</b>				
(100)	Salaries	\$19,965.00	\$0	\$19,965.00
(200)	Fringe Benefits			\$0
	<b>Category I Sub-Total</b>	\$19,965.00	\$0	\$19,965.00
<b>Category II - Other Direct Costs</b>				
(300)	Travel	\$0	\$0	\$0
(400)	Equipment			\$0
(500)	Supplies			\$0
(600)	Contractual Services			\$0
(700)	Other Miscellaneous			\$0
	<b>Category II Sub-Total</b>	\$0	\$0	\$0
<b>Total Direct Costs</b>		\$19,965.00	\$0	\$19,965.00
<b>Category III - Indirect Costs</b>				
(800)	Indirect Cost Rate			\$0
<b>Summary</b>				
	<b>Total Labor Costs</b>	\$19,965.00	\$0	\$19,965.00
	<b>Total Direct Costs</b>	\$0	\$0	\$0
	<b>Total Indirect Costs</b>			\$0
<b>Grand Total</b>		\$19,965.00	\$0	\$19,965.00
	<b>Fund Sources</b>	100.00%	0.00%	

## Operational Plan

x I agree to the following

Comments:

Site Description	Jurisdiction Wide
	Conduct focused DWI saturation patrols within high risk locations during times when alcohol-related crashes are most frequent Conduct a minimum of 4 nights of DWI enforcement during each holiday period Conduct pre and post earned media activities for each holiday period
	Christmas/New Year's Wave
Pre-Media Campaign	December 9, 2008 - December 18, 2008
Enforcement Period	December 19, 2008 – January 4, 2009
Post-Media Campaign	January 5, 2009 - January 14, 2009
	Spring Break Wave
Pre-Media Campaign	February 25, 2009 - March 5, 2009
Enforcement Period	March 6, 2009 - March 22, 2009
Post-Media Campaign	March 23, 2009 - April 1, 2009
	Independence Day Wave
Pre-Media Campaign	June 16, 2009 - June 25, 2009
Enforcement Period	June 26, 2009 - July 5, 2009
Post-Media Campaign	July 6, 2009 - July 15, 2009
	Labor Day Crackdown
Pre-Media Campaign	August 11, 2009 - August 20, 2009

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Enforcement Period     August 21, 2009 - September 7, 2009  
Post-Media Campaign     September 8, 2009 - September 18, 2009

Description of Activities

Pre-Media Efforts Before Enforcement Periods:     Conduct local media events immediately before the enforcement effort to maximize the visibility of enforcement to the public. The media events tell the public when, where, how and why impaired driving laws are being enforced.

Enforcement Periods:     Intensify enforcement through coordinated saturation patrols in an overtime STEP placing primary emphasis on increasing DWI arrests and reducing the number of alcohol related traffic crashes during peak holiday traffic.

Post-Media Efforts After Enforcement Periods:     Conduct local media events to tell the public why impaired driving laws are important and the results of the mobilization.

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11/26/2008



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: <b>12/8/08</b>		Reviewed by Legal <i>ms</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan Upchurch	Executive Director	<i>[Signature]</i>	12/1/08
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	12/1/08
Agenda Coordinator (include phone #):		Irene Pegues x-7152 <i>[Signature]</i>	Proj #5388	
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
<b>CAPTION</b>				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A REAL ESTATE CONTRACT BY AND BETWEEN BANK OF TEXAS, N.A. AND THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	<b>2008-09</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
Budget		110,168	1,924,832	500,000
Encumbered/Expended Amount		-110,168	-51,622	0
This Item		0	-60,222	0
BALANCE		0	<b>1,812,988</b>	<b>500,000</b>
FUND(S):    STREET IMPROVEMENT CIP				
<b>COMMENTS:</b> Funds are included in the 2008-09 Street Improvement CIP. This item, in the amount of \$60,222, will leave a current year balance of \$1,812,988 for the Preston/Legacy Intersection Improvements project. <b>STRATEGIC PLAN GOAL:</b> Easement purchases for intersection improvements relate to the City's Goal of Safe, Efficient Travel.				
<b>SUMMARY OF ITEM</b>				
This contract is for the acquisition of a 0.040 acre Street and Utility Easement from the Bank of Texas on their vacant property at the northeast corner of Legacy and Preston. The City will pay \$60,222 for the land. The offer was based on an appraisal for the easement.  The easement is needed for intersection improvements and staff recommends approval.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
N/A		N/A		

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A REAL ESTATE CONTRACT BY AND BETWEEN BANK OF TEXAS, N.A. AND THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has been presented a proposed Real Estate Contract between Bank of Texas, N.A. and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Real Estate Contract"); and,

**WHEREAS**, Engineering recommends to City Council the acquisition of the 0.040 acres in order to obtain a permanent Street and Utility Easement; and

**WHEREAS**, upon full review and consideration of the Real Estate Contract, staff recommendations, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or, in his absence, an Executive Director, shall be authorized to execute it on behalf of the City of Plano.

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

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

**Section II.** The City Manager, or in his absence, an Executive Director, is hereby authorized to execute the Real Estate Contract 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 Real Estate Contract.

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

**DULY PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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

**REAL ESTATE CONTRACT**

**THIS CONTRACT** is entered into as of the effective date as hereinafter defined by and between **BANK OF TEXAS, N.A.**, a National Bank (the "Seller"), and **CITY OF PLANO, TEXAS**, a home rule municipal corporation (the "Purchaser").

**WHEREAS**, the Purchaser is in need of acquiring a Street and Utility Easement (the "Easement") containing 0.040 acres of land as more particularly described in Exhibit "A" which is attached hereto and made a part hereof by reference.

**WHEREAS**, Seller and Purchaser have entered into this Contract to provide for the sale and purchase of the Easement.

**NOW, THEREFORE**, in consideration of the premises and for the further consideration of the terms, provisions, and conditions hereinafter set forth, Seller and Purchaser have agreed as follows:

1. **Agreement to Convey.**

For the consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth, Seller has agreed and does hereby agree to sell, grant and convey to the Purchaser the Easement and Purchaser has agreed and does hereby agree to purchase the Easement from the Seller. The Easement will be GRANTED and CONVEYED to Purchaser on the easement form attached as Exhibit "B". The Easement shall be conveyed after the execution of this contract.

2. **Purchase Price.**

The purchase price ("Purchase Price") to be paid for the Easement shall be **SIXTY THOUSAND TWO HUNDRED TWENTY TWO AND NO/100 DOLLARS (\$60,222.00)**. Payment shall be contemporaneous with the conveyance of the Easement.

3. **Policy Insurance.**

Within ten (10) days from the Effective Date (as hereinafter defined) of this Contract, the Purchaser, at the Purchaser's sole cost and expense, shall obtain a current commitment ("Title Commitment") for the issuance of an Owner's Policy of Title Insurance to the Purchaser together with legible copies of all documents constituting exceptions to Seller's title as reflected in the Title Commitment. Purchaser shall have a period of ten (10) days from the delivery of

the Title Commitment and the documents referred to therein as conditions or exceptions to title to the Property, in which to review such items and to deliver to Seller in writing such objections as Purchaser may have to anything contained or set forth in the Title Commitment or title exception documents. Any items to which Purchaser does not object within such period shall be deemed to be permitted exceptions ("Permitted Exceptions"). In the event Purchaser timely objects to any matter contained in the Title Commitment and/or title exception documents as hereinabove provided, Seller shall have a reasonable period of time, not to exceed ten (10) days within which Seller may attempt to cure such objections specified as aforesaid by Purchaser. In the event Seller has been unable or unwilling to cure any such objections as aforesaid, then, and in such event, Purchaser may, at its option, either terminate this Contract or Purchaser may waive any such objection and the transaction contemplated hereby shall be consummated as provided herein.

**4. Representations and Warranties of Seller.**

(a) To the best knowledge and belief of Seller there are no parties in possession of any portion of the Easement as lessees, tenants at sufferance or trespassers, and no prescriptive rights will have been acquired in, or have commenced to run against the Easement or any portion thereof.

(c) To the best knowledge and belief of Seller, there is no litigation or similar proceeding pending against the Easement and no litigation or similar proceeding is threatened or contemplated that would affect the Easement or any portion thereof.

(e) No person, firm, partnership, corporation or other entity shall have any right or option to purchase, lease, occupy or use the Easement or any part thereof in such a manner as to interfere with the Easement.

(e) The consummation of the transactions contemplated herein will not violate or constitute a default under any provision of any contract, agreement, regulation, court order, judgment, decree, law or other document or instrument to which Seller is subject or bound and will not violate any other restrictions or prohibition of any kind or character to which Seller is subject.

(f) Seller is duly authorized and empowered to enter into this Contract and to consummate the transactions contemplated hereunder, and any person executing this Contract on behalf of Seller is duly authorized and empowered to do so.

5. **Acknowledgments, Covenants and Agreements of Seller.**

Seller acknowledges, covenants and agrees with Purchaser as follows:

(a) Purchaser and its agents and representatives shall have full access to the Easement at all times.

(b) No new or additional improvements will be constructed, located or placed on the Easement.

(c) To the best of Seller's knowledge and belief, the Easement does not include any personal property.

(d) During the pendency of this Contract, Seller shall not (without the prior written consent of Purchaser) create, impose or agree to any mortgages, liens, encumbrances, leases, tenancies, licenses, security interests, covenants, conditions, restrictions, rights-of-way, easements, judgments or other matters affecting title to the Easement.

(e) This Contract constitutes a full and final settlement for all compensation due Seller for the Easement, including severance damages, if any. Seller hereby releases Purchaser from any and all present or future claims, including any nuisance claims, related to Purchaser's use of said Easement.

(f) The covenants in this Section 5 shall survive the execution of this Contract and the granting of the Easement.

6. **Default.**

(a) Seller's Default. In the event Seller should fail to consummate this Contract for any reason except Purchaser's default, Purchaser may, at its option, either enforce specific performance of this Contract or terminate this Contract by giving written notice thereof to Seller as its sole and exclusive remedy hereunder. If Seller is unable to cure objections to title exceptions as required by this Contract, Purchaser shall have the right to take the Easement by waiving any objections Purchaser might have to the exceptions. Nothing herein shall be construed to limit the Purchaser's right and power of eminent domain.

(b) Purchaser's Default. In the event Purchaser shall fail to consummate this Contract for any reason except Seller's default, Seller may, at its option and as its sole and exclusive remedy, either enforce specific performance of this Contract or terminate this Contract by giving written notice thereof to Purchaser. Seller's remedy set forth in this Paragraph 6(b) is exclusive.

7. **Right to Possession.**

Purchaser shall be entitled to possession upon execution of the Contract.

8. **Nonwaiver.**

No waiver by either party or any provision hereof shall be deemed to have been made unless expressed in writing and signed by the party against which enforcement is sought. No delay or omission in the exercise of any right or remedy accruing to either party upon any breach of this Contract by the other party shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other or subsequent breach of the same or any other term, covenant or condition herein contained.

9. **Miscellaneous Provisions.**

(a) This Contract (including the exhibits attached hereto) embodies the complete and entire agreement between the parties hereto relative to the Property and supersedes all prior negotiations, agreements and understanding relating thereto and may not be varied except by written agreement of such parties.

(b) This Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, heirs and assigns.

(c) This Contract shall be construed under and in accordance with the laws of the State of Texas and is fully performable in Collin County, Texas.

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

(e) Any notice to be given or to be served upon any party hereto in connection with this Contract must be in writing and may be given by Certified or Registered Mail and shall be deemed to have been given and received when a Certified or Registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail, and if given otherwise than by Certified or Registered Mail, it shall be deemed to have been given when delivered to and received by the party (or such party's agents or representatives) to whom it is addressed. Such notice shall be given to the parties hereto at the address set forth under their respective signatures below. Any party hereto may,

at any time by giving two (2) days' written notice to the other parties hereto, designate any other address in substitution of the foregoing address to which such notice shall be given.

(f) This Contract may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(g) The headings used throughout this Contract have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Contract.

(h) Purchaser represents and warrants unto Seller that Purchaser has full power and authority to enter into and consummate this Contract.

(i) The effective date of this Contract shall be the last date of signature of any party set forth below.

(j) Seller and Purchaser each represent to the other that there have been no brokers or real estate commissions incurred as a result of this transaction.

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the dates shown below their respective signatures.

**SELLER:**

**BANK OF TEXAS, N.A., a National Bank**

Date: Nov. 18, 2008

By: 

Name: **MICHAEL D. NALLEY**

Title: **MANAGER, CORPORATE REAL ESTATE**



## EXHIBIT "A"

COUNTY: COLLIN  
HIGHWAY: SH 289  
PROJECT LIMITS

Page 1 of 3  
January 23, 2008

At: State Highway 289 Interchange at Legacy Drive

CSJ: 0091-05-055

## Field Note Description for Parcel 3

**BEING** 1,738 square feet of land, more or less, in the Jesse Stiff, Abstract Number 793, City of Plano, Collin County, Texas, and being part of LOT 4, BLOCK 1 of the REVISED CONVEYANCE PLAT OF LOTS 2R, 3, 4, 5, 6 & 7, BLOCK 1 OF THE CONVEYANCE PLAT OF LEGACY CORPORATE CENTER, an addition to the City of Plano, as recorded as Collin County Clerk File Number 20070607010001950, Plat Records of Collin County, Texas, and also being part of a tract of land as described in Special Warranty Deed to Bank of Texas, N.A., as recorded in Collin County Clerk File Number 20070813001118130, Official Public Records of Real Property of Collin County, Texas, and being more particularly described by metes and bounds as follows:

**COMMENCING** at the northeast corner of said LOT 4;

**THENCE** South 00 degrees 08 minutes 07 seconds East along the east line of said LOT 4, a distance of 219.57 feet to a five-eighths inch steel rebar with TxDOT aluminum disk set for the POINT OF BEGINNING in the new north right of way line of Legacy Drive;

1. **THENCE** South 00 degrees 08 minutes 07 seconds East, continuing along the east line of said LOT 4, a distance of 11.08 feet to the southeast corner of said LOT 4 in the existing north right of way line of Legacy Drive (variable width right of way), from which a 5/8-inch steel rebar with yellow plastic cap found (controlling monument) bears North 89 degrees 56 minutes 54 seconds East, a distance of 60.45 feet;
2. **THENCE** South 89 degrees 56 minutes 54 seconds West, along the existing north right of way line of said Legacy Drive, a distance of 154.91 feet to a 5/8-inch steel rebar with yellow plastic cap found (controlling monument) for the south end of the corner clip connecting the existing north right of way line of said Legacy Drive and the existing east right of way line of State Highway 289 (Preston Road, variable width right of way);
3. **THENCE** North 42 degrees 16 minutes 26 seconds West, along said corner clip line, a distance of 14.40 feet to a five-eighths inch steel rebar with TxDOT aluminum disk set for corner in the new north right of way line of said Legacy Drive, from which a 5/8-steel rebar with yellow plastic cap found (controlling monument) bears North 42 degrees 16 minutes 26 seconds West, a distance of 102.27 feet;

EXHIBIT "A"

COUNTY: COLLIN  
HIGHWAY: SH 289  
PROJECT LIMITS

Page 2 of 3  
January 23, 2008

At: State Highway 289 Interchange at Legacy Drive  
CSJ: 0091-05-055

Field Note Description for Parcel 3

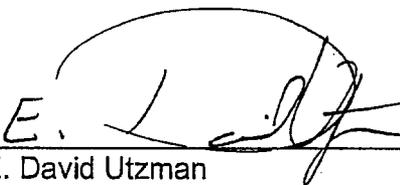
- 4. **THENCE** North 89 degrees 48 minutes 14 seconds East, along the new north right of way line of said Legacy Drive, a distance of 164.57 feet to the POINT OF BEGINNING and containing 1,738 square feet (0.040 acres) of land, more or less.

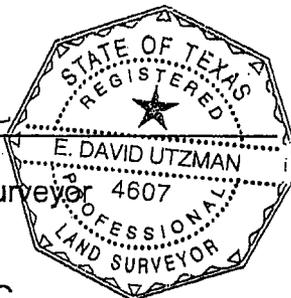
This description accompanies a parcel map of even date herewith.

Access is allowed to the highway facility from the remainder of the abutting property.

All bearings are based on the Texas Coordinate System of 1983 (1993 Adj.), North Central Zone. All coordinates shown are surface values and may be converted to grid by dividing by the TxDOT conversion factor of 1.000152710.

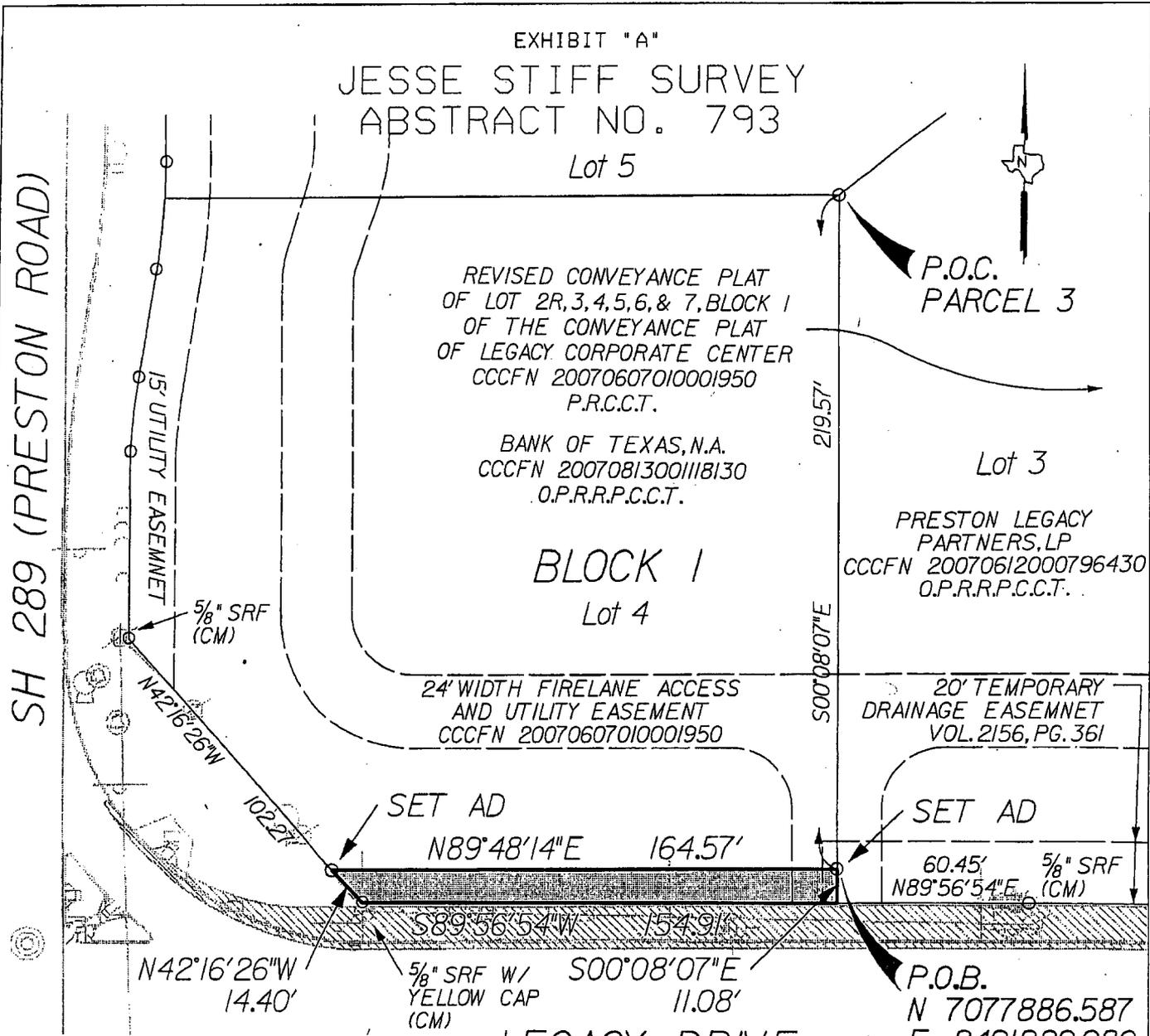
FIELD NOTES PREPARED FROM FIELDWORK PERFORMED IN 2007 AND 2008.

  
 E. David Utzman  
 Registered Professional Land Surveyor  
 Texas No. 4607

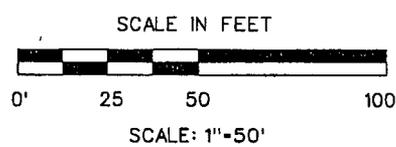


03/12/08  
Date

Arredondo, Zepeda & Brunz, LLC.  
11355 McCree Road  
Dallas, Texas 75238  
(214) 341-9900/(214) 341-9925 - Fax



- NOTES:
1. ALL BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM OF 1983 (1993 ADJ.), NORTH CENTRAL ZONE. ALL COORDINATES SHOWN ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY DIVIDING BY THE TXDOT CONVERSION FACTOR OF 1.000152710.
  2. CONTROL MONUMENTS USED FOR BOUNDARY SOLUTIONS ARE NOTED AS (CM) FOR CONTROLLING MONUMENT.
  3. A FIELD NOTE DESCRIPTION OF EVEN SURVEY DATE HEREWITH ACCOMPANIES THIS PLAT.
  4. REMAINDER ACREAGE IS BY DEED CALL SUBTRACTION UNLESS OTHERWISE NOTED.



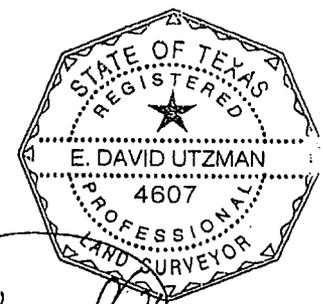
ROY ACQUISITION - 1,738 SQ. FT. (0.040 AC.)  
 REMAINDER - 48,155 SQ. FT. (1.106 AC.) (APPROX.)

LEGEND

PROPOSED ROW LINE	—————
EXISTING ROW LINE	-----
PROPERTY LINE	————— P —————
COUNTY LINE	————— C —————
DENIAL OF ACCESS LINE	————— III —————
SURVEY LINE	————— S —————
FENCE LINE	— x — x —
CITY LIMITS	—————
EASEMENTS	—————
RAILROAD	—————
STRUCTURE	—————

SRF - STEEL REBAR FOUND  
 SPF - STEEL PIPE FOUND  
 SET AD - TXDOT ALUMINUM DISK SET ON TOP OF A 5/8-INCH IRON ROD  
 SET BD - TXDOT BRONZE DISK SET IN CONCRETE  
 CM - CONTROLLING MONUMENT

A PLAT OF SURVEY OF  
 PARCEL 3  
 FOR STATE HWY 289 PRESTON /  
 LEGACY INTERCHANGE  
 A 1,738 S.F. (0.040 AC.)  
 TRACT OF LAND IN THE  
 JESSE STIFF SURVEY  
 ABSTRACT NUMBER 793  
 COLLIN COUNTY, TEXAS  
 JANUARY 23, 2008  
 EXHIBIT "A"  
 PAGE 3 OF 3



*E. David Utzman* 03/12/08  
 E. DAVID UTZMAN R.P.L.S. NO. 4607 DATE

**EXHIBIT "B"**

**STREET AND UTILITY EASEMENT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

**KNOW ALL MEN BY THESE PRESENTS:**

THAT, **BANK OF TEXAS, N.A.**, a National Bank, whether one or more, hereinafter called "Grantor," for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration to Grantor in hand paid by the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, hereinafter called "Grantee," the receipt and sufficiency of which is hereby acknowledged, does hereby **SELL, GRANT and CONVEY** to the Grantee an easement for street and utility purposes and the right to lay out, open, operate, construct, reconstruct and perpetually maintain street and utility facilities (the "Facilities"), together with all necessary incidental improvements and appurtenances, in, under, along, upon and across certain real property located in the City of Plano, Collin County, Texas, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference as if fully set forth herein (the "Easement Property").

**TO HAVE AND TO HOLD** the same perpetually unto the Grantee, its successors and assigns, together with the right and privilege at all times to enter the Easement Property, or any part thereof, and with the right of access across Grantor's adjacent property for ingress and egress to the Easement Property for the purpose of constructing, reconstructing and maintaining the Facilities, and all incidental improvements and for making connections therewith. Grantee shall have the right to

J-12



EXHIBIT "A"  
The Easement Property

COUNTY: COLLIN  
HIGHWAY: SH 289  
PROJECT LIMITS

Page 1 of 3  
January 23, 2008

At: State Highway 289 Interchange at Legacy Drive

CSJ: 0091-05-055

Field Note Description for Parcel 3

**BEING** 1,738 square feet of land, more or less, in the Jesse Stiff, Abstract Number 793, City of Plano, Collin County, Texas, and being part of LOT 4, BLOCK 1 of the REVISED CONVEYANCE PLAT OF LOTS 2R, 3, 4, 5, 6 & 7, BLOCK 1 OF THE CONVEYANCE PLAT OF LEGACY CORPORATE CENTER, an addition to the City of Plano, as recorded as Collin County Clerk File Number 20070607010001950, Plat Records of Collin County, Texas, and also being part of a tract of land as described in Special Warranty Deed to Bank of Texas, N.A., as recorded in Collin County Clerk File Number 20070813001118130, Official Public Records of Real Property of Collin County, Texas, and being more particularly described by metes and bounds as follows:

**COMMENCING** at the northeast corner of said LOT 4;

**THENCE** South 00 degrees 08 minutes 07 seconds East along the east line of said LOT 4, a distance of 219.57 feet to a five-eighths inch steel rebar with TxDOT aluminum disk set for the POINT OF BEGINNING in the new north right of way line of Legacy Drive;

1. **THENCE** South 00 degrees 08 minutes 07 seconds East, continuing along the east line of said LOT 4, a distance of 11.08 feet to the southeast corner of said LOT 4 in the existing north right of way line of Legacy Drive (variable width right of way), from which a 5/8-inch steel rebar with yellow plastic cap found (controlling monument) bears North 89 degrees 56 minutes 54 seconds East, a distance of 60.45 feet;
2. **THENCE** South 89 degrees 56 minutes 54 seconds West, along the existing north right of way line of said Legacy Drive, a distance of 154.91 feet to a 5/8-inch steel rebar with yellow plastic cap found (controlling monument) for the south end of the corner clip connecting the existing north right of way line of said Legacy Drive and the existing east right of way line of State Highway 289 (Preston Road, variable width right of way);
3. **THENCE** North 42 degrees 16 minutes 26 seconds West, along said corner clip line, a distance of 14.40 feet to a five-eighths inch steel rebar with TxDOT aluminum disk set for corner in the new north right of way line of said Legacy Drive, from which a 5/8-steel rebar with yellow plastic cap found (controlling monument) bears North 42 degrees 16 minutes 26 seconds West, a distance of 102.27 feet;

EXHIBIT "A"  
The Easement Property

COUNTY: COLLIN  
HIGHWAY: SH 289  
PROJECT LIMITS

Page 2 of 3  
January 23, 2008

At: State Highway 289 Interchange at Legacy Drive

CSJ: 0091-05-055

Field Note Description for Parcel 3

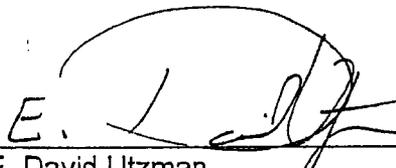
- 4. **THENCE** North 89 degrees 48 minutes 14 seconds East, along the new north right of way line of said Legacy Drive, a distance of 164.57 feet to the POINT OF BEGINNING and containing 1,738 square feet (0.040 acres) of land, more or less.

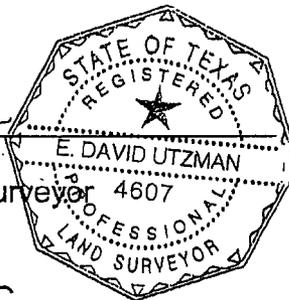
This description accompanies a parcel map of even date herewith.

Access is allowed to the highway facility from the remainder of the abutting property.

All bearings are based on the Texas Coordinate System of 1983 (1993 Adj.), North Central Zone. All coordinates shown are surface values and may be converted to grid by dividing by the TxDOT conversion factor of 1.000152710.

FIELD NOTES PREPARED FROM FIELDWORK PERFORMED IN 2007 AND 2008.

  
 E. David Utzman  
 Registered Professional Land Surveyor  
 Texas No. 4607



03/12/08  
Date

Arredondo, Zepeda & Brunz, LLC.  
11355 McCree Road  
Dallas, Texas 75238  
(214) 341-9900/(214) 341-9925 - Fax

# JESSE STIFF SURVEY ABSTRACT NO. 793

Lot 5

REVISED CONVEYANCE PLAT  
OF LOT 2R,3,4,5,6,& 7, BLOCK 1  
OF THE CONVEYANCE PLAT  
OF LEGACY CORPORATE CENTER  
CCCFN 20070607010001950  
P.R.C.C.T.

BANK OF TEXAS, N.A.  
CCCFN 20070813001118130  
O.P.R.R.P.C.C.T.

BLOCK 1  
Lot 4

24' WIDTH FIRELANE ACCESS  
AND UTILITY EASEMENT  
CCCFN 20070607010001950

20' TEMPORARY  
DRAINAGE EASEMENT  
VOL. 2156, PG. 361

SET AD  
N89°48'14"E 164.57'

SET AD  
60.45' 5/8" SRF (CM)  
N89°56'54"E

S89°56'54"W 154.91'  
5/8" SRF W/  
YELLOW CAP  
S00°08'07"E 11.08'

P.O.B.  
N 7077886.587  
E 2491229.980  
PARCEL 3

SH 289 (PRESTON ROAD)

15' UTILITY EASEMENT

5/8" SRF (CM)

N42°16'26"W 14.40'

N42°16'26"W 102.27'

NOTES:

1. ALL BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM OF 1983 (1993 ADJ.), NORTH CENTRAL ZONE. ALL COORDINATES SHOWN ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY DIVIDING BY THE TXDOT CONVERSION FACTOR OF 1.000152710.

2. CONTROL MONUMENTS USED FOR BOUNDARY SOLUTIONS ARE NOTED AS (CM) FOR CONTROLLING MONUMENT.

3. A FIELD NOTE DESCRIPTION OF EVEN SURVEY DATE HEREWITH ACCOMPANIES THIS PLAT.

4. REMAINDER ACREAGE IS BY DEED CALL SUBTRACTION UNLESS OTHERWISE NOTED.

LEGEND

PROPOSED ROW LINE	—————
EXISTING ROW LINE	-----
PROPERTY LINE	—————
COUNTY LINE	—————
DENIAL OF ACCESS LINE	—————
SURVEY LINE	—————
FENCE LINE	-x-x-
CITY LIMITS	—————
EASEMENTS	—————
RAILROAD	—————
STRUCTURE	—————

SRF - STEEL REBAR FOUND  
SPF - STEEL PIPE FOUND  
SET AD - TXDOT ALUMINUM DISK SET ON TOP OF A 5/8-INCH IRON ROD  
SET BD - TXDOT BRONZE DISK SET IN CONCRETE  
CM - CONTROLLING MONUMENT

SCALE IN FEET

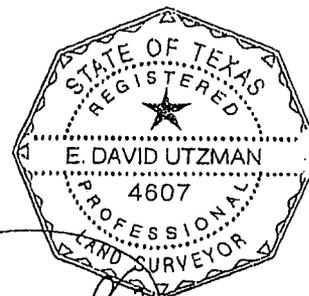


SCALE: 1"=50'

ROW ACQUISITION - 1,738 SQ. FT. (0.040 AC.)  
REMAINDER - 46,155 SQ. FT. (1.06 AC.) (APPROX.)

A PLAT OF SURVEY OF  
PARCEL 3  
FOR STATE HWY 289 PRESTON /  
LAGACY INTERCHANGE  
A 1,738 S.F. (0.040 AC.)  
TRACT OF LAND IN THE  
JESSE STIFF SURVEY  
ABSTRACT NUMBER 793  
COLLIN COUNTY, TEXAS  
JANUARY 23, 2008

EXHIBIT "A"  
PAGE 3 OF 3



*E. David Utzman* 03/12/08  
E. DAVID UTZMAN R.P.L.S. NO. 4607 DATE

J-16



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	<b>12/8/08</b>	Reviewed by Legal <i>PM</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Property Standards		Initials	Date
Department Head	Cynthia O'Banner	Executive Director	<i>[Signature]</i>	12/1/08
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	12/1/08
Agenda Coordinator (include phone #):		<b>Gloria Carter (ext. 5150)</b>		
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
<b>CAPTION</b>				
AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING ARTICLE III, PROPERTY MAINTENANCE CODE, DIVISION 3, REGISTRATION AND INSPECTION OF MULTI-FAMILY DWELLING COMPLEXES OF CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO BY AMENDING SECTIONS 6-61, 6-63(A) AND 6-70(A) TO REVISE THE DEFINITION AND LOWER THE AGE REQUIREMENT OF A MULTI-FAMILY DWELLING/BUILDING/RESIDENCE FOR REGISTRATION PURPOSES; PROVIDING A PENALTY CLAUSE; A SAVINGS CLAUSE; A SEVERABILITY CLAUSE; A REPEALING CLAUSE; A PUBLICATION CLAUSE; AND AN EFFECTIVE DATE.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
<b>BALANCE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
FUND(s):				
COMMENTS:				
<b>SUMMARY OF ITEM</b>				
To amend regulations for the registration and inspection of multi-family dwelling complexes by revising the definition and lowering the age requirement of a multi-family dwelling/building/residence from ten (10) years old or older to five (5) years old or older for registration and inspection purposes.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Memo				
Ordinance				

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## INTEROFFICE MEMORANDUM

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To: Frank Turner, Executive Director  
From: Cynthia O'Banner, Property Standards Director   
Subject: Rental Registration and Inspection Program  
Date: 11/21/2008

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As an aspect of the City Council's goals and objectives, the rental registration and inspection program is scheduled for further expansion. The ordinance amendment modifies the definition and regulations of the program by lowering the age requirement of multi-family developments for annual registrations and systematic inspections from ten (10) years or older to five (5) years or older. It is estimated that this final expansion to the multi-family rental registration and inspection program will incorporate an additional 25 multi-family complexes and 7,629 units into the process, thereby creating a projected total of 112 multi-family complexes and 26,317 units that would at present meet the criteria of the program. The final phase-in has been previously delayed due to the consideration of budget constraints, however, staff additions and other related equipment and office needs required for the final phase-in were approved during the FY 06-07 budget. The expansion is expected to continue the self-sufficiency operation of the multi-family rental registration and inspection program.

Multi-family developments less than five (5) years old will not be included in the program due to the recent issuance of their certificate of occupancy, substantiating their livability and conformance with the City's building codes. Therefore, further modifications to the multi-family development aspect of the program are not anticipated.

### **BACKGROUND:**

The City's Rental Registration and Inspection (RRIP) program transitioned from a pilot program implemented in November 2005 to a regular, self-sustaining program in January 2007. As initially adopted as a pilot program by City Council, the intent of the RRIP is to promote and provide for the protection of life, health and safety of rental tenants in building complexes used for rental purposes and establish regulation of those buildings and premises for the purpose of sustaining sanitation and public health.

The pilot program created the registration and inspection of all multi-family developments twenty (20) years old or older comprised of five (5) or more dwelling units. The regular program shaped the incorporation of the remainder of the multi-family developments to be phased into the program gradually as follows:

- FY 07-08 → developments ten (10) years or older  
30 multi-family complexes with 9,204 dwelling units added
- FY 08-09 → developments five (5) years or older  
25 multi-family complexes with 7,629 dwelling units projected to be added.

/co

## ARTICLE III. PROPERTY MAINTENANCE CODE\*

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### DIVISION 3. REGISTRATION AND INSPECTION OF MULTI-FAMILY DWELLING COMPLEXES

#### Sec. 6-60. Short title.

This division may be referred to as the "Multi-Family Dwelling Registration and Inspection Code".

(Ord. No. 2005-11-25, § I, 11-28-05)

#### Sec. 6-61. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meanings hereinafter designated. Where terms are not defined, they shall have their ordinary accepted meanings.

*Accessory building or use* means a building or use that is clearly subordinate to and functionally related to the primary building or use, which contributes to the comfort, convenience, or necessity of occupants of the primary building or use on the same platted lot. Accessory buildings shall be detached from the primary building and shall not be used for living quarters.

*Bedroom* means any room or space used or intended to be used for sleeping purposes.

*Building official* means the officer or other designated authority charged with the administration and enforcement of the building code, or the building official's duly authorized representative.

*Code official* means the official who is charged with the administration and enforcement of this code, or any duly authorized representative.

*Common area* means communal areas of the complex, including hallways, stairways, lobby areas, laundry rooms, pool facilities, green spaces, recreation rooms and parking lots.

*Dwelling unit* means a building or portion of a building which is arranged, occupied, or intended to be occupied as living quarters of a family and including facilities for food preparation, sleeping and sanitation.

*Exterior property* means the open space on the premises and on adjoining property under the control of owners or operators of such premises.

*Landlord* means the owner, operator, lessor, management company, managing agent or on-site manager of a multi-family dwelling.

*Multi-family dwelling/building/residence* means any building or portion thereof that is ~~ten (10)~~ five (5) years old or older, which is designed, built, rented, leased, or let to be occupied as five (5) or more dwelling units or apartments. The term shall not include hotels, motels, U.S. Department of Housing and Urban Development (HUD) approved Section 8 units, or such owner occupied dwelling units.

*Occupancy* means the purpose for which a building or portion thereof is utilized or occupied.

*Occupant* means any individual living or sleeping in a building, or having possession of a space within a building.

*Owner* means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county

or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

*Person* means an individual, corporation, partnership or any other group acting as a unit.

*Premises* mean a lot, plot or parcel of land, easement or public way, including any structures thereon.

*Property standards director* or *director* means the code compliance director or the director's duly authorized representative who is charged with the administration and enforcement of this article.

*Tenant* means a person, corporation, partnership or group other than the legal owner of record, occupying a building or portion thereof as a unit.

(Ord. No. 2005-11-25, § I, 11-28-05; Ord. No. 2007-1-19, §§ I, II, 1-22-07)

### **Sec. 6-62. Purpose.**

The purpose of this division is to safeguard the life, health, safety, welfare, and property of the occupants of multi-family dwelling complexes and the general public by developing a process to enforce the minimum building standards and property maintenance codes; and to provide equitable and practical remedies for the violation of minimum building standards and property maintenance codes.

(Ord. No. 2005-11-25, § I, 11-28-05)

### **Sec. 6-63. Applicability and administration.**

(a) This article shall apply to multi-family complexes located in the city which are ~~ten~~ ~~(10)~~ five (5) years old or older with five (5) or more dwelling units.

(b) The property standards director and the director's authorized representatives are authorized to administer and enforce the provisions of this article.

(Ord. No. 2005-11-25, § I, 11-28-05; Ord. No. 2007-1-19, §§ I, II, 1-22-07)

Secs. 6-64--6-69. Reserved.

### **Sec. 6-70. Registration required.**

(a) The landlord of a multi-family dwelling complex that is ~~ten~~ ~~(10)~~ five (5) years old or older with five (5) or more dwelling units shall annually register the complex with the property standards director by June 30th of each calendar year.

(b) A registration is valid for one calendar year, unless the ownership of the complex changes.

(c) If a change in ownership of the complex occurs during the period that a registration is otherwise valid, the landlord of the complex shall have thirty (30) days from the date the change of ownership occurred to file a new registration with the property standards director and shall pay a twenty-five dollar (\$25.00) fee to re-issue the registration.

(d) Annual registration or renewals postmarked or received after June 30th shall be assessed an additional fee increase of:

(1) Ten (10) percent of registration fee if within one month of due date;

(2) Thirty (30) percent of registration fee if within two (2) months of due date;

(3) Fifty (50) percent of registration fee thereafter.

(e) Registration re-issues received after thirty (30) days of ownership change shall be assessed a late fee of seventy-five dollars (\$75.00) at the time of registration re-issue.

(f) All fees and assessments must be current with the city prior to the renewal of a registration certificate.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING ARTICLE III, PROPERTY MAINTENANCE CODE, DIVISION 3, REGISTRATION AND INSPECTION OF MULTI-FAMILY DWELLING COMPLEXES OF CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO BY AMENDING SECTIONS 6-61, 6-63(a) AND 6-70(a) TO REVISE THE DEFINITION AND LOWER THE AGE REQUIREMENT OF A MULTI-FAMILY DWELLING/BUILDING/RESIDENCE FOR REGISTRATION PURPOSES; PROVIDING A PENALTY CLAUSE; A SAVINGS CLAUSE; A SEVERABILITY CLAUSE; A REPEALING CLAUSE; A PUBLICATION CLAUSE; AND AN EFFECTIVE DATE.**

**WHEREAS**, on January 22, 2007, the City Council of the City of Plano passed Ordinance No. 2007-1-19 revising Sections 6-61, 6-63, and 6-70 of Division 3, Registration and Inspection of Multi-Family Dwelling Complexes of Article III, Property Maintenance Code, of Chapter 6 Buildings and Building Regulations of the Code of Ordinances; and

**WHEREAS**, the Director of Property Standards of the City of Plano recommended lowering the age requirement for multi-family dwelling complexes registration with the property standards director from ten (10) years to five (5) years; and

**WHEREAS**, lowering the age requirement of the multi-family dwelling complexes for registration with the property standards director will safeguard the life, health, safety, welfare and property of the occupants through the timely process of enforcing the minimum building standards and property maintenance codes; and

**WHEREAS**, upon recommendation of City staff and upon full review and consideration of all matters attendant and related thereto, the City Council finds and determines that it is necessary to amend Sections 6-61, definition of multi-family dwelling/building/residence, 6-63(a) and 6-70(a) of Section II of Ordinance No. 2007-1-19 codified in Division 3, Registration and Inspection of Multi-Family Dwelling Complexes, of Article III, Property Maintenance Code, of Chapter 6, Buildings and Building Regulations, of the Code of Ordinances for the City of Plano, Texas.

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

**Section I.** Sections 6-61, definition of multi-family dwelling/building/residence, 6-63(a) and 6-70(a) of Section II of Ordinance No. 2007-1-19 passed on January 22, 2007 are hereby amended.

**Section II.** Section 6-61, Definitions, definition of multi-family dwelling/building/residence, of Article III, Division 3 of Chapter 6 of the Code of Ordinances of the City of Plano, Texas is hereby amended as follows:

*“Multi-family dwelling/building/residence means any building or portion thereof that is five (5) years old or older, which is designed, built, rented, leased, or let to be occupied as five (5) or more dwelling units or apartments. The term shall not include hotels, motels, U.S. Department of Housing and Urban Development (HUD) approved Section 8 units, or such owner occupied dwelling units.”*

**Section III.** Section 6-63(a), Applicability and administration, of Article III, Division 3 of Chapter 6 of the Code of Ordinances of the City of Plano, Texas is hereby amended as follows:

*“(a) This article shall apply to multi-family complexes located in the city which are five (5) years old or older with five (5) or more dwelling units.”*

**Section IV.** Section 6-70(a), Registration required, of Article III, Division 3 of Chapter 6 of the Code of Ordinances of the City of Plano, Texas is hereby amended as follows:

*“(a) The landlord of a multi-family dwelling complex that is five (5) years old or older with five (5) or more dwelling units shall annually register the complex with the property standards director by June 30th of each calendar year.”*

**Section V.** Any person, firm or corporation who knowingly violates any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

**Section VI.** The repeal of any ordinance or part of ordinances affected by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this ordinance.

**Section VII.** It is the intention of the City council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

**Section VIII.** All provisions of the ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the ordinances of the city of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section IX.** This ordinance shall become effective immediately upon its passage and publication as required by law.

**DULY PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	<b>12/8/08</b>		Reviewed by Legal <i>PM</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Building Inspections		Initials	Date	
Department Head	Selso Mata	<i>[Signature]</i>	Executive Director	<i>[Signature]</i> 11/25/08	
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i> 11/25/08	
Agenda Coordinator (include phone #): <b>Diana Gallegos 5993</b>					

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

**CAPTION**

**AN ORDINANCE OF THE CITY OF PLANO AMENDING CHAPTER SIX, BUILDING AND BUILDING REGULATIONS, WITH THE ADDITION OF ARTICLE XIII, IRRIGATION SYSTEM, TO ESTABLISH THE MINIMUM STANDARDS FOR INSTALLATION OF IRRIGATION SYSTEMS WITHIN THE CITY LIMITS OF THE CITY; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A PENALTY CLAUSE AND AN EFFECTIVE DATE.**

**FINANCIAL SUMMARY**

NOT APPLICABLE     OPERATING EXPENSE     REVENUE     CIP

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

**FUND(S):**    **GENERAL FUND**

**COMMENTS:** this item has no fiscal impact

Strategic Plan Goal: Establishing an Ordinance to set the minimum standards for installation of irrigation systems within the City Limits relates to the City's Goal of "Service Excellence"

**SUMMARY OF ITEM**

This Ordinance is in response to House Bill (HB) 1656, requiring municipalities with a population of 20,000 or more to adopt a landscape irrigation program. In addition, this ordinance will establish the rules and regulations recommended by the Texas Commission on Environmental Quality (TCEQ) in cooperation with the Texas Municipal League, our Utility Operations Department and Building Inspections.

List of Supporting Documents:

Other Departments, Boards, Commissions or Agencies

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF PLANO AMENDING CHAPTER SIX, BUILDING AND BUILDING REGULATIONS, WITH THE ADDITION OF ARTICLE XIII, IRRIGATION SYSTEMS, TO ESTABLISH THE MINIMUM STANDARDS FOR INSTALLATION OF IRRIGATION SYSTEMS WITHIN THE CITY LIMITS OF THE CITY; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A PENALTY CLAUSE AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Plano has determined that water conservation and environmental protection are important issues and concerns affecting the city; and,

**WHEREAS**, properly-installed irrigation systems will conserve water, help avoid wasteful use, and improve the overall quality of life for the citizens of Plano; and

**WHEREAS**, during the 2007 legislative session, the Texas Legislature adopted House Bill 1656; and

**WHEREAS**, House Bill 1656 amended Chapter 401 of the Texas Local Government Code to require a city with a population of over 20,000 or more to regulate the installation of irrigation systems within the corporate limits of the city and

**WHEREAS**, the provisions herein are necessary to promote and protect the health, safety, and welfare of the public by creating an urban environment that is protective of the city's water supply and provides an enhanced quality of life for the citizens of the City of Plano.

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

**Section I. Article XIII, Irrigation Systems of Chapter Six of the Code of Ordinances is hereby adopted and shall read in its entirety as follows:**

**ARTICLE XIII IRRIGATION SYSTEMS**

**Sec. 6-561 Definitions**

The following words and terms have the following meanings, unless the context clearly indicates otherwise.

- (1) **Air gap separation (AG)**--A complete physical separation between the free flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel.
- (2) **Atmospheric Vacuum Breaker (AVB)**—An assembly containing a float check, a check seat, and an air inlet port. Atmospheric Vacuum Breakers shall not be subjected to back pressure situations.
- (3) **Auxiliary Water Supply**- Any water supply other than the City of Plano’s approved public water supply, including water from another public water supply or from a natural source including, but not limited to, wells, cisterns, springs, rivers, streams, used waters, or industrial fluids.
- (4) **Backflow prevention**--The mechanical prevention of reverse flow, or back siphonage, of nonpotable water from an irrigation system into the potable water source.
- (5) **Backflow prevention assembly**—An assembly which, when properly installed between the City water supply system and the terminus or point of ultimate use will prevent backflow. Examples of such include, but are not limited to, reduced pressure backflow assemblies, double check valve assemblies, pressure vacuum breakers, and air gap separation.
- (6) **City**- The City of Plano, Texas and its duly authorized representatives.
- (7) **Commission** – The Commission on Environmental Quality.
- (8) **Completion of irrigation system installation**--When the landscape irrigation system has been installed, all minimum standards met, all tests performed, and the irrigator is satisfied that the system is operating correctly.
- (9) **Consulting**--The act of providing advice, guidance, review or recommendations related to landscape irrigation systems.
- (10) **Cross-connection**—A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree than approved or auxiliary water supply source in the treatment process.
- (11) **Design**--The act of determining the various elements of a landscape irrigation system that will include, but not be limited to, elements such as collecting site specific information, defining the scope of the project, defining plant watering needs, selecting and laying out emission devices, locating system components, conducting hydraulics calculations, identifying any local

regulatory requirements, or scheduling irrigation work at a site. Completion of the various components will result in an irrigation plan.

(12) **Design pressure**--The pressure that is required for an emission device to operate properly. Design pressure is calculated by adding the operating pressure necessary at an emission device to the total of all pressure losses accumulated from an emission device to the water source.

(13) **Double Check Valve (DC)**—An assembly composed of two independently acting, approved check valves, including tightly closing resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient-seated test cocks.

(14) **Emission device**--Any device that is contained within an irrigation system and that is used to apply water. Common emission devices in an irrigation system include, but are not limited to, spray and rotary sprinkler heads, and drip irrigation emitters.

(15) **Employed**--Engaged or hired to provide consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems. A person is employed if that person is in an employer-employee relationship as defined by Internal Revenue Code, 26 United States Code Service, §3212(d) based on the behavioral control, financial control, and the type of relationship involved in performing employment related tasks.

(16) **Head-to-head spacing**--The spacing of spray or rotary heads equal to the manufacturers published radius of the head.

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

(18) **Hydraulics**--The science of dynamic and static water; the mathematical computation of determining pressure losses and pressure requirements of an irrigation system.

(19) **Inspector**--A licensed plumbing inspector, water district operator, other governmental entity, or irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor.

(20) **Installer**--A person who actually connects an irrigation system to a private or public raw or potable water supply system or any water supply, who is licensed according to Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations).

(21) **Irrigation inspector**--A person who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor and is required to be licensed under Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations).

(22) **Irrigation plan**--A scaled drawing of a landscape irrigation system which lists required information, the scope of the project, and represents the changes made in the installation of the irrigation system.

(23) **Irrigation services**--Selling, designing, installing, maintaining, altering, repairing, servicing, permitting, providing consulting services regarding, or connecting an irrigation system to a water supply.

(24) **Irrigation system**--An assembly of component parts that is permanently installed for the controlled distribution and conservation of water to irrigate any type of landscape vegetation in any location, and/or to reduce dust or control erosion. This term does not include a system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002.

(25) **Irrigation technician**--A person who works under the supervision of a licensed irrigator to install, maintain, alter, repair, service or supervise installation of an irrigation system, including the connection of such system in or to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations).

(26) **Irrigation zone**--A subdivision of an irrigation system with a matched precipitation rate based on plant material type (such as turf, shrubs, or trees), microclimate factors (such as sun/shade ratio), topographic features (such as slope) and soil conditions (such as sand, loam, clay, or combination) or for hydrological control.

(27) **Irrigator**--A person who sells, designs, offers consultations regarding, installs, maintains, alters, repairs, services or supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Title 30, Texas Administrative Code, Chapter 30.

(28) **Irrigator-in-Charge**--The irrigator responsible for all irrigation work performed by an exempt business owner, including, but not limited to obtaining permits, developing design plans, supervising the work of other irrigators or irrigation technicians, and installing, selling, maintaining, altering, repairing, or servicing a landscape irrigation system.

(29) **Landscape irrigation**--The science of applying the necessary amount of water to promote or sustain healthy growth of plant material or turf.

(30) **License**--An occupational license that is issued by the commission under Title 30, Texas Administrative Code, Chapter 30 to an individual that authorizes the individual to engage in an activity that is covered by Title 30, Texas Administrative Code, Chapter 30.

(31) **Mainline**--A pipe within an irrigation system that delivers water from the water source to the individual zone valves.

(32) **Maintenance checklist**--A document made available to the irrigation system's owner or owner's representative that contains information regarding the operation and maintenance of the irrigation system, including, but not limited to: checking and repairing the irrigation system, setting the automatic controller, checking the rain or moisture sensor, cleaning filters, pruning grass and plants away from irrigation emitters, using and operating the irrigation system, the precipitation rates of each irrigation zone within the system, any water conservation measures currently in effect from the water purveyor, the name of the water purveyor, a suggested seasonal or monthly watering schedule based on current evapotranspiration data for the geographic region, and the minimum water requirements for the plant material in each zone based on the soil type and plant material where the system is installed.

(33) **Major maintenance, alteration, repair, or service**--Any activity that involves opening to the atmosphere the irrigation main line at any point prior to the discharge side of any irrigation zone control valve. This includes, but is not limited to, repairing or connecting into a main supply pipe, replacing a zone control valve, or repairing a zone control valve in a manner that opens the system to the atmosphere.

(34) **Master valve**--A remote control valve located after the backflow prevention device that controls the flow of water to the irrigation system mainline.

(35) **Matched precipitation rate**--The condition in which all sprinkler heads within an irrigation zone apply water at the same rate.

(36) **New installation**--An irrigation system installed at a location where one did not previously exist.

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

- (38) **Non-potable water**—A water supply, which has not been approved, for human consumption by the commission.
- (39) **Pass-through contract**--A written contract between a contractor or builder and a licensed irrigator or exempt business owner to perform part or all of the irrigation services relating to an irrigation system.
- (40) **Potable water**—Any public water supply which has been investigated and approved by the commission as satisfactory for drinking, culinary and domestic purposes.
- (41) **Pressure Vacuum Breaker**—An assembly which contains an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve, with properly located resilient-seated test cocks and tightly closing resilient-seated shutoff valves attached at each end of the assembly. Pressure vacuum breakers shall not be subjected to back pressure situations.
- (42) **Reclaimed water**--Domestic or municipal wastewater which has been treated to a quality suitable for beneficial use, such as landscape irrigation.
- (43) **Records of landscape irrigation activities**—The irrigation plans, contracts, warranty information, invoices, copies of permits, and other documents that relate to the installation, maintenance, alteration, repair, or service of a landscape irrigation system.
- (44) **Reduced Pressure Principle Backflow Prevention Assembly (RP)** – an assembly containing two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and at the same time below the first check valve. The unit includes properly located resilient-seated test cocks and two tightly-closing resilient seated shutoff valves at each end of the assembly.
- (45) **Static water pressure**--The pressure of water when it is not moving.
- (46) **Supervision**--The on-the-job oversight and direction by a licensed irrigator who is fulfilling his or her professional responsibility to the client and/or employer in compliance with local or state requirements. Also a licensed installer working under the direction of a licensed irrigator or beginning January 1, 2009, an irrigation technician who is working under the direction of a licensed irrigator to install, maintain, alter, repair or service an irrigation system.
- (47) **Water conservation**--The design, installation, service, and operation of an irrigation system in a manner that prevents the waste of water, promotes the most efficient use of water, and

applies the least amount of water that is required to maintain healthy individual plant material or turf, reduce dust, and control erosion.

(48) **Zone flow**--A measurement, in gallons per minute or gallons per hour, of the actual flow of water through a zone valve, calculated by individually opening each zone valve and obtaining a valid reading after the pressure has stabilized. For design purposes, the zone flow is the total flow of all nozzles in the zone at a specific pressure.

(49) **Zone valve**--An automatic valve that controls a single zone of a landscape irrigation system.

### **Sec. 6-562 Valid License Required**

Any person who connects an irrigation system to the water supply within the city must hold a valid irrigation license, as defined by Chapter 30, Title 30 of the Texas Administrative Code and required by Chapter 1903 of the Texas Occupations Code, or a Texas State Plumbing License.

#### *Exception*

A property owner is not required to be licensed in accordance with Texas Occupations Code, Title 12, §1903.002(c)(1) if he or she is performing irrigation work in a building or on a premises owned or occupied by the person as the person's home. A home or property owner who installs an irrigation system must meet the standards contained in Title 30, Texas Administrative Code, Chapter 344 regarding spacing, water pressure, spraying water over impervious materials, rain or moisture shut-off devices or other technology, backflow and isolation valves. The city may, at any point, adopt more stringent requirements for a home or property owner who installs an irrigation system (see Texas Occupation Code § 1903.002 for other exemptions to the licensing requirement)

### **Sec. 6-563 Permit Required**

It shall be unlawful for any person to install or cause to be installed, or to permit any person to install an irrigation system, or to make any alterations, additions or changes to an irrigation system, without first having procured a permit to do so from the building official. Any plan approved for a permit must be in compliance with the requirements of this chapter.

#### *Exemptions:*

1. *An irrigation system that is an on-site sewage disposal system, as defined by Section 355.002 Health and Safety Code; or*
2. *An irrigation system used on or by an agricultural operation as defined by Section 251.002 , Agriculture Code; or*

3. *An irrigation system connected to a groundwater well used by the property owner for domestic use.*

### **Sec. 6-564 Backflow Prevention Methods and Devices**

(a) Any irrigation system that is connected to the potable water supply must be connected through a backflow prevention method approved by the Texas Commission on Environmental Quality (TCEQ). The backflow prevention device must be approved by the American Society of Sanitary Engineers; or the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California; or any other laboratory that has equivalent capabilities for both the laboratory and field evaluation of backflow prevention assemblies. The backflow prevention device must be installed in accordance with the laboratory approval standards or if the approval does not include specific installation information, the manufacturer's current published recommendations.

(b) If conditions that present a health hazard exist, one of the following methods must be used to prevent backflow:

- (1) An air gap may be used if:
  - (A) there is an unobstructed physical separation; and
  - (B) the distance from the lowest point of the water supply outlet to the flood rim of the fixture or assembly into which the outlet discharges is at least one inch or twice the diameter of the water supply outlet, whichever is greater.
- (2) Reduced pressure principle backflow prevention assemblies may be used if:
  - (A) the assembly is installed with the termination point a minimum of twelve (12) inches above finished grade in a location that will ensure that the assembly will not become submerged; and
  - (B) drainage is provided for any water that may be discharged through the assembly relief valve.
- (3) Pressure vacuum breakers may be used if:
  - (A) no back-pressure condition will occur; and
  - (B) the device is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.
- (4) Atmospheric vacuum breakers may be used if:
  - (A) no back-pressure will be present;
  - (B) there are no shutoff valves downstream from the atmospheric vacuum breaker;
  - (C) the device is installed at a minimum of six inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler;
  - (D) there is no continuous pressure on the supply side of the atmospheric vacuum breaker for more than 12 hours in any 24-hour period; and
  - (E) a separate atmospheric vacuum breaker is installed on the discharge side of each irrigation control valve, between the valve and all the emission devices that the valve controls.

(c) Backflow prevention assemblies used in applications designated as health hazards must be tested upon installation and annually thereafter.

(d) If there are no conditions that present a health hazard, double check valve backflow prevention assemblies may be used to prevent backflow if the device is tested upon installation and test cocks are used for testing only.

(e) If a double check valve is installed below ground:

- (1) test cocks must be plugged, except when the double check valve is being tested;
- (2) test cock plugs must be threaded, water-tight, and made of non-ferrous material;
- (3) a y-type strainer is installed on the inlet side of the double check valve;
- (4) there must be a clearance between any fill material and the bottom of the double check valve to allow space for testing and repair; and
- (5) there must be space on the side of the double check valve to test and repair the double check valve.

(f) If an existing irrigation system without a backflow-prevention assembly requires major maintenance, alteration, repair, or service, the system must be connected to the potable water supply through an approved, properly installed backflow prevention method before any major maintenance, alteration, repair, or service is performed.

(g) The irrigator shall ensure the backflow prevention device is tested prior to being placed into service and the test results provided to the local water purveyor and the irrigation system's owner or owner's representative within ten business days of testing of the backflow prevention assembly.

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

#### **Sec 6-565 Specific Conditions and Cross-Connection Control**

(a) Before any chemical is added to an irrigation system connected to the potable water supply, the irrigation system must be connected through a reduced pressure principle backflow prevention assembly or air gap.

(b) Connection of any auxiliary water supply to an irrigation system that is connected to the potable water supply can only be done if the irrigation system is connected to the potable water supply through a reduced pressure backflow prevention assembly or an air gap separation.

(c) Irrigation system components with chemical additives induced by aspiration, injection, or emission system connected to any potable water supply must be connected through a reduced pressure principle backflow assembly.

(d) If an irrigation system is designed or installed on a property that is served by an on-site sewage facility, as defined in Chapter 285 of Title 30, Texas Administrative Code, then:

- (1) all irrigation piping and valves must meet the separation distances from the On-Site Sewage Facilities system as required for a private water line in Texas Administrative Code, Title 30, Section 285.91(10);
- (2) any connections using a private or public potable water source that is not the city's potable water system must be connected to the water source through a reduced pressure principle backflow prevention assembly as defined in Texas Administrative Code, Title 30, Section 344.50; and
- (3) any water from the irrigation system that is applied to the surface of the area utilized by the On-Site Sewage Facility system must be controlled on a separate irrigation zone or zones so as to allow complete control of any irrigation to that area so that there will not be excess water that would prevent the On-Site Sewage Facilities system from operating effectively.

**(e) Quick couplers or hose connections of any type installed within the irrigation system shall require the proper installation of a reduced pressure backflow prevention assembly. The assembly shall be tested upon installation and annually thereafter.**

#### **Sec. 6-566 Water Conservation**

All irrigation systems shall be designed, installed, maintained, altered, repaired, serviced, and operated in a manner that will promote water conservation as defined in the Definitions section of this ordinance.

#### **Sec. 6-567 Irrigation Plan Design: Minimum Standards**

(a) An irrigator shall prepare an irrigation plan for each site where a new irrigation system will be installed. A paper or electronic copy of the irrigation plan must be on the job site at all times during the installation of the irrigation system. A drawing showing the actual installation of the system is due to each irrigation system owner after all new irrigation system installations. During the installation of the irrigation system, variances from the original plan may be authorized by the licensed irrigator if the variance from the plan does not:

- (1) diminish the operational integrity of the irrigation system;
- (2) violate any requirements of this ordinance; and
- (3) go unnoted in red on the irrigation plan.

(b) The irrigation plan must include complete coverage of the area to be irrigated. If a system does not provide complete coverage of the area to be irrigated, it must be noted on the irrigation plan.

(c) All irrigation plans used for construction must be drawn to scale. The plan must include, at a minimum, the following information:

- (1) the irrigator's seal, signature, and date of signing;

- (2) all major physical features and the boundaries of the areas to be watered;
- (3) a North arrow;
- (4) a legend;
- (5) the zone flow measurement for each zone;
- (6) location and type of each:
  - (A) controller;
  - (B) sensor (for example, but not limited to, rain, moisture, wind, flow, or freeze);
- (7) location, type, and size of each:
  - (A) water source, such as, but not limited to a water meter and point(s) of connection;
  - (B) backflow prevention assembly;
  - (C) water emission device, including, but not limited to, spray heads, rotary sprinkler heads, quick-couplers, bubblers, drip, or micro-sprays;
  - (D) valve, including but not limited to, zone valves, master valves, and isolation valves;
  - (E) pressure regulation component; and
  - (F) main line and lateral piping.
- (8) the scale used; and
- (9) the design pressure.

**Sec. 6-568 Design and Installation: Minimum Requirements**

- (a) No irrigation design or installation shall require the use of any component, including the water meter, in a way which exceeds the manufacturer's published performance limitations for the component.
- (b) Spacing.
  - (1) The maximum spacing between emission devices must not exceed the manufacturer's published radius or spacing of the device(s). The radius or spacing is determined by referring to the manufacturer's published specifications for a specific emission device at a specific operating pressure.
  - (2) New irrigation systems shall not utilize above-ground spray emission devices in landscapes that are less than 48 inches not including the impervious surfaces in either length or width and which contain impervious pedestrian or vehicular traffic surfaces along two or more perimeters. If pop-up sprays or rotary sprinkler heads are used in a new irrigation system, the sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar.
  - (3) Narrow paved walkways, jogging paths, golf cart paths or other small areas located in cemeteries, parks, golf courses or other public areas may be exempted from this requirement if the runoff drains into a landscaped area.

(c) Water pressure. Emission devices must be installed to operate at the minimum and not above the maximum sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. Methods to achieve the water pressure requirements include, but are not limited to, flow control valves, a pressure regulator, or pressure compensating spray heads.

(d) Piping. Piping in irrigation systems must be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC) pipe.

(e) Irrigation Zones. Irrigation systems shall have separate zones based on plant material type, microclimate factors, topographic features, soil conditions, and hydrological requirements.

(f) Matched precipitation rate. Zones must be designed and installed so that all of the emission devices in that zone irrigate at the same precipitation rate.

(g) Irrigation systems shall not spray water over surfaces made of concrete, asphalt, brick, wood, stones set with mortar, or any other impervious material, such as, but not limited to, walls, fences, sidewalks, streets, etc.

(h) Master valve. When provided, a master valve shall be installed on the discharge side of the backflow prevention device on all new installations.

(i) PVC pipe primer solvent. All new irrigation systems that are installed using PVC pipe and fittings shall be primed with a colored primer prior to applying the PVC cement in accordance with the International Plumbing Code (Section 605).

(j) Rain or moisture shut-off devices or other technology. All new automatically controlled irrigation systems must include sensors or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. Rain or moisture shut-off technology must be installed according to the manufacturer's published recommendations. Repairs to existing automatic irrigation systems that require replacement of an existing controller must include a sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall

(k) Isolation valve. All new irrigation systems must include an isolation valve between the water meter and the backflow prevention assembly.

(l) Depth coverage of piping. Piping in all irrigation systems must be installed according to the manufacturer's published specifications for depth coverage of piping.

(1) If the manufacturer has not published specifications for depth coverage of piping, the piping must be installed to provide minimum depth coverage of six inches of select backfill,

between the top of the pipe and the natural grade of the topsoil. All portions of the irrigation system that fail to meet this standard must be noted on the irrigation plan. If the area being irrigated has rock at a depth of six inches or less, select backfill may be mounded over the pipe. Mounding must be noted on the irrigation plan and discussed with the irrigation system owner or owner's representative to address any safety issues.

(2) If a utility, man-made structure or roots create an unavoidable obstacle, which makes the six-inch depth coverage requirement impractical, the piping shall be installed to provide a minimum of two inches of select backfill between the top of the pipe and the natural grade of the topsoil.

(3) All trenches and holes created during installation of an irrigation system must be backfilled and compacted to the original grade.

(m) Wiring irrigation systems.

(1) Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system must be listed by Underwriters Laboratories as acceptable for burial underground.

(2) Electrical wiring that connects any electrical components of an irrigation system must be sized according to the manufacturer's recommendation.

(3) Electrical wire splices which may be exposed to moisture must be waterproof as certified by the wire splice manufacturer.

(4) Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system must be buried with a minimum of six inches of select backfill.

(n) Water contained within the piping of an irrigation system is deemed to be non-potable. No drinking or domestic water usage, such as, but not limited to, filling swimming pools or decorative fountains, shall be connected to an irrigation system. If a hose bib (an outdoor water faucet that has hose threads on the spout) is connected to an irrigation system for the purpose of providing supplemental water to an area, the hose bib must be installed using a quick coupler key on a quick coupler installed in a covered purple valve box and the hose bib and any hoses connected to the bib must be labeled "non potable, not safe for drinking." An isolation valve must be installed upstream of a quick coupler connecting a hose bib to an irrigation system.

(o) Beginning January 1, 2010, either a licensed irrigator or a licensed irrigation technician shall be on-site at all times while the landscape irrigation system is being installed. When an irrigator is not onsite, the irrigator shall be responsible for ensuring that a licensed irrigation technician is on-site to supervise the installation of the irrigation system.

## **Sec. 6-569 Completion of Irrigation System Installation**

Upon completion of the irrigation system, the irrigator or irrigation technician who provided supervision for the on-site installation shall be required to complete four items:

(1) A final "walk through" with the irrigation system's owner or the owner's representative to explain the operation of the system;

(2) The maintenance checklist on which the irrigator or irrigation technician shall obtain the signature of the irrigation system's owner or owner's representative and shall sign, date, and seal the checklist. If the irrigation system's owner or owner's representative is unwilling or unable to sign the maintenance checklist, the irrigator shall note the time and date of the refusal on the irrigation system's owner or owner's representative's signature line. The irrigation system owner or owner's representative will be given the original maintenance checklist and a duplicate copy of the maintenance checklist shall be maintained by the irrigator. The items on the maintenance checklist shall include but are not limited to:

(A) the manufacturer's manual for the automatic controller, if the system is automatic;

(B) a seasonal (spring, summer, fall, winter) watering schedule based on either current/real time evapotranspiration or monthly historical reference evapotranspiration (historical ET) data, monthly effective rainfall estimates, plant landscape coefficient factors, and site factors;

(C) a list of components, such as the nozzle, or pump filters, and other such components; that require maintenance and the recommended frequency for the service; and

(D) the statement, "This irrigation system has been installed in accordance with all applicable state and local laws, ordinances, rules, regulations or orders. I have tested the system and determined that it has been installed according to the Irrigation Plan and is properly adjusted for the most efficient application of water at this time."

(3) A permanent sticker which contains the irrigator's name, license number, company name, telephone number and the dates of the warranty period shall be affixed to each automatic controller installed by the irrigator or irrigation technician. If the irrigation system is manual, the sticker shall be affixed to the original maintenance checklist. The information contained on the sticker must be printed with waterproof ink and include:

(4) The irrigation plan indicating the actual installation of the system must be provided to the irrigation system's owner or owner representative.

## **Sec. 6-570 Maintenance, Alteration, Repair, or Service of Irrigation Systems**

(a) The licensed irrigator is responsible for all work that the irrigator performed during the maintenance, alteration, repair, or service of an irrigation system during the warranty period. The irrigator or business owner is not responsible for the professional negligence of any other irrigator who subsequently conducts any irrigation service on the same irrigation system.

(b) All trenches and holes created during the maintenance, alteration, repair, or service of an irrigation system must be returned to the original grade with compacted select backfill.

(c) Colored PVC pipe primer solvent must be used on all pipes and fittings used in the maintenance, alteration, repair, or service of an irrigation system in accordance with the International Plumbing Code (Section 605).

(d) When maintenance, alteration, repair or service of an irrigation system involves excavation work at the water meter or backflow prevention device, an isolation valve shall be installed, if an isolation valve is not present.

#### ***Sec 6-571 Reclaimed Water***

*Reclaimed water may be utilized in landscape irrigation systems if:*

*(1) there is no direct contact with edible crops, unless the crop is pasteurized before consumption;*

*(2) the irrigation system does not spray water across property lines that do not belong to the irrigation system's owner;*

*(3) the irrigation system is installed using purple components;*

*(4) the domestic potable water line is connected using an air gap or a reduced pressure principle backflow prevention device, in accordance with §290.47(i) of this title (relating to Appendices);*

*(5) a minimum of an eight inch by eight inch sign, in English and Spanish, is prominently posted on/in the area that is being irrigated, that reads, "RECLAIMED WATER – DO NOT DRINK" and "AGUA DE RECUPERACIÓN – NO BEBER"; and*

*(6) backflow prevention on the reclaimed water supply line shall be in accordance with the regulations of the city's water provider.*

#### **Sec. 6-572 Items not covered by this ordinance**

Any item not covered by this ordinance and required by law shall be governed by the Texas Occupations Code, the Texas Water Code, Title 30 of the Texas Administrative Code, and any other applicable state statute or TCEQ rule.

**Sec. 6-573 Fees**

Prior to issuance of a permit the applicant shall pay a permit fee in accordance with the City of Plano Building Inspections Fee Schedule as adopted by the city council, as it exists or may be amended.

**Sec. 6-574 Enforcement**

(a) The city shall have the power to administer and enforce the provisions of this chapter as may be required by governing law. Any person, firm, corporation or agent who shall violate a provision of this code, or fails to comply therewith, or with any of the requirements thereof, is subject to suit for injunctive relief as well as prosecution for criminal violations.

(b) Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinance for each offense. Every day a violation continues shall constitute a separate offense. An offense under this chapter is a Class C misdemeanor.

(c) Nothing in this chapter shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this chapter and to seek remedies as allowed by law, including, but not limited to the following:

- (1) Injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance; and
- (2) Other available relief.

**Section II. All provisions of the Code of Ordinances of the City of Plano in conflict with the provision of this Ordinance are hereby repealed, and all other provision of the Code of Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.**

**Section III. It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.**

**Section IV. The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any Ordinances at the time of passage of this Ordinance.**

**Section V. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinance for each offense. Every day a violation continues shall constitute a separate offense.**

**Section VI. This Ordinance shall become effective from and after its passage and publication as required by law.**

**DULY PASSED AND APPROVED** on this, the \_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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

**DATE:** November 18, 2008  
**TO:** Honorable Mayor & City Council  
**FROM:** James Duggan, Chairman, Planning & Zoning Commission  
**SUBJECT:** Results of Planning & Zoning Commission Meeting of November 17, 2008

**AGENDA ITEM NO. 6 - PUBLIC HEARING  
ZONING CASE 2008-72  
APPLICANT: CITY OF PLANO**

Request to amend Section 6.200 (Board of Adjustment) of Article 6 (Procedures and Administration) and related sections of the Zoning Ordinance pertaining to the duties and administrative procedures of the Board of Adjustment.

**APPROVED:** 8-0 **DENIED:** \_\_\_\_\_ **TABLED:** \_\_\_\_\_

**STIPULATIONS:**

Recommended for approval subject to the following stipulations. (Additions are indicated in italicized and underlined text; deletions are indicated in strikethrough text.)

**6.200 Board of Adjustment**

~~6.201~~ There is hereby created a Board of Adjustment consisting of five members, each to be appointed by City Council for a term of two years and removable for cause by the appointing authority upon written charges and after public hearing. There shall be at least one member and one alternate member appointed who is employed in either the retail or advertising business, and at least one member and one alternate member who is employed in the real estate or development business. (ZC 92-46; Ordinance No. 92-9-13)

~~6.202~~ City Council may appoint four alternate members of the Board of Adjustment who shall serve in the absence of one or more of the regular members. The alternate members, when appointed, shall serve for the same period as the regular members, which is for a term of two years expiring on October 31 of the appropriate year, and any vacancy shall be filled in the same manner as for regular members, and alternate members shall be subject to removal under the same provisions as regular members. (ZC 2007-30; Ordinance No. 2007-10-39 and ZC 92-46; Ordinance No. 92-9-13)

~~6.203~~ The Board of Adjustment shall adopt rules to govern its proceedings provided, however, that such rules are not inconsistent with this ordinance or statutes of the State of Texas. Meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence, the acting chairman, may

~~administer oath and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicate such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be a public record.~~

**6.2041 Appeals**

(1) The composition and appointment of the Board of Adjustment shall be in compliance with Chapter 16 of the Code of Ordinances.

(2) The Board of Adjustment may take action in accordance with 6.202 of this ordinance. Appeals to the Board of Adjustment can be taken by any person aggrieved or by an officer, department, or board of the municipality affected by any decision of the Building Official. Such appeal shall be taken made within 15 days after the decision has been rendered by the administrative officer, by filing with the officer from whom the appeal is taken and with the Board of Adjustment, a Notice of Appeal specifying the grounds thereof. The officer from whom the appeal is taken shall ~~forthwith transmit~~ forward to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.

**6.205(3)** An appeal shall stay all proceedings of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on petition, upon notice to the officer from whom the appeal is taken and on due cause shown.

~~**6.206** The Board of Adjustment shall fix a specific time for the hearing of an appeal, give the public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by attorney or by agent.~~

~~**6.207** No appeal to the Board of Adjustment for the same variance, on the same piece of property, shall be allowed prior to the expiration of two years from a previous ruling by the Board of Adjustment on any appeal to such body, unless other property in the immediate vicinity has within the said two year period been changed or acted upon by the Board of Adjustment or City Council so as to alter the facts and conditions on which the previous Board of Adjustment action was based. Such change of circumstances shall permit the rehearing of an appeal by the Board of Adjustment prior to the expiration of a two year period, but such conditions shall in no way have any force in law to compel the Board of Adjustment, after a hearing, to grant a subsequent~~

~~appeal. Such subsequent appeal shall be considered entirely on its merits and the peculiar and specific conditions related to the property on which the appeal is brought.~~

**6.2082 Jurisdiction (ZC 2007-30; Ordinance No. 2007-10-39)**

- ~~(1) Each case must be heard by at least four 75% of the members of the Board of Adjustment. ~~The concurring vote of four members of the Board of Adjustment is necessary to:~~
  - ~~(a) Reverse an order, requirement, decision, or determination of an administrative official.~~
  - ~~(b) Decide in favor of an applicant on a matter on which the Board of Adjustment is required to pass under a zoning ordinance.~~
  - ~~(c) Authorize a variance from the terms of a zoning ordinance.~~~~
- (2) When in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially or permanently injured, the Board of Adjustment may, in specific cases, after written notice and public hearings, and subject to appropriate conditions and safeguards, authorize or order the following:
  - (a) Hear and decide appeals where it is alleged there is error on any order, requirement, decision, or determination made by the Building Official in the enforcement of this ordinance. (ZC 92-46; Ordinance No. 92-9-13)
  - (b) Permit the reconstruction, extension, or enlargement of a building occupied by nonconforming uses, on the lot or tract occupied by such building, provided such reconstruction does not prevent the return of such property to a conforming use.
  - (c) Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with due regard for the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of property. The Board of Adjustment shall, from time to time, on its own motion or upon cause presented by interested property owners, inquire into the existence, continuation, or maintenance of any nonconforming use within the city.

- (d) Permit such variance from the terms of the Zoning Ordinance that will not be contrary to the public interest and where, because of special conditions, the enforcement of this ordinance or its amendments would result in an unnecessary hardship, except as provided in (ii), (iii) and (iv) below. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this ordinance to other parcels of land in the district. No variance may be granted if it results in an unnecessary hardship, as herein defined, on another parcel of land.
- (i) In order to make a finding of hardship and to grant a variance from this ordinance, the Board of Adjustment must determine that: (ZC 92-46; Ordinance No. 92-9-13)
1. The requested variance does not violate the intent of the ordinance or its amendments.
  2. Special conditions of restricted area, shape, topography, or physical features exist that are peculiar to the subject parcel of land and are not applicable to other parcels of land in the same zoning district.
  3. The hardship is in no way the result of the petitioner's own actions.
  4. The interpretation of the provisions in this ordinance or its amendments would deprive the petitioner of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.
- (ii) No variance may authorize a use other than those permitted in the district for which the variance is sought.
- (iii) A petition or request for a variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which a preliminary site plan, site plan, preliminary plat, or final plat, when required by this ordinance or the Subdivision Ordinance for any parcel of property or portion thereof, has not been finally acted upon by both the Planning & Zoning Commission and, where required, by the City Council.
- (iv) The administrative procedures and requirements of this ordinance and the Subdivision Ordinance, with regard to both Planning & Zoning Commission and the City Council consideration and action, on preliminary site plans, site plans, preliminary plats, and final plats, must be exhausted prior to requesting a variance from the terms of this ordinance.

## 6.2093 Action of the Board of Adjustment

- (1) In exercising its powers, the Board of Adjustment may, in conformity with the provisions of ~~Articles 1011-a through 1011-j of the 1925 Civil Statutes of Texas, as amended,~~ Section 211.009(b) of the Texas Local Government Code, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision, or determination as ought to be made and shall have all the powers of the officer from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the petitioner.
- (2) The concurring vote of ~~four~~ 75% of the members of the Board of Adjustment shall be necessary to revise any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the petitioner on any matter upon which it is required to pass under this ordinance or to approve any variance in said ordinance.
- (3) An appeal of the Board of Adjustment's decision must be in accordance with Chapter 211 of the Texas Local Government Code as the same may be amended from time to time. ~~Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality may present to a district court, county court, or county court at law a petition, duly verified, setting forth that such decision is illegal, in whole or part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the Board of Adjustment and not thereafter. The date of filing of the decision in the office of the Board of Adjustment shall be the date the Board of Adjustment announces its decision either orally or in writing to the petitioner. (ZC 99-56; Ordinance No. 99-11-19)~~
- (4) No appeal to the Board of Adjustment for the same variance, on the same property, shall be allowed prior to the expiration of two years from a previous ruling by the Board of Adjustment unless other property in the immediate vicinity has within the said two year period been rezoned, granted a similar variance request by the Board of Adjustment, or such that the physical conditions have changed. These circumstances shall permit the rehearing of an appeal by the Board of Adjustment prior to the expiration of the two year period, but shall not compel the Board of Adjustment, after a hearing, to grant a variance.
- (5) If the court reverses or modifies the Board of Adjustment's decision, the Board of Adjustment may elect to appeal that decision.

**FOR CITY COUNCIL MEETING OF:** December 8, 2008 (To view the agenda for this meeting, see [www.planotx.org](http://www.planotx.org))

**PUBLIC HEARING - ORDINANCE**

TF/et

1-6

CITY OF PLANO  
PLANNING & ZONING COMMISSION

November 17, 2008

**Agenda Item No. 6**

**Public Hearing:** Zoning Case 2008-72

**Applicant:** City of Plano

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**DESCRIPTION:**

Request to amend Section 6.200 (Board of Adjustment) of Article 6 (Procedures and Administration) and related sections of the Zoning Ordinance pertaining to the duties and administrative procedures of the Board of Adjustment.

**REMARKS:**

In August 2008, the City Council decided to merge the Board of Adjustment (BOA) and the Building Standards Commission (BSC) in an effort to reduce the overall number of the City's boards and commissions. The BOA is established in the Zoning Ordinance including its membership and jurisdictional responsibilities. Therefore, the Zoning Ordinance and Code of Ordinance must be amended to provide for the BOA's additional responsibilities.

The BOA, unlike the other boards and commissions, is established in the Zoning Ordinance. Other boards and commissions, such as the BSC, are established within the city's Code of Ordinances. The "blending" of responsibilities will require amendments to the Zoning Ordinance, as well as the Code of Ordinances.

For consistency with the city's other boards and commissions, staff proposes to amend the Zoning Ordinance to remove the establishment of the BOA including its membership requirements and meeting proceedings. These provisions will be incorporated into the Code of Ordinances and are being prepared by the City Attorney's office. The amendments to the Zoning Ordinance and Code of Ordinances will be considered by the City Council on the same meeting agenda.

The proposed Zoning Ordinance amendments remove the BOA membership, administrative, and meetings proceedings criteria. Provisions pertaining to the BOA's jurisdictional responsibilities, staying of enforcement pending an appeal, criteria for evaluating variances, appealing the BOA's decision, applicant eligibility, and the minimum waiting period for refileing the same variance request, are proposed to all remain within the Zoning Ordinance.

## RECOMMENDATION:

Recommended for approval subject to the following stipulations. (Additions are indicated in italicized and underlined text; deletions are indicated in strikethrough text.)

### 6.200 Board of Adjustment

~~6.201~~ There is hereby created a Board of Adjustment consisting of five members, each to be appointed by City Council for a term of two years and removable for cause by the appointing authority upon written charges and after public hearing. There shall be at least one member and one alternate member appointed who is employed in either the retail or advertising business, and at least one member and one alternate member who is employed in the real estate or development business. (ZC 92-46; Ordinance No. 92-9-13)

~~6.202~~ City Council may appoint four alternate members of the Board of Adjustment who shall serve in the absence of one or more of the regular members. The alternate members, when appointed, shall serve for the same period as the regular members, which is for a term of two years expiring on October 31 of the appropriate year, and any vacancy shall be filled in the same manner as for regular members, and alternate members shall be subject to removal under the same provisions as regular members. (ZC 2007-30; Ordinance No. 2007-10-39 and ZC 92-46; Ordinance No. 92-9-13)

~~6.203~~ The Board of Adjustment shall adopt rules to govern its proceedings provided, however, that such rules are not inconsistent with this ordinance or statutes of the State of Texas. Meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence, the acting chairman, may administer oath and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicate such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be a public record.

### 6.2041 Appeals

(1) The composition and appointment of the Board of Adjustment shall be in compliance with Chapter 16 of the Code of Ordinances.

(2) The Board of Adjustment may take action in accordance with 6.202 of this ordinance. Appeals to the Board of Adjustment can be taken by any person aggrieved or by an officer, department, or board of the municipality affected by any decision of the Building Official. Such appeal shall be taken made within 15 days after the decision has been rendered by the administrative officer, by filing with the officer from whom the appeal is taken and with the

Board of Adjustment, a Notice of Appeal specifying the grounds thereof. The officer from whom the appeal is taken shall ~~forthwith transmit~~ forward to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.

**6.205(3)** An appeal shall stay all proceedings of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on petition, upon notice to the officer from whom the appeal is taken and on due cause shown.

~~6.206~~ The Board of Adjustment shall fix a specific time for the hearing of an appeal, give the public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by attorney or by agent.

~~6.207~~ No appeal to the Board of Adjustment for the same variance, on the same piece of property, shall be allowed prior to the expiration of two years from a previous ruling by the Board of Adjustment on any appeal to such body, unless other property in the immediate vicinity has within the said two year period been changed or acted upon by the Board of Adjustment or City Council so as to alter the facts and conditions on which the previous Board of Adjustment action was based. Such change of circumstances shall permit the rehearing of an appeal by the Board of Adjustment prior to the expiration of a two year period, but such conditions shall in no way have any force in law to compel the Board of Adjustment, after a hearing, to grant a subsequent appeal. Such subsequent appeal shall be considered entirely on its merits and the peculiar and specific conditions related to the property on which the appeal is brought.

#### **6.208~~2~~ Jurisdiction (ZC 2007-30; Ordinance No. 2007-10-39)**

- (1) Each case must be heard by at least four 75% of the members of the Board of Adjustment. ~~The concurring vote of four members of the Board of Adjustment is necessary to:~~
  - ~~(a) Reverse an order, requirement, decision, or determination of an administrative official.~~
  - ~~(b) Decide in favor of an applicant on a matter on which the Board of Adjustment is required to pass under a zoning ordinance.~~
  - ~~(c) Authorize a variance from the terms of a zoning ordinance.~~
- (2) When in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be

substantially or permanently injured, the Board of Adjustment may, in specific cases, after written notice and public hearings, and subject to appropriate conditions and safeguards, authorize or order the following:

- (a) Hear and decide appeals where it is alleged there is error on any order, requirement, decision, or determination made by the Building Official in the enforcement of this ordinance. (ZC 92-46; Ordinance No. 92-9-13)
- (b) Permit the reconstruction, extension, or enlargement of a building occupied by nonconforming uses, on the lot or tract occupied by such building, provided such reconstruction does not prevent the return of such property to a conforming use.
- (c) Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with due regard for the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of property. The Board of Adjustment shall, from time to time, on its own motion or upon cause presented by interested property owners, inquire into the existence, continuation, or maintenance of any nonconforming use within the city.
- (d) Permit such variance from the terms of the Zoning Ordinance that will not be contrary to the public interest and where, because of special conditions, the enforcement of this ordinance or its amendments would result in an unnecessary hardship, except as provided in (ii), (iii) and (iv) below. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this ordinance to other parcels of land in the district. No variance may be granted if it results in an unnecessary hardship, as herein defined, on another parcel of land.
  - (i) In order to make a finding of hardship and to grant a variance from this ordinance, the Board of Adjustment must determine that: (ZC 92-46; Ordinance No. 92-9-13)
    - 1. The requested variance does not violate the intent of the ordinance or its amendments.
    - 2. Special conditions of restricted area, shape, topography, or physical features exist that are peculiar to the subject

parcel of land and are not applicable to other parcels of land in the same zoning district.

3. The hardship is in no way the result of the petitioner's own actions.
  4. The interpretation of the provisions in this ordinance or its amendments would deprive the petitioner of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.
- (ii) No variance may authorize a use other than those permitted in the district for which the variance is sought.
  - (iii) A petition or request for a variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which a preliminary site plan, site plan, preliminary plat, or final plat, when required by this ordinance or the Subdivision Ordinance for any parcel of property or portion thereof, has not been finally acted upon by both the Planning & Zoning Commission and, where required, by the City Council.
  - (iv) The administrative procedures and requirements of this ordinance and the Subdivision Ordinance, with regard to both Planning & Zoning Commission and the City Council consideration and action, on preliminary site plans, site plans, preliminary plats, and final plats, must be exhausted prior to requesting a variance from the terms of this ordinance.

#### **6.2093 Action of the Board of Adjustment**

- (1) In exercising its powers, the Board of Adjustment may, in conformity with the provisions of ~~Articles 1011-a through 1011-j of the 1925 Civil Statutes of Texas, as amended,~~ Section 211.009(b) of the Texas Local Government Code, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision, or determination as ought to be made and shall have all the powers of the officer from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the petitioner.
- (2) The concurring vote of ~~four~~ 75% of the members of the Board of Adjustment shall be necessary to revise any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the petitioner on any matter upon which it is required to pass under this ordinance or to approve any variance in said ordinance.
- (3) An appeal of the Board of Adjustment's decision must be in accordance with Chapter 211 of the Texas Local Government Code as the same may be amended from time to time. ~~Any person or persons jointly or severally~~

~~aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality may present to a district court, county court, or county court at law a petition, duly verified, setting forth that such decision is illegal, in whole or part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the Board of Adjustment and not thereafter. The date of filing of the decision in the office of the Board of Adjustment shall be the date the Board of Adjustment announces its decision either orally or in writing to the petitioner. (ZC 99-56; Ordinance No. 99-11-19)~~

- (4) No appeal to the Board of Adjustment for the same variance, on the same property, shall be allowed prior to the expiration of two years from a previous ruling by the Board of Adjustment unless other property in the immediate vicinity has within the said two year period been rezoned, granted a similar variance request by the Board of Adjustment, or such that the physical conditions have changed. These circumstances shall permit the rehearing of an appeal by the Board of Adjustment prior to the expiration of the two year period, but shall not compel the Board of Adjustment, after a hearing, to grant a variance.
- (5) If the court reverses or modifies the Board of Adjustment's decision, the Board of Adjustment may elect to appeal that decision.

**ORDINANCE NO. \_\_\_\_\_**  
**(Zoning Case 2008-72)**

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING SECTION 6.200 (BOARD OF ADJUSTMENTS) OF ARTICLE 6 (PROCEDURES AND ADMINISTRATION) AND RELATED SECTIONS OF THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, TO AMEND THE DUTIES AND ADMINISTRATIVE PROCEDURES OF THE BOARD OF ADJUSTMENT; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

**WHEREAS**, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 8th day of December, 2008, for the purpose of considering a change in the Zoning Ordinance; and

**WHEREAS**, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

**WHEREAS**, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 8th day of December, 2008; and

**WHEREAS**, the City Council is of the opinion and finds that such change would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

**IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** Section 6.200 (Board of Adjustment) of Article 6 (Procedures and Administration) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended to amend the duties and administrative procedures of the Board of Adjustment, such section to read in its entirety as follows:

**6.200 Board of Adjustment****6.201 Appeals**

- (1) The composition and appointment of the Board of Adjustment shall be in compliance with Chapter 16 of the Code of Ordinances.
- (2) The Board of Adjustment may take action in accordance with 6.202 of this ordinance. Appeals to the Board of Adjustment can be taken by any person aggrieved or by an officer, department, or board of the municipality affected by any decision of the Building Official. Such appeal shall be made within 15 days after the decision has been rendered by the administrative officer, by filing with the officer from whom the appeal is taken and with the Board of Adjustment, a Notice of Appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forward to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.
- (3) An appeal shall stay all proceedings of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on petition, upon notice to the officer from whom the appeal is taken and on due cause shown.

**6.202 Jurisdiction (ZC 2007-30; Ordinance No. 2007-10-39)**

- (1) Each case must be heard by at least 75% of the members of the Board of Adjustment.
- (2) When in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially or permanently injured, the Board of Adjustment may, in specific cases, after written notice and public hearings, and subject to appropriate conditions and safeguards, authorize or order the following:
  - (a) Hear and decide appeals where it is alleged there is error on any order, requirement, decision, or determination made by the Building Official in the enforcement of this ordinance. (ZC 92-46; Ordinance No. 92-9-13)

- (b) Permit the reconstruction, extension, or enlargement of a building occupied by nonconforming uses, on the lot or tract occupied by such building, provided such reconstruction does not prevent the return of such property to a conforming use.
  
- (c) Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with due regard for the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of property. The Board of Adjustment shall, from time to time, on its own motion or upon cause presented by interested property owners, inquire into the existence, continuation, or maintenance of any nonconforming use within the city.
  
- (d) Permit such variance from the terms of the Zoning Ordinance that will not be contrary to the public interest and where, because of special conditions, the enforcement of this ordinance or its amendments would result in an unnecessary hardship, except as provided in (ii), (iii) and (iv) below. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this ordinance to other parcels of land in the district. No variance may be granted if it results in an unnecessary hardship, as herein defined, on another parcel of land.
  - (i) In order to make a finding of hardship and to grant a variance from this ordinance, the Board of Adjustment must determine that: (ZC 92-46; Ordinance No. 92-9-13)
    1. The requested variance does not violate the intent of the ordinance or its amendments.
    2. Special conditions of restricted area, shape, topography, or physical features exist that are peculiar to the subject parcel of land and are not applicable to other parcels of land in the same zoning district.
    3. The hardship is in no way the result of the petitioner's own actions.

4. The interpretation of the provisions in this ordinance or its amendments would deprive the petitioner of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.
  - (ii) No variance may authorize a use other than those permitted in the district for which the variance is sought.
  - (iii) A petition or request for a variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which a preliminary site plan, site plan, preliminary plat, or final plat, when required by this ordinance or the Subdivision Ordinance for any parcel of property or portion thereof, has not been finally acted upon by both the Planning & Zoning Commission and, where required, by the City Council.
  - (iv) The administrative procedures and requirements of this ordinance and the Subdivision Ordinance, with regard to both Planning & Zoning Commission and the City Council consideration and action, on preliminary site plans, site plans, preliminary plats, and final plats, must be exhausted prior to requesting a variance from the terms of this ordinance.

#### **6.203 Action of the Board of Adjustment**

- (1) In exercising its powers, the Board of Adjustment may, in conformity with the provisions of Section 211.009(b) of the Texas Local Government Code, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision, or determination as ought to be made and shall have all the powers of the officer from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the petitioner.
- (2) The concurring vote of 75% of the members of the Board of Adjustment shall be necessary to revise any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the petitioner on any matter upon which it is required to pass under this ordinance or to approve any variance in said ordinance.

- (3) An appeal of the Board of Adjustment's decision must be in accordance with Chapter 211 of the Texas Local Government Code as the same may be amended from time to time. The date of filing of the decision in the office of the Board of Adjustment shall be the date the Board of Adjustment announces its decision either orally or in writing to the petitioner. (ZC 99-56; Ordinance No. 99-11-19)
  
- (4) No appeal to the Board of Adjustment for the same variance, on the same property, shall be allowed prior to the expiration of two years from a previous ruling by the Board of Adjustment unless other property in the immediate vicinity has within the said two year period been rezoned, granted a similar variance request by the Board of Adjustment, or such that the physical conditions have changed. These circumstances shall permit the rehearing of an appeal by the Board of Adjustment prior to the expiration of the two year period, but shall not compel the Board of Adjustment, after a hearing, to grant a variance.
  
- (5) If the court reverses or modifies the Board of Adjustment's decision, the Board of Adjustment may elect to appeal that decision.

**Section II.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section III.** The repeal of any ordinance or part of ordinances affectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section IV.** Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

**Section VI.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

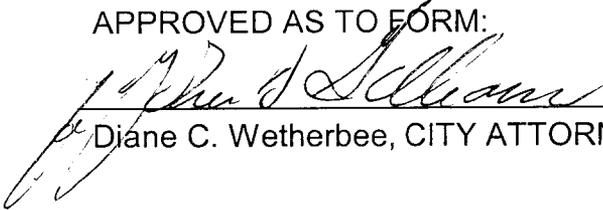
**PASSED AND APPROVED THIS THE 8TH DAY OF DECEMBER, 2008.**

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	<b>12/8/08</b>	Reviewed by Legal <i>PM</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Building Inspections	Initials	Date	
Department Head	Selso Mata <i>[Signature]</i>	Executive Director	<i>[Signature]</i>	12/2/08
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	12/2/08
Agenda Coordinator (include phone #):		Diana Gallegos 5993		
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
<b>CAPTION</b>				
AN ORDINANCE OF THE CITY OF PLANO, TEXAS, ADDING ARTICLE V, BOARD OF ADJUSTMENT, TO CHAPTER 16, PLANNING AND DEVELOPMENT, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO TO RELOCATE THE PROVISIONS RELATED TO THE BOARD OF ADJUSTMENT FOR APPOINTING AND REMOVING MEMBERS FROM THE CITY OF PLANO COMPREHENSIVE ZONING ORDINANCE TO THE CITY OF PLANO CODE OF ORDINANCES, AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, AND AN EFFECTIVE DATE.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
<b>SUMMARY OF ITEM</b>				
This Ordinance relocates the provisions of appointment and removal of members of the Board of Adjustment from the Zoning Ordinance to the City Code of Ordinance, Chapter 16 of the Code of Ordinances, Planning and Development.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF PLANO, TEXAS, ADDING ARTICLE V, BOARD OF ADJUSTMENT, TO CHAPTER 16, PLANNING AND DEVELOPMENT, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO TO RELOCATE THE PROVISIONS RELATED TO THE BOARD OF ADJUSTMENT FOR APPOINTING AND REMOVING MEMBERS FROM THE CITY OF PLANO COMPREHENSIVE ZONING ORDINANCE TO THE CITY OF PLANO CODE OF ORDINANCES, AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, AND AN EFFECTIVE DATE.**

**WHEREAS**, on December 8, 2008 the City Council of the City of Plano removed the provisions relating to the Board of Adjustment from the City of Plano Comprehensive Zoning Ordinance; and

**WHEREAS**, upon recommendation of City staff and upon review and consideration of matters attendant and related thereto, the City Council finds that it would be in the best interest of the City of Plano to move the provisions related to the Board of Adjustment to the City of Plano Code of Ordinances, Chapter 16, Planning and Development.

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

**Section I.** Article V of Chapter 16, Planning and Development, of the City of Plano Code of Ordinances is hereby added to read in its entirety as follows:

**“ARTICLE V. BOARD OF ADJUSTMENT**

**Sec. 16-81. Regular Members.**

There is hereby created a Board of Adjustment consisting of five (5) members, each to be appointed by City Council for a term of two (2) years and removable for cause by the appointing authority upon written charges and after public hearing. There shall be at least one (1) member and one (1) alternate member appointed who is employed in either the retail or advertising business, and at least one (1) member and one (1) alternate member who is employed in the real estate or development business.

**Sec. 16-82. Alternate Members.**

City Council may provide for the appointment of four (4) alternate members of the Board of Adjustment who shall serve in the absence of one (1) or more of the regular members. The alternate members, when appointed, shall serve for the same period as the regular members, which is for a term of two (2) years expiring on October 31<sup>st</sup> of the appropriate year, and any vacancy shall be filled in the same manner as for regular members, and alternate members shall be subject to removal under the same provisions as regular members.

**Sec. 16-83. Meetings.**

The Board of Adjustment will have the authority to adopt rules consistent with state law. Meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence, the acting chairman, may administer oath and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicate such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be a public record.”

**Section II.** All provisions of the Code of Ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section III.** It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

**Section IV.** The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any Ordinances at the time of passage of this Ordinance.

**Section V.** This Ordinance shall become effective from and after its passage and publication as required by law.

**DULY PASSED AND APPROVED** this, the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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

**DATE:** November 18, 2008  
**TO:** Honorable Mayor & City Council  
**FROM:** James Duggan, Chairman, Planning & Zoning Commission  
**SUBJECT:** Results of Planning & Zoning Commission Meeting of November 17, 2008

**AGENDA ITEM NO. 8A - PUBLIC HEARING  
ZONING CASE 2008-80  
APPLICANT: HW SPRING CREEK PARTNERS, L.P.**

Request to rezone 6.1± acres located at the northwest corner of Bourbon Street and Cousteau Court **from** Single-Family Residence Attached and Patio Home **to** Single-Family Residence-9. Zoned Single-Family Residence Attached and Patio Home with Specific Use Permit #594 for Private Street Development.

**APPROVED:** 7-0 **DENIED:** \_\_\_\_\_ **TABLED:** \_\_\_\_\_

**LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA:** **SUPPORT:** 1 **OPPOSE:** 0

**LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0

**PETITION(s) RECEIVED:** N/A **# OF SIGNATURES:** N/A

**STIPULATIONS:**

Recommended for approval as submitted.

**FOR CITY COUNCIL MEETING OF:** December 8, 2008 (To view the agenda for this meeting, see [www.planotx.org](http://www.planotx.org))

**PUBLIC HEARING - ORDINANCE**

EH/et

xc: Curt Welwood, HW Spring Creek Partners, L.P.  
Ashley Freysinger, Kimley-Horn & Associates, Inc.  
Richard Matkin, PISD  
Cliff Bormann, Assistant Building Official

CITY OF PLANO  
PLANNING & ZONING COMMISSION

November 17, 2008

**Agenda Item No. 8A**

**Public Hearing:** Zoning Case 2008-80

**Applicant:** HW Spring Creek Partners, L.P.

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**DESCRIPTION:**

Request to rezone 6.1± acres located at the northwest corner of Bourbon Street and Cousteau Court **from** Single-Family Residence Attached and Patio Home **to** Single-Family Residence-9. Zoned Single-Family Residence Attached and Patio Home with Specific Use Permit #594 for Private Street Development.

**REMARKS:**

The applicant is requesting to rezone a portion of the existing Single-Family Residence Attached (SF-A) and Patio Home (PH) zoning within Normandy Estates to Single-Family Residence-9 (SF-9). The SF-9 district is intended to provide areas for large-lot, urban, single-family development protected from excessive noise, illumination, odors, visual clutter, and other objectionable influences to family living.

The current zoning is SF-A and PH with Specific Use Permit #594 (SUP #594) for Private Street Development. The SF-A district is intended to provide for a variety of residential housing types and densities in the medium density range (five-ten units/acre) on individually-platted lots or multiple units on a single lot. The PH district is intended to provide for areas of detached, zero lot line, single-family development in a clustered lot pattern with a common usable open space system that is an integral part of the development. An SUP authorizes and regulates a use not normally permitted in a district, which could benefit in a particular case the general welfare, provided that adequate development standards and safeguards are established.

The purpose of the zoning case is to create three additional SF-9 lots. As in the current zoning, the requested zoning is consistent with the Residential land use designation of the Comprehensive Plan. The proposed SF-9 zoning is compatible with the existing PH and SF-A zoning.

**RECOMMENDATION:**

Recommended for approval as submitted.





**ORDINANCE NO. \_\_\_\_\_**  
**(Zoning Case 2008-80)**

AN ORDINANCE OF THE CITY OF PLANO AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, SO AS TO REZONE 6.1± ACRES OUT OF THE HENRY COOK SURVEY, ABSTRACT NUMBER 235 AND THE HENRY B. MILLER SURVEY, ABSTRACT NUMBER 835, LOCATED AT THE NORTHWEST CORNER OF BOURBON STREET AND COUSTEAU COURT IN THE CITY OF PLANO, DENTON COUNTY, TEXAS, FROM SINGLE-FAMILY RESIDENCE ATTACHED AND PATIO HOME WITH SPECIFIC USE PERMIT #594 FOR PRIVATE STREET DEVELOPMENT TO SINGLE-FAMILY RESIDENCE-9 WITH SPECIFIC USE PERMIT #594 FOR PRIVATE STREET DEVELOPMENT; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

**WHEREAS**, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 8th day of December, 2008, for the purpose of considering rezoning 6.1± acres out of the Henry Cook Survey, Abstract Number 235 and the Henry B. Miller Survey, Abstract Number 835, located at the northwest corner of Bourbon Street and Cousteau Court in the City of Plano, Denton County, Texas, from Single-Family Residence Attached and Patio Home with Specific Use Permit #594 for Private Street Development to Single-Family Residence-9 with Specific Use Permit #594 for Private Street Development; and

**WHEREAS**, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

**WHEREAS**, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 8th day of December, 2008; and

**WHEREAS**, the City Council is of the opinion and finds that such rezoning would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

**IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended so as to rezone 6.1± acres out of the Henry Cook Survey, Abstract Number 235 and the Henry B. Miller Survey, Abstract Number 835, located at the northwest corner of Bourbon Street and Cousteau Court in the City of Plano, Denton County, Texas, from Single-Family Residence Attached and Patio Home with Specific Use Permit #594 for Private Street Development to Single-Family Residence-9 with Specific Use Permit #594 for Private Street Development, said property being described in the legal description on Exhibit "A" attached hereto.

**Section II.** It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

**Section III.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**Section IV.** The repeal of any ordinance or part of ordinances affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section V.** Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

**Section VII.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED AND APPROVED THIS THE 8TH DAY OF DECEMBER, 2008.**

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

*Diane C. Wetherbee*

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

EXHIBIT "A"  
LEGAL DESCRIPTION

BEING a tract of land situated in the Henry Cook Survey, Abstract Number 235 and the Henry B. Miller Survey, Abstract Number 835, City of Plano, Denton County, Texas, and being part of a called 82.078 acre tract of land described in the general warranty deed from RRE Joint Venture to Collin RRE, L.P., recorded in Volume 5623, Page 3655 of the Land Records of Collin County, Texas (hereinafter referred to as LRCCT), with the herein described tract of land being further described as held on the ground by metes and bounds as follows:

BEGINNING at a 5/8-inch iron rod set in the south line of a called 61.5875 acre tract of land described in the general warranty deed from E.W. Baccus and Laverne W. Baccus to Frito-Lay, Inc., recorded in Volume 2870, Page 660, LRCCT and the north line of said Collin RRE, L.P. tract;

THENCE North  $89^{\circ} 16' 27''$  East, a distance of 600.73 feet to a point;

THENCE crossing the aforementioned Collin RRE tract, the following courses and distances:

South, a distance of 179.87 feet to a point;

West, a distance of 120.16 feet to a point;

Easterly, with a curve to the left, a distance of 112.22 feet through a central angle of  $23^{\circ} 22' 52''$ , having a radius of 275.00 feet, and a chord bearing and distance of south  $78^{\circ} 18' 34''$  West, 111.44 feet to a point;

South  $66^{\circ} 37' 08''$  West, a distance of 21.89 feet to a point;

Southerly, with a curve to the left, a distance of 82.52 feet through a central angle of  $80^{\circ} 49' 28''$ , having a radius of 58.50 feet, and a chord bearing and distance of South  $26^{\circ} 12' 24''$  West, 75.85 feet to a point;

Southerly, with a curve to the left, a distance of 55.78 feet through a central angle of  $14^{\circ} 12' 20''$ , having a radius of 225.00 feet, and a chord bearing and distance of South  $07^{\circ} 06' 10''$  East, 55.64 feet to a point;

South, a distance of 20.28 feet to a point;

West, a distance of 118.00 feet to a point;

South, a distance of 178.15 feet to a point;

South, 89° 41' 05" West, a distance of 98.63 feet to a point;

Westerly, with a curve to the right, a distance of 160.91 feet through a central angle of 40° 58' 29", having a radius of 225.00 feet, and a chord bearing and distance of North 69° 49' 41" West, 157.50 feet to a point;

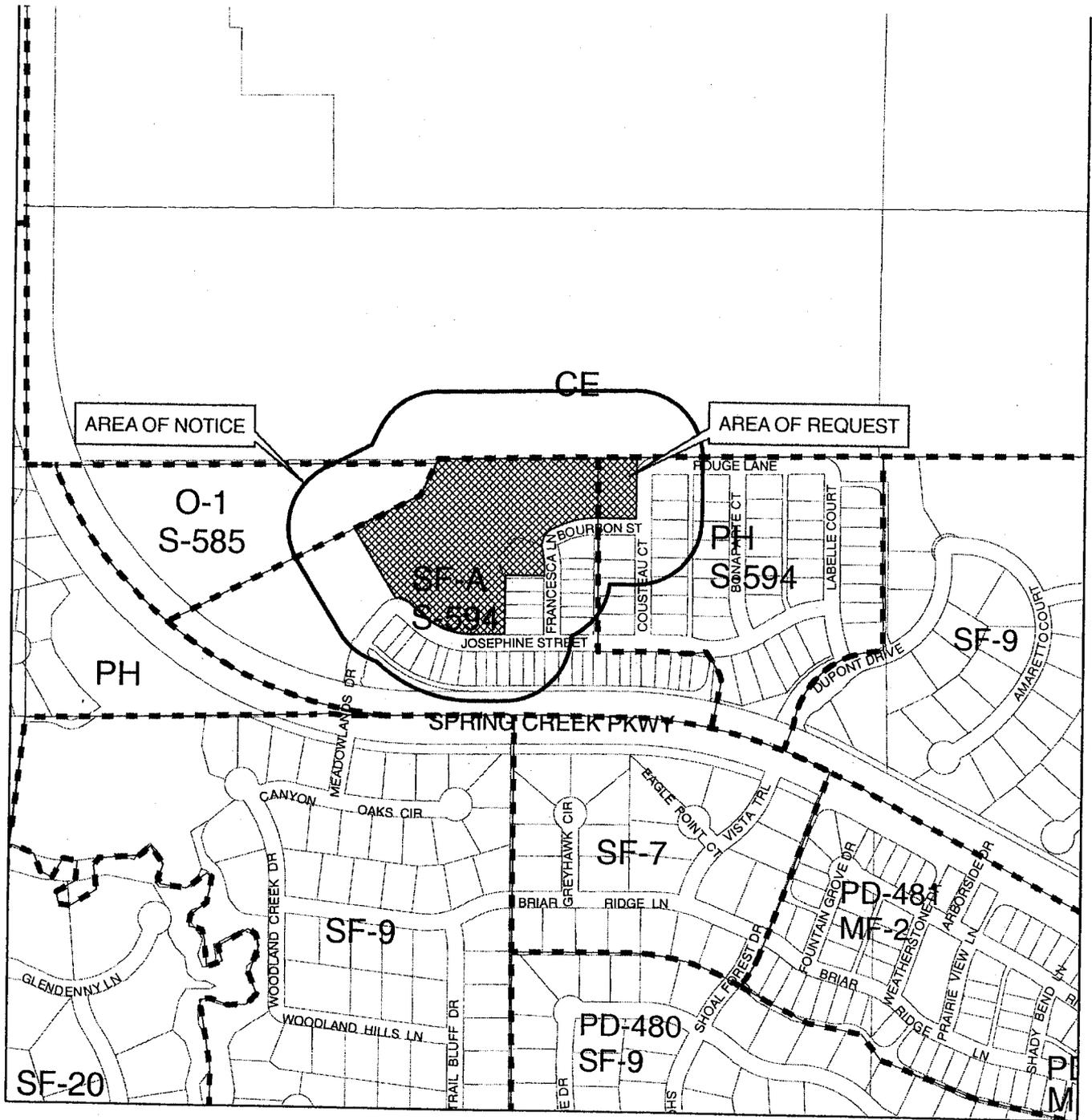
North, 49° 20' 26" West, a distance of 59.33 feet to a point;

Northerly, with a curve to the left, a distance of 46.47 feet through a central angle of 45° 32' 56", having a radius of 58.45 feet, and a chord bearing and distance of North 72° 06' 18" West, 45.25 feet to a point;

North, 31° 23' 23" West, a distance of 244.28 feet to a point;

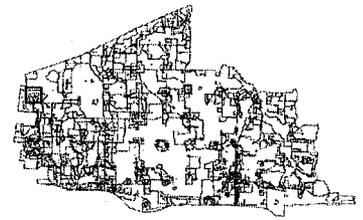
North 63° 17' 34" East, a distance of 222.92 feet to a point;

North 26° 55' 21" East, a distance of 123.56 feet to the POINT OF BEGINNING and CONTAINING 263,410 square feet or 6.05 acres of land;



Zoning Case #: 2008-80

Existing Zoning: SINGLE-FAMILY RESIDENCE ATTACHED & PATIO HOME  
w/SPECIFIC USE PERMIT #594



○ 200' Notification Buffer



**DATE:** November 18, 2008  
**TO:** Honorable Mayor & City Council  
**FROM:** James Duggan, Chairman, Planning & Zoning Commission  
**SUBJECT:** Results of Planning & Zoning Commission Meeting of November 17, 2008

**AGENDA ITEM NO. 9 - PUBLIC HEARING  
ZONING CASE 2008-81  
APPLICANT: CITY OF PLANO**

Request to amend Section 1.600 (Definitions) of Article 1 (General Regulations) and related sections of the Zoning Ordinance regarding minor and major automobile repair.

**APPROVED:** 8-0 **DENIED:** \_\_\_\_\_ **TABLED:** \_\_\_\_\_

**STIPULATIONS:**

Recommended that the definition for "Automobile Repair - Minor/Service Station" be changed to read as follows: (Additions are in underlined text.)

**Automobile Repair - Minor/Service Station** - An establishment used for the retail dispensing or sales of automobile fuels, lubricants, and automobile accessories; the minor repair or replacement of parts, paintless dent repair, and performing state inspections and making minor repairs necessary to pass said inspection. Uses listed under Automobile Repair - Major or any other similar uses are not included. Vehicles, which are inoperative or are being repaired, may not remain parked outside for a period greater than seven days.

**FOR CITY COUNCIL MEETING OF:** December 8, 2008 (To view the agenda for this meeting, see [www.planotx.org](http://www.planotx.org))

**PUBLIC HEARING - ORDINANCE**

KP/et

xc: Richard Matkin, PISD  
Cliff Bormann, Assistant Building Official

CITY OF PLANO  
PLANNING & ZONING COMMISSION

November 17, 2008

**Agenda Item No. 9**

**Public Hearing:** Zoning Case 2008-81

**Applicant:** City of Plano

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**DESCRIPTION:**

Request to amend Section 1.600 (Definitions) of Article 1 (General Regulations) and related sections of the Zoning Ordinance regarding minor and major automobile repair.

**REMARKS:**

At the October 6, 2008, Planning & Zoning Commission meeting an appeal was made regarding the Director of Planning's interpretation of the appropriate use classification for paintless dent repair businesses. At that meeting, the Commission, based on the current language in the Zoning Ordinance, upheld the interpretation of the Director of Planning. However, the Commission also asked staff to research area cities to see how they classify paintless dent repair and called a public hearing to consider potential amendments to the automotive repair definitions.

The "Automobile Repair - Major" use is currently defined as "General repair or reconditioning of engines, air-conditioning systems, and transmissions for motor vehicles; wrecker service; collision services including body, frame, or fender straightening or repair; customizing; painting; vehicle steam cleaning; undercoating and rust proofing; and other similar uses." This use is presently allowed by right in the Light Commercial (LC), Commercial Employment (CE), Central Business-1 (CB-1), and Light Industrial-1 and -2 (LI-1 and LI-2) districts subject to residential adjacency standards.

The "Automobile Repair - Minor/Service Station" use is currently defined as "An establishment used for the retail dispensing or sales of automobile fuels, lubricants, and automobile accessories; the minor repair or replacement of parts, and performing state inspections and making minor repairs necessary to pass said inspection. Uses listed under Automobile Repair - Major or any other similar uses are not included. Vehicles, which are inoperative or are being repaired, may not remain parked outside for a period greater than seven days." This use is presently allowed by right in the LC, CE, CB-1,

LI-1, LI-2, Retail (R), Regional Commercial (RC), and Corridor Commercial (CC) districts subject to residential adjacency standards.

Staff surveyed surrounding cities, including Frisco, McKinney, Allen, Garland, and Richardson and found that their definitions for major and minor automobile repair are very similar to Plano's. Staff at these cities indicated that paintless dent repair would be considered a minor automobile use.

The nature of paintless dent repair is closer in operation to minor automobile repair than major; there is little noise, noxious odor, or other secondary effect. Paintless dent repair typically involves the removal of minor dents and dings by massaging metal from underneath with hand tools. It does not involve the use of fillers, paints, or chemicals. Staff therefore recommends that the definition for "Automobile Repair - Minor/Service Station" be amended to include paintless dent repair.

#### **RECOMMENDATION:**

Recommended that the definition for "Automobile Repair - Minor/Service Station" be changed to read as follows: (Additions are in underlined text.)

**Automobile Repair - Minor/Service Station** - An establishment used for the retail dispensing or sales of automobile fuels, lubricants, and automobile accessories; the minor repair or replacement of parts, paintless dent repair, and performing state inspections and making minor repairs necessary to pass said inspection. Uses listed under Automobile Repair - Major or any other similar uses are not included. Vehicles, which are inoperative or are being repaired, may not remain parked outside for a period greater than seven days.

**ORDINANCE NO. \_\_\_\_\_**  
**(Zoning Case 2008-81)**

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING SECTION 1.600 (DEFINITIONS) OF ARTICLE 1 (GENERAL REGULATIONS) AND RELATED SECTIONS OF THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, TO MODIFY THE DEFINITION FOR AUTOMOBILE REPAIR - MINOR/SERVICE STATION; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

**WHEREAS**, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 8th day of December, 2008, for the purpose of considering a change in the Zoning Ordinance; and

**WHEREAS**, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

**WHEREAS**, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 8th day of December, 2008; and

**WHEREAS**, the City Council is of the opinion and finds that such change would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

**IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** Section 1.600 (Definitions) of Article 1 (General Regulations) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended to modify the definition for Automobile Repair - Minor/Service Station, to read in its entirety as follows:

**Automobile Repair - Minor/Service Station** - An establishment used for the retail dispensing or sales of automobile fuels, lubricants, and automobile accessories; the minor repair or replacement of parts, paintless dent repair, and performing state inspections and making minor repairs necessary to pass said inspection. Uses listed under Automobile Repair - Major or any other similar uses are not included. Vehicles, which are inoperative or are being repaired, may not remain parked outside for a period greater than seven days.

**Section II.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section III.** The repeal of any ordinance or part of ordinances affectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section IV.** Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

**Section VI.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED AND APPROVED THIS THE 8TH DAY OF DECEMBER, 2008.**

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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

- (5) **Public Hearing and consideration of Ordinances as requested in Zoning Cases 2008-75 – 2008-79** all of which are limited to the repeal of certain Specific Use Permits for Private Clubs. The following ordinances are proposed to be repealed which, if approved, will result in the rescission of the Specific Use Permit for an additional use of a Private Club and the applicant is the City of Plano.
- (5a) **Consideration of an Ordinance as requested in Zoning Case 2008-75** – Request to rescind Specific Use Permit #259 for Private Club on 0.1± acre located at the southwest corner of U.S. Highway 75 and Enterprise Drive. Zoned Corridor Commercial.
- (5b) **Consideration of an Ordinance as requested in Zoning Case 2008-76** – Request to rescind Specific Use Permit #278 for Private Club on 0.1± acre located 180± feet north of Park Boulevard and 550± feet west of Ohio Drive. Zoned Retail.
- (5c) **Consideration of an Ordinance as requested in Zoning Case 2008-77** – Request to rescind Specific Use Permit #279 for Private Club on 0.1± acre located 130± feet east of Independence Parkway and 485± feet north of Parker Road. Zoned Retail.
- (5d) **Consideration of an Ordinance as requested in Zoning Case 2008-78** – Request to rescind Specific Use Permit #282 for Private Club on 0.1± acre located 90± feet west of Preston Road and 370± feet north of Plano Parkway. Zoned Planned Development-457-Retail/General Office.
- (5e) **Consideration of an Ordinance as requested in Zoning Case 2008-79** – Request to rescind Specific Use Permit #360 for Private Club on 3.8± acres located on the east side of Dallas North Tollway, 470± feet north of Democracy Drive. Zoned Commercial Employment.

All of the above locations are located within the City of Plano, Collin County, Texas, and the repeal of each ordinance will amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to reflect such action; 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.

**DATE:** November 18, 2008  
**TO:** Honorable Mayor & City Council  
**FROM:** James Duggan, Chairman, Planning & Zoning Commission  
**SUBJECT:** Results of Planning & Zoning Commission Meeting of November 17, 2008

**AGENDA ITEM NO. 10A - PUBLIC HEARING  
ZONING CASE 2008-75  
APPLICANT: CITY OF PLANO**

Request to rescind Specific Use Permit #259 for Private Club on 0.1± acre located at the southwest corner of U.S. Highway 75 and Enterprise Drive. Zoned Corridor Commercial.

**APPROVED:** 8-0 **DENIED:** \_\_\_\_\_ **TABLED:** \_\_\_\_\_

**LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0

**LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0

**PETITION(s) RECEIVED:** N/A **# OF SIGNATURES:** N/A

**STIPULATIONS:**

Recommended for approval as submitted

**FOR CITY COUNCIL MEETING OF:** December 8, 2008 (To view the agenda for this meeting, see [www.planotx.org](http://www.planotx.org))

**PUBLIC HEARING - ORDINANCE**

BM/et

xc: Richard Matkin, PISD  
Cliff Bormann, Assistant Building Official

CITY OF PLANO  
PLANNING & ZONING COMMISSION

November 17, 2008

**Agenda Item No. 10A**

**Public Hearing:** Zoning Case 2008-75

**Applicant:** City of Plano

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**DESCRIPTION:**

Request to rescind Specific Use Permit #259 for Private Club on 0.1± acre located at the southwest corner of U.S. Highway 75 and Enterprise Drive. Zoned Corridor Commercial.

**REMARKS:**

This is a city-initiated zoning request to rescind Specific Use Permit (SUP) #259 for Private Club. The purpose and intent of an SUP is to authorize and regulate a use not normally permitted in a district which could be of benefit in a particular case to the general welfare, provided adequate development standards and safeguards are established for such use during the review of an SUP application.

Prior to the May 2005 election, a restaurant in Plano desiring to serve alcoholic beverages had to obtain SUP approval for Private Club from the City of Plano and had to obtain a Private Club Permit from the Texas Alcoholic Beverage Commission (TABC). The election gave restaurants another option to serve alcoholic beverages by acquiring a Mixed Beverage Permit (with a Food and Beverage Certificate) directly from TABC. With the Mixed Beverage Permit, an SUP is no longer necessary.

Chettinaad Palace operates with a Mixed Beverage Permit from TABC. Therefore, for "housekeeping" purposes, staff recommends that the Private Club SUP be rescinded, since the SUP is not necessary for the restaurant to sell alcoholic beverages. Staff has not received any responses from the property owner as to whether or not they concur with the removal of the SUP.

**RECOMMENDATION:**

Recommended for approval as submitted.

**ORDINANCE NO. \_\_\_\_\_**  
**(Zoning Case 2008-75)**

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING IN ITS ENTIRETY ORDINANCE NO. 94-7-21; THEREBY RESCINDING SPECIFIC USE PERMIT NO. 259 FOR THE ADDITIONAL USE OF PRIVATE CLUB ON 0.1± ACRE OF LAND OUT OF THE JOHN M. SALMONS SURVEY, ABSTRACT NO. 814, LOCATED AT THE SOUTHWEST CORNER OF U.S. HIGHWAY 75 AND ENTERPRISE DRIVE IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, AND AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, TO REFLECT SUCH ACTION; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

**WHEREAS**, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 8th day of December, 2008, for the purpose of considering rescinding Specific Use Permit No. 259 for the additional use of Private Club on 0.1± acre of land out of the John M. Salmons Survey, Abstract No. 814, located at the southwest corner of U.S. Highway 75 and Enterprise Drive in the City of Plano, Collin County, Texas; and

**WHEREAS**, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

**WHEREAS**, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 8th day of December, 2008; and

**WHEREAS**, the City Council is of the opinion and finds that the rescinding of Specific Use Permit No. 259 for the additional use of Private Club would not be detrimental or injurious to the public health, safety and general welfare, or otherwise offensive to the neighborhood; and

**WHEREAS**, the City Council is of the opinion and finds that such change will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

**IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** Ordinance No. 94-7-21 duly passed and approved by the City Council of the City of Plano, Texas, on July 25, 1994, granting Specific Use Permit No. 259 for the additional use of Private Club on 0.1± acre of land out of the John M. Salmons Survey, Abstract No. 814, located at the southwest corner of U.S. Highway 75 and Enterprise Drive in the City of Plano, Collin County, Texas, presently zoned Corridor Commercial, more fully described on Exhibit "A", attached hereto, is hereby repealed in its entirety. Consequently, Specific Use Permit No. 259 is hereby rescinded.

**Section II.** It is hereby directed that the Comprehensive Zoning Ordinance, No. 2006-4-24, as heretofore amended, be revised and amended (which is retained in electronic record format), to reflect the action and zoning classification established by this Ordinance.

**Section III.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section IV.** The repeal of any ordinance or part of ordinances affectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section V.** Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

**Section VII.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED AND APPROVED THIS THE 8TH DAY OF DECEMBER 2008.**

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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

EXHIBIT "A"  
LEGAL DESCRIPTION

SITUATED in the State of Texas, County of Collin, and the City of Plano, being part of the John M. Salmons Survey, Abstract No. 814, being part of Lot 1, Block A of Central Center Retail, an addition to the City of Plano, as recorded in Cabinet F, Page 374 of the Collin County Plat Records and being more particularly described as follows:

COMMENCING for reference at a capped iron rod found marking the northwest corner of said addition, said corner being in the south right-of-way line of Enterprise Drive (60 foot right-of-way);

THENCE with the north line of said addition and the south right-of-way line of Enterprise Drive, East, 96.71 feet and departing said roadway South, 72.64 feet, the PLACE OF BEGINNING for the premises herein described;

THENCE with the north line of said premises, East, 66.33 feet to its northeast corner;

THENCE with an east line of said premises, South, 21.00 feet to a corner;

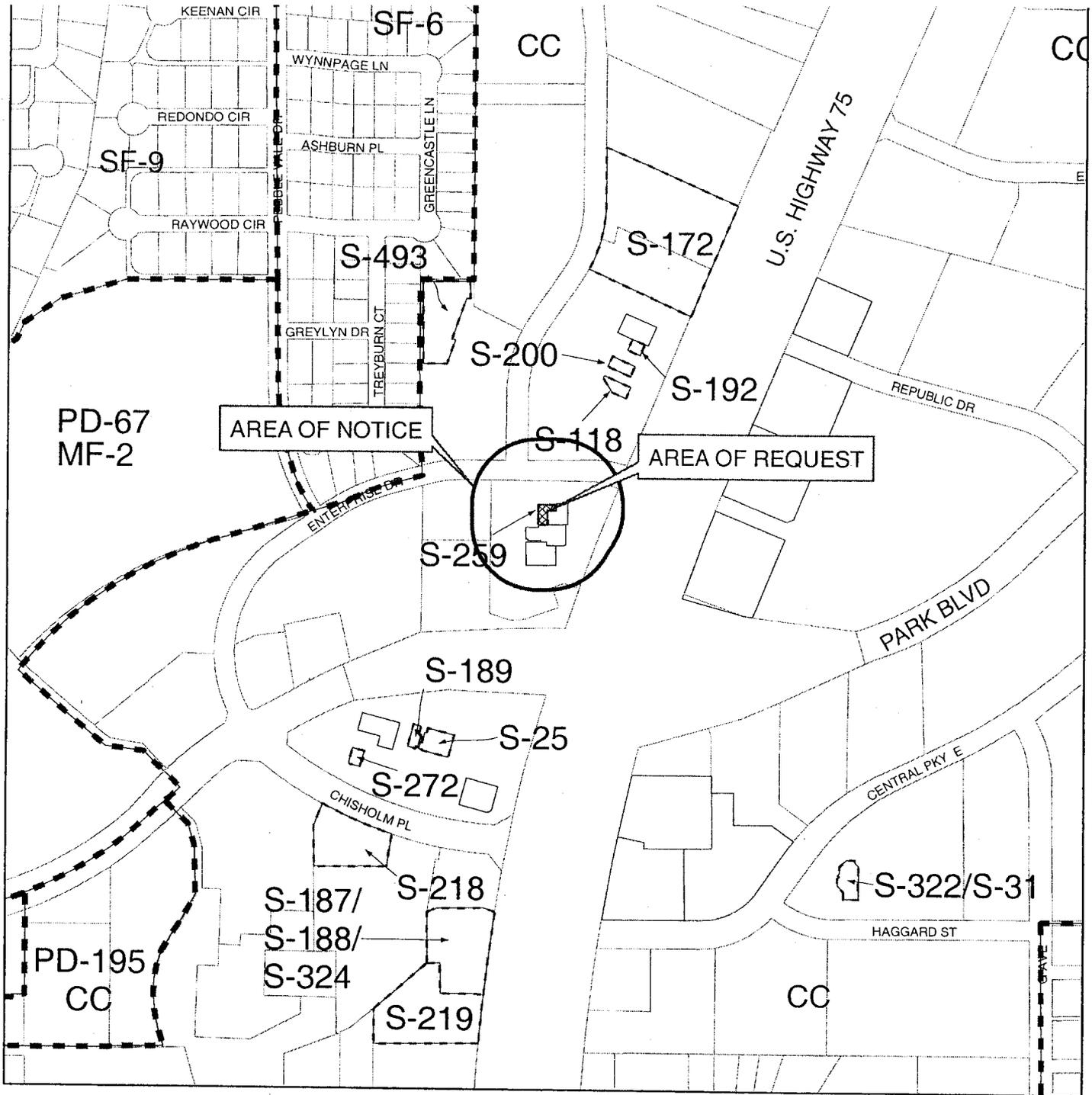
THENCE with a south line of said premises, West, 28.08 feet to a corner;

THENCE with an east line of said premises, South 43.00 feet to a point marking its most southerly southeast corner;

THENCE with the most southerly south line of said premises, West, 38.25 feet to a point marking its southwest corner;

THENCE with the west line of said premises, North, 64.00 feet to the PLACE OF BEGINNING and CONTAINING 3,038 square feet (or 0.1 acre) of land.

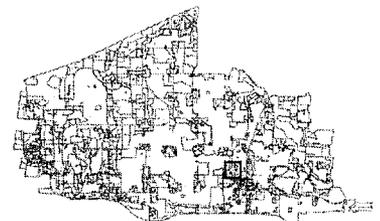
54-6



Zoning Case #: 2008-75

Existing Zoning: CORRIDOR COMMERCIAL w/SPECIFIC USE PERMIT #259

○ 200' Notification Buffer



**DATE:** November 18, 2008  
**TO:** Honorable Mayor & City Council  
**FROM:** James Duggan, Chairman, Planning & Zoning Commission  
**SUBJECT:** Results of Planning & Zoning Commission Meeting of November 17, 2008

**AGENDA ITEM NO. 10B - PUBLIC HEARING  
ZONING CASE 2008-76  
APPLICANT: CITY OF PLANO**

Request to rescind Specific Use Permit #278 for Private Club on 0.1± acre located 180± feet north of Park Boulevard and 550± feet west of Ohio Drive. Zoned Retail.

**APPROVED:** 7-0 **DENIED:** \_\_\_\_\_ **TABLED:** \_\_\_\_\_

**LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0

**LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0

**PETITION(s) RECEIVED:** N/A **# OF SIGNATURES:** N/A

**STIPULATIONS:**

Recommended for approval as submitted.

**FOR CITY COUNCIL MEETING OF:** December 8, 2008 (To view the agenda for this meeting, see [www.planotx.org](http://www.planotx.org))

**PUBLIC HEARING - ORDINANCE**

EH/et

xc: Richard Matkin, PISD  
Cliff Cormann, Assistant Building Official

CITY OF PLANO  
PLANNING & ZONING COMMISSION

November 17, 2008

**Agenda Item No. 10B**

**Public Hearing:** Zoning Case 2008-76

**Applicant:** City of Plano

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**DESCRIPTION:**

Request to rescind Specific Use Permit #278 for Private Club on 0.1± acre located 180± feet north of Park Boulevard and 550± feet west of Ohio Drive. Zoned Retail.

**REMARKS:**

This is a city-initiated zoning request to rescind Specific Use Permit (SUP) #278 for Private Club. The purpose and intent of an SUP is to authorize and regulate a use not normally permitted in a district which could be of benefit in a particular case to the general welfare, provided adequate development standards and safeguards are established for such use during the review of an SUP application.

Prior to the May 2005 election, a restaurant in Plano desiring to serve alcoholic beverages had to obtain SUP approval for a Private Club from the City of Plano and had to obtain a Private Club Permit from the Texas Alcoholic Beverage Commission (TABC). The election gave restaurants another option to serve alcoholic beverages by acquiring a Mixed Beverage Permit (with a Food and Beverage Certificate) directly from TABC. With the Mixed Beverage Permit, an SUP is no longer necessary.

Kosta's Café operates with a Mixed Beverage Permit from TABC. Therefore, for "housekeeping" purposes, staff recommends that the Private Club SUP be rescinded, since the SUP is not necessary for the restaurant to sell alcoholic beverages. Staff has not received a response from the property owner as to whether or not they concur with the removal of the SUP.

**RECOMMENDATION:**

Recommended for approval as submitted.

**ORDINANCE NO. \_\_\_\_\_**  
**(Zoning Case 2008-76)**

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING IN ITS ENTIRETY ORDINANCE NO. 95-2-30; THEREBY RESCINDING SPECIFIC USE PERMIT NO. 278 FOR THE ADDITIONAL USE OF PRIVATE CLUB ON 0.1± ACRE OF LAND OUT OF THE T.S. COTTON SURVEY, ABSTRACT NO. 202, LOCATED 180± FEET NORTH OF PARK BOULEVARD AND 550± FEET WEST OF OHIO DRIVE, IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, AND AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, TO REFLECT SUCH ACTION; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

**WHEREAS**, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 8th day of December, 2008, for the purpose of considering rescinding Specific Use Permit No.278 for the additional use of Private Club on 0.1± acre of land out of the T.S. Cotton Survey, Abstract No. 202, located 180± feet north of Park Boulevard and 550± feet west of Ohio Drive, in the City of Plano, Collin County, Texas; and

**WHEREAS**, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

**WHEREAS**, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 8th day of December, 2008; and

**WHEREAS**, the City Council is of the opinion and finds that the rescinding of Specific Use Permit No. 278 for the additional use of Private Club would not be detrimental or injurious to the public health, safety and general welfare, or otherwise offensive to the neighborhood; and

**WHEREAS**, the City Council is of the opinion and finds that such change will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

**IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** Ordinance No. 95-2-30 duly passed and approved by the City Council of the City of Plano, Texas, on February 13, 1995, granting Specific Use Permit No. 278 for the additional use of Private Club on 0.1± acre of land out of the T.S. Cotton Survey, Abstract No. 202, located 180± feet north of Park Boulevard and 550± feet west of Ohio Drive, in the City of Plano, Collin County, Texas, presently zoned Retail, more fully described on Exhibit "A", attached hereto, is hereby repealed in its entirety. Consequently, Specific Use Permit No. 278 is hereby rescinded.

**Section II.** It is hereby directed that the Comprehensive Zoning Ordinance, No. 2006-4-24, as heretofore amended, be revised and amended (which is retained in electronic record format), to reflect the action and zoning classification established by this Ordinance.

**Section III.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section IV.** The repeal of any ordinance or part of ordinances affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section V.** Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

**Section VII.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

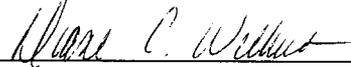
**PASSED AND APPROVED THIS THE 8TH DAY OF DECEMBER, 2008.**

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



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

EXHIBIT "A"  
LEGAL DESCRIPTION

SITUATED in the State of Texas, County of Collin, and City of Plano, being part of the T.S. Cotton Survey, Abstract No. 202, being part of Lot 1, Block 1 of Berkeley Square, an addition to the City of Plano as recorded in Volume F, Page 330 of the Collin County Map Records, said premises being more particularly described as follows:

COMMENCING for reference at the southwest corner of said addition, said corner being in the north right-of-way line of Park Boulevard (120 foot right-of-way);

THENCE with the south line of said addition and the north right-of-way line of Park Boulevard, South, 89° 25' 00" East, 690.19 feet to a point therein;

THENCE North, 00° 35' 00" East, 177.63 feet to the POINT OF BEGINNING and the southeast corner of the premises herein described;

THENCE with the south line of said premises, North, 89° 24' 24" West, 52.33 feet to the southwest corner of said premises;

THENCE with the west line of said premises, North, 00° 35' 36" East, 38.80 feet to its northwest corner;

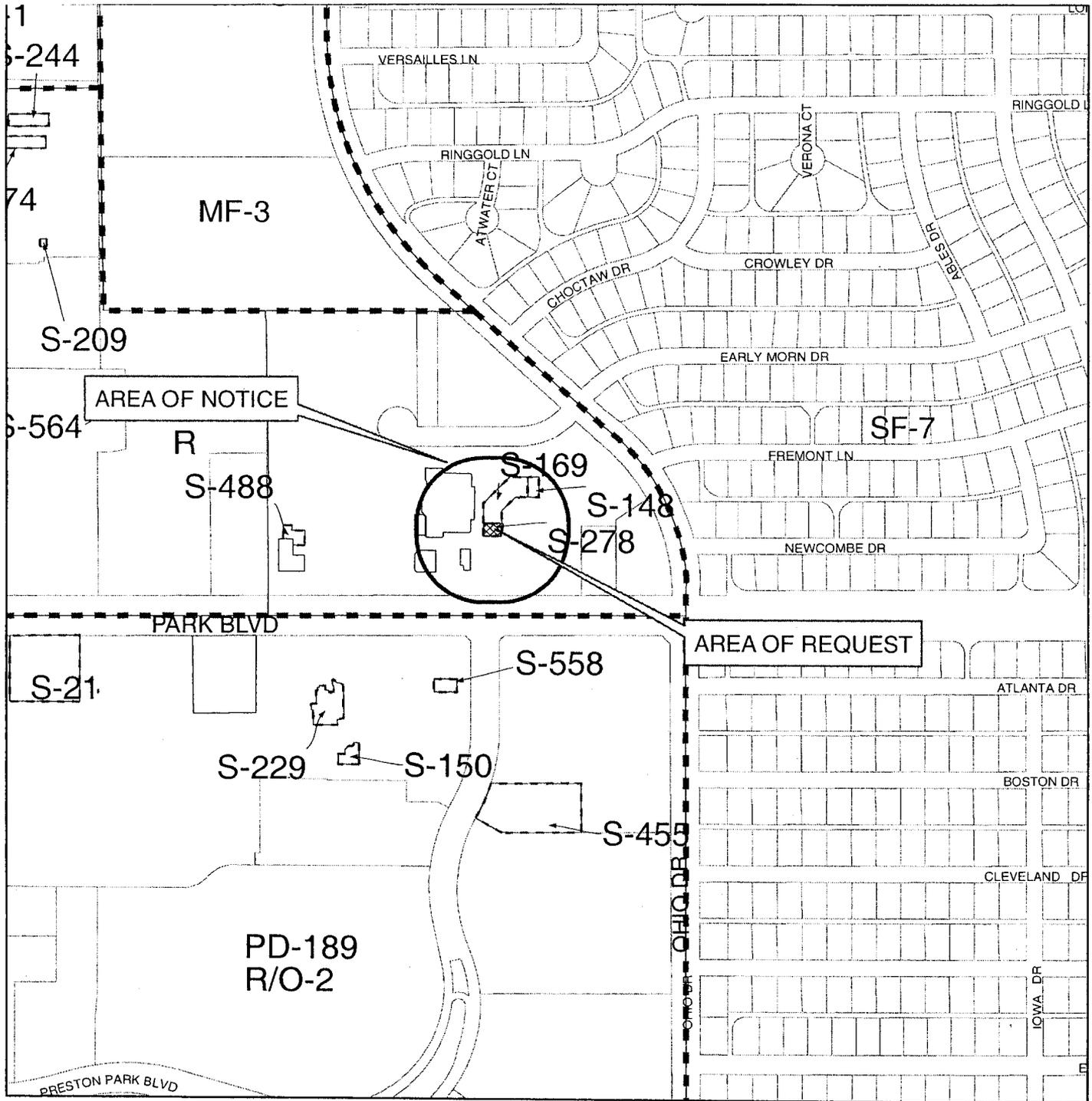
THENCE with the north line of said premises, South, 89° 24' 24" East, 55.39 feet to its northeast corner;

THENCE with the east line of said premises, South, 00° 35' 36" East, 26.15 feet to a point therein;

THENCE with a southeast line of said premises, South, 44° 54' 33" West, 4.40 feet to a point therein;

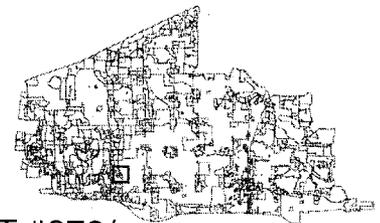
THENCE with the east line of said premises, South, 00° 30' 42" West, 9.50 feet to the PLACE OF BEGINNING and CONTAINING 2,115 square feet or 0049 acre of land.

5b-6



Zoning Case #: 2008-76

Existing Zoning: RETAIL w/SPECIFIC USE PERMIT #278/  
PRESTON ROAD OVERLAY DISTRICT



○ 200' Notification Buffer

**DATE:** November 18, 2008  
**TO:** Honorable Mayor & City Council  
**FROM:** James Duggan, Chairman, Planning & Zoning Commission  
**SUBJECT:** Results of Planning & Zoning Commission Meeting of November 17, 2008

**AGENDA ITEM NO. 10C - PUBLIC HEARING  
ZONING CASE 2008-77  
APPLICANT: CITY OF PLANO**

Request to rescind Specific Use Permit #279 for Private Club on 0.1± acre located 130± feet east of Independence Parkway and 485± feet north of Parker Road. Zoned Retail.

**APPROVED:** 8-0 **DENIED:** \_\_\_\_\_ **TABLED:** \_\_\_\_\_

**LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA:** **SUPPORT:** 1 **OPPOSE:** 0

**LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0

**PETITION(s) RECEIVED:** N/A **# OF SIGNATURES:** N/A

**STIPULATIONS:**

Recommended for approval as submitted.

**FOR CITY COUNCIL MEETING OF:** December 8, 2008 (To view the agenda for this meeting, see [www.planotx.org](http://www.planotx.org))

**PUBLIC HEARING - ORDINANCE**

TF/et

xc: Richard Matkin, PISD  
Cliff Bormann, Assistant Building Official

CITY OF PLANO  
PLANNING & ZONING COMMISSION

November 17, 2008

**Agenda Item No. 10C**

**Public Hearing:** Zoning Case 2008-77

**Applicant:** City of Plano

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**DESCRIPTION:**

Request to rescind Specific Use Permit #279 for Private Club on 0.1± acre located 130± feet east of Independence Parkway and 485± feet north of Parker Road. Zoned Retail.

**REMARKS:**

This is a city-initiated zoning request to rescind Specific Use Permit (SUP) #279 for Private Club. The purpose and intent of an SUP is to authorize and regulate a use not normally permitted in a district which could be of benefit in a particular case to the general welfare, provided adequate development standards and safeguards are established for such use during the review of an SUP application.

Prior to the May 2005 election, a restaurant in Plano desiring to serve alcoholic beverages had to obtain SUP approval for a Private Club from the City of Plano and had to obtain a Private Club Permit from the Texas Alcoholic Beverage Commission (TABC). The election gave restaurants another option to serve alcoholic beverages by acquiring a Mixed Beverage Permit (with a Food and Beverage Certificate) directly from TABC. With the Mixed Beverage Permit, an SUP is no longer necessary.

Papayas Mexican Restaurant operates with a Mixed Beverage Permit from TABC. Therefore, for "housekeeping" purposes, staff recommends that the Private Club SUP be rescinded since the SUP is not necessary for the restaurant to sell alcoholic beverages. Staff has not received a response from the property owner as to whether or not they concur with the removal of the SUP.

**RECOMMENDATION:**

Recommended for approval as submitted.

**ORDINANCE NO. \_\_\_\_\_**  
**(Zoning Case 2008-77)**

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING IN ITS ENTIRETY ORDINANCE NO. 95-7-31; THEREBY RESCINDING SPECIFIC USE PERMIT NO. 279 FOR THE ADDITIONAL USE OF PRIVATE CLUB ON 0.1± ACRE OF LAND OUT OF THE M.C. & S. OWENS SURVEY, ABSTRACT NO. 672, LOCATED 130± FEET EAST OF INDEPENDENCE PARKWAY AND 485± FEET NORTH OF PARKER ROAD IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, AND AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, TO REFLECT SUCH ACTION; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

**WHEREAS**, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 8th day of December, 2008, for the purpose of considering rescinding Specific Use Permit No. 279 for the additional use of Private Club on 0.1± acre of land out of the M.C. & S. Owens Survey, Abstract No. 672, located 130± feet east of Independence Parkway and 485± feet north of Parker Road in the City of Plano, Collin County, Texas; and

**WHEREAS**, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

**WHEREAS**, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 8th day of December, 2008; and

**WHEREAS**, the City Council is of the opinion and finds that the rescinding of Specific Use Permit No. 279 for the additional use of Private Club would not be detrimental or injurious to the public health, safety and general welfare, or otherwise offensive to the neighborhood; and

**WHEREAS**, the City Council is of the opinion and finds that such change will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

**IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** Ordinance No. 95-7-31 duly passed and approved by the City Council of the City of Plano, Texas, on July 24, 1995, granting Specific Use Permit No. 279 for the additional use of Private Club on 0.1± acre of land out of the M.C. & S. Owens Survey, Abstract No. 672, located 130± feet east of Independence Parkway and 485± feet north of Parker Road in the City of Plano, Collin County, Texas, presently zoned Retail, more fully described on Exhibit "A", attached hereto, is hereby repealed in its entirety. Consequently, Specific Use Permit No. 279 is hereby rescinded.

**Section II.** It is hereby directed that the Comprehensive Zoning Ordinance, No. 2006-4-24, as heretofore amended, be revised and amended (which is retained in electronic record format), to reflect the action and zoning classification established by this Ordinance.

**Section III.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section IV.** The repeal of any ordinance or part of ordinances affectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section V.** Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

**Section VII.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED AND APPROVED THIS THE 8TH DAY OF DECEMBER, 2008.**

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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

EXHIBIT "A"  
LEGAL DESCRIPTION

BEING a part of Lot 1R, Block 1 of the replat of Plano Crossroads Addition, an addition to the City of Plano, Collin County, Texas, as per map or plat thereof recorded in Cabinet "H" Sheet 620 of the Map Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING at the northwest corner of said Lot 1R, a cross cut in concrete found for corner and lying in the east line of Independence Parkway;

THENCE South,  $00^{\circ} 36' 51''$  West along said east line, a distance of 115.75 feet to the intersection of same with the westward prolongation of the south line of an existing one story brick building.

THENCE North,  $89^{\circ} 54' 38''$  East passing the southwest corner of said building at a distance of 62.90 feet and continuing in all, a distance of 122.74 feet to the POINT OF BEGINNING.

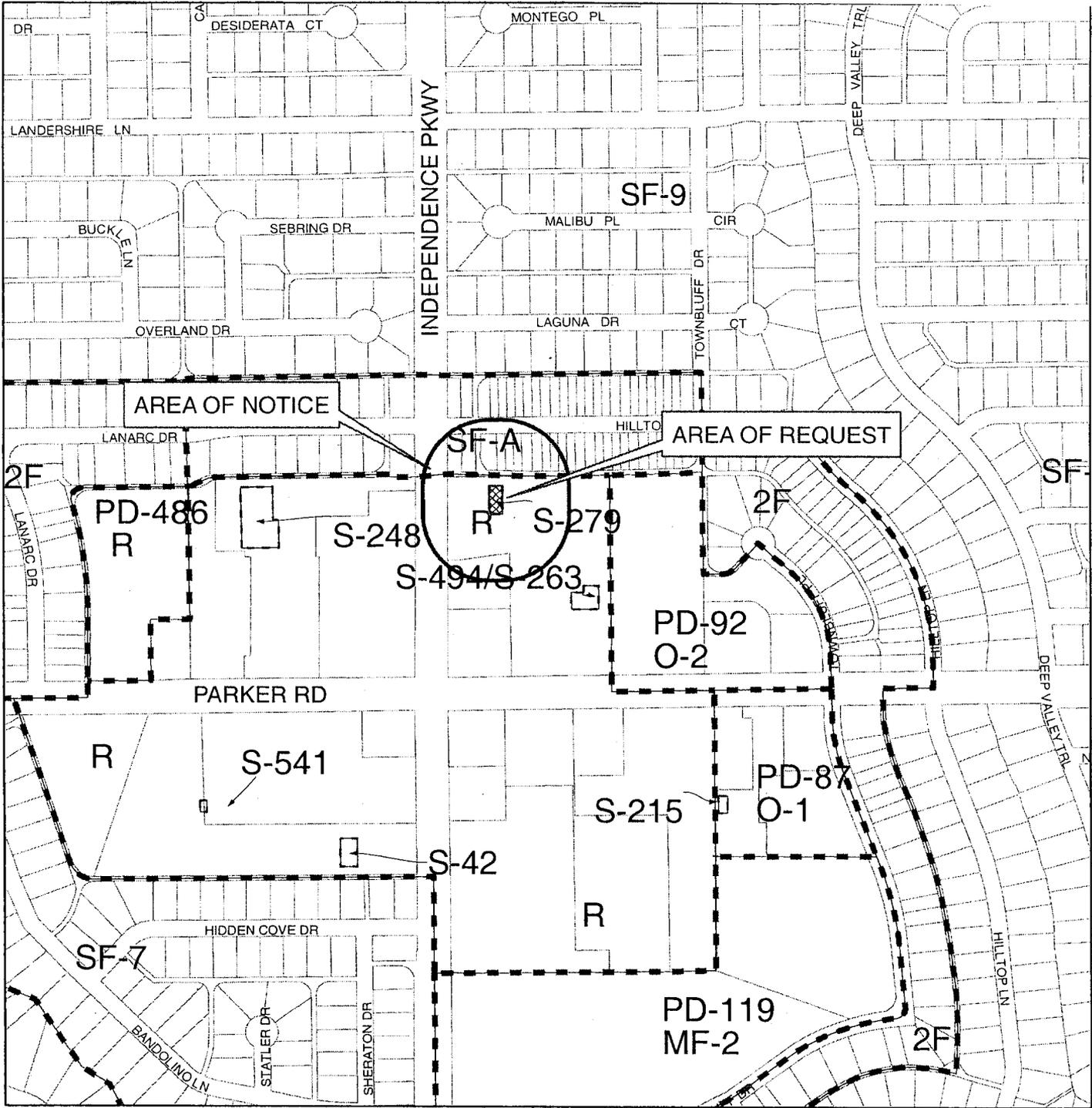
THENCE North  $89^{\circ} 54' 38''$  East along the south line of said building, a distance of 41.33 feet;

THENCE North,  $00^{\circ} 05' 22''$  West, a distance of 81.10 feet to the north line of said building;

THENCE South  $89^{\circ} 54' 38''$  West along said north line, a distance of 41.33 feet;

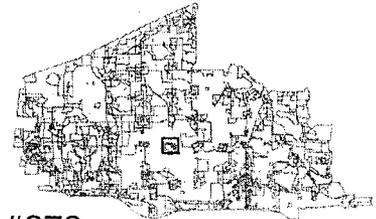
THENCE South,  $00^{\circ} 05' 22''$  East, a distance of 81.10 feet to the POINT OF BEGINNING and CONTAINING 3,351 square feet (0.1± acre) of land.

5c-6



Zoning Case #: 2008-77

Existing Zoning: RETAIL w/SPECIFIC USE PERMIT #279



○ 200' Notification Buffer

5c-7

**DATE:** November 18, 2008  
**TO:** Honorable Mayor & City Council  
**FROM:** James Duggan, Chairman, Planning & Zoning Commission  
**SUBJECT:** Results of Planning & Zoning Commission Meeting of November 17, 2008

**AGENDA ITEM NO. 10D - PUBLIC HEARING  
ZONING CASE 2008-78  
APPLICANT: CITY OF PLANO**

Request to rescind Specific Use Permit #282 for Private Club on 0.1± acre located 90± feet west of Preston Road and 370± feet north of Plano Parkway. Zoned Planned Development-457-Retail/General Office.

**APPROVED:** 8-0 **DENIED:** \_\_\_\_\_ **TABLED:** \_\_\_\_\_  
**LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0  
**LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0  
**PETITION(s) RECEIVED:** N/A **# OF SIGNATURES:** N/A

**STIPULATIONS:**

Recommended for approval as submitted.

TF/et

xc: Richard Matkin, PISD  
Cliff Cormann, Assistant Building Official

CITY OF PLANO  
PLANNING & ZONING COMMISSION

November 17, 2008

**Agenda Item No. 10D**

**Public Hearing:** Zoning Case 2008-78

**Applicant:** City of Plano

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**DESCRIPTION:**

Request to rescind Specific Use Permit #282 for Private Club on 0.1± acre located 90± feet west of Preston Road and 370± feet north of Plano Parkway. Zoned Planned Development-457-Retail/General Office.

**REMARKS:**

This is a city-initiated zoning request to rescind Specific Use Permit (SUP) #282 for Private Club. The purpose and intent of an SUP is to authorize and regulate a use not normally permitted in a district which could be of benefit in a particular case to the general welfare, provided adequate development standards and safeguards are established for such use during the review of an SUP application.

Prior to the May 2005 election, a restaurant in Plano desiring to serve alcoholic beverages had to obtain SUP approval for a Private Club from the City of Plano and had to obtain a Private Club Permit from the Texas Alcoholic Beverage Commission (TABC). The election gave restaurants another option to serve alcoholic beverages by acquiring a Mixed Beverage Permit (with a Food and Beverage Certificate) directly from TABC. With the Mixed Beverage Permit, an SUP is no longer necessary.

Luna De Noche - Willowbend operates with a Mixed Beverage Permit from TABC. Therefore, for "housekeeping" purposes, staff recommends that the Private Club SUP be rescinded since the SUP is not necessary for the restaurant to sell alcoholic beverages. Staff has not received a response from the property owner as to whether or not they concur with the removal of the SUP.

**RECOMMENDATION:**

Recommended for approval as submitted.

**ORDINANCE NO. \_\_\_\_\_**  
**(Zoning Case 2008-78)**

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING IN ITS ENTIRETY ORDINANCE NO. (95-3-36); THEREBY RESCINDING SPECIFIC USE PERMIT NO. 282 FOR THE ADDITIONAL USE OF PRIVATE CLUB ON 0.1± ACRE OF LAND OUT OF THE LEWIS WETSEL SURVEY, ABSTRACT NO. 971, LOCATED 90± FEET WEST OF PRESTON ROAD AND 370± FEET NORTH OF PLANO PARKWAY, IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, AND AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, TO REFLECT SUCH ACTION; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

**WHEREAS**, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 8th day of December, 2008, for the purpose of considering rescinding Specific Use Permit No. 282 for the additional use of Private Club on 0.1± acre of land out of the Lewis Wetzel Survey, Abstract No. 971, located 90± feet west of Preston Road and 370± feet north of Plano Parkway in the City of Plano, Collin County, Texas; and

**WHEREAS**, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

**WHEREAS**, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 8th day of December, 2008; and

**WHEREAS**, the City Council is of the opinion and finds that the rescinding of Specific Use Permit No. 282 for the additional use of Private Club would not be detrimental or injurious to the public health, safety and general welfare, or otherwise offensive to the neighborhood; and

**WHEREAS**, the City Council is of the opinion and finds that such change will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

**IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** Ordinance No. 95-3-36 duly passed and approved by the City Council of the City of Plano, Texas, on March 27, 1995, granting Specific Use Permit No. 282 for the additional use of Private Club on 0.1± acre of land out of the Lewis Wetsel Survey, Abstract No. 971, located 90± feet west of Preston Road and 370± feet north of Plano Parkway in the City of Plano, Collin County, Texas, presently zoned Planned Development-457-Retail/General Office, more fully described on Exhibit "A", attached hereto, is hereby repealed in its entirety. Consequently, Specific Use Permit No. 282 is hereby rescinded.

**Section II.** It is hereby directed that the Comprehensive Zoning Ordinance, No. 2006-4-24, as heretofore amended, be revised and amended (which is retained in electronic record format), to reflect the action and zoning classification established by this Ordinance.

**Section III.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section IV.** The repeal of any ordinance or part of ordinances affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section V.** Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

**Section VII.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED AND APPROVED THIS THE 8TH DAY OF DECEMBER, 2008.**

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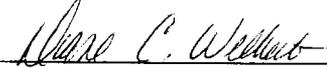
Pat Evans, MAYOR

ATTEST:

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Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



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Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"  
LEGAL DESCRIPTION

BEING a tract out of the Lewis Wetsel Survey, Abstract No. 971 in the City of Plano, Collin County, Texas and being a part of Lot 1R, Block 1, Preston Parkway Center, an Addition to the City of Plano, Texas according to the plat thereof recorded in Cabinet I, Slide 380 of the Map Records of Collin County, Texas and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod found in the west right-of-way of Preston Road (State Highway 289, 150-foot right-of-way at this point) for the southeast corner of the before mentioned addition;

THENCE with the south line of said addition, North 88° 54' 59" West, a distance of 95.31 feet;

THENCE North 01° 05' 01" East, a distance of 8.36 feet to the POINT OF BEGINNING;

THENCE the following courses and distances to wit:

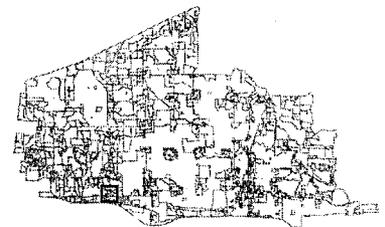
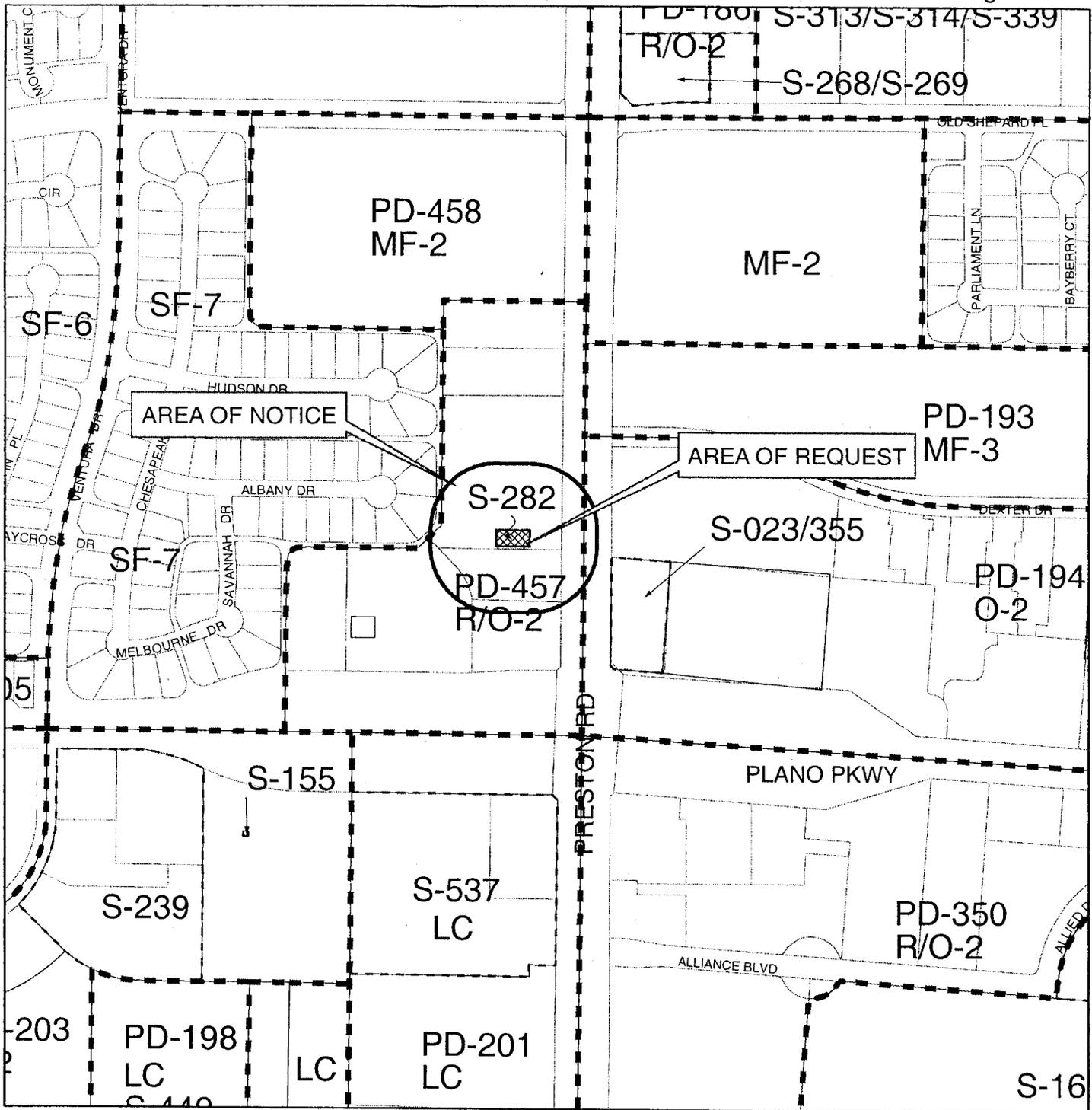
North, 88° 54' 59" West, a distance of 100.02 feet to a point for corner;

North, 01° 05' 01" East, a distance of 50.00 feet to a point for corner;

South, 88° 54' 59" East, a distance of 100.02 feet to a point for corner;

South, 01° 05' 01" West, a distance of 50.00 feet to the POINT OF BEGINNING and CONTAINING 5,001 square feet (0.1±acre) of land.

5d-6



Zoning Case #: 2008-78

Existing Zoning: PLANNED DEVELOPMENT-457-RETAIL/GENERAL OFFICE  
w/SPECIFIC USE PERMIT #282/  
PRESTON ROAD OVERLAY DISTRICT



○ 200' Notification Buffer

5d-7

**DATE:** November 18, 2008  
**TO:** Honorable Mayor & City Council  
**FROM:** James Duggan, Chairman, Planning & Zoning Commission  
**SUBJECT:** Results of Planning & Zoning Commission Meeting of November 17, 2008

**AGENDA ITEM NO. 10E - PUBLIC HEARING  
ZONING CASE 2008-79  
APPLICANT: CITY OF PLANO**

Request to rescind Specific Use Permit #360 for Private Club on 3.8± acres located on the east side of Dallas North Tollway, 470± feet north of Democracy Drive. Zoned Commercial Employment.

**APPROVED:** 8-0 **DENIED:** \_\_\_\_\_ **TABLED:** \_\_\_\_\_

**LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0

**LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0

**PETITION(s) RECEIVED:** N/A **# OF SIGNATURES:** N/A

**STIPULATIONS:**

Recommended for approval as submitted.

**FOR CITY COUNCIL MEETING OF:** December 8, 2008 (To view the agenda for this meeting, see [www.planotx.org](http://www.planotx.org))

**PUBLIC HEARING - ORDINANCE**

BM/et

xc: Richard Matkin, PISD  
Cliff Cormann, Assistant Building Official

CITY OF PLANO  
PLANNING & ZONING COMMISSION

November 17, 2008

**Agenda Item No. 10E**

**Public Hearing:** Zoning Case 2008-79

**Applicant:** City of Plano

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**DESCRIPTION:**

Request to rescind Specific Use Permit #360 for Private Club on 3.8± acres located on the east side of Dallas North Tollway, 470± feet north of Democracy Drive. Zoned Commercial Employment.

**REMARKS:**

This is a city-initiated zoning request to rescind Specific Use Permit (SUP) #360 for Private Club. The purpose and intent of an SUP is to authorize and regulate a use not normally permitted in a district which could be of benefit in a particular case to the general welfare, provided adequate development standards and safeguards are established for such use during the review of an SUP application.

Prior to the May 2005 election, a restaurant in Plano desiring to serve alcoholic beverages had to obtain SUP approval for Private Club from the City of Plano and had to obtain a Private Club Permit from the Texas Alcoholic Beverage Commission (TABC). The election gave restaurants another option to serve alcoholic beverages by acquiring a Mixed Beverage Permit (with a Food and Beverage Certificate) directly from TABC. With the Mixed Beverage Permit, an SUP is no longer necessary.

Hospitality International, Inc. operates with a Mixed Beverage Permit from TABC. Therefore, for "housekeeping" purposes, staff recommends that the Private Club SUP be rescinded, since the SUP is not necessary for the restaurant to sell alcoholic beverages. Staff has not received any responses from the property owner as to whether or not they concur with the removal of the SUP.

**RECOMMENDATION:**

Recommended for approval as submitted.

**ORDINANCE NO. \_\_\_\_\_**  
**(Zoning Case 2008-79)**

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING IN ITS ENTIRETY ORDINANCE NO. 98-8-39; THEREBY RESCINDING SPECIFIC USE PERMIT NO. 360 FOR THE ADDITIONAL USE OF PRIVATE CLUB ON 3.8± ACRES OF LAND OUT OF THE MARIA C. VELA SURVEY, ABSTRACT NO. 935, LOCATED ON THE EAST SIDE OF DALLAS NORTH TOLLWAY, 470± FEET NORTH OF DEMOCRACY DRIVE IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, AND AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, TO REFLECT SUCH ACTION; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

**WHEREAS**, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 8th day of December, 2008, for the purpose of considering rescinding Specific Use Permit No. 360 for the additional use of Private Club on 3.8± acres of land out of the Maria C. Vela Survey, Abstract No. 935, located on the east side of Dallas North Tollway, 470± feet north of Democracy Drive in the City of Plano, Collin County, Texas; and

**WHEREAS**, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

**WHEREAS**, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 8th day of December, 2008; and

**WHEREAS**, the City Council is of the opinion and finds that the rescinding of Specific Use Permit No. 360 for the additional use of Private Club would not be detrimental or injurious to the public health, safety and general welfare, or otherwise offensive to the neighborhood; and

**WHEREAS**, the City Council is of the opinion and finds that such change will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

**IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** Ordinance No. 98-8-39 duly passed and approved by the City Council of the City of Plano, Texas, on August 24, 1998, granting Specific Use Permit No. 360 for the additional use of Private Club on 3.8± acres of land out of the Maria C. Vela Survey, Abstract No. 935, located on the east side of Dallas North Tollway, 470± feet north of Democracy Drive in the City of Plano, Collin County, Texas, presently zoned Commercial Employment, more fully described on Exhibit "A", attached hereto, is hereby repealed in its entirety. Consequently, Specific Use Permit No. 360 is hereby rescinded.

**Section II.** It is hereby directed that the Comprehensive Zoning Ordinance, No. 2006-4-24, as heretofore amended, be revised and amended (which is retained in electronic record format), to reflect the action and zoning classification established by this Ordinance.

**Section III.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section IV.** The repeal of any ordinance or part of ordinances affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section V.** Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

**Section VII.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED AND APPROVED THIS THE 8TH DAY OF DECEMBER, 2008.**

\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



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

EXHIBIT "A"  
LEGAL DESCRIPTION

BEING a tract of land situated in the Maria C. Vela Survey, Abstract No. 935, in the City of Plano, Collin County, Texas and being a portion of a called 1,094.07 acre tract as conveyed to Quorum Development Corporation and evidenced in a deed recorded in Volume 1171 at Page 174 of the Land Records of Collin County, Texas and being more particularly described by metes and bounds as follows (bearings based on the EDS control monumentation);

COMMENCING at the intersection of the south right-of-way line of the Tennyson Parkway (a variable width right-of-way) with the east right-of-way line of the Dallas North Tollway (a 300 foot wide right-of-way);

THENCE South  $00^{\circ} 10' 35''$  East, along the east right-of-way line of said Dallas North Tollway, a distance of 575.12 feet to a capped 5/8-inch iron rod stamped "KHA" set for the POINT OF BEGINNING of the herein described tract;

THENCE North  $89^{\circ} 54' 38''$  East, departing the east right-of-way line of said Dallas North Tollway, a distance of 434.52 feet to a capped 5/8-inch iron rod stamped "KHA" set for corner;

THENCE South  $73^{\circ} 15' 04''$  East, a distance of 66.89 feet to a capped 5/8-inch iron rod stamped "KHA" set for corner;

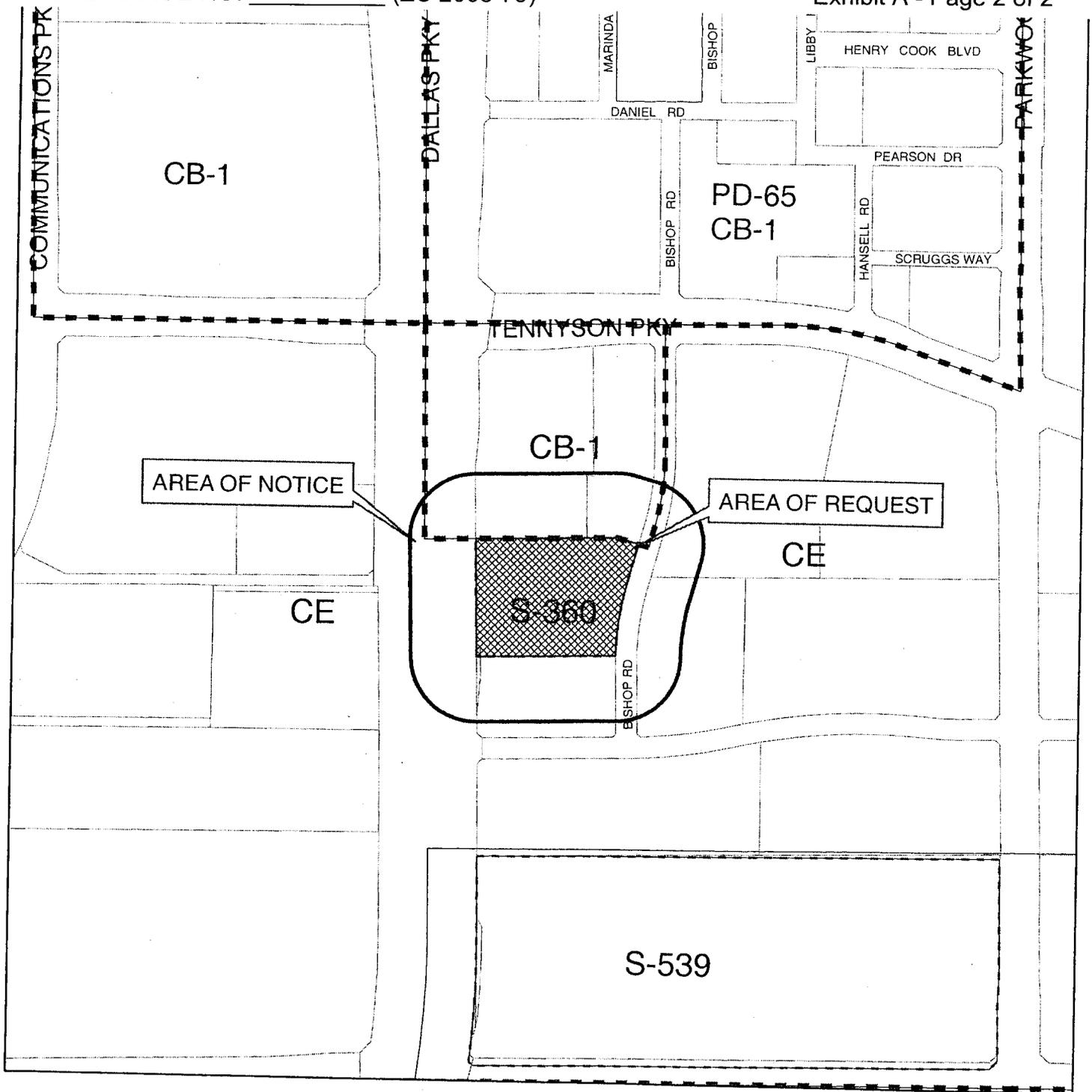
THENCE South  $16^{\circ} 44' 56''$  West, a distance of 122.30 feet to a capped 5/8-inch iron rod stamped "KHA" set for the point of curvature of a curve to the left;

THENCE in a southerly direction, along the arc of said curve to the left, having a central angle of  $15^{\circ} 10' 56''$ , a radius of 865.00 feet, a chord bearing of South  $09^{\circ} 09' 28''$  West, a chord distance of 228.54 feet and an arc length of 229.21 feet to a capped 5/8-inch iron rod stamped "KHA" set for the end of said curve;

THENCE South,  $89^{\circ} 54' 38''$  West, a distance of 425.84 feet to a capped 5/8-inch iron rod stamped "KHA" set for corner on the east right-of-way line of said Dallas North Tollway;

THENCE North  $00^{\circ} 10' 35''$  West, along the east right-of-way line of said Dallas North Tollway, a distance of 362.00 feet to the POINT OF BEGINNING and CONTAINING 3.774 acres or 164,390 square feet of land.

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Zoning Case #: 2008-79

Existing Zoning: COMMERCIAL EMPLOYMENT w/SPECIFIC USE PERMIT #360/  
 DALLAS NORTH TOLLWAY OVERLAY DISTRICT ○ 200' Notification Buffer

