

PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON DECEMBER 22, 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. 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.

- III. Personnel Council 10 min.
 - A. Reappointments/Appointments
 - Arts of Collin County Commission Board of Directors
 - Board of Adjustment
 - Building Standards Commission

 - B. City Manager

PRELIMINARY OPEN MEETING

- | | | | |
|-------|--|----------------|---------|
| I. | Consideration and action resulting from Executive Session discussion:
Personnel Reappointments/Appointments
Arts of Collin County Commission Board of Directors
Board of Adjustment
Building Standards Commission | Council | 5 min. |
| II. | Personnel Appointments
Tax Increment Financing Reinvestment Zone No. 1
Tax Increment Financing Reinvestment Zone No. 2 | Council | 10 min. |
| III. | Rail North Texas | Michael Morris | 15 min. |
| IV. | Mobility Report | Neal | 10 min. |
| V. | Comprehensive Monthly Financial Report | Tacke | 10 min. |
| VI. | Tax Exemption for Charitable Organizations | Rhodes-Whitley | 10 min. |
| VII. | Discussion and Direction regarding forwarding review of the City of Plano Sign Ordinance to the Planning and Zoning Commission with consideration of, but not limited to the following: banners; canopy, promotional, awning and monument signage; and building signage/project names. | Mayor | 5 min. |
| VIII. | Council items for discussion/action on future agendas | Council | 5 min. |
| IX. | 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 22, 2008

CALL TO ORDER: 7:00 p.m.

INVOCATION:

PLEDGE OF ALLEGIANCE:

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>OATHS OF OFFICE</u></p> <p><u>Board of Adjustment</u> Randy Hart Salvator J. La Mastra IV Henry C. Pauly Michael Pirek William G.Suttle Donnie Swango</p> <p><u>Building Standards Commission</u> Jim C. Kesterson Ann L. Nurre Richard W. Prusha</p> <p><u>CERTIFICATES OF APPRECIATION</u></p> <p><u>Board of Adjustment</u> Chris Polito, Chair Roger K. Bolin</p> <p><u>COMMENTS OF PUBLIC INTEREST</u></p> <p><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>CONSENT AGENDA</u></p> <p><u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p>(a) <u>Approval of Minutes</u> December 8, 2008</p> <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p> <p>(b) Bid No. 2008-229-C for Top Soil and Sand for Compost Blends. Line Item 1 (Top Soil) to Earth Haulers, Inc. in the estimated amount of \$44,000 and Line Item 2 (Sand) to David Copeland Sand & Gravel, Inc. in the estimated amount of \$75,000 for a total estimated contract amount of \$119,000. The term of this contract is for one year with three City optional one year renewals.</p> <p>(c) CSP No. 2008-183-B for Class IV Armored Response Vehicle in an amount not to exceed \$152,350 to Lenco Armored Vehicles. This vehicle is purchased under the terms of the 2007 LETPP (Homeland Security) Grant.</p> <p>(d) Bid No. 2009-21-B for the Independence Parkway Paving Improvements – McDermott Road to State Highway 121 to Tiseo Paving Company in the amount of \$1,199,513 for the Alternate 2 Bid for low nitrous oxide dry kiln cement. The project consists of widening Independence Parkway from 4 lanes to 6 lanes from McDermott Road to State Highway 121.</p> <p>(e) Bid No. 2009-26-B for the Mapleshade Lift Station to Crescent Constructors, Inc., in the amount of \$2,375,029. This project consists of the construction of a 7.5 million gallon a day lift station south of Mapleshade Lane between Coit Road and Ohio Drive.</p> <p>Purchase from an Existing Contract</p> <p>(f) To approve the purchase of GIS Maintenance Expenses as designated in the amount of \$57,222 from ESRI through a State of Texas Department of Information Resources (DIR) contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-492)</p> <p>(g) To approve an expenditure for a Service Agreement between Motorola and the City of Plano in the amount of \$171,710 through an existing contract with the Department of Information Resources, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-477)</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(h)	<p>To authorize an expenditure in the amount of \$883,302 with Software House International (SHI) for a Microsoft Enterprise Agreement renewal and true-up for our server and desktop licenses through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (SHI DIR Contract No. DIR-SDD-198)</p>	
	<p>Approval of Change Order</p>	
(i)	<p>To McMahon Contracting, L.P., increasing the contract by \$159,982 for the 2007-2008 Arterial Concrete Pavement Rehabilitation Project, Parker Road, Pleasant Valley and Country Place Drive, Project No. 5867, Change Order No. 1, Bid No. 2008-156-B. This is for additional concrete street pavement repairs on Parker Road between Coit Road and Preston Road.</p>	
(j)	<p>To Birkhoff, Hendricks & Conway, L.L.P., increasing the Professional Services contract by \$44,500 for the Jupiter Road Elevated Tank Repaint. Contract Modification No. 1 is for additional engineering and inspection services.</p>	
(k)	<p>To Jim Bowman Construction Co., L.P., increasing the contract by \$72,993 for Intersection Improvements 2004, Change Order No. 1. This includes work on all three project locations: Spring Creek Parkway at Lookout Trail, Commerce Drive at Plano Parkway and West Park Boulevard at Ohio Drive. This is for additional work related to replacement of deteriorated paving adjacent to the project areas, also included are additional barrier free ramps and sidewalk replacement determined to be necessary to satisfy handicapped requirements.</p>	
	<p><u>Modification to an Existing Contract</u></p>	
(l)	<p>To approve the terms and conditions of a third modification to an existing contract by and between HD Supply Waterworks, LTD and the City of Plano executed on March 25, 2008 to allow the purchase of additional parts and services and to increase the original contract amount by up to \$700,000 or 3.74% for these purchases; authorizing its execution by the City Manager; and providing an effective date.</p>	
	<p><u>Adoption of Ordinances</u></p>	
(m)	<p>To transfer the sum of \$1,715,906 from the Water & Sewer Fund Unappropriated Fund Balance to the Water & Sewer Fund Appropriation for Fiscal Year 2008-09 for the purpose of providing additional funding for increased costs associated with the Fixed Network Meter Project; amending the budget of the City and Ordinance 2008-9-15, Section 1, Item "L" to reflect the actions taken herein; declaring this action to be a case of public necessity; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(n)	To amend Article V, Chapter 12, Motor Vehicles and Traffic of the Code of Ordinances of the City of Plano by adding Section 12-114.1, to Article V, Chapter 12, Motor Vehicles and Traffic of the Code of Ordinances of the City of Plano to prohibit stopping, standing, or parking of a vehicle with a gross vehicle weight rating of 10,000 pounds or more on Split Trail Road, along both sides from its intersection with East Spring Creek Parkway south to its intersection with K Avenue, and Wedgewood Drive, along both sides from its intersection with Dallas Parkway west to its intersection with Communications Parkway, within the city limits of the City of Plano; providing a repealing clause; a severability clause; a savings clause; a penalty clause; a publication clause; and an effective date.	
(o)	To adopt and enact Supplement Number 84 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date.	
	<u>Adoption of Resolutions</u>	
(p)	To approve and authorize the refunds of property tax overpayments; and providing an effective date.	
(q)	To repeal Resolution No. 2008-5-26(R) and approve the terms and conditions of an Agreement by and between the City of Plano, Texas, and The Shops at Legacy (North) LLC, a Texas limited liability company, providing for a Real Property Improvement Tax Abatement, and authorizing its execution by the City Manager; and providing an effective date.	
(r)	To authorize the investment of public funds in the TexasTERM or TexasDAILY public funds reinvestment pool; designating City representatives to transmit funds for investment in the pool; and providing an effective date.	
(s)	To approve and adopt the amended and restated City of Plano Supplemental Savings Plan; authorizing its execution by the City Manager; delegating to the City Manager the authority to adopt future plan amendments where such amendments do not materially increase the cost of the plan to the City; and providing an effective date.	
(t)	To approve the terms and conditions of an Amendment to Development Agreement between the City of Plano, Texas and Pinnacle AMS Development Company, LLC for development of Eastside Station – Plano; authorizing its execution by the City Manager; and providing an effective date.	
(u)	To approve the terms and conditions of an Assignment of Development Agreement by and between Pinnacle AMS Development Company, LLC, Southern/Pinnacle AMS Development Company, LLC and the City of Plano, Texas for development of Eastside Station – Plano; authorizing its execution by the City Manager; and providing an effective date.	
(v)	To approve a Licensing Agreement by and between the City of Plano and the North Central Texas Council of Governments; providing terms and conditions for the purchase of digital aerial photography in the amount of \$8,651; authorizing execution of the License Agreement by the City Manager; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(w)	<p>To repeal Resolution 2005-10-24(R); adopting new criteria and procedures for the Safe Streets Program (SSP), to provide for the Planning & Zoning Commission to assume the responsibilities of the Transportation Advisory Committee.</p> <p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	<p>A Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Raising Cane's USA LLC, a Louisiana limited liability company; authorizing its execution by the City Manager; and providing an effective date.</p>	
(2)	<p>A Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and RomaCorp, Inc., (dba Tony Roma's), a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date.</p>	
(3)	<p>A Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and MarketNet, Inc., a Texas corporation; authorizing its execution by the City Manager; and providing an effective date.</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	



Pat Evans
Mayor

Jean Callison
Mayor Pro Tem

Harry LaRosiliere
Deputy Mayor Pro Tem

Pat Miner
Place 1

Scott Johnson
Place 2

Mabrie Jackson
Place 3

Sally Magnuson
Place 4

Lee Dunlap
Place 8

Thomas H. Muehlenbeck
City Manager

December 18, 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. Under Item II, potential economic development prospects may be discussed. Item III consists of three personnel appointments and an opportunity for the City Manager to discuss additional personnel issues.

The Preliminary Open Meeting will begin with consideration of the three personnel appointments discussed in Executive Session. Two additional personnel appointments will be considered under Item II. Michael Morris will then discuss Rail North Texas. Lloyd Neal will present the Mobility Report and Denise Tacke will present the Comprehensive Monthly Financial Report. Karen Rhodes-Whitely will present information relating to tax exemption for charitable organizations. In conclusion, the Mayor will bring forth discussion and direction regarding forwarding a review of the City of Plano sign ordinance to the Planning and Zoning Commission.

I look forward to seeing you Monday.

Sincerely yours,

Thomas H. Muehlenbeck

MEMO

DATE: December 18, 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 22, 2008 Council Meeting.

<u>Executive Session</u>	<u>Worksession Meeting</u>
<u>Appointments:</u> Arts of Collin County Commission Board of Directors Board of Adjustment Building Standards Commission	<u>Appointments:</u> Tax Increment Financing Reinvestment Zone No. 1 – Chair Tax Increment Financing Reinvestment Zone No. 2 - Chair

**RESOLUTION APPROVING A LEGISLATIVE POSITION ON RAIL NORTH TEXAS:
A PRIMARY RAIL LEGISLATIVE PROGRAM WITH SUPPLEMENTAL ROADWAY
IMPROVEMENTS
(Updated R08-11)**

WHEREAS, the North Central Texas Council of Governments is designated as the Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area by the Governor of Texas in accordance with federal law; and,

WHEREAS, the Regional Transportation Council, comprised primarily of local elected officials, is the regional transportation policy body associated with the North Central Texas Council of Governments, and has been and continues to be the regional forum for cooperative decisions; and,

WHEREAS, the Regional Transportation Council has advocated for additional transportation funding and flexibility for over 10 years, with a special focus on identifying additional funding to construct and operate a seamless regional rail system for the past 5 years; and,

WHEREAS, the Rail North Texas effort has been a bottom-up process to include local elected officials, business leaders, the public, and State legislators and has resulted in a specific legislative proposal.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

Section 1. The Regional Transportation Council supports seeking legislative authority to create a Transportation Funding Area (TFA) for the purpose of levying taxes or fees in order to generate revenue to fund rail and supplemental roadway improvements.

Section 2. The Regional Transportation Council continues to support the principles contained in the three transportation authorities' "Joint Recommendation for Regional Rail in North Central Texas." This rail initiative will be constructed by existing transportation providers.

Section 3. The Regional Transportation Council does not support the creation of any new transportation authorities or transportation providers within the Dallas-Fort Worth region.

Section 4. The Regional Transportation Council supports implementation of Rail North Texas in the Dallas-Fort Worth region consistent with:

- The “Policy Summary” in Attachment 1,
- The “Questions and Answers About Rail North Texas” in Attachment 2,
- What the Rail North Texas initiative is not as contained in Attachment 3,
- The “Project Selection, Funding, and Implementation Process” in Attachment 4, and
- The specific proposal outlined in Attachment 5.

Section 5. The Regional Transportation Council wishes to implement a TFA for the sole purpose of implementing rail and supplemental roadway improvements.

Section 6. This resolution will be transmitted to local governments, partner organizations, and other interested parties with a request to support transportation as the region’s highest legislative priority for the 81st Texas Legislature and a request to endorse this resolution. In addition, each entity is requested to transmit its position of support on these primary legislative proposals to the legislative delegation and NCTCOG.

Section 7. This resolution will be transmitted to the Texas legislative delegation.

Section 8. The NCTCOG Transportation Director is authorized to communicate these positions on behalf of the Regional Transportation Council.

Section 9. This resolution shall be in effect immediately upon its adoption.

Linda Koop, Chair
Regional Transportation Council
Councilmember, City of Dallas

I hereby certify that this resolution was adopted by the Regional Transportation Council of the North Central Texas Council of Governments for the Dallas-Fort Worth Metropolitan Area on December 11, 2008.

Ron Natinsky, Secretary
Regional Transportation Council
Councilmember, City of Dallas

POLICY SUMMARY

- Primary rail with supplemental roadway
- Built by existing transportation authorities and transportation providers
- Limited Transportation Funding Area (TFA)
 - Largely passenger rail
 - Funding only, non-construction
 - No fourth authority
 - No bonding authority needed
 - Coordination of regional projects
- County elections determined by local elected officials and citizen vote
- Legislators: no sales tax, create menu

POLICY SUMMARY

- Equity: creates revenue districts for service areas, money stays in county generated
- Accountability rests with TFA and counties
 - includes public hearing requirements
 - RTC Transportation Implementers Subcommittee
- Probably: one uniform rate for 12 counties and supplemental county revenues
- Some revenues expire
- Decisions on projects and taxes/fees made by local elected officials
- Counties can opt out
- Transportation providers issue bonds
- Projects fixed with voter approval – no reallocation

Questions and Answers About Rail North Texas

If the initiative is called Rail North Texas, why is there not a greater focus on rail in the bill outline?

The bill outline was developed to be used statewide and other regions may want to focus on roadway improvements. The RTC may wish to amend the bill outline to bracket a section specific to the Dallas-Fort Worth region which states that the primary focus will be to design, build, finance, operate, and maintain passenger rail. This has long been the focus of Rail North Texas and will continue to be the focus.

Who is accountable under this model?

This is the strength of this approach. Three groups, working as partners, are all accountable. First, under this model, the Metropolitan Planning Organization policy body – the Regional Transportation Council in the Dallas-Fort Worth region – is responsible for making sure that projects stay on schedule. In DFW, the North Central Texas Council of Governments' Executive Board will hold the revenues, enter into interlocal agreements with implementing agencies, and disburse funds to local governments and transportation providers. As recommended by the three transportation authorities, the RTC will form a Transportation Implementers Subcommittee consisting of the three transportation authorities, TxDOT, and NTTA. This subcommittee will meet regularly to discuss project implementation, coordination, and funding issues. Second, subarea roundtables through public involvement will select the projects. Third, transportation authorities will extend already proven services to construct the projects.

What if I have a problem with the taxes and fees and don't have a representative on the RTC or Executive Board? Is there a way to address those bodies?

No projects can be built, or taxes and/or fees imposed, that voters have not approved. Internet-based reports will keep citizens up to date. The Transportation Funding Area (TFA) will convene a meeting separate from the normal MPO policy board meeting to hear from citizens or local government on any concerns. The Regional Transportation Council has been planning and expediting projects for over 30 years.

How will projects be selected by the TFA?

- The TFA (the Regional Transportation Council in the Dallas-Fort Worth region) will issue a call for projects to transportation authorities, cities, counties, TxDOT, and NTTA.
- Existing transportation authorities will be primarily responsible to submit rail projects.
- All entities will submit project applications back to the TFA.
- TFA staff will evaluate projects based on whether they met basic criteria.
- Subarea roundtables will be convened in each county and will be made up of elected officials and technical staff for the county, each city, and transportation providers within that county. TFA staff will also participate.
- The subarea roundtables will determine the priority ranking of projects within each county and make a recommendation to the TFA.
- Passenger rail will be given priority. Warranted rail lines have already been established by subarea roundtable members. Rail lines which cross multiple counties will need special priority attention if supported in neighboring counties.
- The TFA will vote on the subarea roundtable recommendations.

This process is identical to recent projects selection efforts of the Regional Transportation Council.

How will taxes and fees be selected by the TFA?

- When subarea roundtables are determining the projects they wish to fund, they will consider the revenue needed plus contingency construction funding for each project.
- Based on the revenue needed, the subarea roundtables will select an appropriate mix of taxes and fees at agreed-upon rates for that county and make a recommendation to the TFA.
- The TFA may propose a TFA-wide tax or fee for discussion during the subarea roundtable process.
- Subarea roundtables will approve the taxes and fees.
- The TFA will vote on the subarea roundtable recommendation.

How will the election be held?

The TFA will prepare a ballot for each county within the TFA and submit it to the elections administration of each county to be placed on the ballot. Voters will be asked to approve both the proposed projects and proposed taxes and/or fees. In each county where the majority of voters approve the taxes and/or fees for the TFA, the taxes and/or fees will be imposed and projects constructed. Projects are fixed with the citizen elections and no changes can be made without voter approval.

Can a county opt out of Rail North Texas?

Yes, if the subarea roundtable determines not to select projects to participate in the Rail North Texas election within that county. If a regional revenue source was proposed by the TFA, the subarea roundtable may wish to consider using that revenue source as a local match for projects through the Regional Toll Revenue Funding Initiative or subsequent funding initiatives.

What if a county votes no?

Through the Rail North Texas initiative, local elected officials looked at city-by-city, county-by-county, or regional votes. The county geography was selected as the most appropriate, but it could result in one or more counties voting not to join the TFA. Where this impacts construction of a passenger rail line in more than one county, the TFA may have to postpone or delete the whole corridor due to lack of funding.

Will money raised in one county be used to subsidize projects in another county?

No. The TFA will keep all funds raised in each county in separate accounts. Monthly reports will be distributed to the NCTCOG Executive Board, the TFA, and the MPO policy board. An internet-based reporting system will be accessible to all cities, counties, and citizens of the region.

Will the taxes and fees ever go away?

Yes, for revenues raised for construction. There will be perpetual revenue needed to fund maintenance and operations of the passenger rail system, but this is a small part of the overall funding needed. Any taxes and/or fees for capital (building) expenses will expire when bonds are retired. If additional projects are identified by a subarea that will require additional revenue, a new vote called for by the TFA within that subarea to build other projects could extend taxes and fees if a majority of voters approve.

Who will issue bonds?

The entity carrying out construction will issue bonds for each project. That will be either a transportation authority, city, county, TxDOT, or NTTA. Authority to issue debt is included in the bill outline because other areas of the state may wish for the TFA to undertake this task, but Dallas-Fort Worth will be exempt from that authority.

Who will build the projects?

In the Dallas-Fort Worth region, the TFA will not build projects. Projects will be built by Dallas Area Rapid Transit, Denton County Transportation Authority, The T, Texas Department of Transportation, North Texas Tollway Authority, cities, or counties.

If the TFA isn't building projects, why should we create a TFA?

Many of the passenger rail projects that are needed in the Dallas-Fort Worth region cross county boundaries. There is a need to coordinate the planning, financing, and implementation across the entire region, so a regional entity is best equipped to do that. In addition, in the DFW region, there is an established process to hold and disburse funds within the RTC/NCTCOG process so each county won't have to develop a new accounting and agreement system to implement multiple projects with different entities.

How long will it take to see rail being constructed?

That depends on several factors such as current freight rail use of the rail lines, environmental reviews, transportation authority staff availability, number of projected riders, and many other items. Generally, the rail lines in the plan could be open to riders starting in 2011 through 2030. The timeline will be known to voters and included in the subarea elections.

Aren't the taxes and fees regressive, meaning harder to be paid by lower income citizens?

In some cases, yes, but each subarea will be able to select the best taxes or fees for its residents. The rail lines proposed will benefit lower income populations by providing a transportation option at a much more affordable rate than owning a vehicle. The region will push for the vehicle registration fee to be implemented based on the value of the vehicle.

Transit carries such a small percent of overall commuters, why even bother?

While that may be true if you look at the whole region, our current transit system does not serve the entire region. Looking at highway corridors where there is parallel transit service, about one lane of traffic in each direction is removed by transit service. This benefits the people using transit and the people using the roadway that see reduced congestion. Looking at the rail map, new rail lines are proposed next to extremely congested corridors such as I-35W in Fort Worth, US 75 in Collin County, US 287 in Tarrant and Johnson counties, and SH 121 in Tarrant County. Rail in the U.S. 75 corridor carries the equivalent of two freeway lanes in each direction.

Will TxDOT just take away traditional funding if our region starts funding transportation from local sources?

We will make sure that doesn't happen and there is precedent for protecting state and federal funds. When our region began building toll roads, we obtained assurances from the Texas Transportation Commission, the TxDOT policy body, for state and federal funds to never be reduced to Dallas-Fort Worth. Similarly, the Legislature has required continued federal and state funds even after private-sector concession payments on toll roads. The bill outline contains a similar provision for Rail North Texas that advocates will seek during the upcoming legislative session.

Why not just try to get more federal and state funds?

That is part of the comprehensive legislative package to improve transportation, and we are actively seeking an increase in those funds as well. However, local funds are far more flexible and have less bureaucratic red tape so projects can be built for less money and much more quickly. So, by raising local funds to stay in our region, we are saving taxpayer dollars in the long run. Local funds are not impacted by donor/donee losses and revenue diversions.

Transit won't work in the Dallas-Fort Worth region because it's too spread out, why are we trying to do this?

The success of light rail through Dallas Area Rapid Transit as well as the success of the Trinity Railway Express proves that rail transit will work here. DART, DCTA, and The T have seen skyrocketing increases in passengers this year as gasoline prices soared. Even as gas prices start coming down, the transportation authorities are keeping most of those new passengers. Other areas of the country with density similar to or even less than Dallas-Fort Worth also have successful transit systems (San Francisco, Minneapolis, St. Louis, etc.)

Shouldn't we be able to elect or vote out of office people raising our taxes?

Most of the members of the Regional Transportation Council are elected officials and each city is represented by a member of the RTC. Alternatively, the boards of directors of the current transportation authorities – with authority to impose a sales tax – are not elected positions, in fact the members are not elected officials at all. Every person registered to vote will have the opportunity to vote for or against the taxes for the TFA. These taxes will be for specific projects that can not be changed after the election. Elected officials (through the subarea roundtables) and citizens (through the election) will control the taxes and fees for selected projects.

Is this adding another level of government?

No. It will be adding a new tax or fee, but there will not be a new entity created with a new board and new staff. The existing Regional Transportation Council and NCTCOG Executive Board will oversee the TFA finances. These are unpaid positions. NCTCOG staff will administer all of the funds and contracts. While some additional staff may be needed, the administrative expenses will be minimal. Whether administered through a TFA housed at the NCTCOG or through the existing transportation authorities, additional taxes and/or fees are needed to implement the regional rail system.

How will voters know what they're getting for the money?

Before going to voters in an election, subarea roundtables will select projects with specific timelines and related taxes and/or fees. Representatives of the counties, cities, TFA, and other advocates will present the plans to the public in public meetings, brochures, websites, and other means before the election is held. This will be similar to bond issuance votes that occur periodically in cities and counties throughout the region. With voter approval, the projects are fixed in each subarea.

Would tax dollars be better spent on highways since transit doesn't pay for itself?

Almost no transit system in the world pays for itself out of passenger fares. Some amount of government assistance through taxes or fees is required. The Dallas-Fort Worth region has an extensive plan to build both rail and highway improvements. In order to serve an expected population of 9 million by 2030, we will need all modes of transportation to move people and goods within and through our region. Passenger rail systems are very reliable and run on schedule. Roadways often are unreliable due to incidents, accidents, weather, and construction.

Will the TFA start telling the transportation authorities what to do?

The transportation planning process is extremely collaborative. Projects will be built that have been in the metropolitan transportation plan for decades. The transportation authorities will be assisting in the refinement of the rail plans for each subarea. Transportation authority board members sit on the RTC and are vital to the planning process and are the implementers of transit projects. The TFA will not be involved with decisions the transportation authorities make on projects funded through current sales tax revenue. This is merely a way to generate and disburse additional money for projects that can't be built with existing revenues.

Sales tax has been the way transit is funded up to this point, why is sales tax no longer a funding option?

During the last two legislative sessions the region has tried to get additional sales tax authority for transit, but it has been rejected. We have worked closely with the business community – the strongest opponents to raising the sales tax – to find new revenue options. Business is supportive of transit as a way to move employees and customers reliably. The Legislature has also asked repeatedly for the region to look at other options. The RTC is trying to balance the needs of all interested parties. The State may need sales tax to fund additional needs for Texas in the future.

Why are we not using the tri-party agreement from 2006?

Over 100 local governments and chambers of commerce signed onto the tri-party agreement, which called for the three existing transit authorities to work together to implement regional rail and called for an additional sales tax of up to 1 percent to be imposed outside of the DART and DCTA service areas. The support for that effort was overwhelming, but the Rail North Texas process is fundamentally different. Local governments and organizations should have an opportunity to evaluate the Rail North Texas proposal and choose to support it or not based on the new taxes and fees proposed and the idea to create an infrastructure fund for DART cities. Even though sales tax will not be used, the same three transportation authorities will be asked to design and construct the additional rail lines.

Will DART cities be double taxed?

Any new taxes and/or fees will be imposed for an entire county, so if Dallas County or Collin County vote to approve new taxes or fees, DART cities will pay these new taxes and/or fees as well as the current 1 percent DART sales tax. This will be for new service as agreed to by the cities within DART. It could be to speed up the construction of rail lines by decades or it could be to improve bridges or streets. All new revenues in the DART service area will remain for that service area to construct additional transportation. This special account is the result of not being able to add sales tax to non-DART cities.

Could the TFA reallocate money away from transit projects when there is a shortfall of highway dollars?

No. By taking a set of specific projects with specific funding sources to the voters, the TFA will be making a commitment to fund those projects. An internet-based tracking system will be created so anyone can see how much money is dedicated to each project and how it is being spent.

Will creating a TFA slow down the process of building the rail lines?

No. The fact is that none of the rail lines on the map can be built until our region identifies funding. There are very few cities along the rail lines that can join a transportation authority because the sales tax cap has been met in nearly every city in the region. So, by using the TFA to raise revenue, the region can move to construction. Additionally, the TFA will pass along funds as the transportation authorities begin work.

Why are roadway improvements part of something called Rail North Texas?

The primary focus of Rail North Texas is funding a passenger rail system. Because a previous effort to allow higher sales taxes on a city-by-city basis failed, the Regional Transportation Council began looking at other taxes and fees, all of which need to be implemented on at least a county-by-county basis to be successful and not unduly influence buying or living decisions. This means that taxes or fees could be imposed over DART residents. Not wanting to double tax anyone for the same service, local elected officials determined that funds generated in the DART service area could be used to build supplemental roadway projects. In addition, because a fee may be used in 12 counties, revenues for areas that do not yet have warranted rail projects could go to roadway projects.

Why not just let the revenues go straight to the transportation authorities?

There must be supreme confidence that the money generated will be used for the purposes stated at the time of the vote. The RTC and its staff have already developed this type of accounting system for the State Highway 121 toll road payment. In addition, because rail projects will cross county, and sometimes transportation authority, boundaries, it makes sense for a regional entity to administer the funds. Finally, because roadway projects will most likely be involved, a regional planning agency will already have established processes for transferring funds to either TxDOT, cities, counties, or NTTA to implement projects.

The Rail North Texas Initiative is:

Not creating a new level of government or a fourth transit authority.

Not collecting money in one county and spending it in another county.

Not creating a “one size fits all” transportation solution.

Not creating an additional organization to plan, finance, or construct projects.

Not deciding for citizens on what they wish to do.

Not double taxing the DART service area since revenue collected within one area will go to regional rail, accelerating current rail projects or to build other transportation projects.

Not having construction fees or taxes stay on forever. Fees and taxes would only last the duration of the bond repayment period. Citizens would have to elect to build other projects.

Not putting our future on the roadway system only.

Not waiting on TxDOT or others to fund our needs.

Not delaying projects which would result in higher and higher costs.

Not following the current State and federal approach of raising revenues with no assurances that specific projects would advance.

RAIL NORTH TEXAS PROJECT SELECTION, FUNDING, AND IMPLEMENTATION PROCESS

RTC initiates “call for projects.” Project applications are received and technically evaluated. (Same process as currently being used.)



Subarea Roundtable (county geographic area) that includes citizens, transportation authorities/entities/departments, and local elected officials select priority for submitted projects.



RTC Regional system review; financing and revenue options are developed.



Projects and revenue options sent to Subarea Roundtables for review, refinement, and approval.



RTC requests voter approval for a funding package to proceed with construction of specific projects for subareas within a specified time frame.

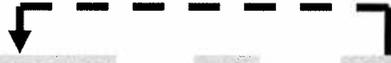


Subarea funding accounts are developed and monitored.



Existing transportation authorities/entities/departments implement the specific projects authorized by the election. Formal RTC Transportation Implementers Subcommittee is created to monitor progress and coordinate the system.

Iteration of projects based on revenue needs.



District-wide Local Voter Option
DRAFT Outline – December 11, 2008 Version

The bill shall authorize the eight Transportation Management Areas within Texas to form a Transportation Funding Area (TFA). The purpose of the TFA is to levy fees and taxes to generate revenue necessary to fund identified metropolitan area mobility needs.

The metropolitan planning organization (MPO) policy making body may establish a TFA by a two thirds vote of its members following a public hearing.

The boundary of the metropolitan planning area shall be the boundary of the TFA. If the metropolitan planning area boundary changes, the boundary of the TFA changes identically and simultaneously. If the metropolitan planning area boundary splits a county and the commissioners court of that county resolves that the entire county be included in the TFA, then the TFA boundary shall expand to include the entire county.

The TFA shall be governed by a board of directors. The board of directors of the TFA shall be the MPO policy making body, unless the MPO policy making body elects not to serve as the TFA board of directors, in which case it may establish an alternative board of directors. At least two thirds of the membership of any alternative board of directors shall consist of local elected officials of cities and counties within the TFA.

The bill shall authorize a TFA to:

- Levy fees and taxes subject to voter approval
- Issue debt
- Fund operations, maintenance, capital and debt service expenses for passenger rail, transit, roadways and freight rail
- Contract with transportation authorities or transportation providers to provide mobility services and implement projects

The TFA shall use revenue generated from fees and taxes in a particular county to fund mobility needs in that county. The TFA may levy the following fees and taxes if approved by voters at an election on a date authorized by statute:

- A vehicle registration fee, not to exceed \$150 per vehicle per year
- A motor fuels excise tax, not to exceed \$0.10 per gallon
- A mileage fee, not to exceed \$0.01 per vehicle mile driven
- A property tax, not to exceed \$0.05 per \$100 appraised value
- A driver's license fee, not to exceed \$50
- New resident impact (vehicle registration), not to exceed \$250

For purposes of this bill, "subarea" will mean the geographical area of a county being represented by city and county elected officials and the public located within that county geographical area. The TFA shall use the established process and criteria of the MPO in identifying mobility needs and selecting projects to fund, using the following protocol:

- The MPO issues a call for projects
- Cities, counties, and transportation authorities within the TFA submit projects
- The MPO evaluates and ranks projects on a subarea basis. Subarea roundtables of elected officials and technical staff provide input on project rankings and the taxes and fees needed to meet the highest ranked project needs
- The MPO develops a ballot specific to each subarea within the MPO listing the highest ranked projects and recommended fees and taxes to generate revenue to fund the projects, correlating projects on the sample ballot to estimated revenues generated by fees and taxes levied on a subarea basis so that the fee and tax revenue generated in a particular county funds projects in that county
- On a date authorized by the legislature, the TFA shall submit all ballots for voter approval.

Ballot language adopted by the MPO policy board shall list:

- the value of the bonds to be issued
- each tax or fee to be levied,
- the rate of each tax or fee to be levied,
- the month and year in which the tax or fee levy shall begin,
- the transportation operations, maintenance and capital projects to be funded,
- the sources of revenue that will cease when capital projects are completed, and
- the estimated time frame for the implementation of each project.

The vote results shall be tabulated on a county basis. Fees and taxes will be levied only in a county in which a majority vote is cast in favor of the projects, fees and taxes listed on the ballot.

The bill shall indemnify metropolitan areas: Metropolitan planning areas shall not be penalized in terms of losing traditional transportation funding by virtue of their establishing a TFA and their voters agreeing to pay additional transportation taxes or fees. TxDOT shall not reduce any allocation of traditional transportation funding to any of its districts by virtue of a district being in a metropolitan planning area that establishes a TFA and levies additional transportation taxes or fees.

Implementation of this legislation within the Dallas-Fort Worth region will be as follows¹:

The primary focus of the TFA created will be to finance the design, construction, operations, and maintenance of passenger rail. Roadway improvements will be considered on a supplemental basis and to create equity for municipalities that are members of a transportation authority.

The TFA will convene as the Regional Transportation Council and will initiate special meetings at least once a quarter to hear public comments on projects, taxes, or fees. These meetings shall be properly advertised. A subcommittee of the MPO policy making body will be created for the transportation authorities and transportation providers to monitor implementation and funding issues and coordinate system development.

The TFA will not issue debt. Any necessary debt will be issued by transportation authorities and transportation providers.

This bill will be implemented in accordance with Regional Transportation Council Resolution Updated R08-11 and Attachments 1-5.

¹ This process is modeled after the Regional Toll Revenue Funding Initiative.



Transportation Engineering Division

Transportation Mobility / Safety Report

November 2008

- Traffic Signals
 - ✓ **Independence Prkwy at Parker Road: Implemented temporary off-peak timing**
 - ✓ **SH 121 (Custer Road to Spring Creek Prkwy): Optimized AM signal timing**
 - ✓ **Parkwood Blvd @ Windhaven Prkwy – Design new traffic signal (10% completed)**
 - Midway Road @ McKamy Trail – Design New Traffic Signal: (85% completed)
 - Rasor Road @ McDermott Road - Design New Traffic Signal (45% completed)
 - Rasor Road @ Ohio Drive - Design New Traffic Signal (45% completed)
 - Traffic Surveillance Camera Restoration Project (70% completed)

- Traffic Safety:
 - ✓ **Leatherwood Dr @ Texana Way: Request for All-Way Stop signs – Will continue review after subdivision is built out.**
 - ✓ **Parker Road @ US 75 (TxDOT) Project – Coordinated temporary traffic control efforts**
 - Epping Drive @ Dunmoor Drive – Request for stop signs; **Request denied due to low traffic volumes**
 - Headquarters Drive @ Spring Creek Prkwy – **Opened to traffic**
 - Annual Traffic Safety Report (25% completed)
 - City-wide Speed Zone Survey Project: (40% completed)
 - Developing ordinance for prohibiting truck/commercial/oversize vehicle parking (**Forwarded for City Council consideration**)
 - HAL/HARS 2008/2009 project list (25% completed)
 - List of new Red Light Camera locations (90% completed)
 - Reviewed **15** temporary traffic control plans for utility work in the city rights-of-way.
 - Speed Trailer Deployment – **Cannes Drive between Hillview Drive and Custer Road. Parnell Lane between Ohio Drive and Archgate Drive.**

- PISD/FISD
 - Anderson Elementary School (Independence Prkwy @ Oakland Hills Drive) – Request to remove existing school zone; Study in progress
 - Andrews Elementary School (Scenic Drive @ Sutherland Lane) - Request for All-Way Stop; Study in progress
 - Bethany Elementary School – Request for reinstallation of driveway related signs – **Installation completed**
 - Clark High School (Spring Creek Parkway @ Eagle Pass) - Request for pedestrian signals; Study in progress
 - Forman Elementary School (Hendrick Drive @ Timberline Drive) - Request for All-Way Stop; Study in progress
 - Harrington Middle School – Request to extend school zone hours; Study in progress
 - Hightower Elementary School (Tulane Drive @ Decator Drive) – Request for pedestrian signals; Study in progress

- Jasper High School (Archgate Drive w/o Alcove Lane) - Request for *No Parking* zone; Study in progress.
 - (Archgate Drive to Legacy Drive) - Request to extend school zone and hours of operation; Study in progress.
 - Rice Middle School – (Independence Parkway @ Russell Creek Drive) - Request to extend school speed zone hours; Study in progress
 - Taylor Elementary School (Independence Prkwy @ Ridge Creek Lane) – Request to evaluate use of existing school crossing; Study in progress
 - Thomas Elementary School (Montana Trail) - Request for one-way traffic flow during school zone hours; Field review conducted; waiting on PISD response.
- Safe Streets Program (SSP)
 - ✓ **Pioneer Lane – Qualification study failed to meet minimum criteria**
 - ✓ **Chalfont Lane - Qualification study failed to meet minimum criteria**

Participating Neighborhoods Active in the Program

- Aspermont Drive – Qualification study pending
 - Belgium Drive – Qualification study pending
 - Denham Way: Comment Forms received back from residents
 - Harrisburg Lane from Custer Road to Sutherland Lane – Petition process pending.
 - Merriman Drive neighborhood streets – Petition process pending.
 - Micarta Drive – Neighborhood meeting to be held in **January**.
 - Mission Ridge from Parker to Matterhorn: **Installation pending.**
 - Oklahoma Avenue – Petition process pending
 - Old Orchard Drive - Qualification study pending
 - Old Pond Drive: : **Installation pending**
 - Parkhaven Drive: Permanent Plan installation pending
 - Pebble Vale Drive – Qualification study pending
 - Robinson Road: **Public meeting to be held in January**
 - Royal Oaks Drive: ballot packets to be mailed **12/08**
 - Russell Creek Drive East of Independence Parkway: **Public meeting to be held in January**
 - Scenic Drive – Qualification study pending
 - Silverstone Drive: Permanent Plan (installation pending)
 - Sutherland Lane (Scenic Drive to Homestead Lane) – Waiver request goes to P&Z for consideration
 - Teakwood Lane from Custer Road to Roundrock Trail – Petition process pending
 - Wesson Drive (Savage Drive to Walters Drive) - Waiver request goes to P&Z for consideration
 - Woodburn Corners: Sent petition to sponsor 7/08
- Long Range Planning:
 - Attended monthly DRMC, RTC, TAC, STTC, and ITE meetings
 - Develop structure for Division Laser Fiche filing system (**40%** completed)

To view additional Mobility information go to the link
“Mobility Video”

NOV 08



Comprehensive Monthly
FINANCE REPORT

ABOUT THIS REPORT

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

This report is comprised of four sections:

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

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

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



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

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SECTION 1

FINANCIAL ANALYSIS

City of Plano
Comprehensive Monthly Finance Report



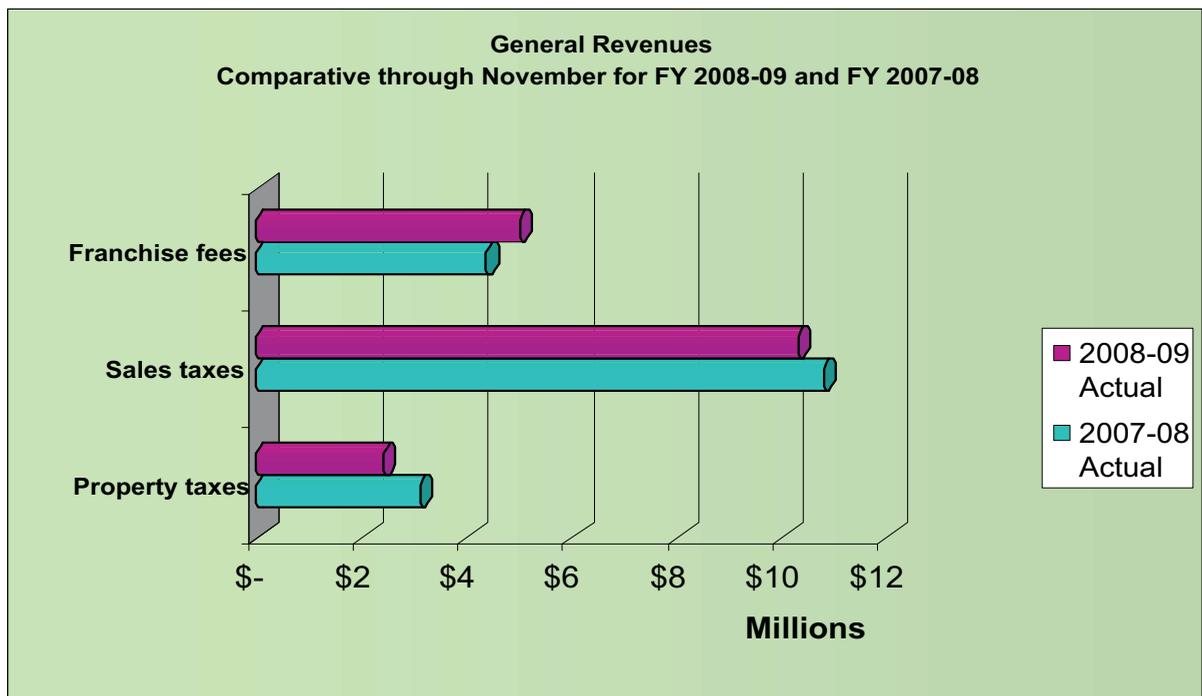
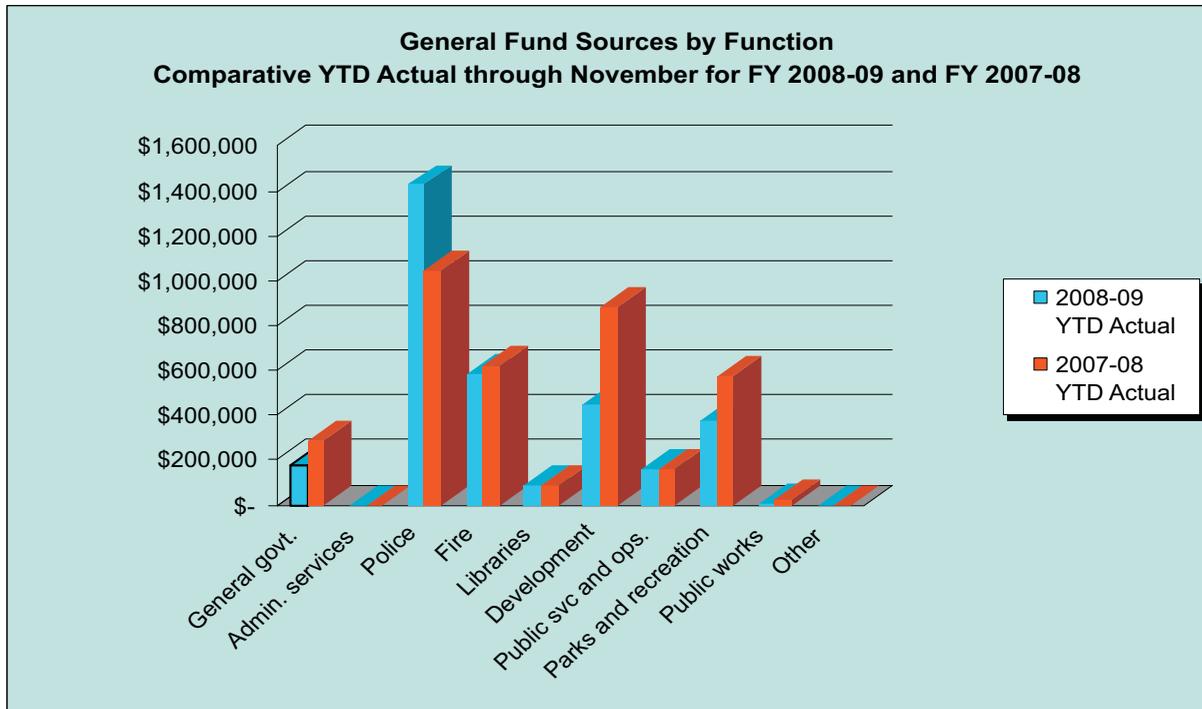
This report is designed for internal use and does not include all the funds and accounts included in the City of Plano's operations. For a complete report, refer to the City of Plano Comprehensive Annual Financial Report, available through the City's Finance Department.

REPORT NOTES NOVEMBER, 2008

The information represented in the graphs below is derived from the statement of activities which is located after this section. The statement of activities presents information demonstrating how the City's net assets are changing during the current fiscal year. The format of the statement of activities reports General Fund and Business-type revenues and expenses by function which provides readers with a broad overview of the City of Plano's finances.

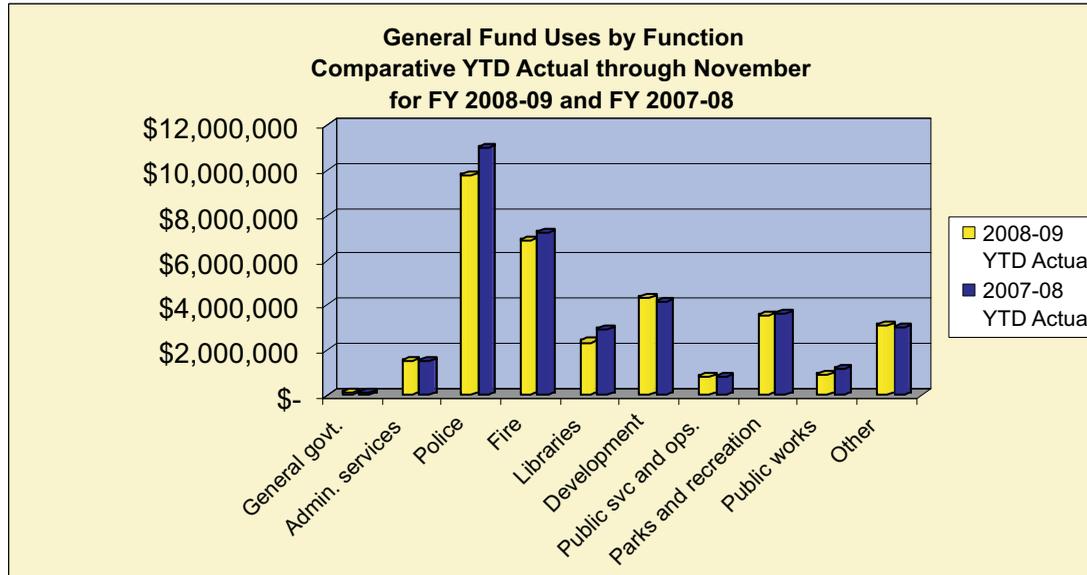
The information in this section compares year to date activity in the current fiscal year to the same time period in prior year. Please note that beginning fund balances in all funds are subject to final audit adjustments.

HIGHLIGHTS OF GENERAL FUND VARIANCES



REPORT NOTES CONTINUED

NOVEMBER, 2008



GENERAL GOVERNMENT

- The City of Plano has an interlocal agreement between the Cities of Lucas and Parker for dispatch services by the City's Public Safety Communications department. Revenues collected from these cities, which are based on population, have decreased over prior year by \$10,125.
- Contractual services for class instruction paid through the Professional Development Center have increased over prior year by \$55,701. Funds were encumbered and a portion spent in June 2008 with Collin and Richland Colleges for class instruction services. The remaining committed amount as of November 2008 is \$41,318 which is an increase over prior November since these orders were not placed or spent until June 2008.

ADMINISTRATIVE SERVICES

- The Human Resource department encumbered funds in August and September 2008 in the amount of \$87,936 to remodel the office and kitchen. Of this encumbered amount, \$68,456 was spent in September and October 2008 and the encumbered amount remaining in November 2008 is \$19,480.
- Costs pertaining to pre-employment physicals and random drug and alcohol testing have increased over prior fiscal year by \$15,000 due to additional testing and increased fees.
- Fees associated with the audit of the City's financial statements increased over prior year by \$11,250 due to increased fees.

POLICE

- Court fines and forfeitures increased year to date over prior year in the amount of \$317,307. The increase can be attributed to a successful collections unit and its efforts in getting defendants to take responsibility for their citations.
- Due to an increase in rates as well as volume of new permits and renewals, alarm permit revenues have increased \$67,430 when compared to prior year.
- False alarm revenue increased \$41,966 as compared to the same period of the prior year. The increase can be attributed to a successful alarm collections unit and its efforts in getting old accounts paid.
- Emergency 911 fees decreased \$63,186 over the prior year due to timing of payments.
- Personal services decreased over prior year by \$568,616. The decrease is due to significant retiree payouts in prior fiscal year totaling approximately \$219,000. Additionally, the Alternative Career Plan pay occurred in December 2008 as opposed to November 2007 which is a decrease of \$287,642.
- The annual maintenance agreement with Motorola for services pertaining to maintenance of the

REPORT NOTES CONTINUED

NOVEMBER, 2008

City's radio system has decreased over prior fiscal year by \$306,127 primarily due to timing of encumbrances for these services.

- The Police department spent \$9,660 for criminal and traffic law publications in the prior year which are purchased every other year.
- Police functioning departments have experienced a decrease of \$47,085 in workers compensation claims and related administrative expenses. Beginning May of last fiscal year, these costs began being absorbed in the Property Liability Loss Fund, whereas prior to May 2007, claims expenses were allocated to using departments.
- Training costs for police personnel have decreased \$33,465. The amount budgeted in the current year is comparable to prior year's budget.
- Funds of \$134,881 were spent and encumbered in prior year for digital video recorders and installation of mobile data computers that were purchased in fiscal year 2007. This project had multiple funding sources and therefore, a reclassification occurred at the end of last fiscal year.

FIRE

- Fire protection plan review revenues have decreased \$18,797 compared to the prior year due to less fire plans as the City continues to get closer to build out.
- Personal services increased \$75,825 over prior year primarily due to increased pay and benefit related costs over last fiscal year.
- Encumbrances for bunker gear cleaning occurred in October 2007 in the amount of \$45,000. The order for bunker gear cleaning services in the current fiscal year has not been placed but these services will be utilized in the current year.
- In prior fiscal year, funds in the amount of \$61,900 were encumbered for services to be provided to analyze the Emergency Medical Services System.
- Costs and encumbrances for wearing apparel have decreased \$54,729. The budgeted amount is comparable to prior year's original budget.
- Training costs and encumbrances have decreased over prior fiscal year by \$18,192 due to timing of orders placed and services received. The amount budgeted in the current fiscal year increased \$3,314 over prior year's budget.
- The Office of Emergency Management and Homeland Security encumbered funds in the prior year of \$34,994 for a new project that provides video conferencing capability.

LIBRARIES

- State grant funding to be utilized to assist small libraries decreased in the current year by \$23,243 due to timing of payments. The amount received is based on volume of materials loaned out to smaller libraries.
- Collin County library grant revenue increased in the current year by \$19,562 due to timing of payments.
- The libraries will be installing ten new self-check machines of which one year of maintenance costs are included in the price of the equipment. The amount paid to 3M Company for maintenance in the current year is \$16,407 while prior year maintenance costs were \$50,611.
- Expenditures and encumbrances for non-print media have increased over prior year by \$53,206 due to a change in departmental ordering processes. Book purchases have decreased over prior year by \$520,541 due to timing of orders placed for book selections. The current year budget for non-print media and books is \$22,286 and \$69,248 higher, respectively than prior year's budget.

DEVELOPMENT

- Building permit revenues decreased over prior year by \$196,458 due to large commercial projects occurring in the prior year.
- Engineering inspection revenues have decreased \$158,689 as compared to prior year. Several large private development projects that have been approved are being withheld at this time due

REPORT NOTES CONTINUED

NOVEMBER, 2008

to the slowing economy. Overall there are fewer and smaller projects being released in the current year.

- Re-inspection revenues have decreased as compared to prior year by \$25,000 as these services are directly tied to the decreased amount of construction occurring within the city.
- Facilities Maintenance has experienced an increase over prior year in payments for electric services in the amount of \$176,868. The increase is primarily attributed to the opening of the Tom Muehlenbeck Center and the new computer server room located at Technical Services.
- Facilities Services experienced an increase in expenditures and encumbrances in janitorial services of \$162,122 due to the addition of the Tom Muehlenbeck Center and Occupational Resource Center facilities.
- The Safe Streets Program has experienced a decrease of \$106,366 due to rebidding of the contract in the latter portion of prior fiscal year. Therefore, encumbrances ceased around July 2007 but activity is picking up again in the current year.

PUBLIC SERVICES AND OPERATIONS

- Child safety fees have increased over prior year by \$10,650 due to increased school zone violations in the current year.
- Personal services increased \$27,152 over prior year primarily due to increased pay and benefit related costs over last fiscal year.

PARKS AND RECREATION

- Parks and Recreation athletic field user fees decreased over prior year by \$96,946 due to timing of payments made by youth and adult sports organizations.
- The Parks and Recreation department has experienced a decrease in membership revenues of \$23,666 as compared to prior fiscal year. With the struggling economy and membership fees doubling in October of the current year, more citizens with seldom used memberships, especially those purchased in November of 2007 at the opening of the Tom Muehlenbeck Center, are choosing not to renew this year.
- Swim memberships were discontinued in the current year, resulting in a revenue decrease of \$37,462. There is currently only one recreation membership sold, which includes pool access.
- Personal services increased \$95,119 over prior year primarily due to increased salary and benefit related costs being higher in the current year as compared to prior period.
- Design services to prepare construction plans, specifications, details and special provisions and to perform other related consulting services in connection with waterproofing the Cox Building occurred in the prior year costing \$9,000. The Cox Building had water damage on the first floor which the City leases from Plano Independent School District (PISD). PISD reimbursed the City as PISD is the owner of the Cox Building and the City is a tenant. The City received \$65,000 in March 2008 and was deposited in a Community Investment Program Project.
- The Recreation Administration department paid for services in the current year to administer the Plano Senior Rides Program in the amount of \$50,000. Payment by the City will be made throughout the current year not to exceed a total contract amount of \$100,000. In prior year, Senior transportation services were provided with Collin County Area Regional Transportation in the amount of \$116,000 and paid incrementally beginning in October 2007.

PUBLIC WORKS

- The Signs & Markings department utilizes contractual services for installation of street buttons and paving marking materials on the City's streets. These services have decreased over prior year by \$99,764 due to a decrease in volume of projects as compared to prior year.

OTHER

- Payments for retiree health insurance have increased over prior year by \$14,078 due to restructuring of retiree insurance, as well as increases in the number of retirees and premium amounts in the current year.
- Payments made in support of social services have increased \$150,194 due to increased funding. The current year budget is \$137,403 higher than prior year's original budget.

REPORT NOTES CONTINUED

NOVEMBER, 2008

- Expenditures for interdepartmental water billings have increased \$136,989 due to more rainfall occurring in the prior fiscal year.
- Technology services charges increased over prior year by \$190,366 due to higher costs budgeted in the current year.
- Funds to support the Boys and Girls Club of Collin County were spent in the amount of \$30,000 in the prior year. The Boys and Girls Club of Collin County will be funded out of the Community Development Block Grant in the current year.

PROPERTY TAX REVENUES

- Ad valorem tax revenues decreased \$694,037 over prior year primarily attributed to timing of collections.

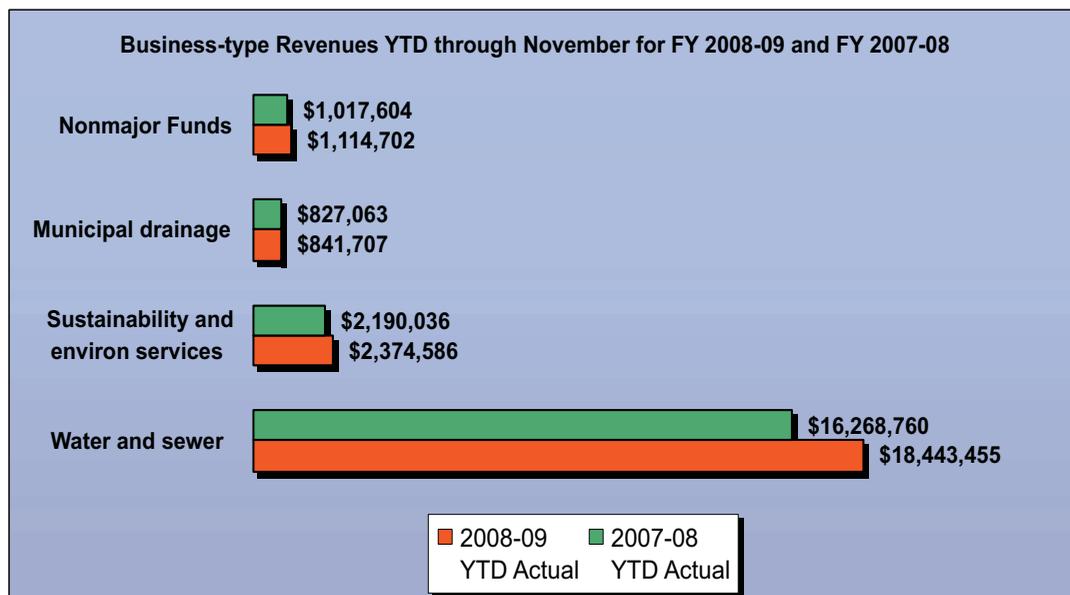
SALES TAX REVENUES

- Sales tax revenues decreased over prior year by \$493,126 primarily due to a recent decline in the economy. Additionally, there was a \$3,786 unfavorable audit adjustment in the current period compared to a \$66,442 unfavorable adjustment in the same period of the prior year. When comparing the cash received in the months of November 2008 and November 2007, an increase of 0.16% is noted in sales tax revenues.

FRANCHISE FEE REVENUES

- Electric franchise fee revenues increased \$74,856 as compared to prior year. The City's franchise fee is based on the number of kWh sold by Oncor to the citizens of Plano. An increase in kWh consumed has occurred in the current year as compared to prior year.
- Telephone franchise fee revenues increased \$579,301 in the current year due to a duplicate payment of \$509,082 made in November. The overpayment was returned in December. The additional \$70,219 increase is due to timing of payments.

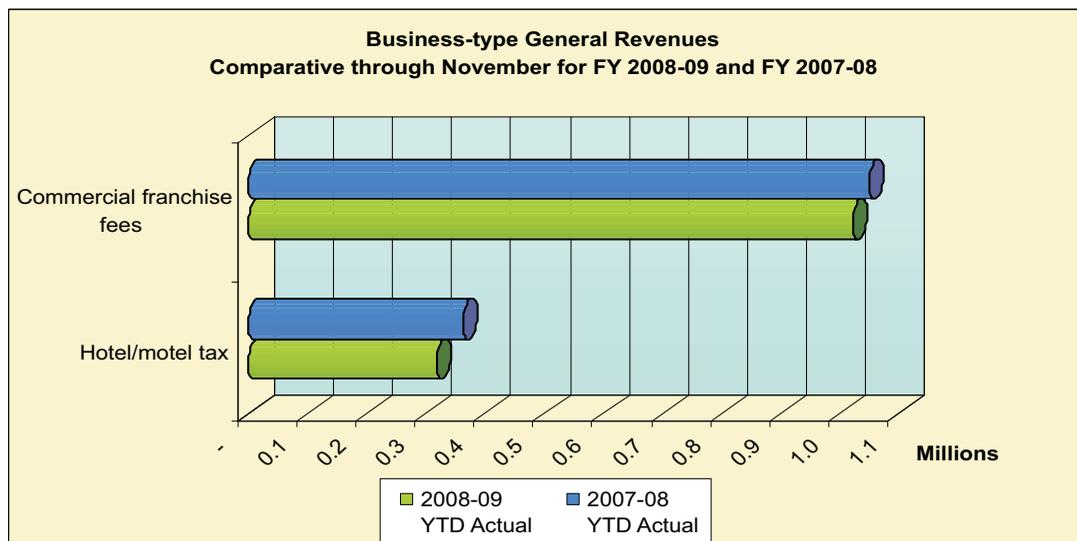
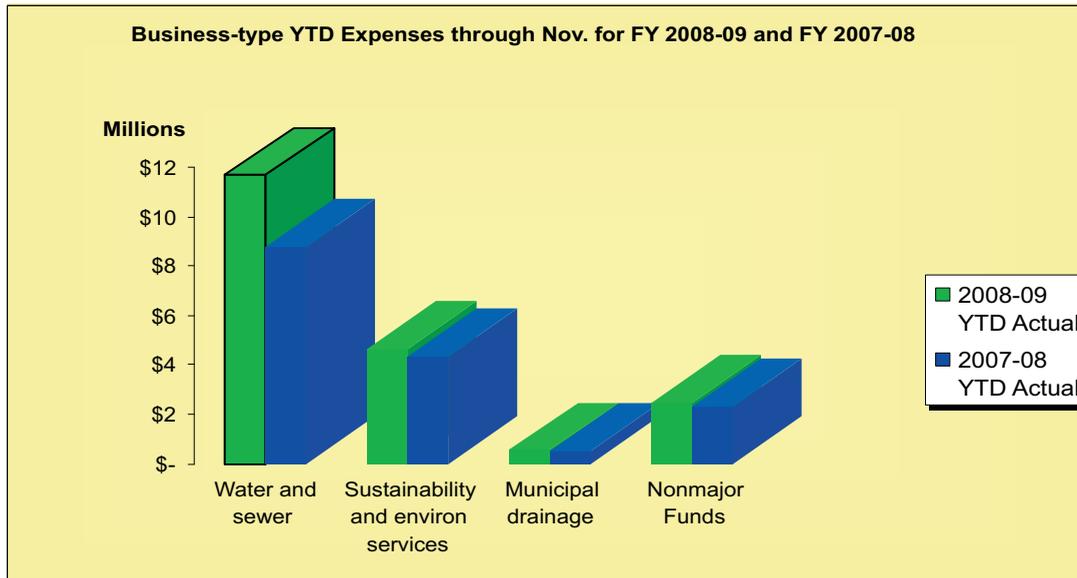
HIGHLIGHTS OF BUSINESS-TYPE VARIANCES



REPORT NOTES CONTINUED

NOVEMBER, 2008

HIGHLIGHTS OF BUSINESS-TYPE VARIANCES



WATER & SEWER

- Water and sewer revenues increased over prior year by \$1,659,765 and \$554,937, respectively. Overall water consumption for the current year is up as compared to the same time period in the prior year due to more rainfall occurring in the prior year resulting in less water consumption. Sewer revenues are directly related to water consumption and therefore increased due to increased water consumption in the current year.
- Expenses and encumbrances for maintenance parts pertaining to the automated meter reading project have increased over prior year. A new vendor is being utilized to install new hardware and software for the automated meter reading project. Encumbrances for these services were placed in April 2008 in the amount of \$2,700,000 of which \$431,947 was spent last fiscal year beginning in June. \$28,967 has been spent in the current year and therefore, \$2,239,086 is encumbered for services to be rendered.
- Payments to North Texas Municipal Water District (NTMWD) for wastewater and pre-treatment services and water usage have increased over prior fiscal year by \$628,544 and \$223,116,

REPORT NOTES CONTINUED

NOVEMBER, 2008

respectively, as these costs are based on contractual amounts.

SUSTAINABILITY AND ENVIRONMENTAL SERVICES

- Residential solid waste revenues are \$148,348 higher than prior year primarily due to an increase in rates for use of 95-gallon carts. The rate increased by \$1.25 to \$15.10 per month.
- Recycling revenues are down \$58,064 as compared to prior year due to a decline in the recycling market.
- Compost revenues are higher over prior year by \$39,644 primarily due to an increase in volume of products sold.
- The Collections and Compost departments have received a combined \$83,820 in insurance and damage receipts due to City fleet being involved in accidents.
- Personal services increased \$44,819 over prior year due to increased salary and benefit related costs being higher in the current year as compared to prior period.
- The Compost Operations department has encumbered \$65,500 for purchase of various types of landscape bags. This purchase is done on an as needed basis and no orders were placed last fiscal year.
- Monthly payments to NTMWD increased \$148,363 over prior year as payments are based on contractual amounts.
- The contract with Otto Container Management has increased over prior year by \$118,543 primarily due to a fee increase.

MUNICIPAL DRAINAGE

- Personal services increased \$17,063 over prior year due to increased salary and benefit related costs being higher in the current year as compared to prior period.
- Concrete purchases have increased over prior year by \$25,256 primarily due to a timing of purchase orders placed.

CIVIC CENTER

- Building design services to expand the Plano Centre are encumbered in the current fiscal year in the amount of \$179,592.
- Costs associated with remodel work done in the restrooms at Plano Centre have been spent and encumbered in the amount of \$75,236.
- Advertising costs and encumbrances have increased over prior year by \$47,651 due to an increase in volume of advertising publications as well as increased fees from media providers. Additionally, the City is launching a website to provide information which has caused advertising costs to increase over prior year.
- Funds spent in the prior year for a replacement phone system occurred in the prior year costing \$71,582.

GOLF COURSE

- Contractual services for debris removal services decreased over prior year by \$5,006 primarily due to timing of payment to Allied Waste Systems. The current year budget is comparable to prior year's original budget.

RECREATION REVOLVING

- Recreation revenues increased over prior year by \$89,777 primarily as a result of fee increases. Additionally, because the Tom Muehlenbeck Center opened in November 2007 no revenues were collected in October 2007. Of the \$89,777 increase, \$19,080 is for recreation revenues generated from Carpenter Recreation Center as class volume and participation have increased as compared to prior year.
- Encumbrances for printing services of the Leisure catalog have decreased over prior year by \$64,944 due to timing of orders placed .

PROPERTY MANAGEMENT

- Contractual services have decreased \$6,500 as compared to prior year for a review of a facility located at 925 East 15th Street to evaluate improvements to the storefront and signage of the property.

REPORT NOTES CONTINUED
NOVEMBER, 2008

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SECTION 1A

FINANCIAL SUMMARY



City of Plano
Comprehensive Monthly Finance Report

CITY OF PLANO, TEXAS
STATEMENT OF ACTIVITIES
FOR THE PERIOD ENDED NOVEMBER 30, 2008

Function/Program Activities General Fund	Expenses/Expenditures			Program Revenues			Net (Expense) Revenue and Changes in Net Assets			
	Budget	Actual/Encumb.	Actual & Encumb. /Budget	Budget	Actual	Actual/Budget	General Fund		Business-type Activities	
							Budget	Actual	Budget	Actual
General Fund Activities:										
General government	\$ 1,341,748	\$ 139,173	10.4%	\$ 605,193	\$ 178,707	29.5%	\$ (736,555)	\$ 39,534	\$ 39,534	
Administrative services	8,397,977	1,551,164	18.5%	8,180	-	-	(8,389,797)	(1,551,164)	(1,551,164)	
Police	63,108,862	9,764,767	15.5%	10,665,371	1,427,688	13.4%	(62,443,491)	(8,337,079)	(8,337,079)	
Fire	43,553,486	6,885,612	15.8%	4,297,480	583,561	13.6%	(39,256,006)	(6,302,051)	(6,302,051)	
Libraries	11,595,741	2,358,518	20.3%	511,398	85,811	16.8%	(11,084,343)	(2,272,707)	(2,272,707)	
Development	21,410,316	4,347,742	20.3%	4,093,712	447,119	10.9%	(17,316,604)	(3,900,623)	(3,900,623)	
Public services and operations	4,882,798	796,362	16.3%	1,195,111	156,693	13.1%	(3,687,687)	(639,669)	(639,669)	
Parks and recreation	22,875,261	3,543,074	15.5%	4,569,573	372,787	8.2%	(18,305,688)	(3,170,287)	(3,170,287)	
Public works	5,941,532	914,317	15.4%	41,000	5,256	12.8%	(5,900,532)	(909,061)	(909,061)	
Other	20,533,629	3,089,967	15.0%	470,635	-	-	(20,062,994)	(3,089,967)	(3,089,967)	
Total General Fund	203,641,350	33,390,696	16.4%	26,457,653	3,257,622	12.3%	(177,183,697)	(30,133,074)	(30,133,074)	
Business-type Activities:										
Water and sewer	75,009,576	11,685,556	15.6%	112,748,390	18,443,455	16.4%	\$ 37,738,814	\$ 6,757,899	6,757,899	
Sustainability and environ services	21,696,469	4,638,861	21.4%	15,819,850	2,374,586	15.0%	(5,876,619)	(2,264,275)	(2,264,275)	
Municipal drainage	2,803,503	534,390	19.1%	4,928,110	841,707	17.1%	2,124,607	307,317	307,317	
Civic center	8,517,115	1,841,337	21.6%	2,698,452	389,307	14.4%	(5,818,663)	(1,452,030)	(1,452,030)	
Municipal golf course	894,751	144,784	16.2%	887,000	115,805	13.1%	(7,751)	(28,979)	(28,979)	
Property management	8,100	1,365	16.9%	39,431	1,125	2.9%	31,331	(240)	(240)	
Recreation revolving	3,083,787	404,436	13.1%	3,070,733	608,015	19.8%	(13,054)	203,579	203,579	
Downtown center development	46,785	47,918	102.4%	67,678	450	0.7%	20,893	(47,468)	(47,468)	
Total business-type activities	112,060,086	19,298,647	17.2%	140,259,644	22,774,450	16.2%	(177,183,697)	(30,133,074)	(30,133,074)	
Total	\$ 315,701,436	\$ 52,689,343		\$ 166,717,297	\$ 26,032,072					(26,657,271)

General Revenues	General Revenues	
	Budget	Actual
Property taxes	83,068,770	2,402,548
Sales taxes	57,417,708	10,289,737
Other taxes	1,336,194	33,145
Hotel/Motel tax	-	-
Franchise fees	21,745,842	5,004,854
Investment income	3,182,198	112,997
Total general revenues	166,750,712	17,843,281
Change in net assets	(10,432,965)	(12,289,793)
Net assets - beginning	44,741,546	44,741,546
Net assets - ending	\$ 32,451,753	\$ 362,156,931

General Revenues	General Revenues	
	Budget	Actual
Property taxes	-	-
Sales taxes	-	-
Other taxes	-	-
Hotel/Motel tax	4,964,601	318,290
Franchise fees	6,496,731	1,021,004
Investment income	408,000	46,294
Total general revenues	11,869,332	1,385,588
Change in net assets	40,088,890	4,861,391
Net assets - beginning	357,295,540	357,295,540
Net assets - ending	\$ 394,608,684	\$ 394,608,684

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

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>2 Months Actual</u>	<u>Actual/ Budget</u>	<u>Performance Index</u>
REVENUES:					
Ad valorem tax	2009	\$ 83,069,000	2,403,000	2.9%	17.36
	2008	77,467,000	3,097,000	4.0%	23.99
	2007	69,461,000	2,632,000	3.8%	22.74
Sales tax	2009	57,418,000	10,290,000	17.9%	107.53
	2008	61,181,000	10,783,000	17.6%	105.75
	2007	57,606,000	11,030,000	19.1%	114.88
Other revenue	2009	52,721,000	8,408,000	15.9%	95.69
	2008	48,069,000	8,416,000	17.5%	105.05
	2007	<u>46,259,000</u>	<u>5,499,000</u>	11.9%	71.32
TOTAL REVENUE	2009	193,208,000	21,101,000	10.9%	65.53
	2008	186,717,000	22,296,000	11.9%	71.65
	2007	<u>173,326,000</u>	<u>19,161,000</u>	11.1%	66.33
EXPENDITURES & ENCUMBRANCES:					
Current operating	2009	\$ 201,136,000	32,703,000	16.3%	97.55
	2008	199,162,000	34,284,000	17.2%	103.28
	2007	188,784,000	30,436,000	16.1%	96.73
Capital outlay	2009	2,505,000	688,000	27.5%	164.79
	2008	2,255,000	1,202,000	53.3%	319.82
	2007	<u>1,466,000</u>	<u>462,000</u>	31.5%	189.09
Total expenditures and encumbrances	2009	203,641,000	33,391,000	16.4%	98.38
	2008	201,417,000	35,486,000	17.6%	105.71
	2007	<u>190,250,000</u>	<u>30,898,000</u>	16.2%	97.44
Excess (deficiency) of revenues over (under) expenditures	2009	(10,433,000)	(12,290,000)	-	-
	2008	(14,700,000)	(13,190,000)	-	-
	2007	(16,924,000)	(11,737,000)	-	-
OTHER FINANCING SOURCES (USES)					
Transfers in	2009	17,635,000	2,939,000	16.7%	99.99
	2008	16,609,000	2,768,000	16.7%	99.99
	2007	16,397,000	2,733,000	16.7%	100.01
Transfers out	2009	(19,678,000)	(3,344,000)	17.0%	101.96
	2008	(21,947,000)	(3,658,000)	16.7%	100.00
	2007	<u>(21,055,000)</u>	<u>(3,602,000)</u>	17.1%	102.65
NET CHANGE IN FUND BALANCES	2009	(12,476,000)	(12,695,000)		
	2008	(20,038,000)	(14,080,000)		
	2007	(21,582,000)	(12,606,000)		
FUND BALANCES-BEGINNING	2009		44,742,000		
	2008		45,684,000		
	2007		<u>48,805,000</u>		
FUND BALANCES-ENDING NOVEMBER 30	2009		32,047,000		
	2008		31,604,000		
	2007		<u><u>36,199,000</u></u>		

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

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>2 Months Actual</u>	<u>Actual/ Budget</u>	<u>Performance Index</u>
REVENUES:					
Water and sewer revenue	2009	\$ 110,226,000	18,040,000	16.4%	98.20
	2008	96,340,000	15,828,000	16.4%	98.58
	2007	93,434,000	13,447,000	14.4%	86.35
Other fees and service charges	2009	2,572,000	414,000	16.1%	96.58
	2008	2,693,000	406,000	15.1%	90.46
	2007	<u>2,556,000</u>	<u>430,000</u>	16.8%	100.94
TOTAL REVENUE	2009	112,798,000	18,454,000	16.4%	98.16
	2008	99,033,000	16,234,000	16.4%	98.36
	2007	<u>95,990,000</u>	<u>13,877,000</u>	14.5%	86.74
EXPENSES & ENCUMBRANCES:					
Capital outlay	2009	-	77,000	-	-
	2008	1,245,000	79,000	6.3%	38.07
	2007	80,000	150,000	187.5%	1125.00
Other expenses & encumbrances	2009	75,010,000	11,609,000	15.5%	92.86
	2008	66,174,000	8,697,000	13.1%	78.86
	2007	<u>63,810,000</u>	<u>9,010,000</u>	14.1%	84.72
Total expenses and encumbrances	2009	75,010,000	11,686,000	15.6%	93.48
	2008	67,419,000	8,776,000	13.0%	78.10
	2007	<u>63,890,000</u>	<u>9,160,000</u>	14.3%	86.02
Excess (deficiency) of revenues over (under) expenses	2009	37,788,000	6,768,000	-	-
	2008	31,614,000	7,458,000	-	-
	2007	32,100,000	4,717,000	-	-
TRANSFERS IN (OUT)					
Transfers in	2009	-	-	-	-
	2008	255,000	42,000	16.5%	98.82
	2007	268,000	45,000	16.8%	100.75
Transfers out	2009	(34,349,000)	(5,725,000)	16.7%	100.00
	2008	(30,889,000)	(5,148,000)	16.7%	100.00
	2007	<u>(30,208,000)</u>	<u>(5,039,000)</u>	16.7%	100.09
CHANGE IN NET ASSETS	2009	\$ 3,439,000	1,043,000		
	2008	980,000	2,352,000		
	2007	2,160,000	(277,000)		
TOTAL NET ASSETS-BEGINNING	2009		321,539,000		
	2008		315,706,000		
	2007		<u>324,871,000</u>		
TOTAL NET ASSETS-ENDING NOVEMBER 30	2009		322,582,000		
	2008		318,058,000		
	2007		<u><u>324,594,000</u></u>		

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

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>2 Months Actual</u>	<u>Actual/ Budget</u>	<u>Performance Index</u>
REVENUES:					
Commerical solid waste franchise	2009	\$ 6,497,000	1,021,000	15.7%	94.29
	2008	6,352,000	1,048,000	16.5%	98.99
	2007	5,901,000	928,000	15.7%	94.36
Refuse collection revenue	2009	13,317,000	2,137,000	16.0%	96.28
	2008	12,273,000	2,037,000	16.6%	99.58
	2007	12,078,000	1,892,000	15.7%	93.99
Other fees and service charges	2009	2,503,000	237,000	9.5%	56.81
	2008	2,100,000	160,000	7.6%	45.71
	2007	<u>1,545,000</u>	<u>91,000</u>	5.9%	35.34
TOTAL REVENUE	2009	22,317,000	3,395,000	15.2%	91.28
	2008	20,725,000	3,245,000	15.7%	93.94
	2007	<u>19,524,000</u>	<u>2,911,000</u>	14.9%	89.46
EXPENSES & ENCUMBRANCES:					
Capital outlay	2009	256,000	17,000	6.6%	39.84
	2008	142,000	1,000	0.7%	4.23
	2007	312,000	-	-	-
Other expenses & encumbrances	2009	21,440,000	4,622,000	21.6%	129.35
	2008	19,969,000	4,331,000	21.7%	130.13
	2007	<u>18,531,000</u>	<u>4,019,000</u>	21.7%	130.13
Total expenses and encumbrances	2009	21,696,000	4,639,000	21.4%	128.29
	2008	20,111,000	4,332,000	21.5%	129.24
	2007	<u>18,843,000</u>	<u>4,019,000</u>	21.3%	127.97
Excess (deficiency) of revenues over (under) expenses	2009	621,000	(1,244,000)	-	-
	2008	614,000	(1,087,000)	-	-
	2007	681,000	(1,108,000)	-	-
TRANSFERS IN (OUT)					
Transfers in	2009	100,000	17,000	17.0%	102.00
	2008	100,000	17,000	17.0%	102.00
	2007	85,000	14,000	16.5%	98.82
Transfers out	2009	(1,224,000)	(204,000)	16.7%	100.00
	2008	(1,175,000)	(196,000)	16.7%	100.09
	2007	<u>(1,205,000)</u>	<u>(201,000)</u>	16.7%	100.08
CHANGE IN NET ASSETS	2009	\$ (503,000)	(1,431,000)		
	2008	(461,000)	(1,266,000)		
	2007	(439,000)	(1,295,000)		
TOTAL NET ASSETS-BEGINNING	2009		1,690,000		
	2008		2,308,000		
	2007		<u>1,759,000</u>		
TOTAL NET ASSETS-ENDING NOVEMBER 30	2009		259,000		
	2008		1,042,000		
	2007		<u><u>464,000</u></u>		

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

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>2 Months Actual</u>	<u>Actual/ Budget</u>	<u>Performance Index</u>
REVENUES:					
Fees and service charges	2009	\$ 4,928,000	840,000	17.0%	102.27
	2008	4,724,000	827,000	17.5%	105.04
	2007	4,700,000	814,000	17.3%	103.91
Miscellaneous revenue	2009	150,000	17,000	11.3%	68.00
	2008	125,000	45,000	36.0%	216.00
	2007	109,000	28,000	25.7%	154.13
TOTAL REVENUE	2009	5,078,000	857,000	16.9%	101.26
	2008	4,849,000	872,000	18.0%	107.90
	2007	4,809,000	842,000	17.5%	105.05
EXPENSES & ENCUMBRANCES:					
Capital outlay	2009	-	-	-	-
	2008	-	-	-	-
	2007	28,000	-	-	-
Other expenses & encumbrances	2009	2,804,000	534,000	19.0%	114.27
	2008	2,579,000	492,000	19.1%	114.46
	2007	2,682,000	434,000	16.2%	97.09
Total expenses and encumbrances	2009	2,804,000	534,000	19.0%	114.27
	2008	2,579,000	492,000	19.1%	114.46
	2007	2,710,000	434,000	16.0%	96.09
Excess (deficiency) of revenues over (under) expenses	2009	2,274,000	323,000	-	-
	2008	2,270,000	380,000	-	-
	2007	2,099,000	408,000	-	-
TRANSFERS OUT					
Operating transfers out	2009	(2,868,000)	(478,000)	16.7%	100.00
	2008	(2,711,000)	(452,000)	16.7%	100.04
	2007	(2,559,000)	(426,000)	16.6%	99.88
CHANGE IN NET ASSETS					
	2009	(594,000)	(155,000)		
	2008	(441,000)	(72,000)		
	2007	(460,000)	(18,000)		
TOTAL NET ASSETS-BEGINNING					
	2009		21,004,000		
	2008		21,106,000		
	2007		20,754,000		
TOTAL NET ASSETS-ENDING NOVEMBER 30					
	2009		20,849,000		
	2008		21,034,000		
	2007		20,736,000		

MONTHLY FINANCIAL SUMMARY REPORT
 THROUGH NOVEMBER 30 OF FISCAL YEARS 2009, 2008, 2007
 NONMAJOR BUSINESS-TYPE FUNDS

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>2 Months Actual</u>	<u>Actual/ Budget</u>	<u>Performance Index</u>
REVENUES:					
Hotel/motel tax	2009	\$ 4,965,000	318,000	0.06	38.43
	2008	4,518,000	363,000	0.08	48.21
	2007	4,009,000	353,000	0.09	52.83
Other revenue	2009	6,974,000	1,136,000	16.3%	97.73
	2008	6,695,000	1,077,000	16.1%	96.52
	2007	6,324,000	1,042,000	16.5%	98.86
TOTAL REVENUE	2009	11,939,000	1,454,000	12.2%	73.07
	2008	11,213,000	1,440,000	12.8%	77.05
	2007	10,333,000	1,395,000	13.5%	81.00
EXPENSES & ENCUMBRANCES:					
Capital outlay	2009	-	59,000	-	-
	2008	81,000	100,000	123.5%	740.74
	2007	52,000	15,000	28.8%	173.08
Other expenses & encumbrances	2009	12,551,000	2,380,000	19.0%	113.78
	2008	11,659,000	2,232,000	19.1%	114.86
	2007	10,469,000	1,963,000	18.8%	112.50
Total expenses and encumbrances	2009	12,551,000	2,439,000	19.4%	116.60
	2008	11,740,000	2,332,000	19.9%	119.18
	2007	10,521,000	1,978,000	18.8%	112.80
Excess (deficiency) of Revenues over (under) expenses	2009	(612,000)	(985,000)	-	-
	2008	(527,000)	(892,000)	-	-
	2007	(188,000)	(583,000)	-	-
TRANSFERS OUT:					
Operating transfers out	2009	(1,446,000)	(240,000)	16.6%	99.59
	2008	(1,120,000)	(186,000)	16.6%	99.64
	2007	(671,000)	(112,000)	16.7%	100.15
CHANGE IN NET ASSETS	2009	(2,058,000)	(1,225,000)		
	2008	(1,647,000)	(1,078,000)		
	2007	(859,000)	(695,000)		
TOTAL NET ASSETS-BEGINNING	2009		13,062,000		
	2008		13,468,000		
	2007		12,926,000		
TOTAL NET ASSETS-ENDING NOVEMBER 30	2009		11,837,000		
	2008		12,390,000		
	2007		12,231,000		

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

	<u>Fiscal Year</u>	<u>Annual Budget</u>	<u>2 Months Actual</u>	<u>Actual/ Budget</u>	<u>Performance Index</u>
REVENUES:					
Miscellaneous revenue	2009	\$ 310,000	44,000	14.2%	85.16
	2008	185,000	90,000	48.6%	291.89
	2007	-	22,000	-	-
EXPENSES & ENCUMBRANCES					
Personal services	2009	559,000	87,000	15.6%	93.38
	2008	551,000	88,000	16.0%	95.83
	2007	529,000	85,000	16.1%	96.41
Materials and supplies	2009	23,000	4,000	17.4%	104.35
	2008	24,000	12,000	50.0%	300.00
	2007	26,000	19,000	73.1%	438.46
Contractual / professional and other	2009	5,487,000	1,402,000	25.6%	153.31
	2008	6,275,000	38,000	0.6%	3.63
	2007	6,276,000	35,000	0.6%	3.35
Capital outlay	2009	-	-	-	-
	2008	-	-	-	-
	2007	-	7,000	-	-
Total Expenses and Encumbrances	2009	6,069,000	1,493,000	24.6%	147.60
	2008	6,850,000	138,000	2.0%	12.09
	2007	6,831,000	146,000	2.1%	12.82
Excess (Deficiency) of Revenues Over (Under) Expenses	2009	(5,759,000)	(1,449,000)	-	-
	2008	(6,665,000)	(48,000)	-	-
	2007	(6,831,000)	(124,000)	-	-
TRANSFERS IN					
Operating transfers in	2009	6,069,000	1,011,000	16.7%	99.95
	2008	6,850,000	571,000	8.3%	50.01
	2007	6,831,000	569,000	8.3%	49.98
CHANGE IN NET ASSETS					
	2009	310,000	(438,000)		
	2008	185,000	523,000		
	2007	-	445,000		
TOTAL NET ASSETS-BEGINNING					
	2009		12,256,000		
	2008		6,941,000		
	2007		1,030,000		
TOTAL NET ASSETS-ENDING NOVEMBER 30					
	2009		11,818,000		
	2008		7,464,000		
	2007		1,475,000		

EQUITY IN TREASURY POOL
NOVEMBER 2008

	CASH	EQUITY IN TREASURY POOL	TOTAL 11/30/08	TOTAL 10/1/08	TOTAL 11/30/07
GENERAL FUND:					
01 General	\$ 22,000	26,831,000	26,853,000	41,732,000	30,841,000
77 Payroll	-	2,223,000	2,223,000	1,949,000	3,105,000
24 City Store	-	10,000	10,000	10,000	9,000
	<u>22,000</u>	<u>29,064,000</u>	<u>29,086,000</u>	<u>43,691,000</u>	<u>33,955,000</u>
DEBT SERVICE FUND:					
03 G.O. Debt Service	-	6,737,000	6,737,000	5,484,000	6,381,000
	<u>-</u>	<u>6,737,000</u>	<u>6,737,000</u>	<u>5,484,000</u>	<u>6,381,000</u>
CAPITAL PROJECTS:					
22 Recreation Center Facilities	-	581,000	581,000	579,000	529,000
23 Street Enhancement	-	1,635,000	1,635,000	1,629,000	1,523,000
25 1991 Police & Courts Facility	-	1,148,000	1,148,000	1,260,000	1,671,000
27 1991 Library Facility	-	868,000	868,000	864,000	643,000
28 1991 Fire Facility	-	2,285,000	2,285,000	2,276,000	1,964,000
29 Technology Improvements	-	749,000	749,000	746,000	254,000
31 Municipal Facilities	-	443,000	443,000	441,000	419,000
32 Park Improvements	-	5,756,000	5,756,000	5,735,000	4,788,000
33 Street & Drainage Improvement	-	6,242,000	6,242,000	4,779,000	2,558,000
35 Capital Reserve	-	38,204,000	38,204,000	39,463,000	37,596,000
38 DART L.A.P.	-	763,000	763,000	761,000	740,000
39 Spring Creekwalk	-	24,000	24,000	23,000	23,000
52 Park Service Areas	-	5,836,000	5,836,000	5,804,000	5,714,000
53 Creative & Performing Arts	-	2,193,000	2,193,000	2,185,000	2,030,000
54 Animal Control Facilities	-	337,000	337,000	336,000	252,000
59 Service Center	-	131,000	131,000	131,000	127,000
60 Joint Use Facilities	-	631,000	631,000	628,000	579,000
85 Public Arts	-	117,000	117,000	116,000	100,000
110 G.O. Bond Clearing - 1999	-	325,000	325,000	343,000	417,000
190 G.O. Bond Clearing - 2000	-	3,651,000	3,651,000	3,641,000	3,680,000
230 Tax Notes Clearing - 2001	-	1,106,000	1,106,000	1,343,000	1,409,000
240 G.O. Bond Clearing - 2001-A	-	183,000	183,000	182,000	184,000
250 Tax Notes Clearing - 2001-A	-	60,000	60,000	158,000	160,000
270 G.O. Bond Refund/Clearing - 2003	-	137,000	137,000	137,000	1,105,000
310 G.O. Bond Refund/Clearing - 2005	-	-	-	-	1,011,000
093 G.O. Bond Clearing - 2006	-	-	-	-	1,651,000
089 C.O. Bond Clearing - 2006	-	198,000	198,000	269,000	375,000
102 G.O. Bond Clearing - 2007	-	7,206,000	7,206,000	9,664,000	23,322,000
105 Tax Notes Clearing - 2007	-	1,000	1,000	555,000	6,704,000
082 G.O. Bond Clearing - 2008	-	31,156,000	31,156,000	34,778,000	-
083 Tax Notes Clearing - 2008	-	16,625,000	16,625,000	17,207,000	-
	<u>-</u>	<u>128,591,000</u>	<u>128,591,000</u>	<u>136,033,000</u>	<u>101,528,000</u>
ENTERPRISE FUNDS:					
26 Municipal Drainage CIP	-	282,000	282,000	281,000	238,000
34 Sewer CIP	-	8,298,000	8,298,000	8,134,000	8,212,000
36 Water CIP	-	6,323,000	6,323,000	5,531,000	5,376,000
37 Downtown Center Development	-	108,000	108,000	119,000	84,000
41 Water & Sewer - Operating	(1,069,000)	3,904,000	2,835,000	3,228,000	(7,067,000)
42 Water & Sewer - Debt Service	-	575,000	575,000	207,000	1,001,000
43 Municipal Drainage - Debt Service	-	3,190,000	3,190,000	3,288,000	2,742,000
44 W & S Impact Fees Clearing	-	3,543,000	3,543,000	3,293,000	2,800,000
45 Sustainability & Environmental Services	1,015,000	(1,186,000)	(171,000)	777,000	138,000
46 Convention & Tourism	4,000	3,428,000	3,432,000	4,248,000	3,469,000
81 Friends of Plano Centre	-	4,000	4,000	4,000	4,000
47 Municipal Drainage	372,000	3,889,000	4,261,000	4,348,000	4,220,000
48 Municipal Golf Course	-	105,000	105,000	139,000	130,000
49 Property Management	-	445,000	445,000	440,000	394,000
51 Recreation Revolving	-	996,000	996,000	1,412,000	866,000
104 Municipal Drain Bond Clearing-1996	-	180,000	180,000	180,000	175,000
320 Municipal Drain Rev Bond Clearing - 2005	-	153,000	153,000	152,000	299,000
094 Municipal Drain Rev Bond Clearing - 2006	-	164,000	164,000	164,000	1,261,000
330 Municipal Drain Rev Bond Clearing - 2007	-	2,202,000	2,202,000	2,604,000	2,945,000
340 Municipal Drain Rev Bond Clearing - 2008	-	2,098,000	2,098,000	2,091,000	-
	<u>322,000</u>	<u>38,701,000</u>	<u>39,023,000</u>	<u>40,640,000</u>	<u>27,287,000</u>

EQUITY IN TREASURY POOL

NOVEMBER 2008

FUND NO.	FUND NAME	CASH	EQUITY IN TREASURY POOL	TOTAL 11/30/08	TOTAL 10/1/08	TOTAL 11/30/07
SPECIAL REVENUE FUNDS:						
2	Sproles Library	-	185,000	185,000	185,000	19,000
4	TIF-Mall	-	-	-	-	50,000
5	TIF-East Side	-	6,002,000	6,002,000	6,002,000	7,789,000
11	LLEBG-Police Grant	-	43,000	43,000	26,000	120,000
12	Criminal Investigation	-	1,024,000	1,024,000	989,000	919,000
13	Grant	-	(363,000)	(363,000)	(69,000)	(633,000)
14	Wireline Fees	-	396,000	396,000	399,000	326,000
15	Judicial Efficiency	-	119,000	119,000	118,000	116,000
16	Industrial	-	18,000	18,000	18,000	17,000
17	Intergovernmental	-	379,000	379,000	370,000	555,000
18	Government Access/CATV	-	262,000	262,000	431,000	521,000
19	Teen Court Program	-	48,000	48,000	46,000	42,000
20	Municipal Courts Technology	-	1,566,000	1,566,000	1,538,000	1,412,000
55	Municipal Court-Building Security Fees	-	1,312,000	1,312,000	1,328,000	1,253,000
56	911 Reserve Fund	-	8,666,000	8,666,000	8,462,000	7,365,000
57	State Library Grants	-	51,000	51,000	(53,000)	17,000
67	Disaster Relief	-	1,112,000	1,112,000	1,114,000	1,153,000
68	Animal Shelter Donations	-	188,000	188,000	180,000	133,000
73	Memorial Library	-	413,000	413,000	378,000	212,000
86	Juvenile Case Manager	-	170,000	170,000	167,000	136,000
87	Traffic Safety	-	1,215,000	1,215,000	1,213,000	744,000
88	Child Safety	-	922,000	922,000	827,000	783,000
		-	23,728,000	23,728,000	23,669,000	23,049,000
INTERNAL SERVICE FUNDS:						
6	Public Safety Technology	-	1,966,000	1,966,000	1,718,000	1,610,000
9	Technology Infrastructure	-	(9,000)	(9,000)	(108,000)	4,131,000
58	PC Replacement	-	2,021,000	2,021,000	2,024,000	1,451,000
61	Equipment Maintenance	-	(4,468,000)	(4,468,000)	(4,201,000)	(5,071,000)
62	Information Technology	-	3,635,000	3,635,000	3,261,000	(204,000)
63	Office Services	-	(15,000)	(15,000)	(277,000)	(237,000)
64	Warehouse	-	83,000	83,000	238,000	240,000
65	Property/Liability Loss	-	4,965,000	4,965,000	5,629,000	7,445,000
66	Technology Services	-	12,316,000	12,316,000	12,786,000	11,722,000
71	Equipment Replacement	-	10,509,000	10,509,000	9,898,000	12,261,000
78	Health Claims	-	7,776,000	7,776,000	7,943,000	28,642,000
79	Parkway Service Ctr. Expansion	-	(28,000)	(28,000)	(28,000)	(28,000)
		-	38,751,000	38,751,000	38,883,000	61,962,000
FIDUCIARY FUNDS:						
7	Unclaimed Property	-	58,000	58,000	57,000	52,000
8	Library Training Lab	-	6,000	6,000	5,000	6,000
69	Collin County Seized Assets	-	264,000	264,000	263,000	288,000
74	Developers' Escrow	-	4,118,000	4,118,000	4,185,000	4,074,000
75	Plano Economic Development Trust	-	656,000	656,000	683,000	-
76	Economic Development	-	11,291,000	11,291,000	11,727,000	8,133,000
84	Rebate	-	1,021,000	1,021,000	1,017,000	1,041,000
		-	17,414,000	17,414,000	17,937,000	13,594,000
TOTAL		\$ 344,000	282,986,000	283,330,000	306,337,000	267,756,000
		CASH	TRUST INVESTMENTS	TOTAL 11/30/08	TOTAL 10/1/08	TOTAL 11/30/07
TRUST FUNDS						
42	Water & Sewer Reserve	-	-	-	-	-
72	Retirement Security Plan	-	61,612,000	61,612,000	70,000	70,007,000
91	115 Trust	-	-	-	23,000,000	-
TOTAL TRUST FUNDS		\$ -	61,612,000	61,612,000	23,070,000	70,007,000

A Treasury Pool fund has been created for the purpose of consolidating cash and investments. All City funds not restricted or held in trust are included in this consolidated fund. Each fund's "Equity in Treasury Pool" represents the fund's proportionate share of the Treasury Pool Fund. At November 30, 2008 the Treasury Pool, including an adjustment to Fair Value as required by GASB 31, consisted of the following:

Cash	26,236,000
Local Government Investment Pool	231,451,000
Federal Securities	19,931,000
Certificates of Deposit	5,000,000
Fair Value Adjustment	196,000
Interest Receivable	172,000
	<u>282,986,000</u>

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

Health Claims Fund	1 Month Variance Favorable (Unfavorable)			1 month Variance Favorable (Unfavorable)			Year to Date Variance Favorable (Unfavorable)		
	FY 08-09 October	FY 07-08 October		FY 08-09 November	FY 07-08 November		FY 08-09 Total	FY 07-08 Total	
Revenues									
Employees Health Ins. Contributions	\$ 250,000	\$ 197,000	53,000	250,000	197,000	53,000	\$ 500,000	\$ 394,000	\$ 106,000
Employers Health Ins. Contributions	1,538,000	1,753,000	(215,000)	1,546,000	1,749,000	(203,000)	3,084,000	3,502,000	(418,000)
Contributions for Retirees	80,000	51,000	29,000	37,000	53,000	(16,000)	117,000	104,000	13,000
Cobra Insurance Receipts	8,000	4,000	4,000	8,000	5,000	3,000	16,000	9,000	7,000
Retiree Insurance Receipts	28,000	25,000	3,000	27,000	31,000	(4,000)	55,000	56,000	(1,000)
Plano Housing Authority	-	-	-	-	-	-	-	-	-
Interest	15,000	155,000	(140,000)	14,000	141,000	(127,000)	29,000	296,000	(267,000)
Total Revenues	1,919,000	2,185,000	(266,000)	1,882,000	2,176,000	(294,000)	3,801,000	4,361,000	(560,000)
Expenses									
Insurance	116,000	118,000	2,000	116,000	120,000	4,000	232,000	238,000	(6,000)
Contracts- Professional Svc.	39,000	5,000	(34,000)	5,000	5,000	-	44,000	10,000	34,000
Contracts- Other	86,000	70,000	(16,000)	101,000	91,000	(10,000)	187,000	161,000	26,000
Health Claims Paid Reinsurance	1,000	(83,000)	(84,000)	(3,000)	(35,000)	(32,000)	(2,000)	(118,000)	116,000
Health Claims - Prescription	259,000	273,000	14,000	260,000	263,000	3,000	519,000	536,000	(17,000)
Health Claims Paid -UHC	1,552,000	982,000	(570,000)	1,449,000	1,043,000	(406,000)	3,001,000	2,025,000	976,000
Cobra Insurance Paid	-	-	-	1,000	1,000	-	1,000	1,000	-
Retiree Insurance Paid	6,000	11,000	5,000	7,000	10,000	3,000	13,000	21,000	(8,000)
Retiree Insurance Paid- Medicare	40,000	-	(40,000)	23,000	-	(23,000)	63,000	-	63,000
Plano Housing Authority	-	-	-	-	-	-	-	-	-
Total Expenses	2,099,000	1,376,000	(723,000)	1,959,000	1,498,000	(461,000)	4,058,000	2,874,000	1,184,000
Net increase (decrease)	\$ (180,000)	\$ 809,000	(989,000)	(77,000)	678,000	(755,000)	\$ (257,000)	\$ 1,487,000	624,000

Health Claims Fund Balance - Cumulative	\$ 3,799,000	\$ 24,863,000	(21,064,000)	\$ 3,723,000	\$ 25,541,000	(21,818,000)
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ANALYSIS OF PROPERTY LIABILITY LOSS FUND THROUGH NOVEMBER 30 OF FISCAL YEARS 2009, 2008, AND 2007

	Fiscal Year 2009	Fiscal Year 2008	Fiscal Year 2007
PROPERTY LIABILITY LOSS FUND			
Claims Paid per General Ledger	\$ 425,000	89,000	188,000
Net Judgments/Damages/Attorney Fees	209,000	58,000	78,000
Total Expenses	\$ 634,000	147,000	266,000

EQUITY IN TREASURY POOL
NOVEMBER 2008

The CIP Status Report is not available from the Engineering Department at time of print.

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

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SECTION 2

ECONOMIC ANALYSIS



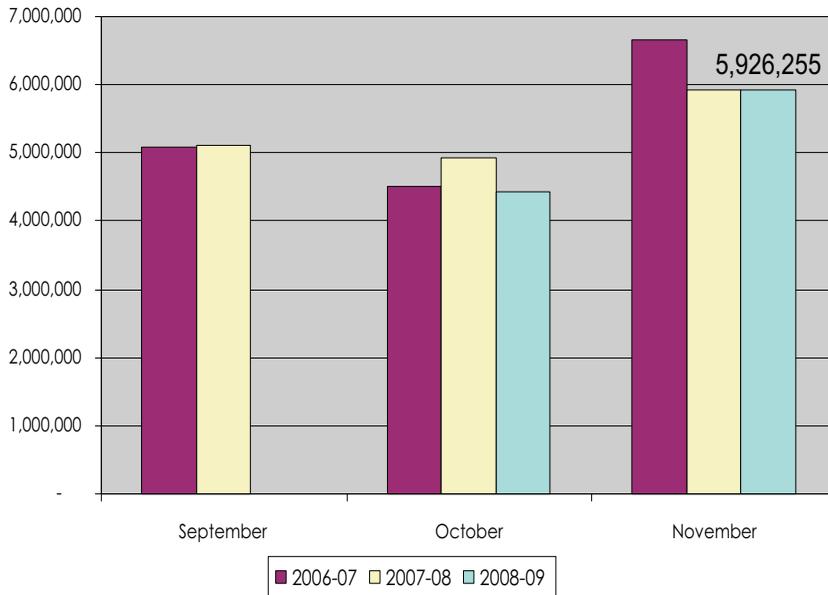
City of Plano
Comprehensive Monthly Finance Report

ECONOMIC ANALYSIS

Sales tax allocation of \$5,926,255 was remitted to the City of Plano in the month of November 2008. This amount represents an increase of .14% compared to the amount

received in November 2007.

SALES TAX
ACTUAL MONTHLY REVENUE
FIGURE I



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

Figure I represent actual sales and use tax receipts for the months of September through November for fiscal years 2006-2007, 2007-2008, and 2008-2009.

ANNUALIZED SALES TAX INDEX
COMPARED TO DALLAS CONSUMER PRICE INDEX
FIGURE II

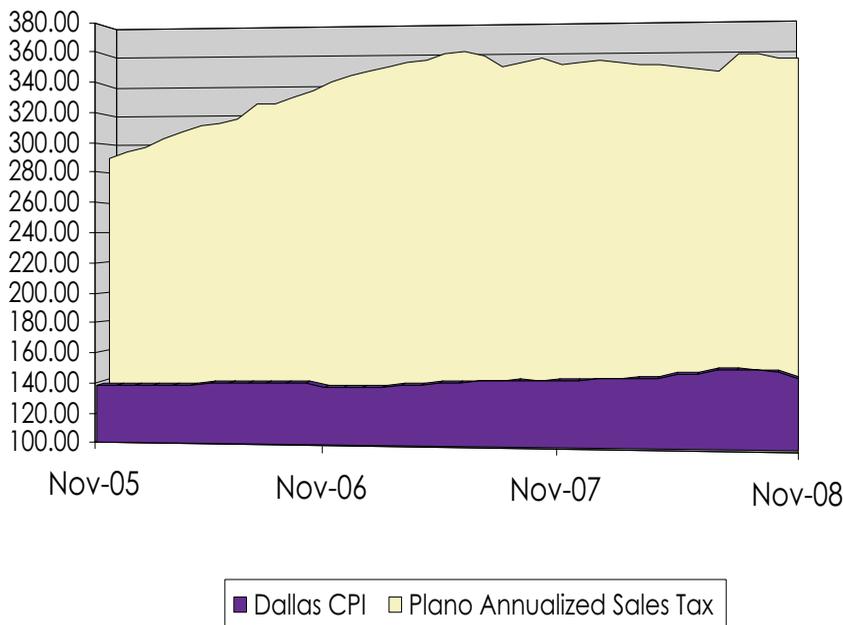


Figure II, left, tracks the percentage change in annualized sales tax revenues compared to the percentage change in the Dallas-area CPI, using 1982-84 as the base period. For November 2008, the adjusted CPI was 146.99 and the Sales Tax Index was 353.68.

Since January 1998, the BLS has moved the Dallas-Area pricing cycle for CPI computation to odd-numbered months.

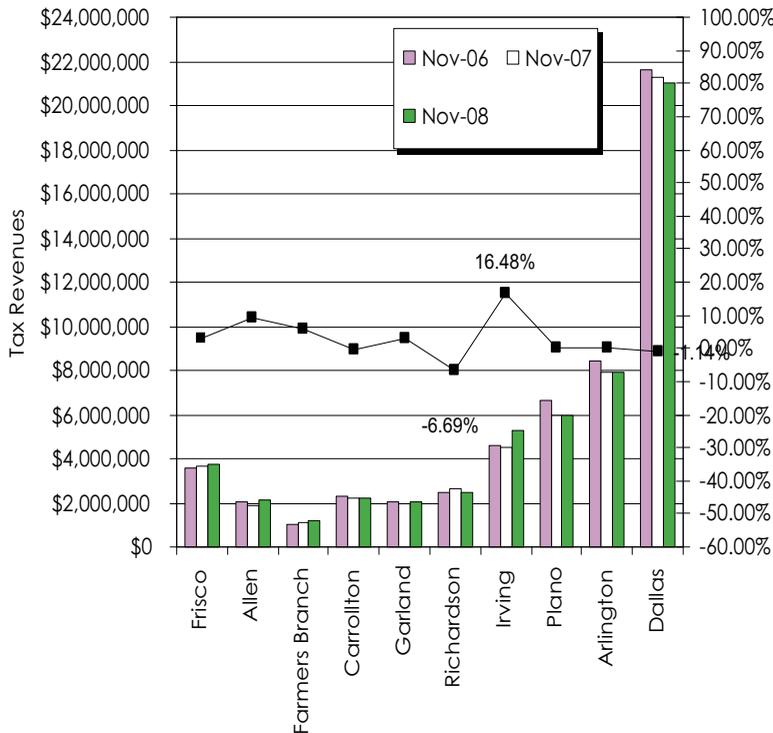
ECONOMIC ANALYSIS

Figure III shows sales tax allocations in the months of November 2006, November 2007 and November 2008 for the City of Plano and nine area cities. Each of the cities shown has a sales tax rate of 1%, except for the cities of Allen and Frisco, which have a 2% rate, but distribute half of the amount shown in the graph to 4A and 4B development corporations within their respective cities, and the City of Arlington which has a 1.75% sales tax rate with .25% dedicated to road maintenance and .50% for funding of the Dallas Cowboys Complex Development Project. In the month of November, the City of Plano received \$5,926,255 from this 1% tax.

SALES TAX COMPARISONS

CITY OF PLANO AND AREA CITIES

FIGURE III

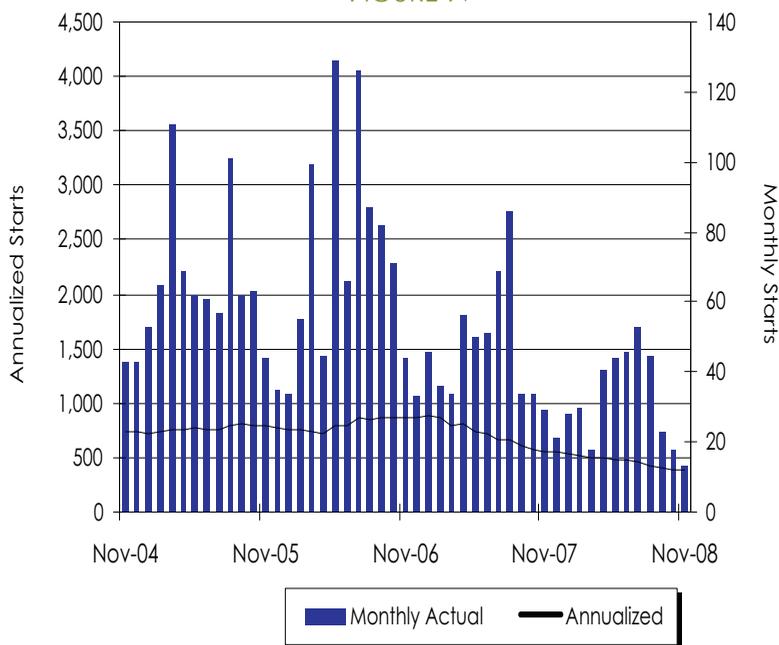


The percentage change in sales tax allocations for the area cities, comparing November 2007 to November 2008, ranged from 16.48% for the City of Irving to -6.69% for the City of Richardson.

In the month of November, the City of Plano received \$5,926,255 from this 1% tax.

SINGLE FAMILY HOUSING STARTS

FIGURE IV



In November 2008, a total of 13 actual single-family housing permits, representing a value of \$4,476,043, were issued. This value represents a 37.56% decrease from the same period a year ago. Annualized single-family housing starts of 380 represent a value of \$89,517,121.

Figure IV above shows actual single-family housing starts versus annualized housing starts for November 2004 through November 2008.

ECONOMIC ANALYSIS

YIELD CURVE
FIGURE V

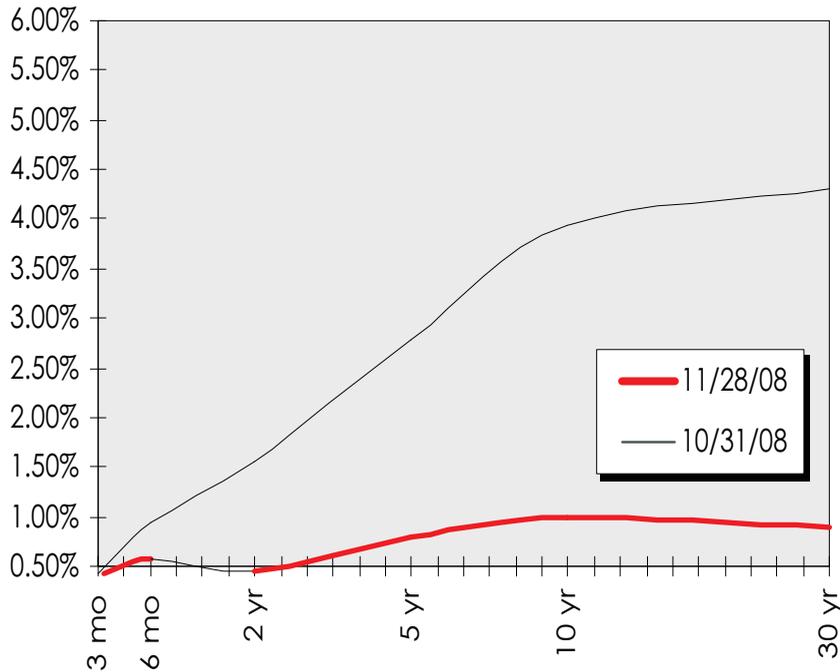


Figure V, left, shows the U.S. Treasury yield curve for November 28, 2008 in comparison to October 31, 2008. Of the reported treasury yields, there were only yield decreases in the month of November.

UNEMPLOYMENT RATES
UNADJUSTED RATE COMPARISON
FIGURE VI*

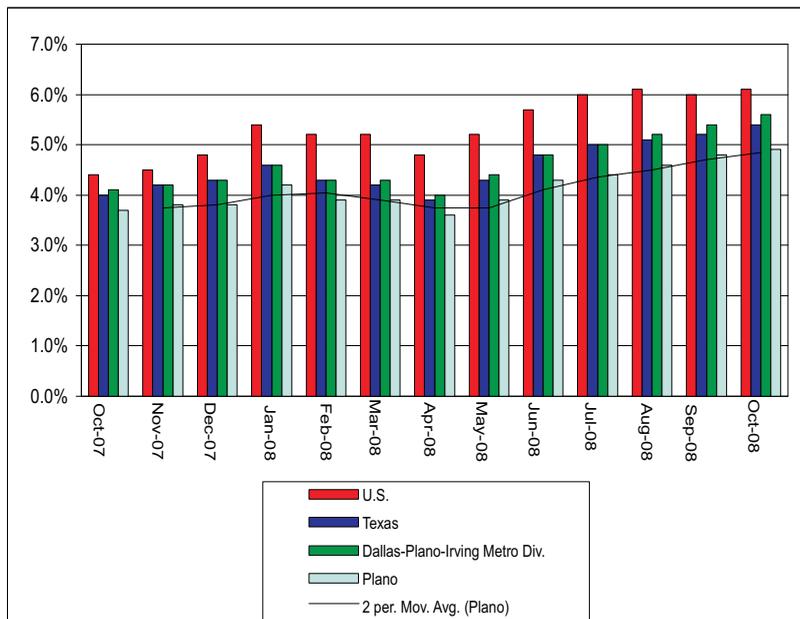


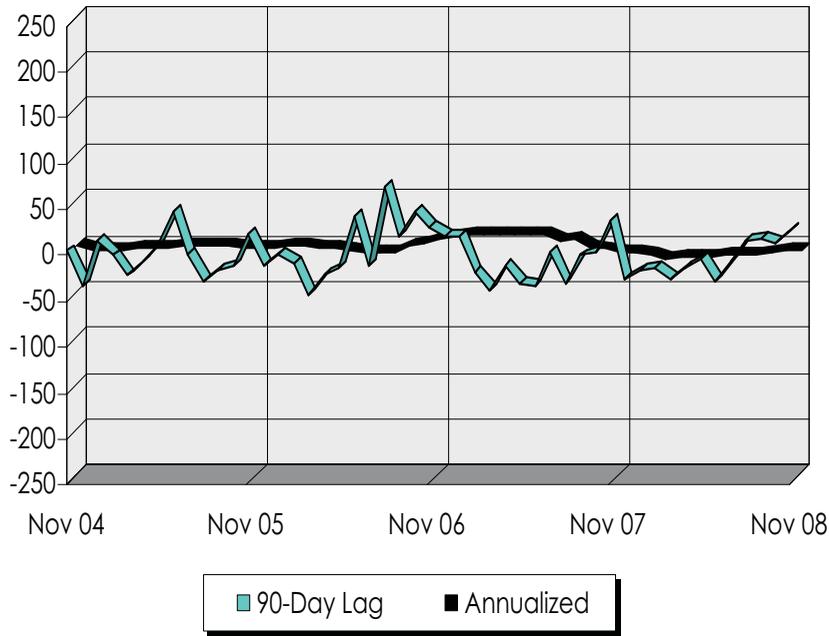
Figure VI shows unadjusted unemployment rates based on the BLS U.S. City Average, and LAUS estimates for the State of Texas, the Dallas-Plano-Irving Metropolitan Division and the City of Plano from October 2007 to October 2008.

*Due to changes in labor force estimation methodology by the BLS and the TWC, sub-state unemployment rate data prior to January 2005 are no longer comparable with current estimates. As a result, statistically significant changes in the reported unemployment rates may have occurred.

ECONOMIC ANALYSIS

Figure VII shows the net difference between the number of housing starts three months ago and new refuse customers in the current month (90-day lag) as well as the average

HOUSING ABSORPTION
90-DAY LAG FROM PERMIT DATE
FIGURE VII

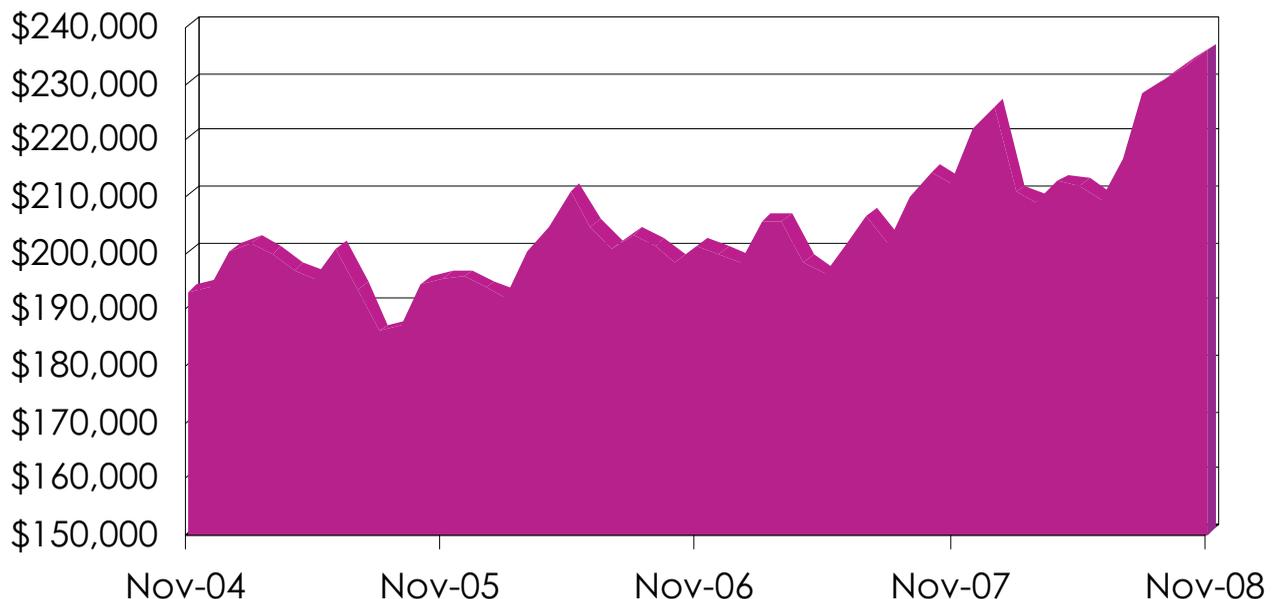


difference between these measures for the past four years (annualized).

For the current month, the 90-day lag is 26 homes, meaning that in August 2008 there were 26 more housing starts than new refuse customers in November 2008. The annualized rate is -7 which means there was an average of 7 fewer housing starts than new garbage customers per month over the past year.

The annualized average declared construction value of new homes increased 11.13% to \$235,571 when compared to November 2007.

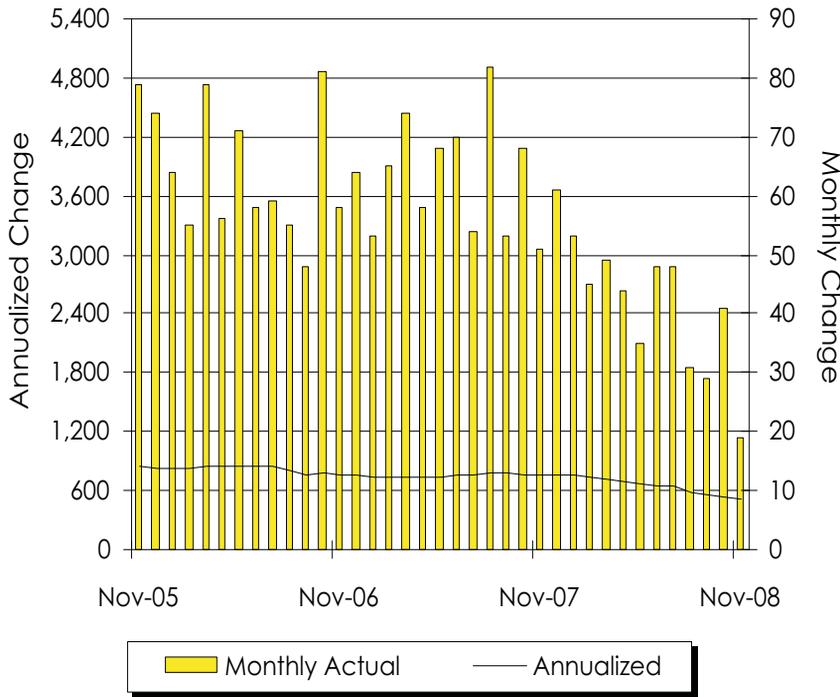
SINGLE-FAMILY NEW HOME VALUE
FIGURE VIII



ECONOMIC ANALYSIS

REFUSE COLLECTIONS ACCOUNTS NET GAINS/LOSSES

Figure IX

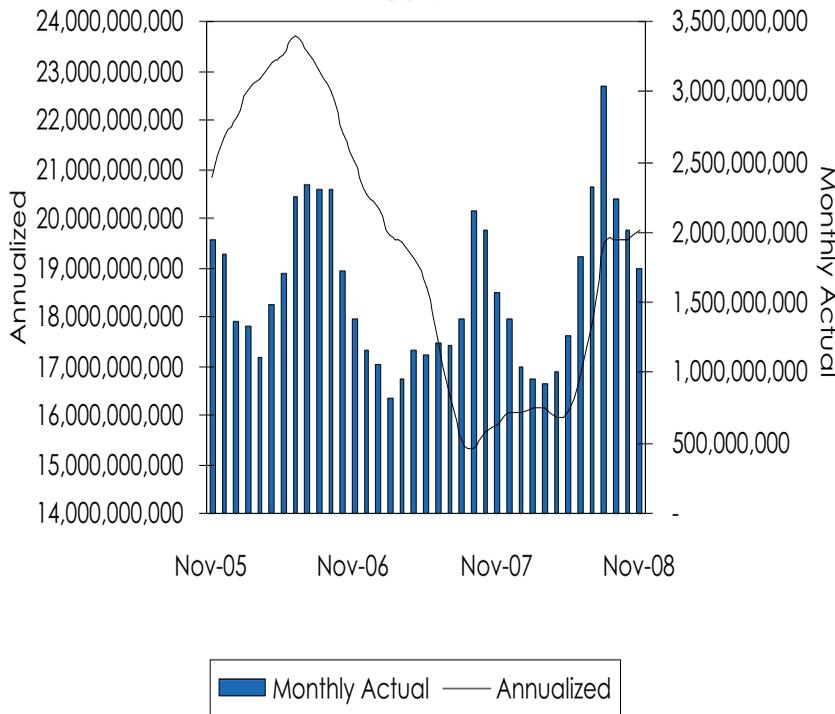


In November, net new refuse collection accounts totaled 19, in comparison to 51 new accounts in November of 2007. This change represents a 62.75% decrease on a year-to-year basis. Annualized new refuse accounts totaled 503 showing a decrease of 257, or a -38.82% change when compared to the same time last year.

Figure IX shows actual versus annualized new refuse collection accounts.

LOCAL WATER CONSUMPTION (GALLONS)

FIGURE X



In November, the City of Plano pumped 1,878,275,000 gallons of water from the North Texas Municipal Water District (NTMWD). Consumption was 1,736,260,990 gallons among 78,519 billed water accounts while billed sewer accounts numbered 74,813. The minimum daily water pumpage was 50,520,000 gallons, which occurred on Saturday, November 29th. Maximum daily pumpage was 81,585,000 gallons and occurred on Thursday, November 4th. This month's average daily pumpage was 62,609,000 gallons.

Figure X shows the monthly actual and annualized average for local water consumption.

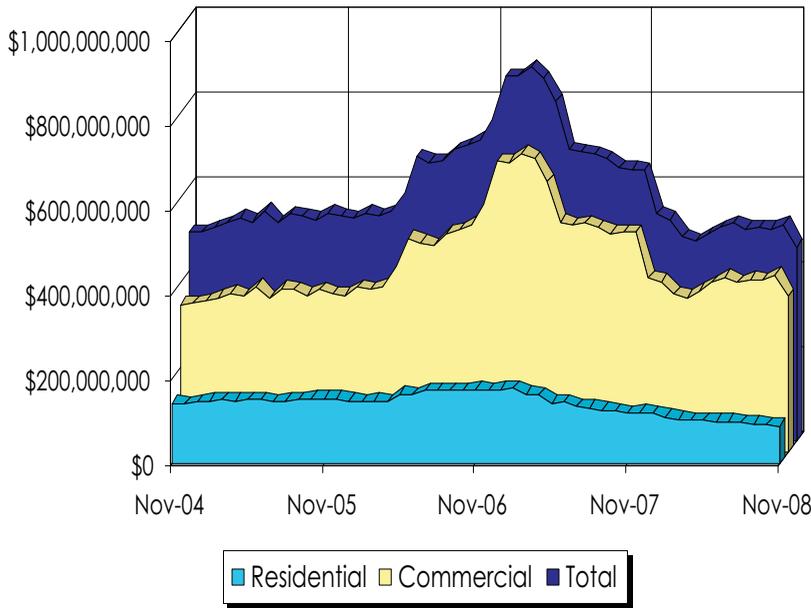
ECONOMIC ANALYSIS

In November a total of 61 new construction permits were issued, for properties valued at \$17,484,256. This includes 13 single-family residences, 5 retail/restaurant 5 other, 10 commercial additions/alterations, 27 interior finish-outs, and no demolitions. There were 5

permits issued for pools/spas.

ANNUALIZED BUILDING PERMIT VALUES

FIGURE XI



The overall annualized value was \$457,211,378, down 28.14% from the same period a year ago. The annualized value of new residential construction decreased to a value of \$89,517,121, down 24.32% from a year ago. The annualized value of new commercial construction decreased 29.01% to \$367,694,257.*

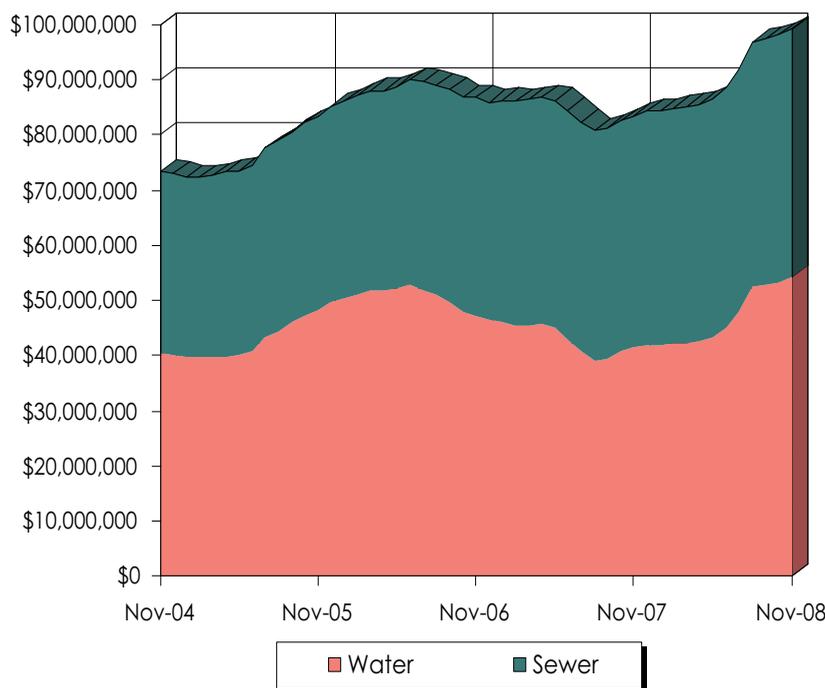
* As of January 2002, data on commercial construction value is based on both the building shell and interior finish work, per the Building Inspection Department.

The actual water and sewer customer billing revenues in November were \$4,642,405 and \$3,789,328, representing an increase of 21.75% and 4.93% respectively, compared to

November 2007 revenues. The aggregate water and sewer accounts netted \$8,431,734 for an increase of 13.57%.

ANNUALIZED WATER & SEWER BILLINGS

FIGURE XII



November consumption brought annualized revenue of \$54,253,807 for water and \$44,903,506 for sewer, totaling \$99,157,313. This total represents an increase of 18.80% compared to last year's annualized revenue.

Figure XII represents the annualized billing history of water and sewer revenues for November 2004 through November 2008.

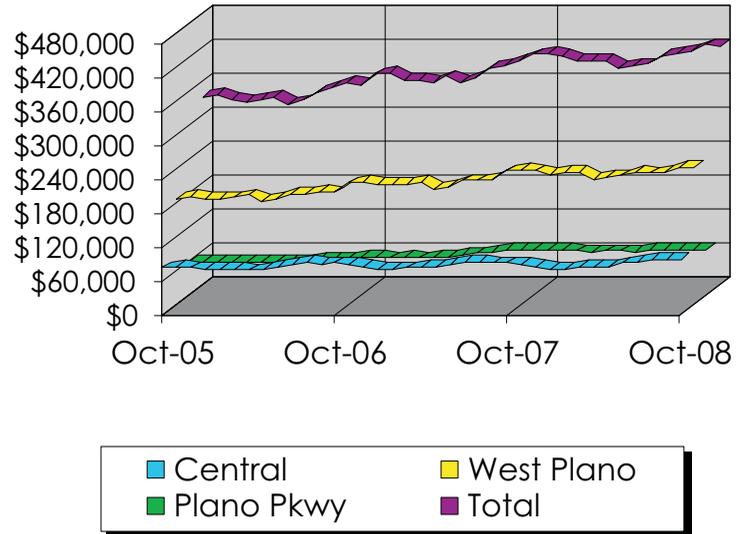
ECONOMIC ANALYSIS

October revenue from hotel/motel occupancy tax was \$427,458. This represents an increase of \$16,959 or 4.13% compared to October 2007. The average monthly revenue for the past six months (see graph) was \$421,144, an increase of 2.93% from the previous year's average. The six-month average for the Central area increased to \$98,442, the West Plano average increased to \$241,511, and the Plano Pkwy average increased to \$81,190 from the prior year.

¹This amount will not always equal the hotel/motel taxes reported in the financial section. The economic report is based on the amount of taxes earned during a month, while the financial report indicates when the City received the tax.

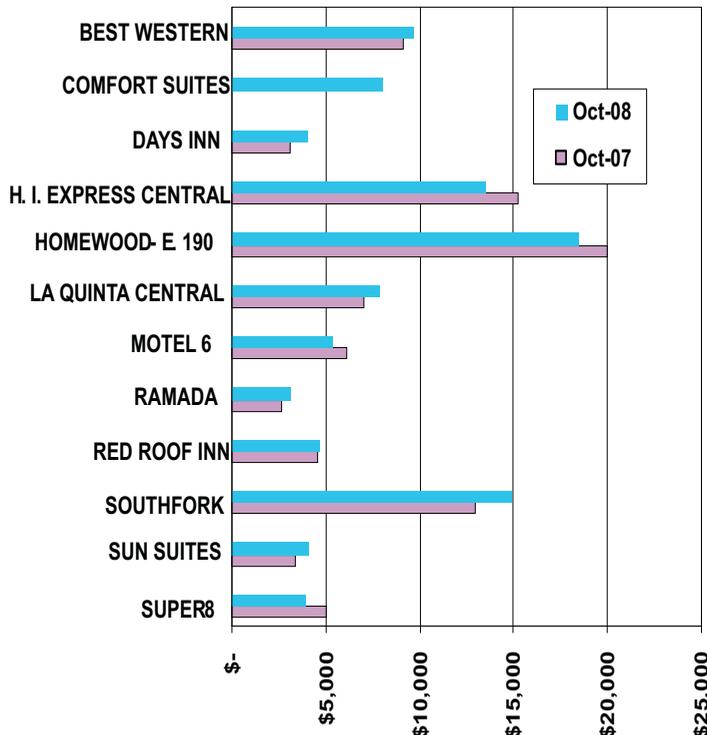
HOTEL/MOTEL OCCUPANCY TAX SIX MONTH TREND

FIGURE XIII

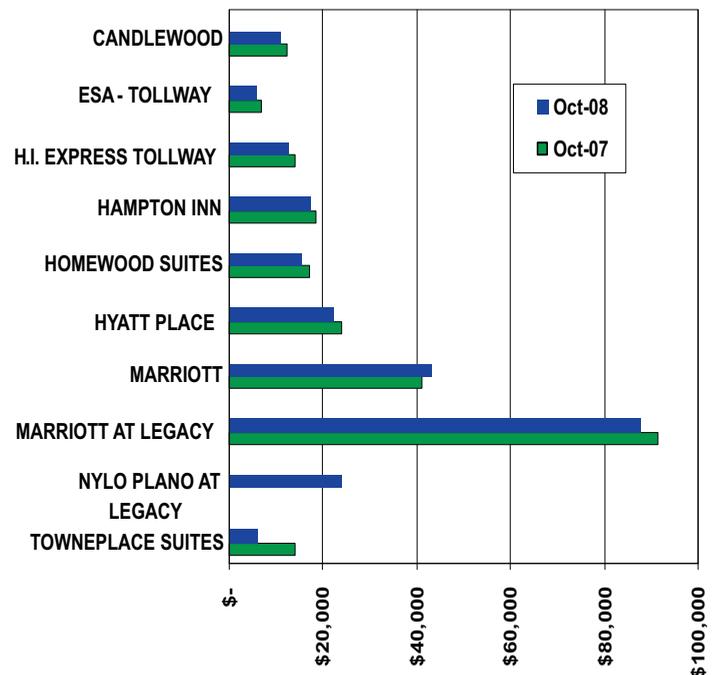


Figures XIV, XV and XVI show the actual occupancy tax revenue received from each hotel/motel in Plano for October 2008 compared to the revenue received in October 2007.

HOTEL/MOTEL OCCUPANCY TAX MONTHLY COMPARISON BY HOTEL - CENTRAL FIGURE XIV



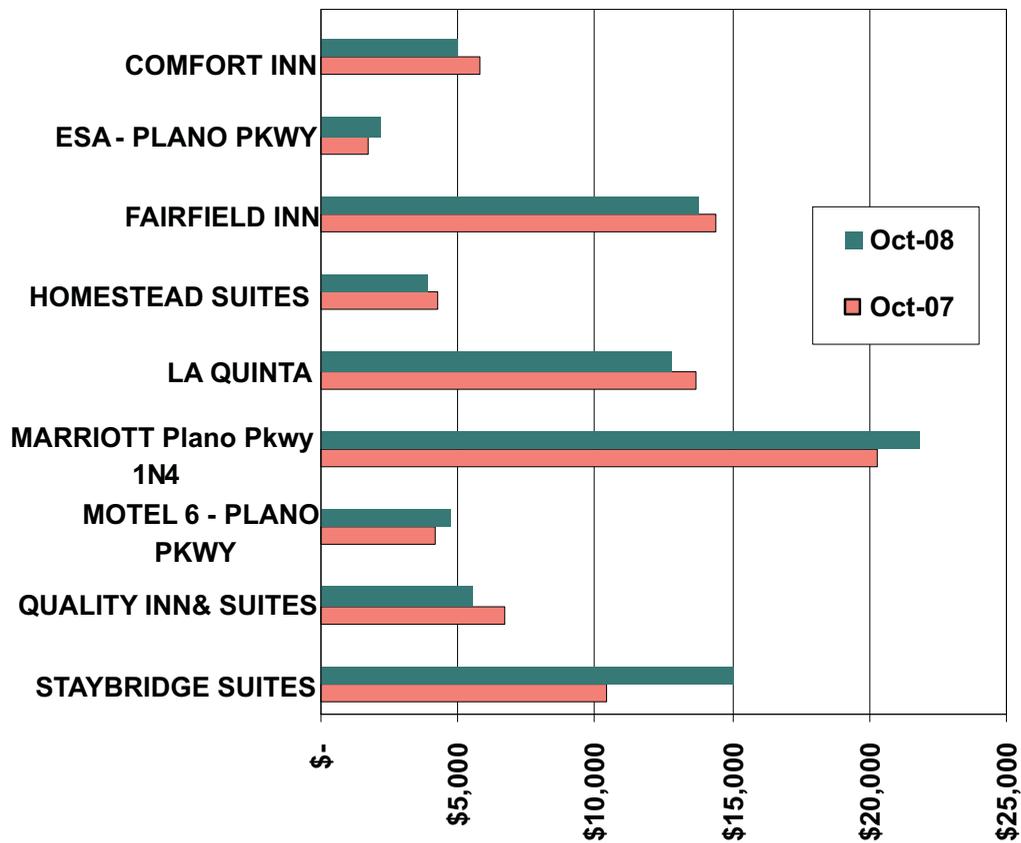
HOTEL/MOTEL OCCUPANCY TAX MONTHLY COMPARISON BY HOTEL - WEST PLANO FIGURE XV



*Since August 2005, Marriott International Tax Revenue numbers on this graph represent two (2) Marriott owned hotels (Courtyard by Marriott 1ND and Residence Inn # 323) **Hyatt Place: Formerly AmeriSuites; began renovation in June 2006

ECONOMIC ANALYSIS

HOTEL/MOTEL OCCUPANCY TAX
 MONTHLY COMPARISON BY HOTEL-PLANO PKWY
 FIGURE XVI



*Since August 2005, Marriott International tax revenue on this graph represent one (1) Marriott owned hotel (Courtyard by Marriott # N14) **Quality Inn & Suites: Formerly Baymont Inn & Suites

SECTION 3

INVESTMENT REPORT

City of Plano
Comprehensive Monthly Finance Report



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

INVESTMENT REPORT

NOVEMBER, 2008

Earned income during November totaled \$491,569 and represents interest paid on maturing investments and coupon payments on investments. Interest allocation is based on average balances within each fund during the month.

The two-year Treasury note yield decreased throughout the month of November, starting at 1.49% and ending at 0.72%.

As of November 30, a total of \$204.7 million was invested in the Treasury Fund. Of this amount, \$60.6 million was General Obligation Bond Funds, \$4.6 million was Municipal Drainage Revenue Bond Funds, and \$139.5 million was in the remaining funds.

Metrics	Current Month Actual	Fiscal YTD	Prior Fiscal YTD	Prior Fiscal Year Total
Funds Invested ¹	\$ 5,000,000	\$ 10,000,000	\$ 28,250,000	\$ 219,706,000
Interest Received ²	\$ 491,569	\$ 1,009,183	\$ 2,754,277	\$ 12,660,107
Weighted Average Maturity (in days) ³	82			
Modified Duration ⁴	0.2057			
Average 2-Year T-Note Yield ⁵	0.72%			

* See interest allocation footnote on Page C-3.

- (1) Does not include funds on deposit earning a "NOW" rate, and/or moneys in investment pools or cash accounts.
- (2) Cash Basis.
- (3) The length of time (expressed in days) until the average investment in the portfolio will mature. The Prior fiscal YTD column represents current month, prior year.
- (4) Expresses the measurable change in the value of the portfolio in response to a 100-basis-point (1%) change in interest rates. The modified duration number in the Prior fiscal YTD column represents current month, prior year.
- (5) Compares 2008 to 2007.

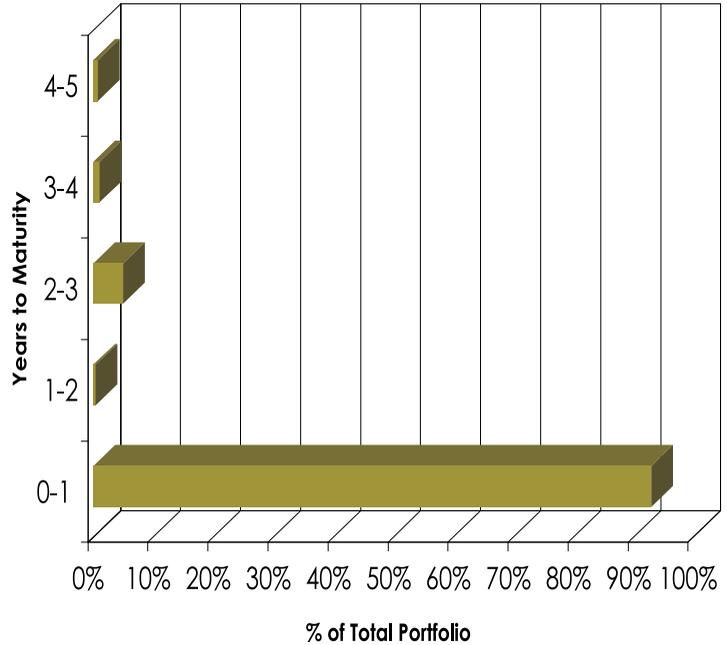
Month-to-Month Comparison

Metrics	Oct-08	Nov-08	Difference
Portfolio Holding Period Yield	2.73%	1.90%	-0.83% (-83 Basis Points)
Average 2-Year T-Note Yield	1.49%	0.72%	-0.77% (-77 Basis Points)

INVESTMENT REPORT

Portfolio Maturity Schedule Figure I

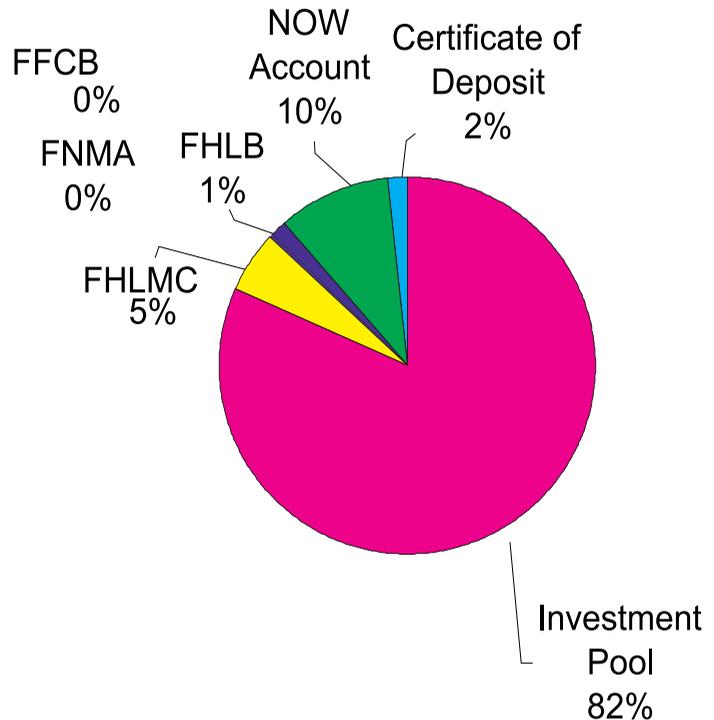
Years to Maturity*	Face Value	% Total
0-1	\$ 263,647,681	92.95%
1-2	1,000,000	0.35%
2-3	14,000,000	4.94%
3-4	3,000,000	1.06%
4-5	2,000,000	0.71%
Total	\$ 283,647,681	100.00%



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

Portfolio Diversification Figure II

Type	Face Value	% Total
Investment Pool	\$ 231,448,852	81.60%
Commercial Paper	0	0.00%
FHLMC	15,000,000	5.29%
FNMA	1,000,000	0.35%
FFCB	0	0.00%
FHLB	4,000,000	1.41%
NOW Account	27,198,829	9.59%
Certificate of Deposit	5,000,000	1.76%
Total	\$ 283,647,681	100.00%



INVESTMENT REPORT

Allocated Interest/Fund Balances November 2008

Fund	Beginning Fund Balance	Allocated Interest		Ending Fund Balance	% of Total
	11/30/2008	Current Month	Fiscal Y-T-D	11/30/2008	
General	26,783,515	47,374	110,279	26,830,889	13.11%
G. O. Debt Services	6,726,077	11,041	21,459	6,737,118	3.29%
Street & Drainage Improvements	6,231,436	10,997	21,173	6,242,433	3.05%
Sewer CIP	8,282,999	14,721	30,016	8,297,720	4.05%
Capital Reserve	38,135,996	68,217	140,981	38,204,213	18.66%
Water & Sewer Operating	3,898,514	5,339	10,086	3,903,853	1.91%
Water & Sewer Debt Service	390,394	558	558	54,428	0.03%
W & S Impact Fees Clearing	3,537,221	6,231	12,535	3,543,451	1.73%
Park Service Area Fees	5,825,165	10,362	21,206	5,835,527	2.85%
Property/ Liability Loss	4,956,091	9,390	19,858	4,965,480	2.43%
Information Services	12,293,789	22,001	45,529	12,315,790	6.02%
Equipment Replacement	10,490,690	18,647	20,001	10,509,337	5.13%
Developer's Escrow	4,110,900	7,382	15,191	4,118,282	2.01%
G. O. Bond Funds	60,492,303	110,331	233,167	60,602,634	29.60%
Municipal Drainage Bond Clearing	4,636,463	8,341	17,461	4,644,804	2.27%
Other	7,786,527	140,640	289,684	7,927,167	3.87%
Total	204,578,080	491,569	1,009,183	204,733,126	100%

November 30, 2008 allocated interest to these funds may include an adjustment to fair value as required by GASB 31

Portfolio Statistics

Month	Total Invested (End of Month)	Portfolio Yield	# of		Weighted Ave. Mat. (Days)	# of Securities
			Securities Purchased	Maturities/ Sold/Called		
May, 2007	\$ 292,825,559	4.49%	8	7	259	131
June, 2007	\$ 328,244,921	4.68%	6	14	255	123
July, 2007	\$ 319,849,907	4.80%	4	18	305	109
August, 2007	\$ 314,475,970	4.81%	3	5	301	107
September, 2007	\$ 280,880,178	4.69%	4	13	352	98
October, 2007	\$ 271,859,396	4.65%	9	9	372	98
November, 2007	\$ 267,923,119	4.50%	0	13	336	85
December, 2007	\$ 297,081,403	4.38%	5	5	330	85
January, 2008	\$ 331,733,593	3.89%	0	7	271	78
February, 2008	\$ 355,395,292	3.74%	0	47	201	31
March, 2008	\$ 387,032,318	3.15%	2	6	185	27
April, 2008	\$ 381,330,126	2.74%	1	5	139	23
May, 2008	\$ 372,180,688	2.87%	3	1	154	25
June, 2008	\$ 364,394,409	2.80%	3	10	89	18
July, 2008	\$ 335,954,990	2.83%	5	4	114	19
August, 2008	\$ 334,980,268	2.69%	7	6	119	20
September, 2008	\$ 299,945,950	2.55%	1	5	104	16
October, 2008	\$ 299,107,004	2.73%	1	4	266	13
November, 2008	\$ 283,647,681	1.90%	1	5	82	9

INVESTMENT REPORT

Equity in Treasury Pool
By Major Category
Figure IV

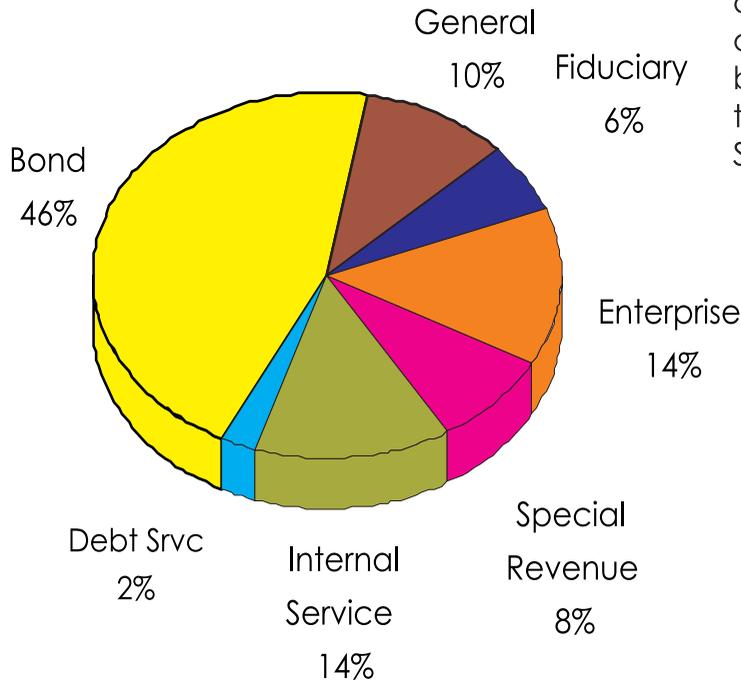
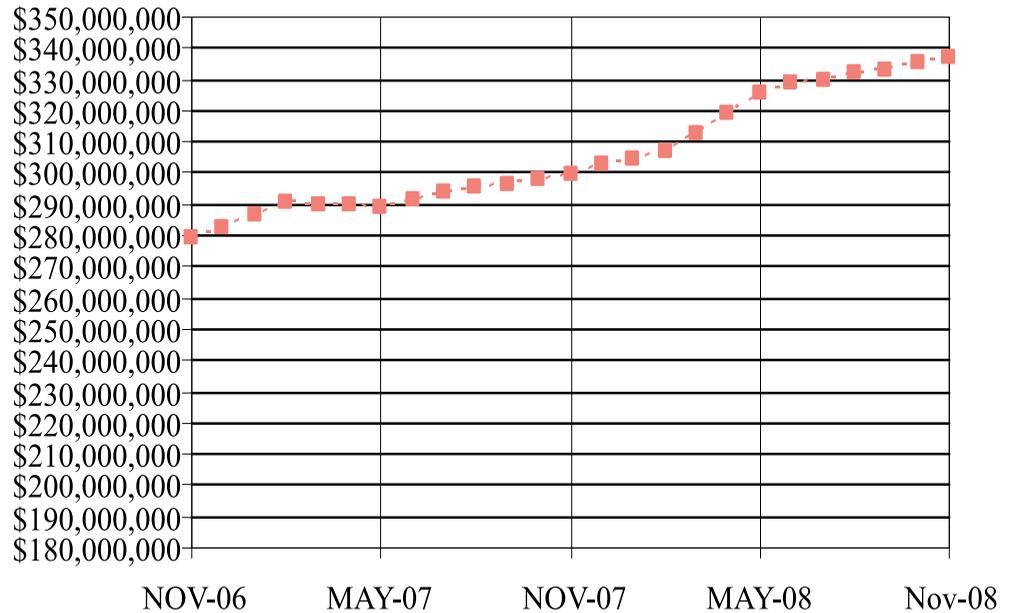


Figure IV shows a breakdown of the various sources of funds for the City's Treasury Pool as of November 30, 2008. The largest category is the Bond Funds in the amount of \$128.5 million. Closest behind is the Enterprise Fund with a total of \$39.0 million, and the Internal Service Funds with \$38.7 million.

Annualized Average Portfolio
Figure V

The annualized average portfolio for November 30, 2008 was \$336,898,643. This is an increase of \$37,044,730 when compared to the November 2007 average of \$299,853,914.



MEMORANDUM

Date: December 22, 2008

To: Honorable Mayor and City Council

From: Karen Rhodes-Whitley, Budget Director

Subject: **Tax Exemption for Charitable Organizations**

During the 77th State Legislative Session in 2001, House Bill 1689 was passed allowing a property tax exemption for the real and personal property of organizations engaged primarily in performing charitable functions, if approved by a local taxing unit. A qualified organization must be a chapter of a statewide organization that engages in primarily religious, charitable, scientific, literary, or educational functions as defined in Section 11.18(d) of the Texas Tax Code. In order to qualify for the exemption, an organization must obtain a determination letter from the State Comptroller stating that the organization was engaged primarily in charitable functions. A new determination letter is required every fifth year after the exemption is granted.

The City of Plano has been approached by the Masonic Lodge No. 768 of Plano, Texas to request such a property tax exemption for its property located at 1414 Avenue J. In reviewing their request, the Central Appraisal District was contacted to determine if any other charitable organizations owned real and personal property. As of December 15, 2008, the Masonic Lodge is the only one. The exemption, if passed by the City Council, equates to a loss of property tax revenue totaling \$890.31. However, in the future, the loss in property tax revenue could increase as other charitable organizations acquire property and apply for the exemption.

Tonight we would like to discuss House Bill 1689 and the ramifications of passing this exemption. If the City Council is in favor of the exemption, an agenda item will be placed on the first City Council meeting in January for your approval. It should be noted that the City of McKinney, Collin County Community College, and Collin County have all passed the property tax exemption for the Masonic Lodge. It is scheduled to go before the Plano Independent School District's Board in 2009.

Item VII. City of Plano Sign Ordinance

Mayor

Discussion/Action Items for Future Council Agendas

2008

December 25 & 26 – Christmas & Winter Holidays

2009

January 1 – New Year's Day

January 12
DART Report

January 19 – MLK Holiday

January 26
Mobility Report
DART Report
Comprehensive Monthly Financial Report

February 17

February 23
ACC Report (Quarterly)
Mobility Report
DART Report
Comprehensive Monthly Financial Report

March 9

March 23
Mobility Report
DART Report
Comprehensive Monthly Financial Report

April 14

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
December 8, 2008**

COUNCIL MEMBERS

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

STAFF

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

Mayor Evans called the meeting to order at 5:10 p.m., Monday, December 8, 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 and receive Legal Advice and to discuss Litigation, Section 551.071, 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 at 6:36 p.m. in the Council Chambers where the following matters were discussed:

**Consideration and Action Resulting from Executive Session Discussion:
Personnel Reappointments/Appointments to Boards and Commissions**

Board of Adjustment

Upon a motion made by Council Member Johnson and seconded by Council Member Dunlap, the Council voted 8-0 to appoint Salvator J. LaMastra IV with a term expiring October 2009, appoint Henry C. Pauly to a term expiring October 2010 and appoint Randy Hart as Chair.

Building Standards Commission

Upon a motion made by Council Member Johnson and seconded by Council Member Dunlap, the Council voted 8-0 to reappoint Jim C. Kesterson, Ann L. Nurre and Richard W. Prusha and move them to regular positions and further to reappoint Jim Degnan as Chair. The Council deferred appointment of alternate members.

Personnel Appointments

Upon a motion made by Deputy Mayor Pro Tem LaRosiliere and seconded by Council Member Magnuson, the Council voted 8-0 to appoint Vincent Bush as Chair.

DART Parking Proposal

Executive Director Turner spoke to property purchased in 2002 at the corner of Park Boulevard and K Avenue, the City's intent to reserve it for future transit-oriented development and the proposal of an alternative plan. He spoke to discussions with DART and the North Central Texas Council of Governments (NCTCOG) to use the property on an interim basis for parking with approximately 400 spaces immediately adjacent to the Parker Road station platform. Mr. Turner spoke regarding the accessibility of the location from K Avenue or Park Boulevard, the cost of management and operation funded through the payment of parking fees, and to providing premium services including covered parking, close proximity and reserved spaces. He spoke to the number of daily riders and limited parking spaces at the station with overflow located in commercial centers. Mr. Turner spoke to an additional concept of offering covered spaces as weekend vendor spots for a "market," the City's participation in the project by providing land, DART's modification of the platform and NCTCOG development of the facility and to extra funds beyond reserves coming back to the City and NCTCOG. He requested Council direction, advising that Staff would prepare a joint resolution with the entities laying out the functions and beginning preliminary design and a business plan.

Council Member Dunlap spoke in support of the recommendation and possibly using solar panels to provide lighting and to recharge vehicles. City Manager Muehlenbeck spoke to considering the effect on future plans for the Cottonbelt line and Mr. Turner advised it should not adversely affect progress. He responded to the Council regarding implementation of vendor spaces as a farmers' market, Christmas festival, or trade days location. Council Member Miner spoke in support of the recommendation and to setting baseline standards for vendor types. Mayor Evans spoke in support and to future accommodation of the Cottonbelt line. The Council concurred in directing Staff to move forward.

Council items for discussion/action on future agendas

Council Member Jackson requested a quarterly update on the Arts of Collin County to begin in February 2009. She further requested an agenda item for discussion of arcades in the City.

Mayor Evans requested an agenda item to discuss and consider referring to the Planning and Zoning Commission a discussion of signage including those located in retail centers.

Consent and Regular Agenda

Council Member Dunlap requested Consent Agenda Item "G," 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, be removed for individual consideration due to a possible conflict of interest.

Nothing further was discussed. Mayor Evans adjourned the Preliminary Meeting at 6:57 p.m.

Pat Evans, MAYOR

ATTEST

Diane Zucco, City Secretary

PLANO CITY COUNCIL
December 8, 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 Regular Session on Monday, December 8, 2008 at 7:07 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Associate Pastor Pete Kralyevich of Four Corners Church.

The Pledge of Allegiance was led by Tiger Cub Scout Pack 283, Den 2 of Brinker Elementary School. The Men of Note performed several holiday songs.

PROCLAMATIONS & SPECIAL RECOGNITION

City Manager Muehlenbeck presented City Engineer Alan Upchurch with his 25-Year Service Award.

OATHS OF OFFICE

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

COMMENTS OF PUBLIC INTEREST

No one appeared to speak.

CONSENT AGENDA

Council Member Dunlap requested Consent Agenda Item "G," be removed for individual consideration due to a possible conflict of interest.

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

Approval of Minutes [Consent Agenda Item (A)]

November 20, 2008
November 24, 2008 (Budget Retreat)
November 24, 2008

Approval of Expenditures

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

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. 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. [Consent Agenda Item (B)] (See Exhibit "A")

Bid No. 2009-5-B for Median Tree Replacement at multiple locations to Wall Enterprises in the amount of \$120,925. [Consent Agenda Item (C)] (See Exhibit "B")

Purchase from an Existing Contract

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) [Consent Agenda Item (D)]

Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)

To approve of a Surveying Contract by and between the City of Plano and Gorrondona & 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) [Consent Agenda Item (E)]

To approve an Engineering Contract by and between the City of Plano and C & P Engineering, LTD., in the amount of \$261,200 for Meadows Addition, and authorizing the City Manager to execute all necessary documents. [Consent Agenda Item (F)]

Approval of Change Order

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. [Consent Agenda Item (H)]

Adoption of Resolutions

Resolution 2008-12-1(R): 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. [Consent Agenda Item (I)]

Resolution 2008-12-2(R): 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. [Consent Agenda Item (J)]

Adoption of Ordinances

Ordinance 2008-12-3: 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. [Consent Agenda Item (K)]

Ordinance 2008-12-4: 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. [Consent Agenda Item (L)]

END OF CONSENT

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

Approval of Change Order - 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. [Consent Agenda Item (G)]

Upon a motion made by Council Member Miner and seconded by Council Member Jackson, the Council voted 7-0 to approve a change order 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.

Council Member Dunlap resumed his seat at the bench.

Public Hearing and adoption of Ordinance No. 2008-12-5 as requested in Zoning Case 2008-72 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 [Regular Agenda Item (1)]

Director of Planning Jarrell spoke to retaining the Board of Adjustment and Building Standards Commission as separate entities, to this item removing reference to the Board of Adjustment from the Zoning Ordinance and the next item creating a new section in the Code of Ordinances. She advised that the change would make the board similar to others in the City and advised that the Planning and Zoning Commission recommended the request 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)

Ordinance No. 2008-12-5 (cont'd)

~~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 6 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

Ordinance No. 2008-12-5 (cont'd)

~~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,

Ordinance No. 2008-12-5 (cont'd)

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.

Ordinance No. 2008-12-5 (cont'd)

- (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

Ordinance No. 2008-12-5 (cont'd)

~~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

Ordinance No. 2008-12-5 (cont'd)

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.

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

Upon a motion made by Deputy Mayor Pro Tem LaRosiliere and seconded by Council Member Dunlap, the Council voted 8-0 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 as requested in Zoning Case 2008-72 and as recommended by the Planning and Zoning Commission; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2008-12-5.

Ordinance No. 2008-12-6 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. [Regular Agenda Item (2)]

Chief Building Official Mata spoke to this item moving the membership requirements of the Board of Adjustment into the Code of Ordinances. Council Member Dunlap spoke to considering revising the membership of the board to remove the requirements for retail/advertisement alternates.

Upon a motion made by Council Member Jackson and seconded by Council Member Magnuson, the Council voted 8-0 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; and further to adopt Ordinance No. 2008-12-6.

Public Hearing and adoption of Ordinance No. 2008-12-7 as requested in Zoning Case 2008-80 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. [Regular Agenda Item (3)]

Director of Planning Jarrell advised that the applicant is requesting larger lots on a portion of the development, that the item is compliant with the Comprehensive Plan and that the Planning and Zoning Commission recommended the item for approval as submitted.

Mayor Evans opened the Public Hearing. Ashley Frysinger, representing the applicant, spoke to the demand for larger estate lots. No one else spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Miner and seconded by Council Member Johnson, the Council voted 8-0 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 as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2008-80; 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; and further to adopt Ordinance No. 2008-12-7.

Public Hearing and adoption of Ordinance No. 2008-12-8 as requested in Zoning Case 2008-81 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 [Regular Agenda Item (4)]

Director of Planning Jarrell spoke to the request developing following an appeal of her interpretation of the appropriate use classification for paintless dent repair businesses and a request from the Planning and Zoning Commission requested Staff review. She spoke to paintless dent repair as being similar to minor automotive repair and to its inclusion in that portion of the Zoning Ordinance which would allow the use to be located in Retail zoning districts. Ms. Jarrell responded that work is usually done within the structure and requirements for open storage and screening would apply. She further stated that the Planning and Zoning Commission recommended that the definition for “Automobile Repair - Minor/Service Station” be changed to read as follows:

Ordinance No. 2008-12-8 (cont'd)

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.

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

Upon a motion made by Council Member Magnuson and seconded by Mayor Pro Tem Callison, the Council voted 8-0 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 as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2008-81; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2008-12-8.

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. [Regular Agenda Item (5)]

Ordinance No. 2008-12-9 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. [Regular Agenda Item (5a)]

Ordinance No. 2008-12-10 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. [Regular Agenda Item (5b)]

Ordinance No. 2008-12-11 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. [Regular Agenda Item (5c)]

Ordinance No. 2008-12-12 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. [Regular Agenda Item (5d)]

Ordinance No. 2008-12-13 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. [Regular Agenda Item (5e)]

Director of Planning Jarrell advised the Council that these locations have made the change to a mixed beverage permit and no longer require private club zoning and further that the Planning and Zoning Commission recommended approval of the requests as submitted.

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

Upon a motion made by Council Member Magnuson and seconded by Council Member Dunlap the Council voted 7-0 to adopt all the ordinances listed as recommended by the Planning and Zoning Commission and as designated by their zoning case number. The repeal of each amends 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, and further adopts each ordinance.

There being no further discussion, Mayor Evans adjourned the meeting at 7:40 p.m.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, City Secretary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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: 12/08/08		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Engineering	Initials	Date		
Department Head	Upchurch	Executive Director	11/25/08		
Dept Signature:	<i>[Signature]</i>	City Manager	11/25/08		
Agenda Coordinator (include phone #): Irene Peques (7198)		Project No. 5732			
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT					
<input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					

CAPTION

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

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.

a-16

b-1



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			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: 12/8/08			Reviewed by Legal <i>[Signature]</i>	<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>	11-25-08
Dept Signature:	<i>[Signature: Don Wendell]</i>	City Manager		<i>[Signature]</i>	11/25/08
Agenda Coordinator (include phone #): Susan Berger (7255)					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT					
<input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
Award/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.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	285,000	0	285,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-120,925	0	-120,925
BALANCE		0	164,075	0	164,075
FUND(S): CAPITAL RESERVE					
COMMENTS: 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.					
STRATEGIC PLAN GOAL: Drought repairs relate to the City's Goal of Premier City in Which to Live.					
SUMMARY OF ITEM					
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.					
The bid includes tree replacements, primarily resulting from drought conditions, on medians and right-of-ways at multiple locations throughout the City of Plano.					
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,					
List of Supporting Documents: Bid Tabulation			Other Departments, Boards, Commissions or Agencies		

ct
a-17



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		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:	12/22/08	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Purchasing	Initials	Date		
Department Head	Mike Ryan	Executive Director			
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	<i>12/15/08</i>	
Agenda Coordinator (include phone #): Sharron Mason, Ext. 7247					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
Award/Rejection of Bid/Proposal for Bid No. 2008-229-C for Top Soil and Sand for Compost Blends Line Item 1 to Earth Haulers, Inc. in the estimated amount of \$44,000.00 and Line Item 2 to David Copeland Sand & Gravel, Inc. in the amount of \$75,000.00 for a total estimated contract amount of \$\$119,000.00.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2008-09; 2009-10; 2010-11; 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	
Encumbered/Expended Amount		0	0	0	
This Item		0	0	0	
BALANCE		0	0	0	0
FUND(s): SUSTAINABILITY AND ENVIRONMENTAL WASTE					
COMMENTS: This item approves price quotes. Expenditures will be made by Compost Operations within the approved budget appropriations. The estimated annual amount is \$119,000. STRATEGIC PLAN GOAL: Providing Compost Blends that relate to the City's Goals of "Service Excellence" and creating a Diverse Business Center.					
SUMMARY OF ITEM					
ANNUAL CONTRACT WITH RENEWALS					
It is the recommendation of the Evaluation Selection Committee to award the Top Soil and Sand for Compost Blends as follows: Line Item 1 to Earth Haulers, Inc. in the estimated amount of \$44,000.00 and Line Item 2 to David Copeland Sand & Gravel, Inc. in the estimated amount of \$75,000.00. The estimated annual amount of \$119,000.00. The term of this contract is for one (1) year with three (3) City optional one (1) renewals.					
List of Supporting Documents: Memorandum and Proposal Recap		Other Departments, Boards, Commissions or Agencies			

Memorandum

To: Sharron Mason
Sr. Buyer
Purchasing Division

From: Sherrian Jones
Division Manager
Texas Pure Products

Date: 10/22/08

Re: Recommendation Memo

Per the staff evaluation of bids received under 2008-229-C (Bid No.) for Top Soil and Sand for Compost Blends (Bid Title). The Texas Pure Products Department has reviewed the bids received for Top Soil and Sand. Staff recommends the bid be awarded as follows: Line Item 1 (Top Soil) to Earth Haulers in the estimated amount of \$44,000.00 (Vendor) and Line Item 2 (Sand) to David Copeland Sand & Gravel, Inc. in the estimated amount of \$75,000.00.

This will establish an annual fixed price contract for top soil and sand for compost blends in the total amount of \$119,000.00.

[Redacted area]

b.2



Bid No. 2008-229-C

TOP SOIL AND SAND FOR COMPOST BLENDS

RECAP

Opening Date/Time: Monday, October 6, 2008 at 3:00 pm

Responses Received:

Soil Express
Earth Haulers, Inc.
Sunbelt Vacuum Inc./Sunbelt Materials
David Copeland Sand & Gravel, Inc.
Neese Materials, Inc.
Grey Construction
Red River Sand, LLC
Turf Materials, Inc.
DFW Materials

Vendor(s) Award Recommendation:

Earth Haulers, Inc. is the recommended vendor for the award of Line Item 1 (Top Soil) in the estimated annual amount of \$44,000.00. **David Copeland Sand & Gravel, Inc.** is the recommended award of Line Item 2 (Sand) in the estimated annual amount of \$75,000.00.

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

Sharron Mason

Sharron Mason, Sr. Buyer

October 23, 2008

Date



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		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: 12/22/08		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> 12/15/08	
Agenda Coordinator (include phone #): Glenna Hayes x 7539					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT					
<input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER EXISTING CONTRACT					
CAPTION					
Award/Rejection of Competitive Sealed Proposal No 2008-183-B for CLASS IV ARMORED RESPONSE VEHICLE in the not to exceeds amount of \$152,350.00 and authorizing the City Manager or his designee to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2008-2009	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0		0	
Encumbered/Expended Amount		0	0	0	0
This Item		0	152,350	0	152,350
BALANCE		0	152,350	0	152,350
FUND(S): Grant Fund 13-559 , 2007 LETPP Grant					
Comments: Funds are available from the 2007 LETTP Grant for the purchase of this armored response vehicle for the Plano Police Department.					
STRAGIC PLAN GOAL: Purchasing an armored vehicle related to the City's Goal of "Service Excellence"					
SUMMARY OF ITEM					
Staff recommends the competitive sealed proposal of Lenco Armored Vehicles, in the not to exceed amount of \$152,350.00 be accepted as the best value, and conditioned upon timely execution of any necessary contract documents for the purchase of a class IV armored response vehicle. This vehicle is purchased under the terms of the 2007 LETPP (Homeland Security) Grant - 2008-183-B					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
Memo; Bid Tab;					



P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
Fax 972-424-0099
<http://www.ci.plano.tx.us>

MEMORANDUM

DATE: December 6, 2008
TO: Greg Rushin, Chief of Police
FROM: Steve Copling, Lieutenant
SUBJECT: Recommendation of Award for Purchase of Tactical Response Vehicle

The Plano Police Department received a \$152,352.11 grant from the 2007 Law Enforcement Terrorism Protection Plan (LETPP) for the purchase of a NIJ Level IV armored truck. Three companies submitted written proposals to build the truck: Alpine Armoring Inc., The Armored Group (T.A.G.), and Lenco Armored Vehicles. A committee evaluated the proposals and determined that Alpine Armoring and T.A.G. were deemed non-responsive to specifications for the following reasons:

- Alpine Armoring: Polycarbonate windows were NIJ Level III; specifications stipulated NIJ Level IV (Section II – “Vehicle windows which are NIJ Level 4 explosion and projectile resistant.”).
- T.A.G.: Exceeded budgetary requirements (Section I – “...limited to a not to exceed amount of \$152,350.00” when the required functionality of a “rotating emergency evacuation and rescue hatch with gun portal to provide projectile protection” (Section II) was included).

The evaluation score was completed for the remaining vendor, Lenco Armored Vehicles.

RANKING:	SUBMITTING FIRM:	WEIGHTED SCORE	VEHICLE w/Turret PRICE ONLY	TOTAL
1	LENCO ARMORED VEHICLES	3.38	0.500	3.88

I hereby recommend that the Plano Police Department accept the bid proposal submitted by Lenco Armored Vehicles and that the Plano Police Department authorize the City of Plano Purchasing Department to enter into contract agreement with Lenco Armored Vehicles for the manufacture of the Plano Police Department’s Tactical Response Vehicle.

The Purchasing Department is expected to place this topic on the December 22, 2008, council agenda for council approval.

The 2007 LETPP grant performance date is February 28, 2010, giving us more than one year from now to take delivery of this vehicle. The built time for the truck is expected to be just a few months.



BID TABULATION
2008-183-B
CSP – CLASS IV ARMORED RESPONSE VEHICLE
09/18/08

LENCO ARMORED VEHICLES
THE ARMORED GROUP, LLC
ALPINE ARMORING, INC.

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

Glenna Hayes

Glenna Hayes, Buyer

September 19, 2008

Date

“BID TABULATION STATEMENT”

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

PURCHASING DIVISION CITY OF PLANO TEXAS

3



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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: 12/22/08		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Engineering		Initials	Date	
Department Head	Alan L. Upchurch		Executive Director	<i>[Signature]</i> 12-12-08	
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i> 12/12/08	
Agenda Coordinator (include phone #)		Irene Pegues (7198)	Project No. 5788		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
(Award/Rejection) of Bid for Bid No. 2009-21-B for the Independence Parkway Paving Improvements - McDermott Road to SH 121 to Tiseo Paving Company in the amount of \$1,199,512.50 for the Alternate 2 Bid for low nitrous oxide dry kiln cement.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		49,419	1,564,419	0	1,613,838
Encumbered/Expended Amount		-49,419	-15,937	0	-65,356
This Item		0	-1,199,513	0	-1,199,513
BALANCE		0	348,969	0	348,969
FUND(S): STREET IMPROVEMENT CIP					
COMMENTS: Funds are included in the 2008-09 Street Improvement CIP. This item, in the amount of \$1,199,513, will leave a current year balance of \$348,969 for the Independence – McDermott to SH 121 project. STRATEGIC PLAN GOAL: Street widening relates to the City's Goal of Safe, Efficient Travel.					
SUMMARY OF ITEM					
Staff recommends the Alternate 2 bid (low nitrous oxide dry kiln cement) of Tiseo Paving Company in the amount of \$1,199,512.50, be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents. Alternate No. 2 (low nitrous oxide dry kiln cement) was less than 5% over the low base bid price at \$1,199,194.00 of Jim Bowman Construction Co. L.P. The second vendor being recommended is Jim Bowman Construction Co. L.P., in the amount of \$1,230,285.25 for their Alternate 2 Bid (low nitrous oxide dry kiln cement). Engineer's estimate was \$1,500,000.00. The project consists of widening of Independence Parkway from 4 lanes to 6 lanes from McDermott Road to SH 121.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Bid Summary			N/A		
Location Map					

CITY OF PLANO
***CORRECTED BID TABULATION**
2009-21-B

INDEPENDENCE PARKWAY PAVING IMPROVEMENTS – MCDERMOTT ROAD TO SH 121 – PROJECT NO. 5788
DECEMBER 4, 2008 @ 3:00 P.M.
BID TABULATION

BIDDER:	BID BOND	ADD 1 ACK	TOTAL BASE BID	ALT NO. 1 TOTAL BID	ALT NO. 2 TOTAL BID
JIM BOWMAN CONST. CO L.P.	YES	YES	\$1,199,194.00	\$1,199,194.00	\$1,230,285.25
TISEO PAVING CO.	YES	YES	\$1,199,512.50	\$1,184,038.75	\$1,199,512.50
MCMAHON CONTRACTING, L.P.	YES	YES	\$1,209,874.00	\$1,209,874.00	\$1,245,855.00
JRJ PAVING LP	YES	YES	\$1,220,709.55	\$1,220,709.55	\$1,254,375.60
TRI-CON SERVICES INC.	YES	YES	\$1,223,440.00	\$1,223,440.00	\$1,307,173.00
AUSTIN BRIDGE & ROAD, L.P.	YES	YES	\$1,237,127.00	\$1,237,127.00	\$1,296,467.00
GLENN THURMAN, INC.	YES	YES	\$1,272,457.00	\$1,272,457.00	\$1,286,237.00
2L CONSTRUCTION, LLC	YES	YES	\$1,266,147.50*	\$1,248,867.25	\$1,274,760.25

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

Dianna Wike

Dianna Wike, Senior Buyer

December 5, 2008, CORRECTED DECEMBER 9, 2008

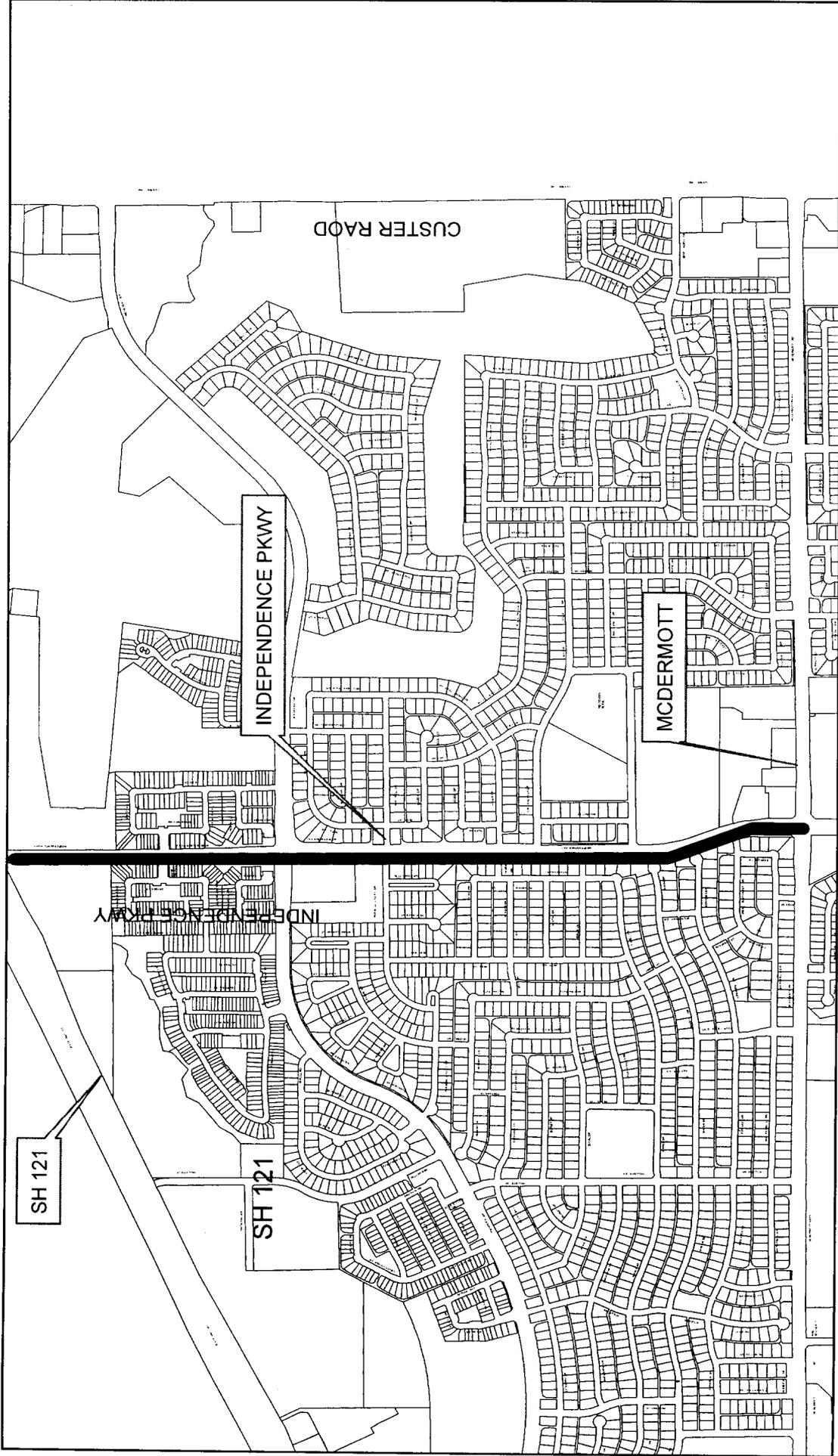
Date

“BID TABULATION STATEMENT”

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PURCHASING DIVISION
CITY OF PLANO, TEXAS

INDEPENDENCE PKWY FROM MCDERMOTT DRIVE TO SH 121



CITY OF PLANO ENGINEERING DEPARTMENT
COMMUNITY INVESTMENT PROGRAM PROJECT





**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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:	12/22/08	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Engineering	Initials	Date		
Department Head	Alan L. Upchurch	Executive Director			
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	<i>12/16/08</i>	
Agenda Coordinator (include phone #):		Irene Pegues (7198)	Project No. 5814		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
Award of Bid for Bid No. 2009-26-B for the Mapleshade Lift Station to Crescent Constructors, Inc., in the amount of \$2,375,029.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		165,624	3,534,376	500,000	4,200,000
Encumbered/Expended Amount		-165,624	-124,221	0	-289,845
This Item		0	-2,375,029	0	-2,375,029
BALANCE		0	1,035,126	500,000	1,535,126
FUND(S): SEWER CIP					
COMMENTS: Funds are included in the 2008-09 Sewer CIP. This item, in the amount of \$2,375,029, will leave a current year balance of \$1,035,126 for the Mapleshade Station & Gravity Line project.					
STRATEGIC PLAN GOAL: Lift station construction relates to the City's Goals of Livable and Sustainable Community.					
SUMMARY OF ITEM					
Staff recommends the Alternate 2 bid (low nitrous oxide dry kiln cement) of Crescent Constructors, Inc., in the amount of \$2,375,029.00, be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents. Alternate No. 2 (low nitrous oxide dry kiln cement) was less than 5% over the low base bid price at \$2,357,000.00.					
The second vendor being recommended is Red River Construction Co., in the amount of \$2,446,950.00, for their Alternate 2 Bid (low nitrous oxide dry kiln cement).					
Engineer's estimate was \$2,300,000.00.					
The project consists of the construction of a 7.5 million gallon a day lift station south of Mapleshade Lane between Coit Road and Ohio Drive.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
Bid Summary		N/A			
Location Map					

CITY OF PLANO
 BID TABULATION
 2009-26-B

MAPLESHADE LIFT STATION – PROJECT NO. 5814
 DECEMBER 10, 2008 @ 3:00 P.M.
 BID TABULATION

BIDDER:	BID BOND	ADD 1 ACK	TOTAL BASE BID	ALT NO. 1 TOTAL BID	ALT NO. 2 TOTAL BID
CRESCENT CONTSTRUCTORS, INC.	YES	YES	\$2,357,000.00	\$2,357,000.00	\$2,375,029.00
RED RIVER CONSTRUCTION CO.	YES	YES	\$2,437,400.00	\$2,437,400.00	\$2,446,950.00
LEGACY CONTRACTING, LP dba CONTROL SPECIALIST SERVICES, LP	YES	YES	\$2,599,393.00	\$2,165,000.00	\$2,609,393.00
CAJUN CONSTRUCTORS, INC.	YES	YES	\$2,602,000.00	NO BID	\$2,609,870.00
BAR CONSTRUCTORS, INC.	YES	YES	\$2,723,569.00	\$2,715,919.00	\$2,723,569.00
GRACON CONSTRUCTION INC.	YES	YES	\$2,791,110.00	\$2,791,110.00	\$2,801,360.00

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

Dianna Wike

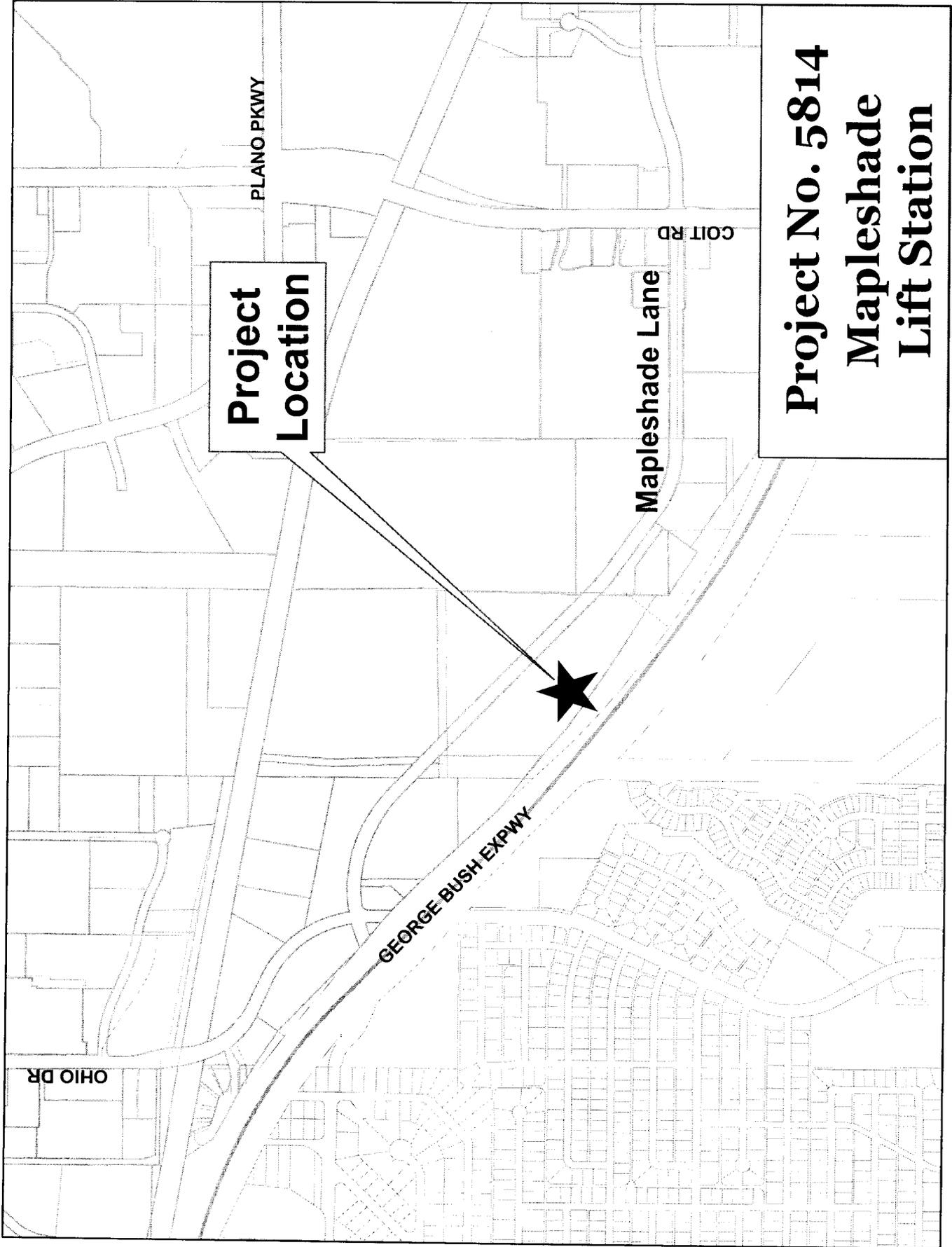
Dianna Wike, Senior Buyer

DECEMBER 10, 2008

Date

“BID TABULATION STATEMENT”

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 PURCHASING DIVISION
 CITY OF PLANO TEXAS



**Project
Location**

**Project No. 5814
Mapleshade
Lift Station**



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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 <i>CS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Council Meeting Date:	12/22/08	Reviewed by Legal <i>AM</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Planning	Initials	Date		
Department Head	Phyllis M. Jarrell	Executive Director	<i>[Signature]</i> 12/13/08		
Dept Signature:	<i>P. Jarrell</i>	City Manager	<i>[Signature]</i> 12/16/08		
Agenda Coordinator (include phone #): Tammy Stuckey, Ext. 7156					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER EXISTING CONTRACT					
CAPTION					
Approval of the purchase of GIS Maintenance Expenses as designated in the amount of \$57,222 from ESRI through a State of Texas Department of Information Resources (DIR) contract, and authorizing the City Manager or his designee to execute all necessary documents. (DIR-SDD-492)					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2008-2009	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	95,689	0	95,689
Encumbered/Expended Amount		0	-17,989	0	-17,989
This Item		0	-57,222	0	-57,222
BALANCE		0	20,478	0	20,478
FUND(S): GENERAL FUND					
COMMENTS: Funds are included in the 2008-2009 Planning Department budget. This item, in the amount of \$57,222 will leave a current year balance of \$20,478 to be used for another GIS maintenance expenses.					
STRATEGIC PLAN GOAL: GIS maintenance relates to the City's Goal of Service Excellence					
SUMMARY OF ITEM					
Planning recommends Council approve an agreement with ESRI through the Department of Information Resources, State of Texas (DIR) in an amount of \$57,222 for annual maintenance, support and right-to-use licensing for the City's GIS software. The annual maintenance contract covers all GIS software in use within the City with the exception of Public Works, which is covered within their department budget. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so satisfies any State Law requiring the local governments to seek competitive bids for the items. Contract # DIR-SDD-492					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Staff Memo Quote 25328860					

12/11/2008

M E M O

TO: Phyllis Jarrell, Director of Planning
FROM: Ron Reynolds, GIS Manager
SUBJECT: GIS software maintenance

I am submitting for approval of renewal of our annual GIS software maintenance and upgrades of ESRI's GIS software. The maintenance item cover all support and licensing of ESRI software used in the City with the exception of Public Works. Public Works has maintained their own contract with ESRI since acquiring GIS in 1994. The maintenance contract is required for us to continue to receive support from the vendor for upgrades, technical assistance or software patches. Without the maintenance we will be unable to efficiently or reliably support GIS systems or other city systems with a GIS component. Nor would the division be able to upgrade the GIS software in the future without first repurchasing the software. Other city systems that rely on GIS would be prevented from upgrading as well without upgrades to the core GIS products.

RR

fz

**ESRI**

380 New York Street
 REDLANDS, CA 92373
 Phone: 909-793-28533936
 Fax #: 909-307-3083

Quotation

Date: 11/13/2008**Quotation Number:** 25328860

CITY OF PLANO
 PLANNING DEPT
 1520 AVE K STE 250
 PLANO TX 75074
Attn: Ron Reynolds

Customer Number: 6245

For questions regarding this document, please contact Customer Service at 888-377-4575.

Send Purchase Orders To:

ESRI, Inc.
 380 New York Street
 Redlands, CA 92373-8100
 Attn: Barbara Walker

Please include the following remittance address on your Purchase Order:

ESRI Inc.
 File #54630
 Los Angeles, CA 90074-4630

Item	Qty	Material#	Unit Price	Extended Price
10	2	52384 ArcInfo Concurrent Use Primary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	3,000.00	6,000.00
1010	10	52385 ArcInfo Concurrent Use Secondary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	1,200.00	12,000.00
2010	1	52396 ArcCOGO Floating Primary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	500.00	500.00
3010	1	86497 ArcEditor Concurrent Use Primary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	1,500.00	1,500.00
4010	5	86500 ArcEditor Concurrent Use Secondary Maintenance Start Date: 12/22/2008	1,200.00	6,000.00

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Any estimated sales and/or use tax has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. ESRI reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide ESRI with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Issued By: Barbara Walker**Ext:** 3936

[WALKERB]

To expedite your order, please reference your customer number and this quotation number on your purchase order.

P-3

**ESRI**

380 New York Street
 REDLANDS, CA 92373
 Phone: 909-793-28533936
 Fax #: 909-307-3083

Quotation

Page 2

Date: 11/13/2008

Quotation Number: 25328860

Item	Qty	Material#	Unit Price	Extended Price
End Date: 12/21/2009				
5010	3	87194 ArcView Concurrent Use Primary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	700.00	2,100.00
6010	22	87195 ArcView Concurrent Use Secondary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	500.00	11,000.00
7010	1	87232 ArcGIS Spatial Analyst Concurrent Use Primary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	500.00	500.00
8010	1	87233 ArcGIS Spatial Analyst Concurrent Use Secondary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	200.00	200.00
9010	1	87198 ArcGIS 3D Analyst Concurrent Use Primary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	500.00	500.00
10010	1	87236 ArcGIS Geostatistical Analyst Concurrent Use Primary Maintenance Start Date: 05/01/2009 End Date: 12/21/2009	321.92	321.92
11010	2	93094 ArcView with Extension Single Use Primary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	1,000.00	2,000.00
12010	8	87193 ArcView Single Use Secondary Maintenance	300.00	2,400.00

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Issued By: Barbara Walker

Ext: 3936

[WALKERB]

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f-4



ESRI

380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533936
Fax #: 909-307-3083

Quotation

Page 3

Date: 11/13/2008

Quotation Number: 25328860

Item	Qty	Material#	Unit Price	Extended Price
		Start Date: 12/22/2008 End Date: 12/21/2009		
13010	1	93303 ArcEditor Single Use Primary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	1,500.00	1,500.00
14010	1	87768 ArcLogistics Route without Data Annual Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	1,000.00	1,000.00
15010	1	100571 ArcGIS Network Analyst Concurrent Use Primary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	500.00	500.00
16010	1	100572 ArcGIS Network Analyst Concurrent Use Secondary Maintenance Start Date: 12/22/2008 End Date: 12/21/2009	200.00	200.00
17010	1	109835 ArcGIS Server Aggregated Migrated Maintenance Bundle	9,000.00	9,000.00
17050	3	109839 ArcGIS Server Standard Enterprise Up to Four Cores Migrated Maintenance Start Date: 12/22/2008 End Date: 12/21/2009		
17060	1	109840 ArcGIS Server Basic Enterprise Up to Four Cores Migrated Maintenance Start Date: 12/22/2008 End Date: 12/21/2009		

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Issued By: Barbara Walker

Ext: 3936

[WALKERB]

To expedite your order, please reference your customer number and this quotation number on your purchase order.

P-5



ESRI

380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533936
Fax #: 909-307-3083

Quotation

Page 4

Date: 11/13/2008

Quotation Number: 25328860

Item	Qty	Material#	Unit Price	Extended Price
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Subtotal	57,221.92
Estimated Tax	0.00
Total	\$ 57,221.92

DUNS/CEC: 06-313-4175 CAGE: 0AMS3

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Issued By: Barbara Walker

Ext: 3936

[WALKERB]

To expedite your order, please reference your customer number and this quotation number on your purchase order.

f-6



ESRI

380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533936
Fax #: 909-307-3083

Quotation

Page 5

Date: 11/13/2008

Quotation Number: 25328860

Customer Number: 6245

Item	Qty	Material#	Unit Price	Extended Price
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BY SIGNING BELOW, YOU ARE INDICATING THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION. DO NOT USE THIS FORM FOR ORDER ACTIVATION IF YOUR ORGANIZATION WILL NOT HONOR AND PAY AN INVOICE THAT HAS BEEN ISSUED AT YOUR DIRECTION WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

To expedite your order, either attach a copy of this quotation to your purchase order when it is remitted to ESRI, or sign below and return this quotation to indicate your acceptance. ESRI's address and fax number are provided on the first page of this quotation.

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax ESRI the signed quote in its entirety in order for the quote to be accepted. You will be contacted by your Customer Service Representative if additional information is required to complete your request.

If your organization is a US Federal, state, or local government agency; an educational facility; or a company that will not pay an invoice without having issued a formal purchase order, a signed quotation will not be accepted unless it is accompanied by your purchase order.

If you choose to discontinue your support, you will become ineligible for support benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your support coverage at a later date.

By signing below, you are authorizing ESRI to issue a software support invoice in the amount of \$_____ plus sales tax, if applicable.

Please check one of the following:

I agree to pay any applicable sales tax.

I am tax exempt. Please contact me if ESRI does not have my current exempt information on file.

Signature of Authorized Representative

Date

Name (Please Print)

Title

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Issued By: Barbara Walker Ext: 3936

[WALKERB]

To expedite your order, please reference your customer number and this quotation number on your purchase order.

f-7



ESRI

ESRI Inc
380 New York Street
REDLANDS CA 92373

SUBJECT: MAINTENANCE QUOTE

DATE: 11/13/2008
TO: Ron Reynolds
ORGANIZATION: CITY OF PLANO
PLANNING DEPT
FAX #: 972-941-7396 **PHONE #:** 972-941-7242
FROM: Barbara Walker
FAX #: 909-307-3083 **PHONE #:** 909-793-2853 Ext. 3936
EMAIL: bwalker@esri.com

Number of pages transmitted
(including this cover sheet): 7

QUOTATION #25328860

DIR-SDD-492
2006MPA4409

Please find the attached quotation for your forthcoming software maintenance term. Keeping your maintenance current entitles you to exclusive benefits, and if you choose to discontinue your coverage, you will become ineligible for these valuable benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your coverage at a later date. For details about the maintenance program benefits for your licensing, please visit <http://gis.esri.com/software/maintenance/qualifying.cfm>

Customers who have multiple copies of some ESRI products may have the option of supporting some of their licenses with secondary maintenance. Please contact Customer Service to find out more about the availability of secondary maintenance.

For information about ESRI Desktop terms and conditions, please visit http://www.esri.com/legal/pdfs/mla_e204_e300/english.pdf; for information about ESRI Server software, Developer software, or Web services terms and conditions, please visit <http://www.esri.com/legal/pdfs/mls.pdf>

Maintenance fees for ArcIMS, ArcSDE, and ArcGIS Server current with maintenance prior to December 31, 2006 have been transferred to the new ArcGIS Server 9.2 licenses. The ArcGIS Server 9.2 migration policy allows these transferred licenses to be eligible for maintenance fees with no increase in pricing for software maintenance. For detailed information regarding this policy, please visit <http://www.esri.com/software/maintenance/about/announcements.html>



ESRI Inc
380 New York Street
REDLANDS CA 92373

If you have any questions or need additional information, please contact Customer Service at 888-377-4575.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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:	12/22/08		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Technology Services		Initials	Date	
Department Head	David Stephens		Executive Director		
Dept Signature:	<i>David Stephens</i>		City Manager	<i>[Signature]</i> 12/16/08	
Agenda Coordinator (include phone #): Amy Powell X7342					

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

CAPTION

Approval of expenditure for a service agreement between Motorola and the City of Plano in the amount of \$171,710 through an existing contract with the Department of Information Resources, and authorizing the City Manager or his designee to execute all necessary documents. (DIR-SDD-477).

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	979,534	0	979,534
Encumbered/Expended Amount	0	-179,534	0	-179,534
This Item	0	-171,710	0	-171,710
BALANCE	0	628,290	0	628,290

FUND(S): TECHNOLOGY SERVICES FUND (066)

COMMENTS: Funds for the maintenance and service of wireless mesh network devices are included in the 2008-09 Technology Services Budget. The remaining balance will be used throughout the year for other maintenance agreements.

STRATEGIC PLAN GOAL: Maintenance and service contracts relate to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Technology Services recommends Council approve an expenditure, in the amount of \$171,710 for a service agreement, with Motorola, for maintenance and monitoring of 932 Wireless Mesh Network devices. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so satisfies any State law requiring local government to seek competitive bids for this item. (DIR-SDD-477).

List of Supporting Documents: Motorola Statement of Work and Service Agreement Staff Memo	Other Departments, Boards, Commissions or Agencies
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Interoffice Memo

Date: 12/08/08
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Motorola Mesh Maintenance for Phase I

This Wireless Mesh Build-out of Phase I is completed and a total of 932 new devices need to be added to the maintenance coverage. The additional units will be covered from 12/01/2008 until 4/30/2009 for an additional amount of \$ 171,710.00. In April the contract will become renewable for these additional units and the original units covered under maintenance.

Motorola is a State of Texas, Department of Information Resources vendor and furnishes these maintenance services under their DIR contract Number DIR-SDD-477.

We are recommending City Council approve this contract to Motorola for a total amount of \$171,710.00 and authorize the City Manager to sign all contracts and documents associated with this maintenance contract.



SERVICE AGREEMENT

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

Contract Number: S00001012950
 Contract Modifier:
 Supercedes Agreement(s):

Date: 12/09/2008

Company Name: PLANO, CITY OF
 Attn:
 Billing Address: P O Box 860279
 City, State, Zip: Plano, TX 75086-0279
 Customer Contact: Michael Branch
 Phone: (972)816-9132
 Fax:

Required P.O.: Yes
 Customer #: 1011267912
 Bill to Tag #: 0006
 Contract Start Date: 12/01/2008
 Contract End Date: 04/30/2009
 Anniversary Day: Nov 30th
 Payment Cycle: MONTHLY
 Tax Exempt: Exempt From All Taxes
 PO #: TBD

Qty	Model/Option	Description	Monthly Ext	Extended
5	SVC02SVC0071A	***** Recurring Services ***** SP-OIR WITH LOCAL DISPATCH SITE(S)	\$ 34,342.00	\$ 171,710.00
SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS			Subtotal - Recurring Services	\$ 34,342.00 \$ 171,710.00
			Subtotal - One-Time Event Services	\$.00 \$.00
			Total	\$34,342.00 \$171,710.00
			Taxes	- -
			Grand Total	\$ 34,342.00 \$ 171,710.00
PLEASE SEE ATTACHED FOR EQUIPMENT LIST AND STATEMENTS OF WORK			THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE. TO BE VERIFIED BY MOTOROLA.	

Subcontractor(s)	City	State
SCIENTEL WIRELESS LLC	PLANO	TX

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

AUTHORIZED CUSTOMER SIGNATURE	TITLE	DATE
<i>John Martin</i>	Regional Service Manager	12/9/08
MOTOROLA REPRESENTATIVE (SIGNATURE)	TITLE	DATE
<i>John Martin</i>	972-2774608	
MOTOROLA REPRESENTATIVE (PRINT NAME)	PHONE	FAX

City of Plano Mesh Canopy

MODEL	QTY
IAP	102
MWR/EWR	630
MISC	1
Camera	3
DragonWave (Hops)	8
Canopy AP	72
Canopy SM	105
Canopy Cluster Management Module	9
Canopy Backhaul	2

Service Terms and Conditions

Motorola, Inc., through its Commercial, Government, and Industrial Solutions Sector ("Motorola"), and the customer named in this Agreement ("Customer"), hereby agree as follows:

Section 1 APPLICABILITY

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

Section 2 DEFINITIONS AND INTERPRETATION

"Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions will take precedence over any cover page, and the cover page will take precedence over any attachments, unless the cover page or attachment specifically states otherwise. "Equipment" means the communication equipment that is specified in the attachments or is subsequently added to this Agreement. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3 ACCEPTANCE

Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement will become binding only when accepted in writing by Motorola. The term of this Agreement will begin on the "Start Date" indicated in this Agreement.

Section 4 SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed Statement of Work or other attachment. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for such services.

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

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

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

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

4.6. If Equipment cannot, in Motorola's opinion, be properly or economically serviced for any reason including excessive wear, unavailability of parts, the state of technology, or practical infeasibility, Motorola may modify the scope of Services related to such Equipment; remove such Equipment from the Agreement; or increase the price to Service such Equipment.

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

Section 5 EXCLUDED SERVICES

- 5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; or accident, liquids, power surges, neglect, acts of God or other force majeure events.
- 5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries, magnetic tapes, etc.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by such transmission medium.

Section 6 TIME AND PLACE OF SERVICE

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

Section 7 CUSTOMER CONTACT

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

Section 8 PAYMENT

Unless alternative payment terms are specifically stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date. Customer agrees to reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

Section 9 WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days following completion of those Services. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA

DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 DEFAULT/TERMINATION

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

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

Section 11 LIMITATION OF LIABILITY

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the previous twelve (12) months of Service provided under this Agreement. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT TO THE FULL EXTENT SUCH DAMAGES MAY BE DISCLAIMED BY LAW, MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT.** Except for money due upon an open account, no action may be brought for a breach of this Agreement more than one (1) year after the accrual of such cause of action. This limitation of liability will survive the expiration or termination of this Agreement.

Section 12 EXCLUSIVE TERMS AND CONDITIONS

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an inadvertent omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed

proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any such information or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section will survive the expiration or termination of this Agreement.

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

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

Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS

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

Section 15 COVENANT NOT TO EMPLOY

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

Section 16 MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to such property, and return it to Motorola upon request. Such property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

Section 17 GENERAL TERMS

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

17.2. This Agreement and the rights and duties of the parties will be governed and interpreted in accordance with the laws of the State in which the Services are performed.

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

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

17.5. Motorola may assign its rights and obligations, and may subcontract any portion of its performance, under this Agreement.

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

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

Motorola
Name of Contractor

By: John Martin
Signature

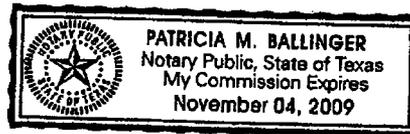
John Martin
Print Name

Regional Service Manager
Title

12/15/08
Date

STATE OF Texas §

COUNTY OF Dallas §



SUBSCRIBED AND SWORN TO before me this 15th day of
December, 2008

Patricia M. Ballinger
Notary



City of Plano – MOTOMESH Phase 1, sectors 1, 2, and 3 with Additional Backhaul Statement of Work

OnSite Infrastructure Response and Dispatch Service

1.0 Description of Services

Motorola/Scientel will respond to all emergency failures of the system on a 24 hour, 7 days a week basis. On-Call technical repair response is provided on a 24x7 basis during normal 8x5 CST business hours by calling the Motorola/Scientel Plano Office. After hours, before 8 a.m. CST and after 5 p.m. CST, repair service is requested by calling the Motorola/Scientel 7x24 Answering Service who shall contact the Motorola/Scientel On-Call technicians. The Answering Service has a list of all available Motorola/Scientel technicians, and escalation numbers for Motorola/Scientel management so that a response by Motorola/Scientel to the call-out is assured. In addition, Motorola/Scientel will provide the City of Plano with the On-Call Technical Support Number, which directly contacts the Motorola/Scientel service personnel. Once a trouble call is generated to the Motorola/Scientel Plano office or after hours Answering Service, the trouble call is tracked and will be escalated to the next level responder in the event the initial responder does not confirm receipt of the trouble call. Using an escalating response procedure guarantees initial contact will be made with Motorola/Scientel's technicians within the required response time.

Upon notification to the on-call technician, the technician will respond within the required response window. Motorola/Scientel will provide 2 hour phone response and the on-site, or virtual on-site, response time of 4 hours. If additional support is required, Motorola/Scientel has a team based regionally, fully trained and equipped to maintain MotoMesh, Cisco, DragonWave and Canopy Equipment and resolve any system issues after a disaster or emergency situation.

The Servicer will respond to the Customer location based on pre-defined Severity Levels set forth in the Severity Definitions Table and Response times set forth in the Response Time Table in order to Restore the System.

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

2.0 Motorola has the following responsibilities:

- 2.1. Continuously receive service requests.
- 2.2. Create a Case as necessary when service requests are received. Gather information to perform the following:
 - 2.2.1. Characterize the issue.
 - 2.2.2. Determine a plan of action.
 - 2.2.3. Assign and track the Case to resolution.
 - 2.2.4. Dispatch a Servicer as required by Motorola standard procedures and provide necessary Case information collected in 2.2.
- 2.3. Dispatch a Servicer as required by Motorola standard procedures and provide necessary Case information collected in 2.2.
- 2.4. Ensure the required personnel have access to Customer information as needed.
- 2.5. Servicer will perform the following on-site:
 - 2.5.1. Run diagnostics on the Infrastructure or FRU.
 - 2.5.2. Replace defective Infrastructure or FRU, as applicable. Customer, Servicer or Motorola may provide Infrastructure or FRU.
 - 2.5.3. Provide materials, tools, documentation, physical planning manuals, diagnostic/test equipment and any other requirements necessary to perform the Maintenance service. Motorola/Scientel will obtain customer authorization for any tools, and diagnostics test equipment prior to accessing the network and record on the ticket what tools were used and that they were either removed or turned off.
 - 2.5.4. If a third party Vendor is needed to restore the System, the Servicer may accompany that Vendor onto the Customer's premises, with prior approval and consent of the City of Plano.

- 2.6. Verify with Customer that Restoration is complete or System is functional, if required by Customer's repair Verification in the Customer Support Plan required by section 3.2. and the Servicer will be released.
- 2.7. Escalate the Case to the appropriate party upon expiration of a Response time.
- 2.8. Close the Case upon receiving notification from Customer or Servicer, indicating the Case is resolved.
- 2.9. Notify Customer of Case Status as defined required by the Customer Support Plan:
 - 2.9.1. Open and closed; or
 - 2.9.2. Open, assigned to the Servicer, arrival of the Servicer on-site, deferred or delayed, closed.
- 2.10. Provide Case activity reports to Customer. Status information upon request by City of Plano.
- 2.11. Motorola/Scientel will maintain and store in an easily accessible location any and all Software needed to restore the System.
- 2.12. Maintain and store in an easily accessible location proper System backups.
- 3.0 Customer has the following responsibilities:
 - 3.1. Contact Motorola, as necessary, to request service.
 - 3.2. Provide Motorola with pre-defined Customer information and preferences prior to Start Date necessary to complete Customer Support Plan.
 - 3.2.1. Case notification preferences and procedure.
 - 3.2.2. Repair Verification preference and procedure.
 - 3.2.3. Database and escalation procedure forms.
 - 3.2.4. Submit changes in any information supplied in the Customer Support Plan to the Customer Support Manager.
 - 3.3. Provide the following information when initiating a service request:
 - 3.3.1. Assigned System ID number.
 - 3.3.2. Problem description and site location.
 - 3.3.3. Other pertinent information requested by Motorola to open a Case.
 - 3.4. Allow approved Servicers access to Equipment.
 - 3.5. Supply Infrastructure or FRU, as applicable, in order for Motorola to Restore the System as set forth in paragraph 2.5.2.
 - 3.6. Verify with the SSC that Restoration is complete or System is functional, if required by Repair Verification preference provided by Customer in accordance with section 3.2.
 - 3.7. Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide these services.
 - 3.8. City of Plano can escalate the severity level, based on network impact.

Severity Definitions Table

Severity Level	Problem Types
Severity 1 – -Water Tower - MISC - MUNI -or significant impact to the customers end users preventing acceptable system availability	<ul style="list-style-type: none"> ▪ Response is provided continuously ▪ Major System failure ▪ 33% of System down ▪ 33% of Site channels down ▪ Site Environment alarms (smoke, access, temp, AC power. ▪ This level is meant to represent a major issue that results in an unusable system, sub-system, Product, or critical features from the Customer's perspective. No Work-around or immediate solution is available.
Severity 2 - IAP	<ul style="list-style-type: none"> ▪ Response during Standard Business Day ▪ Significant System Impairment not to exceed 33% of system down ▪ System problems presently being monitored ▪ This level is meant to represent a moderate issue that limits a Customer's normal use of the system, sub-system, product, or major non-critical features from a Customer's perspective

Severity 3 - MWR	<ul style="list-style-type: none"> ▪ Response during Standard Business Day ▪ Intermittent system issues ▪ Information questions ▪ Upgrades/Preventative maintenance ▪ This level is meant to represent a minor issue that does not preclude use of the system, sub-system, product, or critical features from a Customer's perspective. It may also represent a cosmetic issue, including documentation errors, general usage questions, recommendations for product enhancements or modifications, and scheduled events such as preventative maintenance or product/system upgrades.
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Response Times Table (Customer's Response Time Classification is designated in the Service Agreement)

Severity Level	Response Time
Severity 1 -or significant impact to the customers end users preventing acceptable system availability	Within 4 hours from receipt of Notification Continuously
Severity 2	Within 4 hours from receipt of Notification Standard Business Day
Severity 3	Within 24 hours from receipt of Notification Standard Business Day

Infrastructure Repair with Advanced Replacement

1.0 Description of Services

Infrastructure Repair is a repair service for Motorola and select third party Infrastructure as set forth in the applicable attached Exhibit(s), all of which are hereby incorporated into this Statement of Work (SOW) by this reference. Infrastructure may be repaired down to the Component level, as applicable, at the Motorola Infrastructure Depot Operations (IDO). At Motorola's discretion, select third party Infrastructure may be sent to the original equipment manufacturer or third party vendor for repair. If Infrastructure is no longer supported by the original equipment manufacturer or third party vendor, Motorola may replace Infrastructure with equal or improved Infrastructure, when possible, while maintaining the integrity of the RF design.

When available, Motorola will provide Customer with an Advanced Replacement unit(s) or FRU(s) in exchange for Customer's malfunctioning FRU(s). Non-standard configurations, Customer-modified Infrastructure and third party Infrastructure, not purchased through Motorola, are excluded from Advanced Replacement service. Malfunctioning FRU (s) will be evaluated and repaired by IDO and returned to IDO FRU inventory upon completion of repair. In cases where Advanced Replacement is not available or when a Customer requires the exact serial number to be returned, a FRU may be available on a Loaner basis.

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

- 2.0 Motorola has the following responsibilities:
- 2.1. Use commercially reasonable efforts to maintain an inventory of FRU.
 - 2.2. Provide new or reconditioned units as FRU to Customer or Servicer, upon request and subject to availability. The FRU will be of equal or better value kit and version, and will contain like boards and chips, as the Customer's malfunctioning Infrastructure to regain functionality of the network.
 - 2.3. Program FRU to original operating parameters based on templates provided by Customer as required in Section 3.5. If Customer configuration is not provided or is not reasonably usable, a standard default configuration will be used.
 - 2.4. Properly package and ship Advanced Replacement FRU from IDO's FRU inventory to Customer specified address.
 - 2.4.1. During normal operating hours of Monday through Friday 7:00am to 7:00pm CST, excluding holidays, FRU will be sent next day air via Federal Express Priority Overnight or UPS Red, unless otherwise requested. Motorola will pay for such shipping, unless Customer requests shipments outside of the above mentioned standard business hours and/or carrier programs, such as NFO (next flight out). In such cases, Customer will be subject to shipping and handling charges.
 - 2.4.2. When sending the Advanced Replacement FRU to Customer, provide a return air bill in order for Customer to return the Customer's malfunctioning FRU. The Customer's malfunctioning FRU will become property of IDO and the Customer will own the Advanced Replacement FRU.
 - 2.4.3. When sending a Loaner FRU to Customer, IDO will not provide a return air bill for the malfunctioning Infrastructure. The Customer is responsible to arrange and pay for shipping the malfunctioning Infrastructure to IDO. IDO will repair and return the Customer's Infrastructure and will provide a return air bill for the customer to return IDO's Loaner FRU.
 - 2.5. Provide repair return authorization number upon Customer request for Infrastructure that is not classified as an Advanced Replacement or Loaner FRU.
 - 2.6. Receive malfunctioning Infrastructure from Customer and document its arrival, repair and return.
 - 2.7. Perform the following service on Motorola Infrastructure:
 - 2.7.1. Perform an operational check on the Infrastructure to determine the nature of the problem.
 - 2.7.2. Replace malfunctioning FRU or Components.
 - 2.7.3. Verify that Motorola Infrastructure is returned to Motorola manufactured specifications, as applicable
 - 2.7.4. Perform a Box Unit Test on all serviced Infrastructure.
 - 2.7.5. Perform a System Test on select Infrastructure.
 - 2.8. Provide the following service on select third party Infrastructure:
 - 2.8.1. Perform pre-diagnostic and repair services to confirm Infrastructure malfunction and eliminate sending Infrastructure with no trouble found (NTF) to third party vendor for repair, when applicable.
 - 2.8.2. Ship malfunctioning Infrastructure to the original equipment manufacturer or third party vendor for repair service, when applicable.
 - 2.8.3. Track Infrastructure sent to the original equipment manufacturer or third party vendor for service.
 - 2.8.4. Perform a post-test after repair by Motorola, original equipment manufacturer, or third party vendor to confirm malfunctioning Infrastructure has been repaired and functions properly in a Motorola System configuration, when applicable.
 - 2.9. Re-program repaired Infrastructure to original operating parameters based on configuration provided by Customer as required by Section 3.5. If Customer configuration is not provided or is not reasonably usable, a standard default configuration will be used. If IDO determines that the malfunctioning Infrastructure is due to a Software defect, IDO reserves the right to reload Infrastructure with the latest Software version available. Enhancement Release(s), if needed, are subject to additional charges to be paid by Customer unless the Customer has a Motorola Software Subscription agreement.
 - 2.10. Properly package repaired Infrastructure unless Customer's malfunctioning FRU was exchanged with an IDO FRU. Motorola will return Customer's FRU(s) to IDO's FRU inventory, upon completion of repair.
 - 2.11. Ship repaired Infrastructure to the Customer specified address during normal operating hours set forth in 2.4.1. FRU will be sent two-day air unless otherwise requested. Motorola will pay for such shipping, unless Customer requests shipments outside of the above mentioned standard business hours and/or carrier programs, such as NFO (next flight out). In such cases, Customer will be subject to shipping and handling charges.

3.0 Customer/Scientel has the following responsibilities:



- 3.1. Contact or instruct Scientel to contact the Motorola System Support Center (SSC) and request an Advanced Replacement, or Loaner FRU and a return authorization number (necessary for all non-Advanced Replacement repairs) prior to shipping malfunctioning Infrastructure or third party Infrastructure named in the applicable attached Exhibit.
 - 3.1.1. Provide model description, model number, serial number, type of System and Firmware version, symptom of problem, and address of site location for FRU or Infrastructure.
 - 3.1.2. Indicate if Infrastructure or third party Infrastructure being sent in for service was subjected to physical damage or lightning damage. Indicate if Infrastructure or third party Infrastructure being sent in for service was subjected to physical damage or lightning damage.
 - 3.1.3. Provide Customer purchase order number to secure payment for any costs described herein.
- 3.2 Pay for shipping of Advanced Replacement or Loaner FRU from IDO if Customer requested shipping outside of standard business hours or carrier programs set forth in section 2.4.1.
- 3.3 Within five (5) days of receipt of the Advanced Replacement FRU from IDO's FRU inventory, properly packaged by Scientel, Customer's malfunctioning Infrastructure and ship the malfunctioning Infrastructure to IDO for evaluation and repair as set forth in 2.7. Scientel must send the return air bill, referenced in 2.4.2 above back to IDO in order to ensure proper tracking of the returned Infrastructure. Scientel will be subject to a replacement fee for malfunctioning Infrastructure not properly returned. For Infrastructure and/or third party Infrastructure repairs that are not exchanged in advance, properly package Infrastructure and ship the malfunctioning FRU, at Customer's expense and risk of loss to Motorola. Customer is responsible for properly packaging the Customer malfunctioning Infrastructure FRU to ensure that the shipped Infrastructure arrives un-damaged and in repairable condition. Clearly print the return authorization number on the outside of the packaging.
- 3.4 If received, Customer or 3rd party vendor – Scientel must properly package and ship Loaner FRU back to IDO within five (5) days of receipt of Customer's repaired FRU.
- 3.5 Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide the Infrastructure Repair with Advanced Replacement services to Customer.
- 4.0 In addition to any exclusions named in Section 5 of the Service Terms and Conditions or in any other underlying Agreement to which this SOW is attached, the following items are excluded from Infrastructure Repair with Advanced Replacement:
 1. All Infrastructure over seven (7) years from product cancellation date.
 2. Physically damaged Infrastructure.
 3. Third party Equipment not shipped by Motorola.
 4. Consumable items including, but not limited to, batteries, connectors, cables, tone/ink cartridges.
 5. Test equipment.
 6. Racks, furniture and cabinets.

Broadband Infrastructure Exhibit for Advanced Exchange	Inclusions, Exclusions, Exceptions and Notes for Infrastructure Repair
Access Points	Includes Canopy, Mesh, MotoMesh, Meshcam, MeshTrack, Hot Zone Duo intelligent access points, and any MESH equipment purchased through Motorola. Excludes all other technologies
Backhaul	Includes Canopy and dragonwave equipment Excludes all other technologies
Cables, connectors and testers	Excluded
Cameras	Includes Meshcam, Automatic License Plate Recognition Kits (only) Excludes all other technologies, fixed black & white, color, pan tilt zoom analog, pan tilt zoom IP, fixed hybrid (IP and Analog) cameras
Cluster Management Modules (CMM)	Includes Canopy. Excludes all other technologies
Digital Video Recorder	Includes Mobile Video Enforcer Excludes-all other technologies
Docking Station	Includes Mobile Video Enforcer

	Excludes all other technologies
Mobile Internet Switching Controller(MISC)	Includes Mobile Video Enforcer, HP DL360, Mobile Video Enforcer system server Excludes all other technologies
Modems	Includes Mesh, MotoMesh Excludes all other technologies
Monitors	Excluded
Mounting Bracket	Excluded
Multiplexers	Excludes RAD data multiplexers
Network Interface Card	Includes Mesh, MotoMesh, Meshcam Excludes all other technologies
Network Switches	Included
Networking Enablers	Excludes Asymmetric DSL Broadband Gateway, Asymmetric Customer Premise Equipment, Symmetric DSL Broadband Gateway, Symmetric DSL-CPE's and accessories
Personal Tracking Device	Includes MeshTrack Excludes all other technologies
Power Supply	Included
Reflector Hardware Kit	Excluded
Software	Excluded
Subscriber Modules	Includes Canopy Excludes all other technologies
Surge Suppressor	Excluded
UPS	Excluded from service agreements buy may be repaired on an above contract, time and material basis. Excludes any one-site services. Excludes all batteries.
Video Recording System	Includes Mobile Video Enforcer Excludes all other technologies
Wirless Router AC and DC Input	Includes Mesh, MotoMesh, Meshcam, MeshTrack, Hot Zone Duo Excludes all other technologies

Technical Support

- 1.0 Scientel's Technical Support was created to insure that City of Plano is provided the answers to their technical issues. Motorola's Technical Support Operation is available 24 hours per day, 365 days a year to field all levels of calls. Motorola will provide Technical Support 24x7, 365 days per year.
- 2.0 This operation is staffed with technologists who specialize in the diagnosis and resolution of system performance issues by telephone. A case is created on each issue and is followed to resolution, with escalation if necessary. Because of the Center's proximity to the factory engineers, the highest level of technical support is available. The City of Plano is required to provide remote connection to its Orion Network Monitoring System via Netmotion Remote Client VPN connection and to the rest of the Motorola Mesh network to facilitate effective support and troubleshooting capabilities. Scientel will provide 24 x 7 remote monitoring services from both its Lombard and Plano facilities.

Software Support

- 1.0 In order to keep the City of Plano's system operating with current functionality and to prolong the useful life of the system, Motorola is providing a Software Support Program as part of this agreement.
- 2.0 Under the Software Support Program, Motorola will provide periodic bulletins which describe available Software Enhancement Releases or Core Releases. Basic Warranty includes Enhancement Releases which provide minor software performance enhancements, bug fixes and updates. This uplift support also



provides Core Releases for major upgrades to the system software version. As a subscriber, the City of Plano may order any available Enhancement Release or Core Release, and it will be provided without separate charge.

Maintenance and Support Detail

- 1.0 Under the Terms and Conditions of this Maintenance Agreement, periodic maintenance will be conducted on the City of Plano Broadband Wireless Network. The first inspection will occur on the sixth month (180 days) after the acceptance of the proposal by the City of Plano. The inspections will involve but not be limited to: 1. Perform system visual inspection, 2. Check components, 3. Run system self-test, 4. Verify against baseline documentation.
- 2.0 Document test results and file report with customer identifying all modifications or repairs pre-authorized, by City of Plano, to be made to the system during the maintenance inspection and documenting any recommended repairs or upgrades for the system.

ANTENNA INFRASTRUCTURE

- 1.0 Prior to a site visit, the individual performing the inspection shall prepare a "Telecom Inspection Checklist" as applicable for each site to be visited. When in the field, the inspecting individual shall mark the checklist to confirm that a certain aspect of the project has been inspected, and note any discrepancies or needed modifications to the checklist.
- 2.0 Maintenance Checklist: An inspection of each site will be performed to ensure that the integrity of the original installation remains intact. During the physical inspection process, data on the following items will be collected and provided to the City of Plano in a formal report.

IAP Sites:

- MotoMesh Antenna's (IAP7300) condition
- Connection(s) condition (Bolts, clamps, brackets, etc.)
- Power cable condition
- Communication cable condition
- Radio/switch installation condition
- Connection(s) condition (cabling)

MWR Sites:

- MotoMesh Antenna's (MWR7300) condition
- Connection(s) condition (Bolts, clamps, brackets, etc.)
- Power cable condition
- Cable routing condition
- Connection(s) condition (cabling)

Canopy Sites:

- Canopy Antenna condition
- Connection(s) condition (Bolts, clamps, brackets, etc.)

- PoE cable condition or power cable condition
- Cable routing condition
- Connection(s) condition (cabling)
- GPS Cable Testing

DragonWave Sites:

- DragonWave Antenna condition
- Connection(s) condition (Bolts, clamps, brackets, etc.)
- LMR and Fiber cable condition
- Cable routing condition
- Connection(s) condition (cabling)

Other Site Maintenance:

- 1.0 **Cabinet Maintenance:** Motorola/Scientel will provide the necessary monthly inspections, and take the necessary steps to maintain cabinets that are part of this bid proposal. Cabinet Maintenance includes periodic painting and repairing cabinets to prevent the cabinet from failing to protect the System equipment.
- 2.0 **APC UPS:** Motorola/Scientel will provide the necessary monthly inspections, and take the necessary steps to maintain proper Uninterrupted Power Supply operation that are part of this proposal. This includes UPS tune-ups, adjustments and repairs on a monthly basis to keep the units in proper operating condition. UPS spares and advance replacement is not included in this scope as per City of Plano request.
- 3.0 **Antenna Support Structures:** Motorola/Scientel will provide antenna support structure maintenance (poles, mounts, etc.) and take the necessary steps to maintain the antenna support structures that are part of this bid proposal. This includes corrosion control and defective part replacement.
- 4.0 **Microwave Antenna Systems:** Motorola/Scientel will provide inspections on a quarterly basis using various test equipment to measure the condition of the Microwave antenna, coax, cables and connectors. Motorola/Scientel will provide any needed repair for the antenna systems, by replacing any defective antenna hardware, to assure proper operation of the antenna system.

NETWORK SOFTWARE & HARDWARE

- 1.0 To help minimize the risk of potential problems, Motorola/Scientel Wireless will check Network Software & Hardware Maintenance Checklist during the preventative maintenance period to ensure continued network stability, information security, and data integrity.
- 2.0 As a service to City of Plano, Motorola/Scientel will perform the Network Software & Hardware Maintenance Checklist on a monthly basis to keep your systems and network running smoothly:
 - Apply any critical service packs and critical software upgrades that are currently affecting network performance. All other releases should be installed within 6 months of release date.
 - Test speed of Mobile network connection via sample download/upload.
 - Hardware conflicts.
 - Standalone Performance Checks.
 - Network Connectivity Checks.
 - Network Performance Checks.
 - Check Event logs on MiSC.
 - Verify Security.



- Fault Tolerance Verification.
- Meeting to discuss current issues and address future requirements.

ITEMS COVERED UNDER THE CONTRACT

- 1.0 Items covered under this contract are on the MotoMESH System. All sites are within the City Limits of The City of Plano, TX. The system maintenance is based on the following:

Phase 1, sectors 1, 2, and 3. W/additional backhaul:

- 102 IAP7000 Intelligent Access Points
- 630 MWR7000 Mobile Wireless Routers
- 8 hops of DragonWave Licensed Microwave
- 72 Motorola Canopy Advantage Access Points
- 105 Motorola Canopy Subscriber Modules
- 9 Canopy Cluster Management Modules w/TSP
- 2 Canopy Backhaul Radios
- 3 Cameras
- 1 MiSC (Cisco 3560 SW)

SYSTEM REPAIRS WHEN NECESSARY

- Replace minor components (connectors, fittings, etc.) as needed, to ensure continued reliable operation of the system, at no charge to the City of Plano.
- Perform Warranty Related Repairs (if hardware or software is still under warranty), at no charge to the City of Plano.
- Estimate cost, time, and materials for repairs for non-warranty related items for any significant items needing repair, which are identified during the maintenance inspection.
- If estimate is accepted, perform repairs.
- Replace units as required and when necessary to ensure reliable operation of the system. These devices will be replaced by the fixed unit or a new unit when available. APC UPS units are the responsibility of City of Plano.
- Store spares at Motorola/Scientel's Plano facility.

LIMITATIONS/EXCLUSIONS

- Motorola/Scientel will not cover, under the contract terms/amounts paid, when time and material repairs are needed for:
 - Vandalism/abuse of the installed hardware and software.
 - 3rd party hardware or software changes that impact network performance made by the customer after system acceptance. Motorola/Scientel will however provide technical support to resolution, if a software conflict arises. Motorola may request that the software in question be removed prior to providing support in order to establish isolation to determine if the issue is with the MESH application or with the secondary software loaded.
 - If a conflict results from a patch or upgrade Motorola will provide technical support to resolve the issue. Motorola may request that the last patch or upgrade be removed in order to determine if a problem pre-existed, then allow for the patch or upgrade to be reinstalled and continue support to resolve the conflict/issue.
 - Electricity service caused problems, such as lightning strikes or power outages.
 - Out of warranty software or hardware not included as part of this agreement.

CALL-OUTS and CORRECTIVE MAINTENANCE

- 1.0 Motorola/Scientel will respond to all emergency failures of the system on a 24 hour, 7 days a week basis. On-Call technical repair response is provided on a 24x7 basis during normal 8x5 CST business hours by calling the Motorola/Scientel Plano Office. After hours, before 8 a.m. CST and after 5 p.m. CST, repair service is requested by calling the Motorola/Scientel 7x24 Answering Service who shall contact the Motorola/Scientel On-Call technicians. The Answering Service has a list of all available Motorola/Scientel technicians, and escalation numbers for Motorola/Scientel management so that a response by Motorola/Scientel to the call-out is assured. In addition, Motorola/Scientel will provide Motorola/City of Plano with the On-Call Technical Support Number, which directly contacts the Motorola/Scientel service personnel. Once a trouble call is generated to the Motorola/Scientel Plano office or after hours Answering Service, the trouble call is tracked and will be escalated to the next level responder in the event the initial responder does not confirm receipt of the trouble call. Using an escalating response procedure guarantees initial contact will be made with Motorola/Scientel's technicians within the required response time.

- 2.0 Upon notification to the on-call technician, the technician will respond within the required response window. Motorola/Scientel will provide 2 hour phone response and the on-site, or virtual on-site, response time of 4 hours. If additional support is required, Motorola/Scientel has a team based regionally fully trained and equipped to maintain MotoMesh, Cisco, DragonWave and Canopy Equipment and resolve any system issues after a disaster or emergency situation.

SUPPORT PROCEDURE:

Upon receipt of a major alarm Motorola/Scientel will dispatch a technician from our Plano, TX facility in accordance with the following procedure:

- Motorola/Scientel Wireless receives notification of problem or failure.
- Motorola/Scientel technician uses NMS to troubleshoot problem or failure.
- Motorola/Scientel technician determines if problem or failure is minor or major.

If problem is classified Minor (non-traffic affecting):

1. City of Plano technical representative determines if call out of Motorola/Scientel technician is required.
2. NOC technician contacts Scientel technical representative.
3. Motorola/Scientel technician is dispatched to City of Plano to rectify the problem.
4. Motorola/Scientel technician notifies the City of Plano of failure/problem and onsite arrival.
5. Motorola/Scientel technician corrects problem or failure.
6. Motorola/Scientel technician documents repairs made and files report.
7. Motorola/Scientel technician notifies the City of Plano of problem resolution.

If problem is classified as Major (traffic affecting):

1. City of Plano technical representative determines if call out of Motorola/Scientel technician is required.
2. NOC technician contacts Scientel technical representative.
3. Motorola/Scientel technician is dispatched to City of Plano to rectify the problem.
4. If major problem occurs during non-business hours, Motorola/Scientel technician is dispatched to the City of Plano to rectify the problem.
5. Motorola/Scientel technician corrects problem or failure



6. Motorola/Scientel technician documents repairs made and files report
7. Motorola/Scientel technician notifies the City of Plano of problem resolution.

Motorola makes the commitment to the City of Plano that it will not replace Scientel without the prior approval of the City of Plano; however, this commitment is only valid if Scientel maintains Motorola's requirements to retain the status of a specialty subcontractor.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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: 12/22/08		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Technology Services		Initials	Date	
Department Head	David Stephens	Executive Director			
Dept Signature:	<i>David Stephens</i>	City Manager	<i>[Signature]</i>	<i>12/17/08</i>	
Agenda Coordinator (include phone #): Amy Powell X7342					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER EXISTING CONTRACT					
CAPTION					
Purchase from existing Contract/Agreement to authorize expenditure in the amount of \$883,302 with Software House International (SHI) for a Microsoft Enterprise Agreement renewal and true up for our server and desktop licenses through a Department of Information Resources (DIR) Contract, and authorizing the City Manager or his designee to execute all necessary documents. (SHI DIR Contract No. DIR-SDD-198).					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS	
Budget		2,599,143	0	2,599,143	
Encumbered/Expended Amount		-921,759	0	-921,759	
This Item		-883,302	0	-883,302	
BALANCE		794,082	0	794,082	
FUND(s): TECHNOLOGY SERVICES FUND (066)					
COMMENTS: Funds are available in the Technology Services 2008-09 Budget for annual maintenance contracts and licensing renewals. The balance will be used for other maintenance agreements and contracts.					
STRATEGIC PLAN GOAL: True-up and Annual Microsoft License renewals relate to the City's Goal of "Service Excellence".					
SUMMARY OF ITEM					
Technology Services recommends Council approve an expenditure of \$767,271.00 to Software House International (SHI) through a Department of Information Resources (DIR) Contract for an annual enterprise agreement with an additional \$116,031.00 of true-up charges for server and desktop software in accordance with our annual enterprise agreement with Microsoft. This is the first year of a three year contract. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so satisfies any State Law requiring the local government to seek competitive bids for items. (SHI DIR Contract No. DIR-SDD-198).					
List of Supporting Documents: Staff Memo; SHI Quote w/Enterprise Agreement		Other Departments, Boards, Commissions or Agencies			

Interoffice Memo

Date: 12/08/08
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Microsoft Enterprise Agreement Renewal and Annual True-up

It is time to renew our Microsoft Enterprise Agreement with Microsoft Corp. through the Department of Information Resources with the State of Texas. This contract provides the City license protection throughout the year, licensing our Microsoft products. We also must true-up our Microsoft licenses for both the desktop and server products used this year. The contract attached along with the pricing sheet is our new three year contract. We are in year one of the new contract and the pricing for the true-up items used this last year are priced at year three pricing from our completed contract. Our annual State of Texas (DIR) pricing is \$ 767,271.00 for the base contract and our true-up costs for this year is \$ 116,031.00. This contract was provided by Software House International (SHI), a DIR vendor. The total for this year's contract and the true-up costs for additional server and desktop products is \$ 883,302. The SHI DIR contract number is DIR-SDD-198.



Microsoft Enterprise Agreement - State of Texas Government Pricing

Darron Gross - Account Executive

1301 South Mopac, Suite 375

Austin, Texas 78746

Phone 512-634-8100

Quote to: City of Plano

Chester Helt

Phone: _____

Qty		Enterprise Products	Per-Desktop Price	Extended Annual Price
2500		MS Full Platform Enterprise Agreement SA ONLY (includes Office Pro Plus, Windows OS, Enterprise CAL, SQL CAL)	\$199.00	\$497,500.00
Qty		Additional Products - Software Assurance Only	Annual Unit	Extended Annual Price
2500		Microsoft Desktop Optimization Pack (monthly Subscription)	\$8.40	\$21,000.00
257	(+59 true-up)	Windows Server - Std Edition	\$119.00	\$30,583.00
42	(+2 true-up)	Windows Server - Enterprise Edition	\$387.00	\$16,254.00
5		Windows Server - Web Edition	\$67.00	\$335.00
1		Windows Terminal Server External Connector	\$1,325.00	\$1,325.00
2500	(+200 true-up)	Windows Terminal Server CAL (must choose device or user)	\$14.00	\$35,000.00
6		Exchange Server - Std Edition	\$115.00	\$690.00
4		Exchange Server - Enterprise Edition	\$656.00	\$2,624.00
42	(+6 true-up)	SQL Server - Standard Edition	\$146.00	\$6,132.00
14		SQL Server - Enterprise Edition	\$1,392.00	\$19,488.00
6	disc. See comment	Content Mgmt Server - Enterprise Edition - 1 processor		
3	grant from CMS	Share Point for Internet Sites	\$6,713.00	\$20,139.00
18	grant from CMS	Office SharePoint Designer	\$36.00	\$648.00
1		Office Share Point Server	\$726.00	\$726.00
4		BizTalk Server - Standard Edition - 1 Processor	\$1,394.00	\$5,576.00
1		Operations Mgr Server	\$94.00	\$94.00
288	(+61 true-up)	Operations Mgr - Enterprise Ops Mgmt License	\$70.00	\$20,160.00
1		Office Communication Server - Standard	\$115.00	\$115.00
2500	see comment	Office Communication Server Enterprise CAL	\$23.00	\$57,500.00
2500	see comment	Office Communication Server Standard CAL	\$5.00	\$12,500.00
141		Map Point	\$45.00	\$6,345.00
1		Office SharePoint Designer	\$36.00	\$36.00
6		Project Professional (with 1 Project Server CAL)	\$153.00	\$918.00
1		Project Server	\$1,451.00	\$1,451.00
50		Project Server CAL (must choose device or user)	\$26.00	\$1,300.00
75	(+25 true-up)	Visio Professional	\$87.00	\$6,525.00
3		Visual Studio Team Ed. w/ MSDN Prem - (Developer)	\$769.00	\$2,307.00
Qty		Additional Products - Software Assurance 'Step-Up'	Annual Unit	Extended Annual Price
		Windows Server Enterprise Edition - Step-Up from Standard Ed	\$625.00	
		Windows Server DataCenter - 1 Processor - Step-Up from Enterprise Ed	\$19.00	
		Windows Server DataCenter - 1 Processor - Step-Up from Standard Ed	\$643.00	
		SQL Server Enterprise Edition - Step-Up from Standard Edition	\$2,909.00	
		Server Management Suite Enterprise Step-Up from Ops Mgr Ent ML	\$166.00	
Qty		Additional Products - License & Software Assurance	Annual Unit	Extended Annual Price
		Windows Server DataCenter Edition - L&SA	\$920.00	
Total Annual Price - Additional Products				\$269,771.00
Annual Price - EA Desktop + Additional Products				
Total 3 Year EA Price				

NOTE: ORDER FOR ENT AGREEMENT MUST BE ACCOMPANIED BY A SIGNED ORIGINAL MS ENT ENROLLMENT FORM

Annual Desktop True-Up Prices

Pro-Plus, Ent CAL, SQL CAL, Win | Year 1 - \$879 ; Year 2 - \$711 ; Year 3 - \$559

Date Quoted: **November 12, 2008**

h-3



SHI-Government Solutions

State of Texas Gov't Sales Team

800-870-6079

www.texas.gs.shi.com

Microsoft Enterprise Agreement - State of Texas Government Pricing

Darron Gross - Account Executive
 1301 South Mopac, Suite 375
 Austin, Texas 78746
 Phone 512-634-8100

Quote to: City of Plano

Chester Helt

Phone: _____

Qty		Enterprise Products - Year 3 True-UP	Per-Desktop Price	Extended Price
		MS Full Platform Enterprise Agreement L&SA (Includes Office Pro Plus, Windows OS, CORE CAL)	\$468.00	
Qty		Additional Products - Year 3 True-Up	Annual Unit	Extended Price
59		Windows Server - Std Edition	\$531.00	\$31,329.00
2		Windows Server - Enterprise Edition	\$1,722.00	\$3,444.00
200	to get to 2500	Windows Terminal Server CAL (must choose device or user)	\$59.00	\$11,800.00
6		SQL Server - Standard Edition	\$653.00	\$3,918.00
61		Operations Mgr - Enterprise Ops Mgmt License	\$315.00	\$19,215.00
300	to get to 2500	Office Communication Server Enterprise CAL	\$103.00	\$30,900.00
300	to get to 2500	Office Communication Server Standard CAL	\$23.00	\$6,900.00
25		Visio Professional	\$341.00	\$8,525.00
Total Year 3 True-Up Price - Additional Products				\$116,031.00
Total Year 3 True-UP Price				\$116,031.00

Date Quoted: November 14, 2008

h-4

Enterprise Custom Enrollment (indirect) State and Local

Microsoft Business Agreement number (if applicable) <i>Reseller or Microsoft affiliate to complete</i>	U1063194	Reseller purchase order number <i>Reseller to complete</i>	Framework ID N36
Enterprise Custom Agreement number <i>Reseller or Microsoft affiliate to complete</i>	01E61288	Previous Qualifying Enrollment number <i>Reseller to complete</i>	4743620
Enrollment number <i>Microsoft affiliate to complete</i>		Previous Qualifying Enrollment end date <i>Reseller to complete</i>	12/31/2008

This Microsoft Enterprise Enrollment is entered into between the following entities signing, as of the effective date identified below.

Definitions. When used in this enrollment, “you” refers to the entity that signs this enrollment with us, and “we” or “us” refers to the Microsoft entity that signs this enrollment.

“Qualifying Enrollment,” means (i) an enterprise enrollment under a separate Microsoft Select Master Agreement or Microsoft Enterprise Agreement; (ii) any enterprise subscription enrollment entered into under a separate Microsoft Enterprise Subscription Agreement; or (iii) any other enrollment submitted under the Microsoft Enterprise Agreement identified on the cover page.

All other definitions in the Microsoft Enterprise Agreement identified above apply here.

Effective date. If you are renewing Software Assurance from one or more previous “Qualifying Enrollments” then the effective date will be the day after the first Enrollment expires.

Otherwise the effective date will be the date this enrollment is signed by us. Where a previous Qualifying Enrollment is being used, your reseller will require that enrollment number and end date to complete the applicable boxes above.

Term. This enrollment will expire 36 full calendar months from the effective date. It could be terminated earlier or renewed as provided in the Microsoft Enterprise Agreement. We will advise you of your renewal options before it expires.

Representations and warranties. By signing this enrollment, the parties agree to be bound by the terms of this enrollment, and you represent and warrant that: (i) you have read and understand the Microsoft Business Agreement identified above (if any) and the Microsoft Enterprise Agreement, including all documents it incorporates by reference and any amendments to those documents, and agree to be bound by those terms; and (ii) you are either the entity that signed the Microsoft Enterprise Agreement or its affiliate.

Non-exclusivity. This enrollment is non-exclusive. Nothing contained in it requires you to license, use or promote Microsoft software or services exclusively. You may, if you choose, enter into agreements with other parties to license, use or promote non-Microsoft software or services.

This enrollment consists of (1) this cover page, (2) the Contact Information Page(s), (3) the Enterprise order information, (4) the Reseller Information Form, (5) the Media Order Form, and (6) the Core User CAL Terms and Conditions (if applicable).

Customer	Contracting Microsoft Affiliate
Name of entity *	Microsoft Licensing, GP
Signature *	Signature
Printed name *	Printed name
Printed title *	Printed title
Signature date *	Signature date (date Microsoft affiliate countersigns)
* indicates required fields	Effective date (may be different than our signature date)

**THIS ENROLLMENT NOT VALID UNLESS SIGNED BELOW BY
TEXAS DEPT. OF INFORMATION RESOURCES**

Required Approval by Texas Department of Information Resources:	
By:	
Name:	(Signature)
Title:	(Printed)
Date:	(Printed)

Microsoft Volume Licensing web sites	
(Note: We will advise you of any changes to these URLs.)	
Product use rights	http://microsoft.com/licensing
Product List	http://microsoft.com/licensing
Microsoft Volume Licensing Services (MVLS) (password protected site to view orders under this enrollment)	https://licensing.microsoft.com/
Customer guide	http://microsoft.com/licensing/programs/

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Notices to Microsoft should be sent to:	Copies should be sent to:
MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group (425) 936-7329 fax

Attachments:

<input checked="" type="checkbox"/>	<u>Media Order Form (required)</u>
<input type="checkbox"/>	<u>Core User CAL Terms and Conditions, if applicable</u>
<input type="checkbox"/>	<u>MS Capital Form, if applicable</u>

Customer. Please remit to your reseller.

Reseller. Please remit to Microsoft.

1. Contact information. Each party will notify the other in writing if any of the information in the following contact information page(s) change. The * indicates required fields. By providing contact information, you consent to its use for purposes of administering this enrollment by us, our affiliates, and other parties that help us administer this enrollment.

Primary contact information: The customer signing on the cover page must identify an individual from inside its organization to serve as the primary contact. This contact is the default online administrator for this enrollment and receives all notices unless you provide us written notice of a change. The online administrator may appoint others as administrators and grant others access to online information.

Customer		
Name of entity *		Contact name *
City of Plano		Last First
Street address *		Contact email address (required for online access) *
City *	State/Province *	Phone
Country *	Postal code *	Fax

Notices and online access contact information: Complete this only if you want to designate a notices and online access contact different than the primary contact. This contact will become the default online administrator for this enrollment and receive all notices. This contact may appoint other administrators and grant others access to online information.

Notices and online access contact		
<input type="checkbox"/> Same as primary contact		
Name of entity		Contact name
		Last First
Street address		Contact email address (required for online access)
City	State/Province	Phone
Country	Postal code	Fax

Language preference: This section designates the language in which you prefer to receive notices.

English

Additional electronic contractual notices contact information: This contact will receive electronic contractual notices in addition to the notices contact. This contact is not required if you do not want an additional set of notices issued.

Electronic contractual notices contact		
Name of entity		Contact name Last First
Street address		Contact email address (required for electronic notices)
City	State/Province	Phone
Country	Postal code	Fax

Software Assurance benefits contact: This contact will receive communications concerning Software Assurance benefits, and any additional TechNet subscriptions that have been ordered separately from Software Assurance under this enrollment. This contact is optional. If this contact is not completed, any notices for Software Assurance benefits will default to the notices and online contact.

Software Assurance benefits contact		
Name of entity		Contact name Last First
Street address		Contact email address (required for electronic notices)
City	State/Province	Phone
Country	Postal code	Fax

MSDN contact: This contact will receive communications concerning registration for MSDN products ordered under this enrollment. This contact is optional. If this contact is not completed, any notices for MSDN will default to the notices and online contact.

MSDN contact		
Name of entity		Contact name Last First
Street address		Contact email address (required for electronic notices)
City	State/Province	Phone
Country	Postal code	Fax

Microsoft account manager: This section designates your Microsoft account manager contact.

Microsoft account manager name Michael Easley	Microsoft account manager email address measley@microsoft.com
--	--

2. Defining your enterprise.

Use this section to identify which affiliates will be included in your enterprise. Your enterprise must consist of entire government agencies, departments or legal jurisdictions, not partial government agencies, departments, or legal jurisdictions. Each affiliate must be entirely "in" or entirely "out." All affiliates acquired after the effective date of this enrollment that are not party to a Qualifying Enrollment of their own will automatically be included unless you fill in part b below.

a. Use this part (a) to determine which current affiliates will be included in your enterprise. Check only one of the boxes in part (a).	
<input checked="" type="checkbox"/>	Only you (and no other affiliates) will be participating
<input type="checkbox"/>	You and the following affiliates will be participating (attach a list of names on a separate piece of paper if more than 10 affiliates are being included):
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
b. Use this part (b) to indicate whether affiliates with which you consolidate after the enrollment effective date will be included. Unless you check the box below, all affiliates you consolidate with after the enrollment effective date that are not party to a Qualifying Enrollment of their own will automatically be included.	
<input type="checkbox"/>	Exclude all affiliates consolidated with after the enrollment effective date that are not party to a Qualifying Enrollment of their own.

3. Selecting your language option.

Select the option for the languages in which you will run the products licensed under this enrollment. The options and their corresponding languages are identified here.

All Languages		
"Listed Languages"	"Restricted Languages"	"Extended Languages"
Arabic	Danish	Czech
Bulgarian	Dutch	Estonian
Chinese Simplified	English ¹	Hungarian
Chinese Traditional	Finnish	Latvian
Croatian	French ³	Lithuanian
English ¹ Hebrew	German	Polish
Indic	Greek	Slovenian
Japanese	Italian	Slovak
Korean	Norwegian	
Portuguese (Brazil)	Portuguese (Portugal)	
Romanian	Spanish ²	
Russian	Swedish	
Serbian		
Spanish ²		
Thai		
Turkish		
Ukrainian		

¹ English is a Listed Language if this enrollment is signed outside of the following countries and a Restricted Language if this enrollment is signed inside these countries: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, United Kingdom, Switzerland, Sweden, or Spain. English is a "Listed Language", except when restricted as described in the "Restricted Languages" list (see footnote 3)

² Spanish is a Listed Language only if this enrollment is signed in Latin America and is otherwise Restricted Language.

³ French is a "Listed Language," if signed in Canada

- Select All Languages to run your products in any of the Listed, Extended or Restricted Languages. This option also allows you to run Multi-Language packs for your products.
- Select Listed Languages to run your products in those languages.
- Select Extended Languages to run your products in those languages.
- If you select the Listed or Extended Languages option you may run up to 10% of the copies of each of your products in All Languages.

Check one box

- Listed Languages
- All Languages
- Extended Languages

4. Language allocation.

Provide us with your good faith estimate of the specific languages in which you will run all copies of all products and the approximate percentage of those copies you will run in each language. Information that you provide here does not limit your future use of products under this enrollment in any permitted language within the language group you select above. Attach a separate sheet if more space is needed.

Language	Percentages
English	100%%
	%
	%
	%

5. Applicable currency.

Payments made in connection with this enrollment must be in U.S. Dollars

6. Establishing your price level.

The price level for enterprise products is determined by the terms and conditions of the enterprise agreement. Your price level for additional products will be level "D".

<p>Qualified desktops: You represent that the total number of qualified desktops in your enterprise is, or will be increased to, this number during the initial term of this enrollment (This number must be equal to at least 250 desktops).</p>	2500
<p>Qualified users: You represent that the total number of qualified users in your enterprise is, or will be increased to, this number during the initial term of this enrollment (This number must be equal to at least 250 users).</p>	

7. Enterprise product orders.

Your reseller will provide you with your product pricing and order. Your prices and payment terms for all products ordered will be determined by agreement between you and your reseller. Your reseller will provide us with your order separately from this enrollment.

We will invoice your reseller in three equal annual installments for the enterprise products covered by your initial order. The first installment will be invoiced to your reseller upon our acceptance of this enrollment; the remaining installments will be invoiced at the next two anniversaries of the enrollment effective date. We will invoice your reseller for the enterprise products covered by any true up orders in total upon our acceptance of each true up order.

Select the enterprise products to be covered by your initial order. If you select the Core CAL, you must select either *desktop* or *user* licenses.

Enterprise Products	Desktop Licenses	User Licenses
Windows Desktop Operating System Upgrade	<input checked="" type="checkbox"/>	
Office Professional Plus ¹	<input checked="" type="checkbox"/>	
Office Enterprise	<input type="checkbox"/>	
Office Standard ¹	<input type="checkbox"/>	
Core Client Access License ^{1,2}	<input type="checkbox"/>	<input type="checkbox"/>
Enterprise Client Access License Suite ^{1,2}	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exchange Server Client Access License Standard ²	<input type="checkbox"/>	<input type="checkbox"/>
Exchange Server Client Access License Enterprise ²	<input type="checkbox"/>	<input type="checkbox"/>
Office SharePoint Server Client Access License Standard ²	<input type="checkbox"/>	<input type="checkbox"/>
OfficeSharePoint Server Client Access License Enterprise ²	<input type="checkbox"/>	<input type="checkbox"/>
Windows Server Client Access License ²	<input type="checkbox"/>	<input type="checkbox"/>
Systems Management Server Configuration Management License	<input type="checkbox"/>	
Systems Center Operations Manager Client Operations Management License	<input type="checkbox"/>	

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Windows Terminal Services Client Access License ²	<input type="checkbox"/>	<input type="checkbox"/>
Office Communication Server Client Access License Standard ²	<input type="checkbox"/>	<input type="checkbox"/>
Office Communication Server Client Access License Enterprise ²	<input type="checkbox"/>	<input type="checkbox"/>
SQL Server Client Access License ²	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Microsoft Rights Management Services	<input type="checkbox"/>	<input type="checkbox"/>
Microsoft Forefront Security Suite	<input type="checkbox"/>	<input type="checkbox"/>

¹ The components of the current versions of Office Professional, Office Standard and the current versions of the components that make up the Core CAL, are identified in the Product List.

² If you select a User CAL and the agreement identified on the cover page is version 6.1 or earlier, the User CAL Terms and Conditions apply.

8. Additional Products

We will invoice your reseller for each additional product covered by your initial order in three equal annual installments. The first installment will be invoiced to your reseller upon our acceptance of this enrollment; the remaining installments will be invoiced at the next two anniversaries of the enrollment effective date. We will invoice your reseller for any new additional product not initially included in your enrollment in total upon our acceptance of your order. We will invoice your reseller for additional products initially included in your enrollment and covered by any true up order submitted during the initial term in total upon our acceptance of your true up order.

9. Qualifying systems licenses.

All desktop operating system licenses provided under this program are upgrade Licenses. **No full operating system licenses are available under this program.** Therefore, if you select the Windows Desktop Operating System Upgrade & Software Assurance, all qualified desktops on which you will run the Windows Desktop Operating System Upgrade must be licensed to run one of the qualifying operating systems identified in the Product List at <http://www.microsoft.com/licensing>. Note that the list of operating systems that qualify for the Windows Desktop Operating System Upgrade varies with the circumstances of your order. That list is more extensive at the time of your initial order than it is for some subsequent true ups and system refreshes during the term of your enrollment.

10. Renewal orders.

For any 36-month renewal, your renewal order will be invoiced to your reseller in three annual installments. The first installment will be invoiced upon our acceptance of the renewal order; the remaining installments will be invoiced at the next two anniversaries of the effective date of that renewal term. For any 12-month renewal and for any true up orders, we will invoice your reseller in total upon our acceptance of your order.

Your reseller should complete the following sections and sign this form where indicated.

General information

Reseller company name:
Street address: (PO boxes will not be accepted)
City and State / Province and postal code:
Country:
Contact name:
Phone number:
Fax number:
Email address:

The undersigned confirms that the reseller information is correct.

Name of reseller
Signature
Printed name
Printed title
Date

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SLG Enterprise and Enterprise Subscription Media Order Form

Media shipping information form - starter CD kit

Enrollment information		Reseller contact	
Agreement number (Reseller or Microsoft affiliate to complete)	01E61288	Company name:	
Enrollment number (Microsoft affiliate to complete)		Contact name:	
Customer contact Name:		Contact email:	
		Contact phone:	

THIS FORM MUST BE ATTACHED TO AN ENROLLMENT.

At your option, starter CD kits and CD-ROM subscriptions relating to your enrollment that you choose to receive will be shipped to the address below. Terms used but not defined in this form have the meanings given to them in your enrollment identified in this form.

The starter CD kit ship to information identifies the delivery location. If you do not elect physical media, and intend to download copies of software instead, please provide the download delivery location as the starter CD kit ship to information.

Starter CD kit ship to information (* indicates required information)	
<input type="checkbox"/> Same as notices contact in the enrollment	
Customer name * City of Plano	Contact name *
Street address * (no PO boxes accepted)	Contact email address *
City and State / Province * Texas	Contact phone number *
Country and postal code * USA	Contact fax number

If you choose below to receive media, then upon our acceptance of your enrollment, we will send you your starter CD kit in the language(s) you select. This starter CD kit will be provided at no additional charge, in order to permit you to exercise the license rights granted under your enrollment and related Enterprise Agreement. You may also subscribe to updates in the form of CDs, or upon reasonable notice, electronic download or similar other means. If you need additional starter CD kits and updates, you may order these through your reseller for a fee. For a complete list of the contents of any kit, visit the web site at <http://selectug.mslicense.com/>.

Yes, I **want** to receive a starter CD kit (media)

Yes, I **want** to subscribe to receive CD kit updates

No, I **do not want** to receive a starter CD kit (media)

No, I **do not want** to subscribe to receive CD kit updates

SLG Enterprise and Enterprise Subscription Media Order Form

Media shipping information form – starter CD kit (continued)

For each language and group you wish to receive, mark the corresponding box with an X

Language	Enterprise Kit	Mapping Kit*
English	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
English/Multi-Language**	<input type="checkbox"/>	
Arabic	<input type="checkbox"/>	
Brazilian Portuguese	<input type="checkbox"/>	
Bulgarian	<input type="checkbox"/>	
Chinese Simplified ***	<input type="checkbox"/>	
Chinese Traditional	<input type="checkbox"/>	
Chinese Traditional Hong Kong/Pan-Chinese	<input type="checkbox"/>	
Croatian	<input type="checkbox"/>	
Czech	<input type="checkbox"/>	
Danish	<input type="checkbox"/>	
Dutch	<input type="checkbox"/>	
Estonian	<input type="checkbox"/>	
Finnish	<input type="checkbox"/>	
French	<input type="checkbox"/>	<input type="checkbox"/>
German	<input type="checkbox"/>	<input type="checkbox"/>
Greek	<input type="checkbox"/>	
Hebrew	<input type="checkbox"/>	
Hungarian	<input type="checkbox"/>	
Italian	<input type="checkbox"/>	<input type="checkbox"/>
Japanese	<input type="checkbox"/>	
Korean	<input type="checkbox"/>	
Latvian	<input type="checkbox"/>	
Lithuanian	<input type="checkbox"/>	
Norwegian	<input type="checkbox"/>	
Polish	<input type="checkbox"/>	
Portuguese	<input type="checkbox"/>	
Romanian	<input type="checkbox"/>	
Russian	<input type="checkbox"/>	
Serbian	<input type="checkbox"/>	
Slovak	<input type="checkbox"/>	
Slovenian	<input type="checkbox"/>	
Spanish	<input type="checkbox"/>	<input type="checkbox"/>
Swedish	<input type="checkbox"/>	
Thai	<input type="checkbox"/>	
Turkish	<input type="checkbox"/>	
Ukrainian	<input type="checkbox"/>	

* Mapping Kit is not available for use in or shipment to India, Hong Kong SAR, Macau SAR, China, Morocco Pakistan, and Turkey.

** Before installing any of the Multilanguage Packs, the English version of the product must first be installed. If you order English/Multilanguage, you must also order English.

*** Chinese Simplified Windows XP Professional is not available in the Enterprise Chinese Simplified Kit and is only available in certain countries. Contact your reseller for availability in your region.

= Not Available



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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:	12/22/08	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Public Works Administration / David Falls	Initials	Date	
Department Head	<i>[Signature]</i>	Executive Director	<i>[Signature]</i>	12-10-08
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	12/10/08
Agenda Coordinator (include phone #): Margie Stephens (X4104)				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input checked="" type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
<i>To McMahon Contracting, L.P. , increasing the contract by \$159,981.90 for the 2007 - 2008 Arterial Concrete Pavement Rehabilitation Project, Parker Road, Pleasant Valley and Country Place Drive, Project No. 5867, Change Order No. 1, Bid No. 2008-156 - B.</i>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years
Budget		2,506,850	4,314,150	2,300,000
Encumbered/Expended Amount		-2,506,850	-1,792,602	0
This Item		0	-159,982	0
BALANCE		0	2,361,566	2,300,000
FUND(S): CAPITAL RESERVE				
COMMENTS: Funds are included in the 2008-09 Capital Reserve. This item, in the amount of \$159,982, will leave a current year balance of \$2,361,566 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.				
SUMMARY OF ITEM				
This change order is for additional concrete street pavement repairs on Parker Road between Coit Road and Preston Road. This change order will expedite pavement repairs on this section of roadway which was not included in the original contract.				
Staff recommends approval of Change Order No. 1. The total Contract will be \$977,545.98, which is a 19.57% increase of the original contract amount of \$817,564.08.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Change Order No. 1				

CHANGE ORDER NO. 1

**2007-08 ARTERIAL REHAB
PARKER RD., PLEASANT VALLEY & COUNTRY PLACE DR.
PROJECT NO. 5867
PURCHASE ORDER NO. 103531
CIP NO.35-51131
BID NO. 2008-156-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 **MCMAHON CONTRACTING, L.P.** for the **2007-08 ARTERIAL REHAB PROJECT – PARKER RD., PLEASANT VALLEY & COUNTRY PLACE**, dated **JUNE 23, 2008**.

B. DESCRIPTION OF CHANGE

The change order is to add additional quantities of work to the contract in order to continue repairs on Parker Road between Coit Road and Preston Road that were not included in the original project.

C. EFFECT OF CHANGE

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

<i>ITEM NO.</i>	<i>ITEM DESCRIPTION</i>	<i>ORIGINAL QUANTITY</i>	<i>REVISED QUANTITY</i>	<i>UNIT</i>	<i>UNIT PRICE</i>	<i>AMOUNT OF CHANGE</i>
100	Full Depth Saw Cut	7200	11,456	LF	\$2.00	\$8,512.00
101	Longitudinal and Transverse BJ	7200	11456	LF	\$2.80	\$11,916.80
102	R/D Existing Concrete Paving	10,720	13,107	SY	\$5.50	\$13,128.50
103	F/I 10" Concrete Paving	2,584	4971	SY	\$50.00	\$119,350.00
105	F/I 6" Monolithic Curb	6358	7594	LF	\$1.10	\$1,359.60
107	F/I Type I Buttons	175	300	Each	\$5.00	\$625.00
108	F/I Type II Buttons	550	750	Each	\$3.50	\$700.00
109	F/I Extra Width Crack & Jt Seal	5,000	7000	LF	\$1.15	\$2,300.00
110	F/I Construction Barricading	1	1.19	LS	\$10,000.00	\$1,900.00
111	F/I Erosion Control	1	1.19	LS	\$1,000.00	\$190.00
	TOTAL:					\$159,981.90

Original Contract Amount	\$ 817,564.08
Contract Amount (Including Previous Change Orders)	\$ 817,564.08
Amount, Change Order No. 1	\$ 159,981.90
Revised Contract Amount	\$ 977,545.98
Total Percent Increase Including Previous Change Orders	19.57%

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add 30 WORKING day(s) to this project:

Original Contract Time	120 working days
Amount (Including Previous Change Orders)	120 working days
Amount, Change Order No. 1	30 working days
Revised Contract Time	150 working days
Total Percent Increase Including Previous Change Orders	25.00%

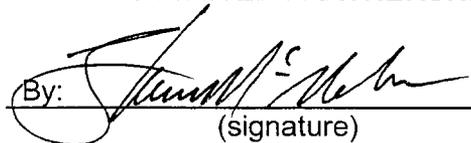
E. AGREEMENT

By the signatures below, duly authorized agents of the City of Plano, Texas and **MCMAHON CONTRACTING, L.P.**, do hereby agree to append this Change Order No. 1 to the original contract between themselves, dated June 23, 2008.

OWNER: CITY OF PLANO

**CONTRACTOR: MCMAHON
CONTRACTING, L.P., A TEXAS LIMITED
PARTNERSHIP
BY: JSM MANAGEMENT COMPANY,
LLC, GENERAL PARTNER
A TEXAS LIMITED PARTNERSHIP**

By: _____
(signature)

By:  _____
(signature)

Print
Name: Thomas H. Muehlenbeck

Print
Name: **SHAWN MCMAHON**

Print
Title: City Manager

Print Title: **MANAGING PARTNER, OF
JSM MANAGEMENT COMPANY, LLC,
GENERAL PARTNER OF MCMAHON
CONTRACTING, L.P.**

Date: _____

Date: November 25, 2008

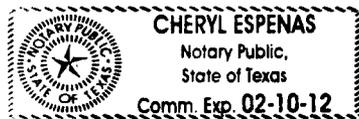
APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 25th day of November, 2008, by **SHAWN MCMAHON, MANAGING PARTNER, OF JSM MANAGEMENT COMPANY, LLC, GENERAL PARTNER OF MCMAHON CONTRACTING, L.P. a TEXAS LIMITED PARTNERSHIP**, on behalf of said partnership.



Cheryl Espenas
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**

CITY SECRETARY'S USE ONLY		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:	12/22/08	Reviewed by Legal <i>JS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan L. Upchurch	Executive Director		
Dept Signature:	<i>Alan L. Upchurch</i>	City Manager	<i>JM</i>	<i>12/22/08</i>
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>IP</i>	Project No. 5853	
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input checked="" type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
To Birkhoff, Hendricks & Conway, L.L.P., increasing the professional services contract by \$44,500 for the Jupiter Elevated Tank Repaint. Contract Modification No. 1 is for additional engineering and inspection services.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years
Budget		25,299	1,039,701	0
Encumbered/Expended Amount		-25,299	-1,038,854	0
This Item		0	-44,500	0
BALANCE		0	-43,653	0
FUND(S): WATER CIP				
COMMENTS: Funds are included in the 2008-09 Water CIP. This modification #1, in the amount of \$44,500, will exceed the current year balance by \$43,653 for the Jupiter Elevated Tank Repaint project. The overage will be funded through reallocation from the Parker Road Estates Water Rehab project.				
STRATEGIC PLAN GOAL: Water tank repainting relates to the City's Goal of Livable and Sustainable Community.				
SUMMARY OF ITEM				
Additional services are required for the addition of the interior painting of the White Rock Elevated Tank and for the addition of quality control services during construction.				
The original contract amount was \$29,600.00. The Engineering Department is seeking City Council approval of this first modification because the contract now exceeds \$50,000.00. The revised contract amount is \$74,100.00.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Contract Modification		N/A		

CONTRACT MODIFICATION
JUPITER ELEVATED TANK REPAINT
PROJECT NO. 5853

PURCHASE ORDER NO. 155588
CIP NO. 68156

This shall serve as a First Modification to the Contract between the City of Plano, Texas (hereinafter "City"), and Birkhoff, Hendricks & Conway, L.L.P. (hereinafter "Consultant"), dated November 7, 2007, for Professional Engineering Services for the referenced project (hereinafter "Project").

Services:

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

1. Preparation of specifications and exhibits to add the interior repaint of the White Rock Elevated Storage Tank.
2. For site visit to the White Rock Elevated Tank to determine condition of interior coating system and visible structural defects.
3. For preparation of the Proposal and Bid Schedule for the work specified in the specifications.
4. For construction administration services for the White Rock Elevated Storage Tank.
5. For quality control testing for the Jupiter and White Rock Elevated Storage Tanks.

Compensation:

For additional services provided pursuant to this Modification, City shall pay Consultant an amount not to exceed \$44,500. Such payment shall be made in accordance with the payment terms specified in the Contract.

MODIFICATION NO. 1
 Project No. 5853 - Jupiter Elevated Tank Repaint
 Page 2 of 3

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

Original Contract Amount	\$	29,600.00
Contract Amount (Including Previous Modifications)	\$	29,600.00
Amount, Modification No. 1	\$	44,500.00
Revised Contract Amount	\$	<u>74,100.00</u>
Total Percent Increase Including Previous Modifications		150.3%

CITY OF PLANO	BIRKHOFF, HENDRICKS & CONWAY, L.L.P.
_____ OWNER	_____ CONSULTANT
By: _____ (signature)	By: _____ (signature)
Print Name: Thomas H. Muehlenbeck	Print Name: John W. Birkhoff, P.E.
Print Title: City Manager	Print Title: Managing Partner
Date: _____	Date: _____

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 _____ day of December, 2008, by **John W. Birkhoff, P.E., Managing Partner, of Birkhoff, Hendricks & Conway, L.L.P.**, a Texas limited liability partnership, on behalf of said limited liability partnership.

Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF COLLIN

This instrument was acknowledged before me on the _____ day of December, 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

j-4



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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: 12/22/08		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Engineering			Date	
Department Head	Alan J. Upchurch	Executive Director	12-12-08		
Dept Signature:	<i>Alan J. Upchurch</i>	City Manager	12/15/08		
Agenda Coordinator (include phone #):		Irene Pegues (7198)	Project No. 5385.1		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input checked="" type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
To Jim Bowman Construction Co., L.P., increasing the contract by \$72,993, for Intersection Improvements 2004, Change Order No. 1. (Original Bid No. 2007-28-B)					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		13,094	431,906	0	445,000
Encumbered/Expended Amount		-13,094	-92,172	0	-105,266
This Item		0	-72,993	0	-72,993
BALANCE		0	266,741	0	266,741
FUND(S): STREET IMPROVEMENT CIP					
COMMENTS: Funds are included in the 2008-09 Street Improvement CIP. This change order, in the amount of \$72,993, will leave a current year balance of \$266,741 for the Intersection Improvements 2004 project.					
STRATEGIC PLAN GOAL: Intersection improvements relate to the City's Goal of Safe, Efficient Travel.					
SUMMARY OF ITEM					
This change order is for additional work related to replacement of deteriorated paving adjacent to the project areas as determined to be necessary by the Public Works and Engineering Departments during the course of construction. Also included are additional barrier free ramps and sidewalk replacement determined to be necessary to satisfy handicapped requirements. Additional costs for barricading and remobilization due to delay related to utility conflicts are also included. Other items of work determined to be necessary due to field conditions or related to the aforementioned items are also included. This change order includes work on all three (3) project locations:					
<ol style="list-style-type: none"> 1. Spring Creek Parkway at Lookout Trail 2. Commerce Drive at Plano Parkway 3. West Park Boulevard at Ohio Drive 					
Staff recommends approval of Change Order No. 1. The contract total will be \$385,382.70, which includes change orders of 23.37% of the original contract amount of \$312,389.65.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
Change Order No. 1		N/A			
Location Maps					

CHANGE ORDER NO. 1

INTERSECTION IMPROVEMENTS 2004
1. SPRING CREEK PARKWAY AT LOOKOUT TRAIL
2. COMMERCE DRIVE AT PLANO PARKWAY
3. WEST PARK BOULEVARD AT OHIO DRIVE
PROJECT NO. 5385.1
PURCHASE ORDER NO. 103164
CIP NO. 33-31442
BID NO. 2007-28-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 **INTERSECTION IMPROVEMENTS 2004 – 1. SPRING CREEK PARKWAY AT LOOKOUT TRAIL; 2. COMMERCE DRIVE AT PLANO PARKWAY; 3. WEST PARK BOULEVARD AT OHIO DRIVE PROJECT**, dated **DECEMBER 11, 2006**.

B. DESCRIPTION OF CHANGE

1. Replacement of deteriorated paving adjacent to the project area on Lookout Trail as determined to be necessary by the Public Works Department.
2. Replacement of existing driveways, walk and barrier free ramp areas on Lookout Trail to satisfy handicapped requirements.
3. Replacement of deteriorated paving at the Commerce Drive / Plano Parkway intersection adjacent to the project area.
4. Additional retaining wall installation at the Commerce Drive / Plano Parkway intersection to provide for grade difference between the sidewalk and adjacent private property.
5. Rerouting and installation of a new private irrigation system on adjacent commercial property at the Commerce Drive / Plano Parkway intersection. This work was well beyond an ordinary irrigation system adjustment for pavement widening.
6. Replacement of deteriorated paving adjacent to the project area on both Ohio Drive and West Park Boulevard.
7. Replacement of existing walk at the Ohio Drive / West Park Boulevard intersection to satisfy handicapped requirements.
8. Remobilization and barricading associated with project delay due to gas line conflicts at the Ohio Drive / West Park Boulevard intersection.
9. Other items of work at all three (3) intersections determined to be necessary due to field conditions or related to the above mentioned items.

C. EFFECT OF CHANGE

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

Item numbers preceded by "1" refer to 1. Spring Creek Parkway at Lookout Trail

Item numbers preceded by "2" refer to 2. Commerce Drive at Plano Parkway

Item numbers preceded by "3" refer to 3. West Park Boulevard at Ohio Drive

ITEM NO.	ITEM DESCRIPTION	ORIGINAL QUANTIT Y	REVISED QUANTIT Y	UNIT	UNIT PRICE	AMOUNT OF CHANGE
1-102	Rem. Cb. & Pave	25	28.29	SY	40.00	131.60
1-103	Full Depth Saw	126	290	LF	4.00	656.00
1-105	Rem. BFR	2	4	EA	150.00	300.00
1-106	6" Mono. Cb.	105	245.4	LF	2.70	379.08
1-107	10" R.C. Pave	98	353.89	SY	86.00	22,006.54
1-108	Long Butt Jt.	126	253.10	LF	2.00	254.20
1-109	Conc. Walk	65	91.99	SY	38.00	1,025.62
1-110	BFR	2	6	EA	800.00	3,200.00
1-111	Grass Sod	50	224	SY	8.00	1,392.00
1-201	4" N.R.R.Y. Button	22	44	EA	4.20	92.40
1-202	4"R.Y. Button	24	44	EA	4.20	84.00
1-301	Eros Contr. (Dep. Area)	110	208.9	LR	3.00	296.70
2-102	Rem. Cb. & Pave	65	72.46	SY	35.00	261.10
2-103	Full Depth Saw	220	247	LF	2.0	54.00
2-107	10" R.C. Pave	140	177.40	SY	85.00	3,179.00
2-111	Grass Sod	75	156	SY	8.00	648.00
2-113	R.C. Ret. Wall	8	10.7	SY	950.00	2,565.00
2-812	Irrig. Reroute/Restore	0	1	LS	2,520.00	2,520.00

3-102	Rem. Cb. & Pave	2,054	2,181.31	SY	9.00	1,145.79
3-103	Full Depth Saw	865	1,052	LF	2.00	374.00
3-104	Remove Walk	68	223	SY	9.00	1,395.00
3-107	10"R.C. Pave	450	883.74	SY	61.50	26,675.01
3-108	Long Butt Jt.	640	872.60	LF	2.00	465.20
3-109	Conc. Walk	68	223.00	SY	36.00	5,580.00
3-111	Grass Sod	513	1,008.00	SY	6.00	2,970.00
3-112	Med. Pave. Stone	305	292.33	SY	37.00	-468.79
3-116	Relocate TSB	1	0	EA	300.00	-300.00
3-117	4" R.C. Paver Base	305	292.33	SY	30.00	-380.10
3-118	7" R.C. Pave	1,920	1,765.74	SY	36.70	-5,661.34
3-119	Street header	214	0	LF	8.00	-1,712.00
3-120	Med. Nose	1	2	EA	400.00	400.00
3-121	6" Lime Stab.	2,045	1,882.76	SY	7.00	-1,135.68
3-122	Lime	37	31.22	TN	101.00	-583.78
3-203	4" N.R.R.W. Buttons	172	203	EA	4.00	124.00
3-501	Rem. Exist. Pole Fnd.	1	3	EA	261.00	522.00
3-505	Rel. Cont. Valve	1	0	EA	500.00	-500.00
3-602	Rem. Trees	8	4	EA	250.00	-1000.00
3-604	Remobil. & Barricades	0	1	LS	6,038.50	6,038.50
	TOTAL:					\$72,993.05

Original Contract Amount	\$ 312,389.65
Contract Amount (Including Previous Change Orders)	\$ 312,389.65
Amount Change Order No. 1	\$ 72,993.05
Revised Contract Amount	\$ 385,382.70
Total Percent Increase Including Previous Change Orders	23.37%

D. EFFECT OF CHANGE ON CONTRACT TIME

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

Original Contract Time	<u>100 working days</u>
Amount (Including Previous Change Orders)	<u>100 working days</u>
Amount Change Order No. 1	<u>0 working days</u>
Revised Contract Time	<u>100 working days</u>
Total Percent Increase Including Previous Change Orders	<u>0.00%</u>

E. AGREEMENT

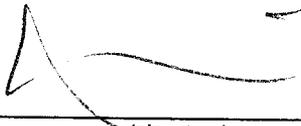
By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **JIM BOWMAN CONSTRUCTION CO., L.P.**, do hereby agree to append this Change Order No. 1 to the original contract between themselves, dated **December 11, 2006**.

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

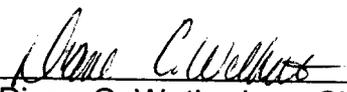
Print
Title: CITY MANAGER

Print
Title: SOLE MANAGER

Date: _____

Date: 11/25/08

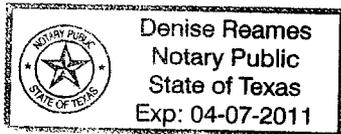
APPROVED AS TO FORM:

By:  _____
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 30th day of November, 2008, by **JIM BOWMAN, SOLE MANAGER**, 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 §

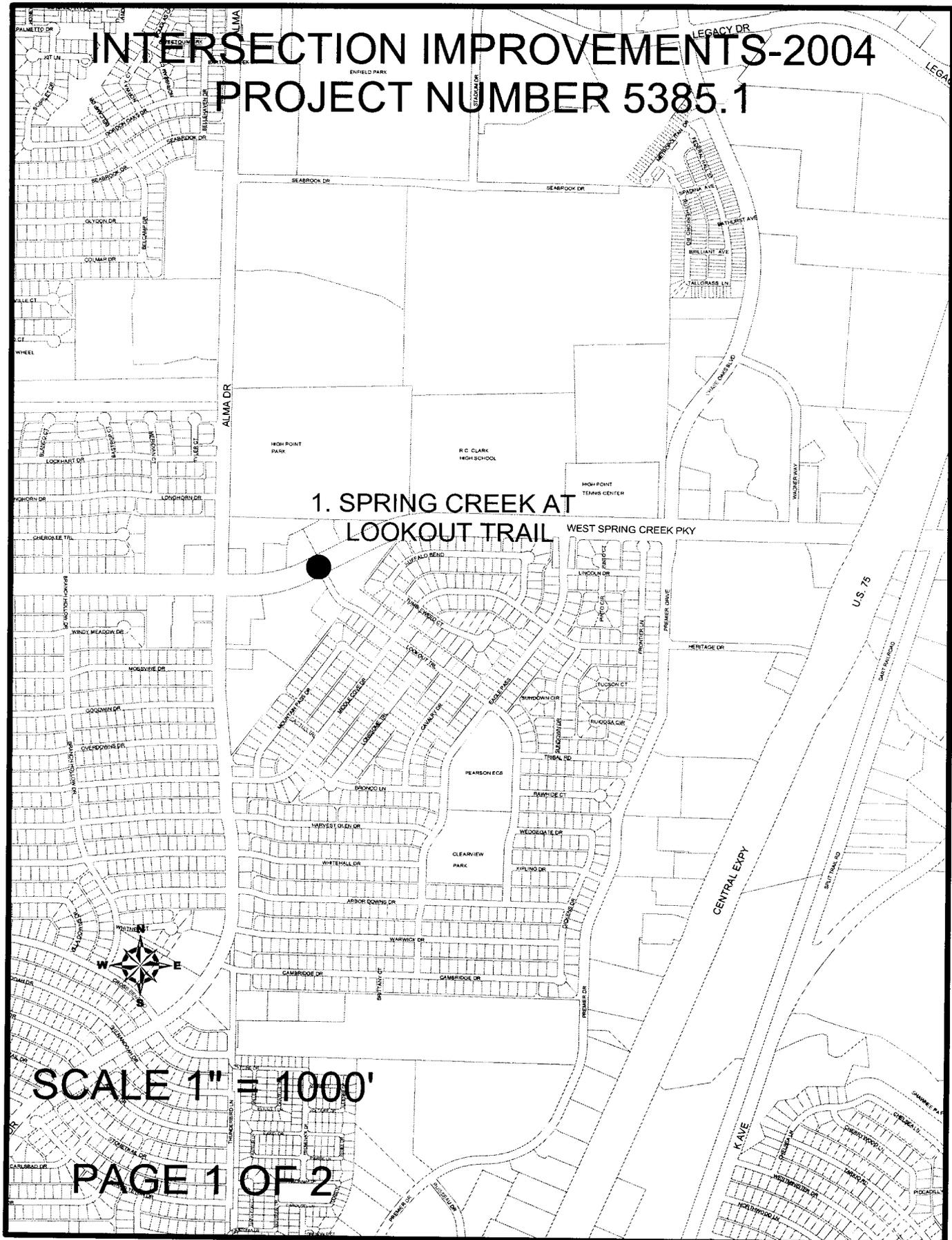
This instrument was acknowledged before me on the _____ day of _____, 2008 by **THOMAS H. MUEHLENBECK, CITY MANAGER**, of the **City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

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INTERSECTION IMPROVEMENTS-2004 PROJECT NUMBER 5385.1

1. SPRING CREEK AT LOOKOUT TRAIL WEST SPRING CREEK PKY



SCALE 1" = 1000'

PAGE 1 OF 2

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INTERSECTION IMPROVEMENTS-2004 PROJECT NUMBER 5385.1

3. WEST PARK AT OHIO

WEST PARK BLVD

2. COMMERCE AT
PLANO PARKWAY

SCALE 1"=1000'

PAGE 2 OF 2





**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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: 12/22/08		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Purchasing		Initials	Date	
Department Head	Mike Ryan		Executive Director		
Dept Signature:	<i>Mike Ryan</i>		City Manager	<i>[Signature]</i>	
Agenda Coordinator (include phone #):		Zahid Khan X7376			

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

CAPTION

APPROVING THE TERMS AND CONDITIONS OF A THIRD MODIFICATION TO AN EXISTING CONTRACT BY AND BETWEEN HD SUPPLY WATERWORKS, LTD AND THE CITY OF PLANO EXECUTED ON MARCH 25, 2008 TO ALLOW THE PURCHASE OF ADDITIONAL PARTS AND SERVICES AND TO INCREASE THE ORIGINAL CONTRACT AMOUNT BY UP TO \$700,000.00 or 3.74% FOR THESE PURCHASES; 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: 2007 -08 through 2014-15	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	700,000	0	700,000
BALANCE	0	700,000	0	700,000

FUND(S): WATER & SEWER FUND (041)

COMMENTS: This contract modification in the amount of \$700,000.00 approves additional parts and services over the life of the contract. Including this item, modifications to the original contract total \$2,075,000, and the total HD Supply contract amount is now \$20,797,476. Expenditures will be made in the appropriate funds, within annually approved budget appropriations, for each year of the project.

This item is contingent upon the approval of a companion agenda item, Supplemental Appropriation # 1 to the Water & Sewer Fund.

Strategic Plan Goal: Improvements to the automated meter reading system are related to the City's goals of "Service Excellence".

SUMMARY OF ITEM

Third modification of agreement executed on March 25, 2008, to add a supplemental fee schedule for additional parts and services and to increase the original contract amount of \$18,722,000 by up to 3.74% or \$700,000.00 over the life of the Agreement to compensate for these additional purchases. Total modifications equal \$2,075,000 or 11.08%.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Third Modification	Other Departments, Boards, Commissions or Agencies N/A

MEMORANDUM

TO: Rod Hogan, Executive Director

FROM: Mark D. Israelson, Director of Customer & Utility Services 

DATE: December 12, 2008

SUBJECT: Fixed Network Contract Modification #3

In March of this year, after 18 months of research and coordination with the Technology Services and Public Works Departments, the Customer & Utility Services Department entered into a contract for a Fixed Network system that uses the MOTOMESH system to send meter reads directly to the office without having to drive down the street to collect the read. The new system will collect a minimum of four reads per day, or 100 million reads per year, system wide and will give our citizens much more information to be used towards water education, sustainability, and conservation programs.

New water meters were included as part of the Fixed Network contract, since a specific type of meter register and connection provide the most assurances of accuracy and reliability. Research found that a wire to wire connection with an absolute encoded water meter register were consistent attributes to systems which have successfully implemented either AMR or Fixed Network. The specific attributes of the water meter led the Customer & Utility Services Department to partner with the Public Works Department, where the water meter contract was expiring, to develop an RFP that would meet the needs of both departments. Our contract provides that the water meter and fixed network transmitter be sent as one connected unit.

After the contract was executed and project management/implementation began, additional information and operational adjustments were needed to maximize efficiency in the project. Originally, Utility Operations intended to absorb the installation of fifty water meters per day using existing crews. After the installation by City of Plano crews, the contractor would have to follow behind and program the fixed network units. Through discussions between the Customer & Utility Services Department and Utility Operations, it was decided that the most efficient way to proceed with the project was for the contractor to also provide an additional 100 meter installations per day to help alleviate the growing issues with the existing AMR system and supplement the Utility Operations efforts. Having one contractor supply and install water meters, fixed network devices, and provide field programming all at the same time provides a single point of contact for issues, and quality control. In addition contracting provides a consistent product, communication, and result from installation and also allows for the project to be completed in 5 years as compared to the original plan of 8 years. The contract was modified in July to include the contract installation of 50,000 residential water meters to supplement the 29,000 large meters Utility Operations will be installing over the same time period, which created two unforeseen issues that need to be addressed.

The current contract modification provides clarification on the pricing for some of our larger meters that will be configured without strainers, which can be reused from existing meters. This will save the City several hundred dollars per meter. Additionally, pricing for the cleaning of meter boxes (removing excess dirt and debris) which is necessary to access water meters, and the cleaning and reusing of meter bushings that taper our 1" water lines to our 3/4" water meters are critical elements to the quality installation of a water meter and would be most efficiently performed by our contractor. The total contractual increase for these services for the 50,000 meters is \$700,000 over the 5 year period. This is a 3.7% increase over the original contract and brings all modifications up to \$2,075,000 or an 11% increase.

If you have any questions please feel free to contact me at extension 5112.

THE STATE OF TEXAS § **Third Modification of Agreement**
 § **By and Between City of Plano and**
 § **HD Supply Waterworks, Ltd.**
COUNTY OF COLLIN §

THIS THIRD MODIFICATION OF the Master Project Agreement (hereinafter "Third Modification") is made and entered into on this the _____ **day of** _____, **2008**, by and between **HD SUPPLY WATERWORKS, LTD.** (hereinafter "HD SUPPLY WATERWORKS"), a Florida limited partnership, and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation (hereinafter "CITY"), acting by and through its City Manager or his designee.

WITNESSETH:

WHEREAS, City and HD Supply Waterworks entered into an Agreement on March 25, 2008 (hereinafter "Agreement") for the provision, installation, programming and maintenance of fixed network system (hereinafter "Services"); and

WHEREAS, City and HD Supply Waterworks desire to amend such Agreement in certain respects as set forth herein in this Second Modification.

NOW THEREFORE, the Agreement is incorporated herein as if written word for word. Except as provided below, all other terms and conditions of the Agreement shall remain unchanged and shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this Second Modification and the Agreement, priority of interpretation shall be in the following order: Second Modification, First Modification, Agreement. In consideration of the foregoing, and for other good and valuable consideration, the parties hereto agree as follows:

I.

Beginning on the effective date of this Modification and continuing through the remaining term of the Agreement, **Exhibit A-1** is amended by adding **Exhibit A-1-a**, the Neptune Price List effective March 2008, attached hereto, with the condition that the City shall receive 20% discount off all of the items listed on **Exhibit A-1-a**

II.

Beginning on the effective date of this Modification and continuing through the remaining term of the Agreement, **Exhibit A-1, Material Procurement Summary For Installation Contract**, is amended to add the following:

- | | |
|---|---------------------|
| • Clean and reinstall Meter Bushing | \$ 4.00 per unit |
| • Minimum cleanout of meter box by hand | \$ 10.00 per unit |
| • 2" HP Turbine - No Strainer | \$ 453.50 per unit |
| • 2" Tru/Flo Compound - No Strainer | \$1,165.00 per unit |
| • 3" HP Turbine - No Strainer | \$ 695.00 per unit |

1-4

- 3" Tru/Flo Compound - No Strainer \$1,744.50 per unit
- 4" HP Turbine - No Strainer \$1,155.00 per unit
- 4" Tru/Flo Compound - No Strainer \$2,330.00 per unit
- 6" HP Turbine - No Strainer \$1,995.00 per unit
- 6" Tru/Flo Compound - No Strainer \$4,075.00 per unit
- 8" HP Turbine - No Strainer \$2,935.00 per unit
- 10" HP Turbine - No Strainer \$5,232.00 per unit

GENERAL CONDITIONS:

- Installation of cleaned bushings (either new or used condition) , included within installation labor costs
- All washers for meter installation will be provided by HD supply.
- All screws for MTU installation will be provided by HD supply.

IN WITNESS WHEREOF, this Modification is effective on the date first written above.

**HD SUPPLY WATERWORKS, LTD., a
Florida limited partnership**

By: _____

Printed Name: _____

Title: _____

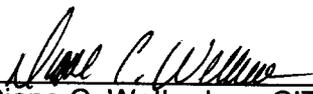
Address: _____

CITY OF PLANO, TEXAS

By: _____

Thomas H. Muehlenbeck
CITY MANAGER
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	12/22/08		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Budget & Research		Initials	Date	
Department Head	Karen Rhodes-Whitley		Executive Director		
Dept Signature:	<i>K. Rhodes</i>		City Manager	<i>[Signature]</i> 12/16/08	
Agenda Coordinator (include phone #):		Carla Rude, X 7407			

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

CAPTION

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, TRANSFERRING THE SUM OF \$1,715,906 FROM THE WATER & SEWER FUND UNAPPROPRIATED FUND BALANCE TO THE WATER & SEWER FUND APPROPRIATION FOR FISCAL YEAR 2008-09 FOR THE PURPOSE OF PROVIDING ADDITIONAL FUNDS FOR INCREASED COSTS ASSOCIATED WITH THE FIXED NETWORK METER PROJECT; AMENDING THE BUDGET OF THE CITY AND ORDINANCE 2008-9-15, SECTION 1, ITEM "L" TO REFLECT THE ACTIONS TAKEN HEREIN; DECLARING THIS ACTION TO BE A CASE OF PUBLIC NECESSITY; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	75,109,576	0	75,109,576
Encumbered/Expended Amount	0	0	0	0
This Item	0	1,715,906	0	1,715,906
BALANCE	0	76,825,482	0	76,825,482

FUND(s): WATER & SEWER FUND (041)

COMMENTS: Supplemental appropriations approved to date for the Water & Sewer Fund, including this item, total \$1,715,906. The current Water & Sewer Fund balance supports this supplemental appropriation with additional revenues generated by an increase in Summer 2008 Water sales revenues, (\$2,221,170).

STRATEGIC PLAN GOAL: Improvements to the automated meter reading system are related to the City's Goals of "Service Excellence".

SUMMARY OF ITEM

Supplemental Appropriation No. 1

This supplemental appropriation will allow for funding to cover additional costs associated with meter change-outs.

List of Supporting Documents:

Other Departments, Boards, Commissions or Agencies



**CITY OF PLANO
COUNCIL AGENDA ITEM**

FY 2008-09 Supplemental Appropriations Log	

**FY 2008-09
SUPPLEMENTAL APPROPRIATIONS**

Description	Department	Amount
TOTAL GENERAL FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL CATV FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL MUNICIPAL DRAINAGE FUND APPROPRIATIONS		<u>\$ -</u>
Supplemental Appropriation for funding increased costs related to the Fixed Network Meter Project.	041 - Water & Sewer	\$ 1,715,906
TOTAL WATER & SEWER FUND		<u>\$ 1,715,906</u>
TOTAL SUSTAINABILITY & ENVIRONMENTAL FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL CONVENTION & TOURISM FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL PROPERTY/LIABILITY FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL GOLF COURSE FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL RECREATION FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL INTERNAL SERVICE FUNDS AND OTHER FUNDS APPROPRIATIONS		<u>\$ -</u>
GRAND TOTAL ALL FUNDS		<u>\$ 1,715,906</u>

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, TRANSFERRING THE SUM OF \$1,715,906 FROM THE WATER & SEWER FUND UNAPPROPRIATED FUND BALANCE TO THE WATER & SEWER FUND APPROPRIATION FOR FISCAL YEAR 2008-09 FOR THE PURPOSE OF PROVIDING ADDITIONAL FUNDING FOR INCREASED COSTS ASSOCIATED WITH THE FIXED NETWORK METER PROJECT; AMENDING THE BUDGET OF THE CITY AND ORDINANCE 2008-9-15, AS AMENDED, TO REFLECT THE ACTIONS TAKEN HEREIN; DECLARING THIS ACTION TO BE A CASE OF PUBLIC NECESSITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano approved and adopted the budget for the City for Fiscal Year 2008-09 setting the Operations Appropriation for the Water & Sewer Fund at \$75,009,576; and

WHEREAS, additional funding is required in order for the City of Plano to provide funding for unanticipated costs related to the Fixed Network Meter change-outs; and

WHEREAS, the City Council deems it to be in the best interest of the City of Plano and its citizens to expend public funds for improvements to the meter reading system; and

WHEREAS, such costs cannot be fully met through appropriations in the existing budget; and

WHEREAS, the City Council now finds that additional appropriations to the Water & Sewer Fund Appropriation should be made in order to provide funding for the Fixed Network Meter Project, and that such action is a public necessity.

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

SECTION I. The sum of ONE MILLION SEVEN HUNDRED FIFTEEN THOUSAND NINE HUNDRED AND SIX DOLLARS (\$1,715,906) is hereby transferred from the Water & Sewer Fund Unappropriated Fund Balance to the Water & Sewer Fund Appropriation.

SECTION II. The budget of the City of Plano for Fiscal Year 2008-09 as adopted by Ordinance No. 2008-9-15 and Section I (L.) is amended to reflect the action taken herein.

SECTION III. The actions taken herein are found and declared to be a case of public necessity pursuant to the City Charter Section 9.15.

SECTION IV. This supplemental appropriation Ordinance No. 1 shall become effective immediately from and after the date of its passage.

Ordinance No. _____

Page 2

DULY PASSED AND APPROVED THIS THE _____ DAY OF _____,
2008.

ATTEST:

Pat Evans, **MAYOR**

Diane Zucco, **CITY SECRETARY**

APPROVED AS TO FORM:



Diane C. Wetherbee, **CITY ATTORNEY**



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	12/22/08	Reviewed by Legal <i>3/3</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan Upchurch	Executive Director	<i>[Signature]</i>	12/15/08
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	12/16/08
Agenda Coordinator (include phone #): I. Pegues, ext 7152				
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
<p>An ordinance of the City of Plano, Texas, amending Article V, Chapter 12, Motor Vehicles and Traffic of the Code of Ordinances of the City of Plano by adding Section 12-114.1, to Article V, Chapter 12, Motor Vehicles and Traffic of the Code of Ordinances of the City of Plano to prohibit stopping, standing, or parking of a vehicle with a gross vehicle weight rating of 10,000 pounds or more on Split Trail Road, along both sides from its intersection with East Spring Creek Parkway south to its intersection with K Avenue, and Wedgewood Drive, along both sides from its intersection with Dallas Parkway west to its intersection with Communications Parkway, within the city limits of the City of Plano; providing a repealing clause; a severability clause; a savings clause; a penalty clause; a publication clause; and an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
<p>The City of Plano Transportation Engineering Division has received two requests to prohibit the parking of truck-tractor semi-trailer combinations on Types F and G width streets in the City. No existing ordinance addresses this condition. The Transportation Engineering Division researched ordinances used by other Texas cities to regulate on-street truck and commercial vehicle parking and determined that the proposed ordinance would provide the needed flexibility for the City to manage the on-street parking of trucks and other large vehicles. The ordinance includes the prohibition of stopping, standing or parking of vehicles with a gross vehicle weight rating of 10,000 pounds or more along and upon Split Trail Road and Wedgewood Drive. The Transportation Engineering Division supports the prohibition of stopping, standing, or parking at any time of vehicles with a gross vehicle weight rating of 10,000 pounds or more along and upon Split Trail Road and Wedgewood Drive.</p>				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Map				

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING ARTICLE V, CHAPTER 12, MOTOR VEHICLES AND TRAFFIC OF THE CODE OF ORDINANCES OF THE CITY OF PLANO BY ADDING SECTION 12-114.1 TO ARTICLE V, CHAPTER 12, MOTOR VEHICLES AND TRAFFIC OF THE CODE OF ORDINANCES OF THE CITY OF PLANO TO PROHIBIT STOPPING, STANDING, OR PARKING OF A VEHICLE WITH A GROSS VEHICLE WEIGHT RATING OF 10,000 POUNDS OR MORE ON SPLIT TRAIL ROAD, ALONG BOTH SIDES FROM ITS INTERSECTION WITH EAST SPRING CREEK PARKWAY SOUTH TO ITS INTERSECTION WITH K AVENUE, AND WEDGEWOOD DRIVE, ALONG BOTH SIDES FROM ITS INTERSECTION WITH DALLAS PARKWAY WEST TO ITS INTERSECTION WITH COMMUNICATIONS PARKWAY, WITHIN THE CITY LIMITS OF THE CITY OF PLANO; PROVIDING A REPEALING CLAUSE; A SEVERABILITY CLAUSE; A SAVINGS CLAUSE; A PENALTY CLAUSE; A PUBLICATION CLAUSE; AND AN EFFECTIVE DATE.

WHEREAS, the stopping, standing, or parking of vehicles of certain sizes restrict traffic flow and create safety issues for drivers; and

WHEREAS, staff recommends prohibiting the stopping, standing, or parking of certain larger vehicles on certain roads in Plano in order to address safety issues for drivers and members of the public; and

WHEREAS, the City Council of the City of Plano, upon review of all things considered, including staff recommendations, finds it necessary to prohibit the stopping, standing, or parking of vehicles with a gross vehicle weight rating of 10,000 pounds or more along and upon certain streets within the city limits of the City of Plano in order to provide for the safety of the general public within the area.

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

Section I. Article V, Chapter 12, Motor Vehicles and Traffic of the Code of Ordinances of the City of Plano is amended by adding Section 12-114.1 to Article V, Chapter 12, Motor Vehicles and Traffic, Code of Ordinances of the City of Plano to read in its entirety as follows:

“Section 12-114.1. Stopping, standing, or parking of vehicles exceeding 10,000 pounds GVW prohibited on certain streets at all times.

It shall be unlawful for any person to stop, stand, or park any vehicle with a gross vehicle weight rating of 10,000 pounds or more when signs are posted stating: “VEHICLES EXCEEDING 10,000 GVW NO STOPPING, STANDING, OR PARKING AT ANY TIME” except when necessary to avoid conflict with other traffic, or in compliance with law or directions of a police officer, or when in the process of loading or unloading freight or merchandise, on any of the following streets within the city:

Split Trail Road, along both sides from its intersection with East Spring Creek Parkway south to its intersection with K Avenue.

Wedgewood Drive, along both sides from its intersection with Dallas Parkway west to its intersection with Communications Parkway.

Section II. The Traffic Engineer of Plano is hereby authorized and directed to cause placement of traffic control signs at each approach to the portions of the roadways described herein, and such sign shall give notice to all persons of the prohibition against stopping, standing, or parking in this area.

Section III. All provisions of the Code of 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 Code of Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section IV. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

Section V. 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 at the time of passage of this ordinance.

Section VI. Any person, firm, or corporation violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction in the Municipal Court, shall be subject to a fine not to exceed TWO HUNDRED AND NO/100 DOLLARS (\$200.00) for each offense. Each and every violation shall be deemed to constitute a separate offense.

Section VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED THIS 22ND DAY OF DECEMBER, 2008.

Pat Evans, MAYOR

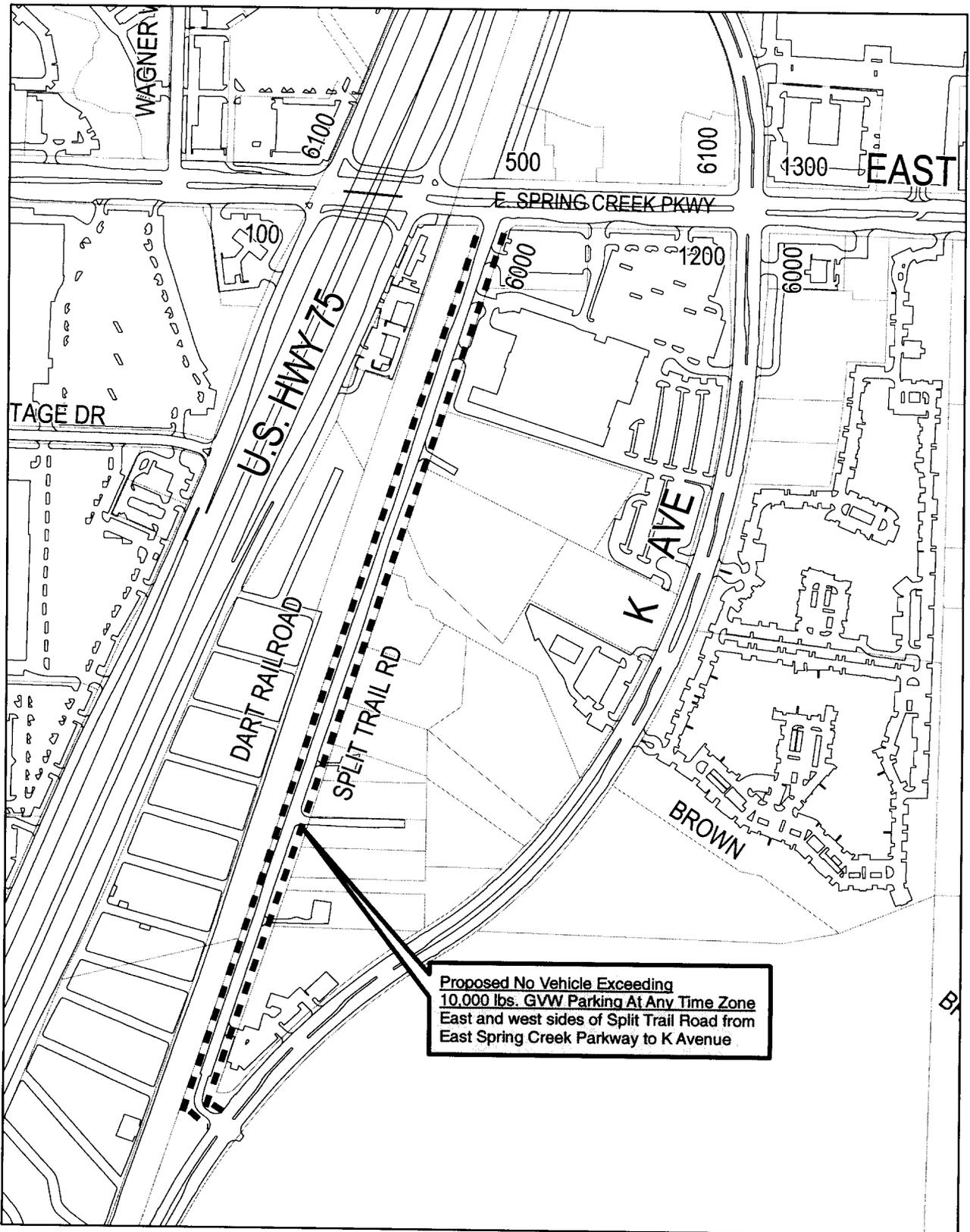
ATTEST:

Diane Zucco, CITY SECRETARY

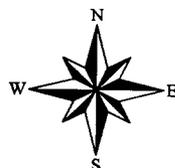
APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY



Proposed No Vehicle Exceeding 10,000 lbs. GVW Parking Locations on Split Trail Road between East Spring Creek Parkway and K Avenue

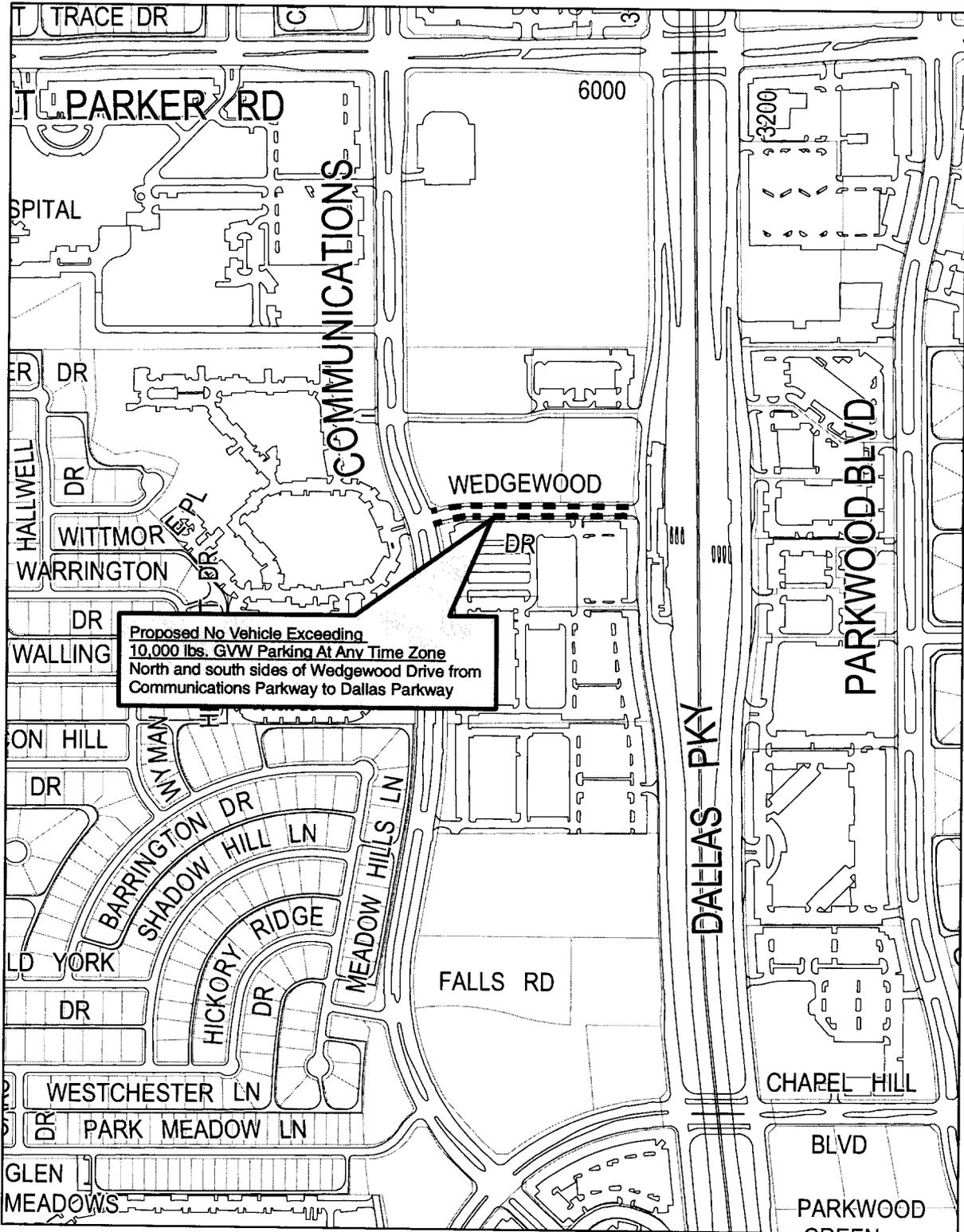


1 inch = 500 feet

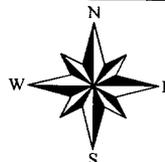


Transportation Engineering Division

n-4



Proposed No Vehicle Exceeding
10,000 lbs. GVW Parking Locations
on Wedgewood Drive between
Communications Parkway and
Dallas Parkway



1 inch = 500 feet



Transportation Engineering Division

n-5



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	12/22/08	Reviewed by Legal <i>RW</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	City Secretary		Initials	Date
Department Head	Diane Zucco	Executive Director		
Dept Signature:		City Manager	<i>[Signature]</i>	<i>12/21/08</i>
Agenda Coordinator (include phone #): Sharon Kotwitz - x7120				
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
To adopt and enact Supplement Number 84 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: This item has no fiscal impact				
SUMMARY OF ITEM				
Adoption of this ordinance enables this supplement to be admissible in court.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS ADOPTING AND ENACTING SUPPLEMENT NUMBER 84 TO THE CODE OF ORDINANCES FOR THE CITY OF PLANO; PROVIDING FOR AMENDMENT TO CERTAIN SECTIONS OF THE CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano, Texas adopted a new Code of Ordinances upon adoption of Ordinance No. 87-3-14, on March 9, 1987; and

WHEREAS, Sections V and VI of Ordinance No. 87-3-14 provide for amendment to said Code of Ordinances; and

WHEREAS, §3.11 of the City of Plano Charter provides that the City Council has the power to have its ordinances codified and printed in Code form, and that such printed form shall have full force and effect without the necessity of publishing the same or any part thereof in a newspaper; and

WHEREAS, the Code of Ordinances of the City of Plano, Texas has been revised by previous amendments duly passed as individual ordinances by the City Council and such amendments are reflected on Supplement Number 84;

WHEREAS, The City Council wishes to adopt the ordinance codification version appearing in Supplement 84 of the Plano Code of Ordinances in order for the printed Code form to be considered identical to the original ordinance and to eliminate any confusion or differences in the format of the original ordinance.

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

Section I. The City Council hereby adopts the printed Code form of the ordinances contained in Supplement 84 as prepared by the codifier.

Section II. This Ordinance shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 22nd 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**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	12/22/08		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Budget		Initials	Date	
Department Head	Karen Rhodes		Asst City Manager		
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i>	<i>12/22/08</i>
Agenda Coordinator (include phone #):	Anita Bell x7194				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AND AUTHORIZING THE REFUNDS OF PROPERTY TAX OVERPAYMENTS; AND PROVIDING AN EFFECTIVE DATE.					
FINANCIAL SUMMARY					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2007-08	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
BALANCE		0	0	0	0
FUND(s):					
COMMENTS: Funds are disbursed by the Collin County Tax Office.					
SUMMARY OF ITEM					
This will authorize the City's Tax Assessor/Collector to make the appropriate property tax refunds totaling \$5,942.81 .					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Refund request listing provided by Collin County Tax Office					

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AND AUTHORIZING THE REFUNDS OF PROPERTY TAX OVERPAYMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 31.11 of the Texas Property Tax Code authorizes refunds of certain payments of taxes upon application to the City; and

WHEREAS, under said Section 31.11 of the Texas Property Tax Code, refunds must be presented to the governing body of the taxing unit for approval; and

WHEREAS, the City Council has been presented a list of tax payments made, a copy of which is attached hereto, made a part hereof and marked Exhibit "A", which payments are requested to be refunded because such payments were erroneous or excessive; and

WHEREAS, upon full review and consideration of the above, and all matters attendant and related thereto, the City Council is of the opinion that the tax payments should be refunded.

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

Section I. The City Council of the City of Plano, Texas, finds and determines that the tax payments listed in Exhibit "A" were paid erroneously or were in excess of taxes due and shall be refunded in accordance with Section 31.11 of the Texas Property Tax Code.

Section II. The Tax Assessor/Collector for the City of Plano, Texas, or his designee, is hereby authorized to take the necessary action to effectuate the refunds approved under this Resolution.

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

DULY PASSED AND APPROVED this _____ day
of _____, 2008.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY



**KENNETH L. MAUN
TAX ASSESSOR COLLECTOR**

COLLIN COUNTY
1800 N. GRAVES ST., STE 170
P.O. Box 8006
McKinney, TX 75070-8006
(972) 547-5020
METRO (972) 424-1460 ext. 5020
FAX (972) 547-5053
Email: taxassessor@co.collin.tx.us

November 11, 2008

Plano City
Karen Rhodes
P.O. Box 860358
Plano, TX 75086-0358

Dear Ms. Rhodes:

Please place a request for approval of the following "Overpayment Refund Listing" on the agenda for the next Plano City Council Meeting. The amount of refunds requested for the overpayment listings is: **\$5,894.58**

Each listing and the amounts are as follows:

OPAP#1	\$179.93	OPAP#8
OPAP#2		OPAP#9
OPAP#3	\$5,714.65	OPAP#10
OPAP#4		OPAP#11
OPAP#5		OPAP#12
OPAP#6		OPAP#13
OPAP#7		OPAP#14

The listings represent refunds caused by overpayments.
All requests for refunds of ad valorem taxes are substantiated by documentation that is available upon request.

Please notify our office upon Council approval so that we may issue and mail the checks.

If you have any questions, please let me know.

Sincerely,

Kenneth L. Maun
Tax Assessor Collector

KLM:br
Enclosure



**KENNETH L. MAUN
TAX ASSESSOR COLLECTOR**

COLLIN COUNTY
1800 N. GRAVES ST., STE 170
P.O. Box 8006
McKinney, TX 75070-8006
(972) 547-5020
METRO (972) 424-1460 ext. 5020
FAX (972) 547-5053
Email: taxassessor@co.collin.tx.us

November 18, 2008

Plano City
Karen Rhodes
P.O. Box 860358
Plano, TX 75086-0358

Dear Ms. Rhodes:

Please place a request for approval of the following "Overpayment Refund Listing" on the agenda for the next Plano City Council Meeting. The amount of refunds requested for the overpayment listings is: \$48.23

Each listing and the amounts are as follows:

OPAP#1	\$48.23	OPAP#8
OPAP#2		OPAP#9
OPAP#3		OPAP#10
OPAP#4		OPAP#11
OPAP#5		OPAP#12
OPAP#6		OPAP#13
OPAP#7		OPAP#14

The listings represent refunds caused by overpayments.
All requests for refunds of ad valorem taxes are substantiated by documentation that is available upon request.

Please notify our office upon Council approval so that we may issue and mail the checks.

If you have any questions, please let me know.

Sincerely,


Kenneth L. Maun
Tax Assessor Collector

KLM:br
Enclosure

P-5



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Council Meeting Date:	12/22/08	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	FINANCE		Initials	Date	
Department Head	Denise Tacke	Executive Director			
Dept Signature:		City Manager	<i>[Signature]</i>	<i>12/16/08</i>	
Agenda Coordinator (include phone #):		Katherine Crumbley x-7479			
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, REPEALING RESOLUTION NO. 2008-5-26(R) AND APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND THE SHOPS AT LEGACY (NORTH) LLC, A TEXAS LIMITED LIABILITY COMPANY, PROVIDING FOR A REAL PROPERTY IMPROVEMENT TAX ABATEMENT, AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2008-2009	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
BALANCE		0	0	0	0
FUND(s): GENERAL					
COMMENTS:					
SUMMARY OF ITEM					
This is repealing an agreement approved by a previous resolution which was never executed and the parties now wish to rescind that agreement and approve a new tax abatement requested by The Shops at Legacy (North), LLC on reinvestment zone 113.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
Tax Abatement Agreement					

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, REPEALING RESOLUTION NO. 2008-5-26(R) AND APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND THE SHOPS AT LEGACY (NORTH) LLC, A TEXAS LIMITED LIABILITY COMPANY, PROVIDING FOR A REAL PROPERTY IMPROVEMENT TAX ABATEMENT, AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 27, 2008, the City Council approved Resolution No. 2008-5-26(R) providing a real property improvement tax abatement for The Shops at Legacy (North) LLC; and

WHEREAS, the agreement approved by Resolution No. 2008-5-26(R) was never executed and the parties now wish to rescind that agreement and approve a new tax abatement agreement; and

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, and The Shops at Legacy (North) LLC, a Texas limited liability company, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager, or 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:

Section I. Resolution No. 2008-5-26(R) is hereby repealed in its entirety.

Section II. The terms and conditions of the Agreement attached hereto as Exhibit "A" having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section III. The City Manager, or 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 IV. This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED this the 22nd day December, 2008.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

TAX ABATEMENT AGREEMENT

This Agreement is entered into by and between the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "City" and The Shops at Legacy (North) LLC, a Texas limited liability company, duly acting by and through its officer, hereinafter referred to as "Owner".

WITNESSETH:

WHEREAS, on the _____ day of _____, 2008, the City Council of the City of Plano, Texas, passed Ordinance No. _____ establishing Reinvestment Zone No. 113, for commercial/industrial tax abatement, hereinafter referred to as the "Ordinance," as authorized by V.T.C.A. Tax Code, Chapter 312.001, et seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as "Act"; and

WHEREAS, the City has adopted a revised policy statement for Tax Abatement by Resolution No. 2007-9-28 (R) stating that it elects to be eligible to participate in tax abatement (the "Policy Statement"); and

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

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

WHEREAS, the contemplated use of the Real Property, as hereinafter defined, and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 113 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law.

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

1. The real property subject to this Agreement is described by metes and bounds in **EXHIBIT "A"** (the "Real Property"). At the time of this Agreement The Shops at Legacy (North) LLC is the owner of the Real Property. This Agreement shall be terminated should the Real Property not be leased by a lessee ("Lessee" or "Owner's Lessee") by August 1, 2009 or should said lease be terminated during the term of this Agreement and a suitable substitute tenant not occupy the Real Property within ninety (90) days from the date of lease termination. A suitable substitute tenant shall be subject to the approval of the City which approval shall not be unreasonably withheld.

JOBS

2. The Owner estimates the occupancy of the proposed development of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in approximately 150 full-time jobs at the Development when the new office building is completed.

IMPROVEMENTS

3. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as "Improvements") consisting primarily of an underground parking facility and not less than 50,000 gross square feet of office space with an initial expenditure of not less than **Ten Million Five Hundred and Nineteen Thousand Dollars (\$10,519,000)** on or before December 31, 2008 provided that Owner shall have such additional time to complete the Improvements as may be required in the event of "force majeure" if Owner is diligently and faithfully pursuing the completion of the Improvements, or if in the reasonable opinion of the City, the Owner has made substantial progress toward completion of the initial phase of the Improvements. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of Owner including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of Owner), fire, shortages of material and/or labor, explosion or flood, and labor disturbances. The date of completion of the Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano.

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

5. The Lessee shall occupy not less than 50,000 gross square feet of office space on the Real Property and employ thereon approximately 150 employees.

DEFAULT

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

- (a) The Improvements are not completed in accordance with this Agreement;
- (b) Owner allows its Real Property taxes owed to City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes;
- (c) Owner's Lessee fails to occupy the Improvements on or before August 1, 2009; or
- (d) The initial investment value of the Improvements to Real Property and maintained on the Real Property during the term of this Agreement is less than the minimum amount set forth in paragraph 3 above; or
- (e) Owner's Lessee fails to employ at least 75% of the employee commitment as provided in paragraph 5 above; or
- (f) Owner fails to provide annual certification as required in paragraph 9 below; or
- (g) Owner or Owner's Lessee has been convicted of a violation under 8 U.S.C. Section 1324a (f) regarding the unlawful employment of aliens.

7. In the event that the Owner defaults under this Agreement then the City shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City; provided, however, that such 30 day period shall be extended if the breach is of a nature that cannot be cured within such 30-day period and Owner is diligently pursuing such remedy. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraph 6(b) above and after the Owner fails to cure same in accordance herewith, this Agreement shall immediately terminate and all taxes due after the event of default shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

8. Upon the occurrence of an event of default under Paragraph 6(b) above and after the Owner fails to cure same in accordance herewith or upon the occurrence of an event of default under Paragraph 6 (g), then this Agreement shall immediately terminate with respect to the tax abatements attributable to the Improvements and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and

owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

9. On or before the 1st day of November of each calendar year during the term of this Agreement, the Owner, or its successor or assign, must provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement. Owner shall also require certification from Owner's Lessee that the Owner's Lessee is complying with the employment requirements of Section 5 above and provide a copy of the certification to the City together with its annual certification.

ASSIGNMENT

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

(a) A transfer or assignment of the Real Property and Improvements, or an assignment of this Agreement, by Owner to one or more affiliates of Owner is permissible without the prior written consent of the City; or

(b) A transfer or assignment of the Real Property and Improvements, or an assignment of this Agreement, by Owner to successors or assigns is permitted without the prior written consent of the City if the successors or assigns agree to be bound by the terms of this Agreement and Lessee shall continue to conduct business on the subject premises, and shall remain the primary tenant.

Owner and Lessee agree to give written notice to the City of any assignment or transfer of interest permitted pursuant to subparagraphs (a) and (b) thereof. Upon an assignment or transfer permitted pursuant to subparagraphs (a) or (b), such affiliate, successor or assign shall become "Owner", for all purposes under this Agreement.

ABATEMENT PROVISIONS

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

(a) The tax abatements as to the Real Property and Improvements, as provided for herein, shall be for a period of seven (7) tax years, from January 1, 2009, through December 31, 2015.

(b) In accordance with all applicable federal, state, and local laws and regulations, the City's abatement shall be based on amounts equal to thirty-two percent (32%) of the improved value of the Real Property and Improvements for each tax year from January 1, 2009, through December 31, 2015.

(c) The Owner shall have the right to protest and/or contest any assessment of the Real Property or Improvements and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this agreement if assessed values fall below those in paragraph 3 as a result of an Owner filed protest and/or contest.

NOTICE

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

For City by notice to:

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

With copy to:

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

For Owner by notice to:

The Shops at Legacy (North) LLC
Attention: Fehmi Karahan
7200 Bishop Road, Suite 250
Plano, Texas 75024

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

MISCELLANEOUS PROVISIONS

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

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

15. The City represents and warrants that the Real Property Improvements do not include any property that is owned by a member of its city council.

16. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 22nd day of December, 2008, authorizing the City Manager to execute the Agreement on behalf of the City.

17. This Agreement was entered into by Owner pursuant to authority granted by its by-laws, whereby the Manager of the corporation was authorized to execute this Agreement on behalf of Owner.

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

19. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement is performable in Collin County, Texas. Signed this 22nd day of December, 2008.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

THE SHOPS AT LEGACY (NORTH) LLC,
a Texas limited liability company

By: _____
Name:
Title:

**LEGAL DESCRIPTION
THE SHOPS AT LEGACY TOWN CENTER (NORTH)
BUILDINGS C AND E
5.164 ACRES**

BEING a tract of land out of the Henry Cook Survey, Abstract No. 183 and the Maria C. Vela Survey, Abstract No. 935, in the City of Plano, Collin County, Texas, being part of Lot 1R of The Shops at Legacy Town Center (North), Lots 1R & 5, Block C, an addition to the City of Plano according to the plat thereof recorded in Cabinet 2007, Page 601 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a 5/8" iron rod found with a plastic cap stamped "KHA" (hereinafter called 5/8" iron rod found) for the north corner of a corner clip at the intersection of the west right-of-way line of Bishop Road and the north right-of-way line of Legacy Drive for the southeast corner of Lot said Lot 1R;

THENCE with said north right-of-way line, the following courses and distances to wit:

South 44°57'18" West, a distance of 21.23 feet to a 5/8" iron rod found for corner;
South 89°54'36" West, a distance of 79.46 feet to a 5/8" iron rod found for corner;
North 88°10'57" West, a distance of 184.35 feet to a 5/8" iron rod found for corner;
South 89°54'55" West, a distance of 96.83 feet to a 5/8" iron rod found for corner;
North 86°11'27" West, a distance of 62.73 feet to a point for corner;

THENCE leaving said north right-of-way line, the following courses and distances to wit:

NORTH, a distance of 666.64 feet to a point for corner;
EAST, a distance of 115.75 feet to a point for corner;
NORTH, a distance of 115.68 feet to a point for corner;
North 30°00'00" East, a distance of 40.65 feet to a point for corner;
North 80°34'45" East, a distance of 85.01 feet to a point for corner;
EAST, a distance of 167.56 feet to a point for corner in the northerly most west line of Lot 5 of said The Shops at Legacy Town Center (North), Lots 1R & 5, Block C;

THENCE with said west line, SOUTH, a distance of 3.10 feet to a 5/8" iron rod found for corner;

THENCE with the northerly most south line of said Lot 5, EAST, a distance of 81.50 feet to a point for corner;

THENCE with the southerly most west line of said Lot 5, SOUTH, a distance of 131.69 feet to a 5/8" iron rod found for corner;

THENCE with the south line of said Lot 5, EAST, a distance of 36.90 feet to a 5/8" iron rod found for corner in the west right-of-way line of said Bishop Road;

THENCE with said west right-of-way line, SOUTH, a distance of 60.00 feet to a 5/8" iron rod found for the northeast corner of Lot 3 of Legacy Town Center (North), an addition to

the City of Plano according to the plat thereof recorded in Cabinet 2006, Page 440 of the Map Records of Collin County, Texas

THENCE with the north line of said Lot 3, WEST, a distance of 277.54 feet to a 5/8" iron rod found for corner;

THENCE with the west line of said Lot 3 part of the way and with the west and south line of Baccus Cemetery, the following courses and distances to wit:

South 00°38'20" West, a distance of 602.31 feet to a 5/8" iron rod found for corner;

South 88°23'32" East, a distance of 172.95 feet to a 5/8" iron rod found for corner;

THENCE leaving said south line the following courses and distances to wit:

South 00°05'24" East, a distance of 19.07 feet to an X in concrete found for corner;

South 89°52'31" East, a distance of 31.80 feet to an X in concrete found for corner;

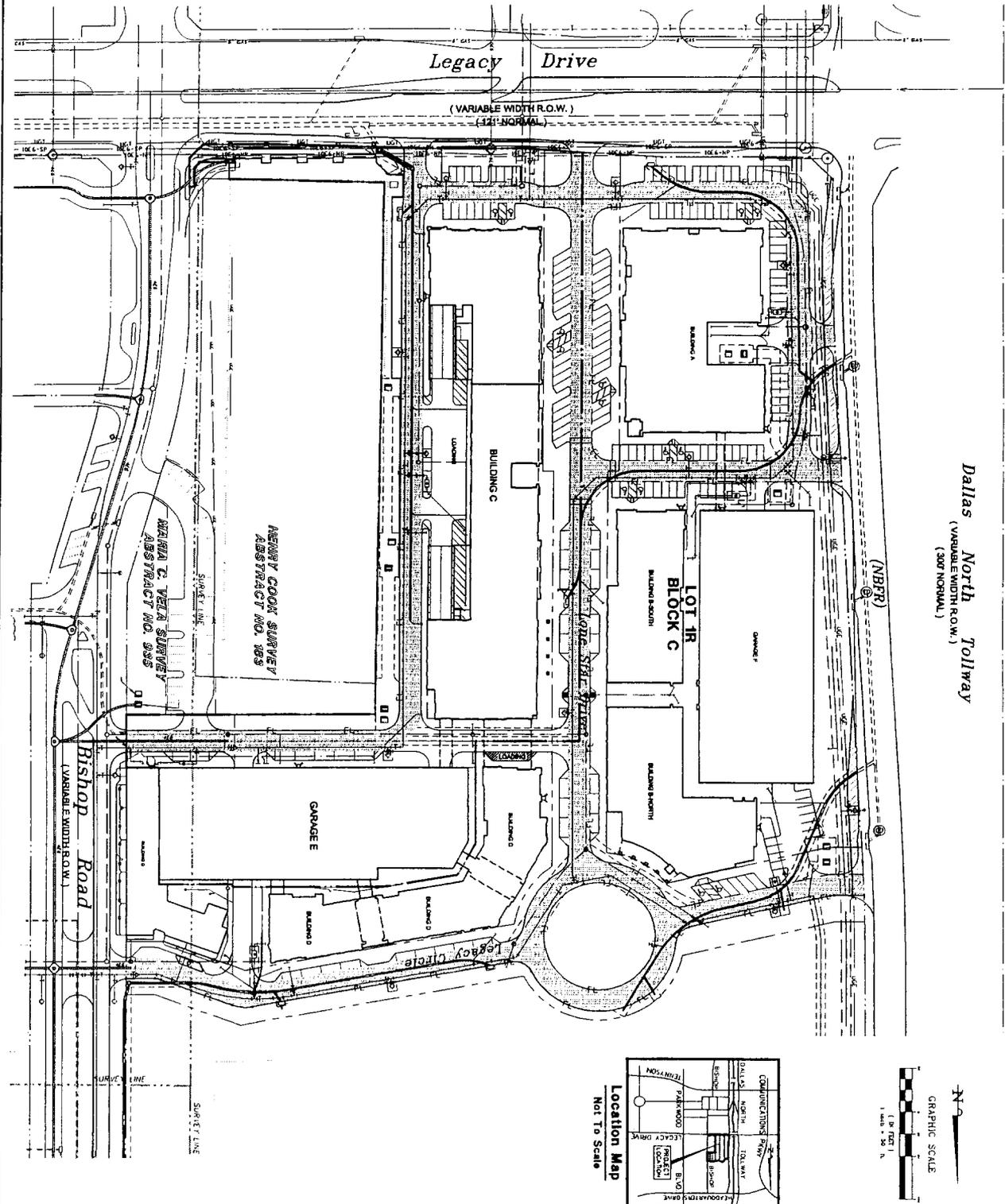
North 45°03'44" East, a distance of 8.52 feet to a 5/8" iron rod found for corner;

NORTH, a distance of 21.71 feet to a point for corner;

EAST, a distance of 5.75 feet to a 5/8" iron rod found for corner in the west right-of-way line of said Bishop Road:

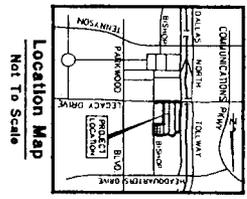
THENCE with said west right-of-way line, SOUTH, a distance of 32.82 feet to the **POINT OF BEGINNING** and containing 5.164 acres of land.

Bearing system based on the monuments found according to the plat of Shops at Legacy Town Center (North), Lots 1R & 5, Block C, an addition to the City of Plano according to the plat thereof recorded in Cabinet 2007, Page 601 of the Map Records of Collin County, Texas.



Dallas North Tollway
(Variable Width R.O.W. 1)
(300' Normal)

(NBPR)



Location Map
Not To Scale

No.	Date	Revisions	App.

Scale	AS NOTED
Designed by	T.B.B
Drawn by	T.B.B
Checked by	P.D.K.
Date	March 13, 2008
Project No	6811002

BUILDING "C" AND GARAGE "E" SITE BOUNDARY EXHIBIT

The Shops at Legacy
Town Center (North) Phase II
Plano, Texas

Kimley-Horn and Associates, Inc.
3750 Campbell, Suite 300
Plano, Texas 75074
Tel: (972) 331-3378
Fax: (972) 331-3379

9-13

**EXHIBIT "C"
CERTIFICATION FORM
REINVESTMENT ZONE NO. 113**

This letter certifies that Owner is in compliance with each applicable term as set forth in the Agreement to Resolution No. _____(R) as of _____, 2008. The term of this agreement is January 1, 2009, through December 31, 2015. This form is due on November 1 of each year this tax abatement is in force.

ATTEST:

THE SHOPS AT LEGACY (NORTH) LLC,
a Texas limited liability company ("Owner")

By: _____

Name:

Title:

Date

NOTE: This certification form should be mailed to:

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



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		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 <i>C.S.</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	12/22/08	Reviewed by Legal <i>JA</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Finance		Initials	Date
Department Head	Denise Tacke <i>DT</i>	Executive Director		
Dept Signature:		City Manager	<i>JKM</i>	<i>12/10/08</i>
Agenda Coordinator (include phone #): Katherine Crumbley - x7479				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS AUTHORIZING THE INVESTMENT OF PUBLIC FUNDS IN THE TEXAS TERM OR TEXAS DAILY PUBLIC FUNDS REINVESTMENT POOL; DESIGNATING CITY REPRESENTATIVES TO TRANSMIT FUNDS FOR INVESTMENT IN THE POOL; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
To empower the City of Plano to delegate to a public funds investment Pool the authority to invest funds and to act as custodian of investments purchased with local investment funds.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS AUTHORIZING THE INVESTMENT OF PUBLIC FUNDS IN THE TEXAS TERM OR TEXAS DAILY PUBLIC FUNDS REINVESTMENT POOL; DESIGNATING CITY REPRESENTATIVES TO TRANSMIT FUNDS FOR INVESTMENT IN THE POOL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano, Texas, ("Participant") is a local government of the State of Texas and is empowered to delegate to a public funds investment Pool the authority to invest funds and to act as custodian of investments purchased with local investment funds; and

WHEREAS, it is in the best interest of the Participant to invest local funds in investments that provide for the preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act; and

WHEREAS, the TexasTERM Local Government Investment Portfolio, a public funds investment pool ("Pool"), was created on behalf of entities whose investment objectives in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act.

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

Section I. Participant shall enter into a Participation Agreement to establish an account in its name in the Pool, for the purpose of transmitting local funds for investment in either the TexasTERM series or the TexasDAILY series within the Pool.

Section II. The individuals, whose signatures appear in this Resolution, are Authorized Representatives of the Participant and are each hereby authorized to transmit funds for investment in the Pool and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds.

List of the Authorized Representatives of the Participant. These individuals may be issued P.I.N. numbers.

Name: Denise Tacke _____ Title: Finance Director
Signature: _____

Name: Mary Reese _____ Title: Controller
Signature: _____

Name: Brianna Alvarado _____ Title: Treasury Analyst
Signature: _____

List the name of the Authorized Representative provided above that will have primary responsibility for performing transactions and receiving confirmations and monthly statements under the Participation Agreement.

Name: Brianna Alvarado

In addition and at the option of the Participant, one additional Authorized Representative can be designated to perform only inquiry of selected information. This limited representative cannot make deposits or withdrawals. If the Participant desires to designate a representative with inquiry rights only, complete the following information.

Name: None

Signature: _____

Section III. This Resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant, and until the Pool receives a copy of any such amendment or revocation.

Section IV. This Resolution is hereby introduced and adopted by the Participant at its regular/special meeting held on the 22nd day of December, 2008 and is 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



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget <i>CS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 12/22/08		Reviewed by Legal <i>JK</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Denise Tacke <i>dt</i>		Initials	Date
Department Head		Executive Director		
Dept Signature:		City Manager	<i>JK</i>	<i>12/22/08</i>
Agenda Coordinator (include phone #): Katherine Crumbley x-7479 <i>hca</i>				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AND ADOPTING THE AMENDED AND RESTATED CITY OF PLANO SUPPLEMENTAL SAVINGS PLAN; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; DELEGATING TO THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR, THE AUTHORITY TO ADOPT FUTURE PLAN AMENDMENTS WHERE SUCH AMENDMENTS DO NOT MATERIALLY INCREASE THE COST OF THE PLAN TO THE CITY; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
The City of Plano desires to amend and restate the City Manager 401 A Plan effective January 1, 2008 and to delegate to the City Manager, or in his absence, an executive director, the authority to adopt Plan amendments.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Department of the Treasury Plan Description, ICMA Retirement Corporation Governmental Money Purchase Plan & Trust Adoption Agreement				

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AND ADOPTING THE AMENDED AND RESTATED CITY OF PLANO SUPPLEMENTAL SAVINGS PLAN; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; DELEGATING TO THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR, THE AUTHORITY TO ADOPT FUTURE PLAN AMENDMENTS WHERE SUCH AMENDMENTS DO NOT MATERIALLY INCREASE THE COST OF THE PLAN TO THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano (the "City") previously established for the benefit of its City Manager the City of Plano Supplemental Savings Plan (the "Plan");

WHEREAS, the City may amend the Plan pursuant to the provisions thereof;

WHEREAS, the City desires to amend and restate the Plan effective as of January 1, 2008 using the form of the ICMA Retirement Corporation Governmental Money Purchase Plan & Trust, a volume submitter plan that has received a favorable opinion letter from the Internal Revenue Service and is attached hereto as Exhibit "A"; and

WHEREAS, the City desires to delegate to the City Manager, or in his absence, an executive director, the authority to adopt, on behalf of the City, Plan amendments that are required to maintain the Plan's qualified status under the Internal Revenue Code of 1986, as amended (the "Code") and/or that are required to comply with other applicable laws; provided such amendments do not materially increase the cost of the Plan to the City;

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

Section I. The amended and restated Plan, 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, is hereby in all things approved.

Section II. Pursuant to Section VI.1.B of the adoption agreement and Section 4.03 of the basic plan document for the Plan, the City shall "pick up" and pay the contributions designated as mandatory participant contributions under the Plan pursuant to a reduction in the participant's accrued leave balance, and the participant shall not have the option of receiving such amounts directly rather than having them contributed to the Plan.

Section III. The City Manager, or in his absence, an Executive Director, is hereby granted the authority to adopt on behalf of the City any amendments to the Plan that are required to maintain the Plan's qualified status under the Code and/or that are required to comply with other applicable laws, except for any amendment that would materially increase the cost of the Plan to the City.

Section IV. The City Manager, or in his absence, an Executive Director, is hereby authorized to execute the amended and restated Plan and any other instruments related thereto and to perform all other acts and to do all other things necessary or proper to effectuate the intent of the foregoing Resolutions.

Section V. Any and all actions taken by the City in connection with the foregoing Resolutions are hereby ratified, confirmed, and approved in all respects for all purposes.

Section VI. 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



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Plan Description: Volume Submitter Money Purchase Pension Plan
FFR: 315D0880002-000 Case: 200600730 EIN: 23-7268296
Letter Serial No: MS80214a
Date of Submission: 01/31/2006

ICMA RETIREMENT CORP
777 NORTE CAPITAL ST NE
WASHINGTON, DC 20002

Contact Person:
Janell Hayes/Leticia Young
Telephone Number:
513-263-3602/513-263-3584
In Reference To:
TEGE:EP:7521
Date: 03/31/2008

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter, a copy of the approved plan, and copies of any subsequent amendments to adopting employers if the practitioner is authorized to amend the plan on their behalf, to each employer who adopts this plan.

This letter considers the changes in qualification requirements contained in the 2004 Cumulative List of Notice 2004-84, 2004-2 C.B. 1030.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). However, an employer that adopts this plan may rely on this letter with respect to the qualification of its plan under Code section 401(a), as provided for in Rev. Proc. 2005-16, 2005-1 C.B. 674 and outlined below. Please review Announcement 2008-23 I.R.B. 2008-14 to determine the items necessary for filing an application for a determination letter if one is required for reliance, or is otherwise desired. The terms of the plan must be followed in operation. Generally, the employer may request a determination letter by filing an application with Employee Plans Determinations on Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans.

Except as provided below, our opinion does not apply with respect to the requirements of: (a) Code sections 401(a)(4), 401(l), 410(b) and 414(s). Our opinion does not apply for purposes of Code section 401(a)(10)(E) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. See section 19.02(1) of Rev. Proc. 2005-16, 2005-1 C.B. 674 regarding volume submitter defined contribution plans and the repeal of Code section 415(e). Our opinion also does not apply for purposes of Code section 401(a)(16) if, after December 31, 1985, the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3), or an individual medical account as defined in Code section 415(l)(2).

S-4

ICMA RETIREMENT CORP

EFY: 315D0850002-000

Page 2

Our opinion applies with respect to the requirement of Code section 416(b) if 100 percent of all nonexcludable employees benefit under the plan. Employers that elect a safe harbor allocation formula and a safe harbor compensation definition can also rely on an advisory letter with respect to the nondiscriminatory amounts requirement under Code section 401(a)(4).

This letter is not a ruling with respect to the tax treatment to be accorded contributions which are picked up by the governmental employing unit within the meaning of section 414(h)(2) of the Internal Revenue Code.

If you, the volume submitter practitioner, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the practitioner. Individual participants and/or adopting employers with questions concerning the plan should contact the volume submitter practitioner. The plan's adoption agreement, if applicable, must include the practitioner's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely yours,



Andrew Zuckerman
Director,
Employee Plans Rulings and Agreements

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Letter 4335

[September 10, 2007 Revised Draft – IRS Changes]

ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
BASIC DOCUMENT

S.6

ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST

I. PURPOSE

The Employer hereby adopts this Plan and Trust to provide funds for its Employees' retirement, and to provide funds for their Beneficiaries in the event of death. The benefits provided in this Plan shall be paid from the Trust. The Plan and the Trust forming a part hereof are adopted and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. Except as provided in Sections 4.12 and 14.03, no part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

II. DEFINITIONS

2.01 Account. A separate record which shall be established and maintained under the Trust for each Participant, and which shall include all Participant subaccounts created pursuant to Article IV, plus any Participant Loan Account created pursuant to Section 13.03. Each subaccount created pursuant to Article IV shall include any earnings of the Trust and adjustments for withdrawals, and realized and unrealized gains and losses allocable thereto. The term "Account" may also refer to any of such separate subaccounts.

2.02 Accounting Date. Each day that the New York Stock Exchange is open for trading, and such other dates as may be determined by the Plan Administrator, as provided in Section 6.06 for valuing the Trust's assets.

2.03 Adoption Agreement. The separate agreement executed by the Employer through which the Employer adopts the Plan and elects among the various alternatives provided thereunder, and which upon execution, becomes an integral part of the Plan.

2.04 Beneficiary. The person or persons (including a trust) designated by the Participant who shall receive any benefits payable hereunder in the event of the Participant's death. The designation of such Beneficiary shall be in writing to the Plan Administrator. A Participant may designate primary and contingent Beneficiaries. Where no designated Beneficiary survives the Participant or no Beneficiary is otherwise designated by the Participant, the Participant's Beneficiary shall be his/her surviving spouse or, if none, his/her estate.

Notwithstanding the foregoing, the Beneficiary designation is subject to the requirements of Article XII unless the Employer elects otherwise in the Adoption Agreement.

Notwithstanding the foregoing, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the Beneficiary designation is subject to the requirements of Article XVII.

Notwithstanding the foregoing, to the extent permitted by the Employer, a Beneficiary receiving required minimum distributions in accordance with Article X and not in a benefit form elected under Article XI or XII, may designate a Beneficiary to receive the required minimum distributions that would have otherwise been payable to the initial Beneficiary but for his or her death.

- 2.05 Break in Service. A Period of Severance of at least twelve (12) consecutive months.

In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

- 2.06 Code. The Internal Revenue Code of 1986, as amended from time to time.
- 2.07 Covered Employment Classification. The group or groups of Employees eligible to make and/or have contributions to this Plan made on their behalf, as specified by the Employer in the Adoption Agreement.

- 2.08 Disability. A physical or mental impairment which is of such permanence and degree that, as determined by the Employer, a Participant is unable because of such impairment to perform any substantial gainful activity for which he/she is suited by virtue of his/her experience, training, or education and that has lasted, or can be expected to last, for a continuous period of not less than twelve (12) months, or can be expected to result in death. The permanence and degree of such impairment shall be supported by medical evidence. If the Employer maintains a long-term disability plan, the definition of Disability shall be the same as the definition of disability in the long-term disability plan.

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2.09 Earnings.

- (a) General Rule. Earnings, which form the basis for computing Employer Contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Employee under section 125, 402(e)(3), 402(h)(1)(B), 403(b), 414(h)(2), 457(b), or, effective January 1, 2001, 132(f)(4) of the Code. Earnings shall include any pre-tax contributions (excluding direct employer contributions) to an integral part trust of the Employer providing retiree health care benefits. Earnings shall also include any other earnings as defined and elected by the Employer in the Adoption Agreement. Unless the Employer elects otherwise in the Adoption Agreement, Earnings shall exclude overtime compensation and bonuses.
- (b) Limitation on Earnings. For any Plan Year beginning after December 31, 2001, the annual Earnings of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Earnings means Earnings during the Plan Year or such other consecutive 12-month period over which Earnings is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year.
- If a determination period consists of fewer than twelve (12) months, the annual Earnings limit is an amount equal to the otherwise applicable annual Earnings limit multiplied by the fraction, the numerator of which is the number of months in the short Plan Year and the denominator of which is twelve (12). If Earnings for any prior determination period are taken into account in determining a Participant's allocations for the current Plan Year, the Earnings for such prior year are subject to the applicable annual Earnings limit in effect for that prior year.
- (c) Limitations for Governmental Plans. In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Code), the dollar limitation shall not apply to the extent the Earnings which are allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. For purposes of this Section, an eligible participant is an individual who first became a Participant in the Plan

during a Plan Year beginning before the first Plan Year beginning after December 31, 1993.

- 2.10 Effective Date. The first day of the Plan Year during which the Employer adopts the Plan, unless the Employer elects in the Adoption Agreement an alternate date as the Effective Date of the Plan.
- 2.11 Employee. Any individual who has applied for and been hired in an employment position and who is employed by the Employer as a common law employee; provided, however, that Employee shall not include any individual who is not so recorded on the payroll records of the Employer, including any such person who is subsequently reclassified by a court of law or regulatory body as a common law employee of the Employer. For purposes of clarification only and not to imply that the preceding sentence would otherwise cover such person, the term Employee does not include any individual who performs services for the Employer as an independent contractor, or under any other non-employee classification.
- 2.12 Employer. The unit of state or local government or an agency or instrumentality of one (1) or more states or local governments that executes the Adoption Agreement.
- 2.13 Hour of Service. Each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.
- 2.14 Nonforfeitable Interest. The nonforfeitable interest of the Participant or his/her Beneficiary (whichever is applicable) is that percentage of his/her Employer Contribution Account balance, which has vested pursuant to Article VII. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in his/her Participant Contribution, Rollover, and Voluntary Contribution Accounts.
- 2.15 Normal Retirement Age. The age which the Employer specifies in the Adoption Agreement. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.
- 2.16 Participant. An Employee or former Employee for whom contributions have been made under the Plan and who has not yet received all of the payments of benefits to which he/she is entitled under the Plan. A Participant is treated as benefiting under the Plan for any Plan Year during which the participant received or is deemed to receive an allocation in accordance with Treas. Reg. section 1.410(b)-3(a).

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2.17 Period of Service. For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the Nonforfeitable Interest in the Participant's Account balance derived from Employer Contributions, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

Notwithstanding anything to the contrary herein, if the Plan is an amendment and restatement of a plan that previously calculated service under the hours of service method, service shall be credited in a manner that is at least as generous as that provided under Treas. Regs. section 1.410(a)-7(g).

2.18 Period of Severance. A continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

2.19 Plan. This Plan, as established by the Employer, including any elected provisions pursuant to the Adoption Agreement.

2.20 Plan Administrator. The person(s) or entity named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described, which is the ICMA Retirement Corporation or any successor Plan Administrator.

2.21 Plan Year. The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.

2.22 Trust. The Trust created under Article VI of the Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

III. ELIGIBILITY

3.01 Service. Except as provided in Sections 3.02 and 3.03 of the Plan, an Employee within the Covered Employment Classification who has completed a twelve (12) month Period of Service shall be eligible to participate in the Plan at the beginning of the payroll period next commencing thereafter. The Employer may elect in the Adoption Agreement to waive or reduce the twelve (12) month Period of Service.

If the Employer maintains the plan of a predecessor employer, service with such employer shall be treated as Service for the Employer.

- 3.02 Age. The Employer may designate a minimum age requirement, not to exceed age twenty-one (21), for participation. Such age, if any, shall be declared in the Adoption Agreement.
- 3.03 Return to Covered Employment Classification. In the event a Participant is no longer a member of Covered Employment Classification and becomes ineligible to make contributions and/or have contributions made on his/her behalf, such Employee will become eligible for contributions immediately upon returning to a Covered Employment Classification. If such Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan.

In the event an Employee who is not a member of a Covered Employment Classification becomes a member, such Employee will be eligible to participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

- 3.04 Service Before a Break in Service. All Periods of Service with the Employer are counted toward eligibility, including Periods of Service before a Break in Service.

IV. CONTRIBUTIONS

- 4.01 Employer Contributions. For each Plan Year, the Employer will contribute to the Trust an amount as specified in the Adoption Agreement. The Employer's full contribution for any Plan Year shall be due and paid not later than thirty (30) working days after the close of the Plan Year. Each Participant will share in Employer Contributions for the period beginning on the date the Participant commences participation under the Plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of a Covered Employment Classification, and such contributions shall be accounted for separately in his/her Employer Contribution Account. Notwithstanding anything to the contrary herein, if so elected by the Employer in the Adoption Agreement, an Employee shall be required to make contributions as provided pursuant to Section 4.03 or 4.04 in order to be eligible for Employer Contributions to be made on his/her behalf to the Plan.
- 4.02 Forfeitures. All amounts forfeited by terminated Participants, pursuant to Section 7.06, shall be allocated to a suspense account and used to reduce dollar for dollar Employer Contributions otherwise required under the Plan for the current Plan Year and succeeding Plan Years, if necessary.

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Forfeitures may first be used to pay the reasonable administrative expenses of the Plan, with any remainder being applied to reduce Employer Contributions.

- 4.03 Mandatory Participant Contributions. If the Employer so elects in the Adoption Agreement, each eligible Employee shall make contributions at a rate prescribed by the Employer or at any of a range of specified rates, as set forth by the Employer in the Adoption Agreement, as a requirement for his/her participation (1) in the Plan or (2) in this portion of the Plan. Once an eligible Employee becomes a Participant and makes an election hereunder, he/she shall not thereafter have the right to discontinue or vary the rate of such Mandatory Participant Contributions. Such contributions shall be accounted for separately in the Participant Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

If the Employer so elects in the Adoption Agreement, the Mandatory Participant Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). Any contribution picked-up under this Section shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

To constitute a Pick-Up Contribution, (1) the Employer must specify that the contributions are being paid by the Employer in lieu of contributions by the Employee, and (2) the Employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the Employer to the Plan.

- 4.04 Employer Matching Contributions of Voluntary Participant Contributions. If the Employer so elects in the Adoption Agreement, Employer Matching Contributions shall be made on behalf of an eligible Employee for a Plan Year only if the Employee agrees to make Voluntary Participant Contributions for that Plan Year. The rate of Employer Contributions shall, to the extent specified in the Adoption Agreement, be based upon the rate at which Voluntary Participant Contributions are made for that Plan Year. Employer Matching Contributions shall be accounted for separately in the Employer Contribution Account.

- 4.05 Voluntary Participant Contributions. If the Employer so elects in the Adoption Agreement, an eligible Employee may make after-tax voluntary (unmatched) contributions under the Plan for any Plan Year in any amount up to twenty five percent (25%) of his/her Earnings for such Plan Year. Matched and unmatched contributions shall be accounted for separately in the Participant's Voluntary Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

- 4.06 Deductible Employee Contributions. The Plan will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a Deductible Employee Contribution Account. The Account will share in the gains and losses under the Plan in the same manner as described in Section 6.06 of the Plan. Such Account shall be at all times nonforfeitable by the Participant.
- 4.07 Final Pay Contributions. If the Employer so elects in the Adoption Agreement, Participants shall be eligible to make or receive Final Pay Contributions under this Plan in accordance with Article XVIII. Notwithstanding the foregoing, this election may only be made if the Employer also elects to make contributions under Section 4.01.
- 4.08 Accrued Leave Contributions. If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Accrued Leave Contributions under this Plan in accordance with Article XIX. Notwithstanding the foregoing, this election may only be made if the Employer also elects to make contributions under Section 4.01.
- 4.09 Military Service Contributions. Notwithstanding any provision of the Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.
- Effective December 12, 1994, if the Employer has elected in the Adoption Agreement to make loans available to Participants, loan repayments will be suspended under the Plan as permitted under section 414(u)(4) of the Code.
- 4.10 Changes in Participant Election. A Participant may elect to change his/her rate of Voluntary Participant Contributions at any time or during an election period as designated by the Employer. A Participant may discontinue such contributions at any time or during an election period as designated by the Employer.
- 4.11 Portability of Benefits.
- (a) Unless otherwise elected by the Employer in the Adoption Agreement, the Plan will accept Participant (which shall include, for purposes of this subsection, an Employee within the Covered Employment Classification whether or not he/she has satisfied the minimum age and service requirements of Article III,) rollover contributions and/or direct rollovers of distributions (including after-tax contributions) made after December 31, 2001 that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Code, from all of the following types of plans:

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- (1) A qualified plan described in Section 401(a) or 403(a) of the Code;
 - (2) An annuity contract described in Section 403(b) of the Code;
 - (3) An eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state; and
 - (4) An individual retirement account or annuity described in Section 408(a) or 408(b) of the Code (including SEPs, and SIMPLE IRAs after two years of participating in the SIMPLE IRA).
- (b) Notwithstanding the foregoing, the Employer may reject the rollover contribution if it determines, in its discretion, that the form and nature of the distribution from the other plan does not satisfy the applicable requirements under the Code to make the transfer or rollover a nontaxable transaction to the Participant;
 - (c) For indirect rollover contributions, the amount distributed from such plan must be rolled over to this Plan no later than the sixtieth (60th) day after the distribution was made from the plan, unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Code.
 - (d) The amount transferred shall be deposited in the Trust and shall be credited to a Rollover Account. Such Account shall be one hundred percent (100%) vested in the Participant.
 - (e) The Plan will accept accumulated deductible employee contributions as defined in section 72(o)(5) of the Code that were distributed from a qualified retirement plan and transferred (rolled over) pursuant to section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3) of the Code. Notwithstanding the above, this transferred (rolled over) amount shall be deposited to the Trust and shall be credited to a Deductible Employee Contributions Account. Such Account shall be one-hundred percent (100%) vested in the Participant.

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- (f) A Participant may, upon approval by the Employer and the Plan Administrator, transfer his/her interest in another plan maintained by the Employer that is qualified under section 401(a) of the Code to this Plan, provided the transfer is effected through a one-time irrevocable written election made by the Participant. The amount transferred shall be deposited in the Trust and shall be credited to sources that maintain the same attributes as the plan from which they are transferred. Such transfer shall not reduce the accrued years or service credited to the Participant for purposes of vesting or eligibility for any Plan benefits or features.
- 4.12 Return of Employer Contributions. Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the date of contribution.

V. LIMITATION ON ALLOCATIONS

5.01 Participants Only in This Plan.

- (a) If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.
- (d) If, as a result of an inadvertent reasonable error in estimating the Maximum Permissible Amount for a Participant in accordance with

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Subsection (b) or pursuant to Subsection (c) or as a result of the allocation of forfeitures, there is an Excess Amount, the excess will be disposed of as follows:

- (1) Any Mandatory Participant Contributions that are not "picked up" by the Employer or Voluntary Participant Contributions, to the extent they would reduce the Excess Amount, will be returned to the Participant;
- (2) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the Excess Amount in the Participant's Account will be used to reduce Employer Contributions (including any allocation of forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary;
- (3) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is not covered by the Plan at the end of the Limitation Year, the Excess Amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions (including allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;
- (4) If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants' accounts before any Employer or any Employee contributions may be made to the Plan for that Limitation Year. Excess Amounts in a suspense account may not be distributed to Participants or former Participants.

5.02 Participants in Another Defined Contribution Plan.

- (a) Unless the Employer provides other limitations in the Adoption Agreement, this Section applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. The Annual Additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's

Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Section 5.01(b).
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.
- (d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.
- (e) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of,
 - (1) The total Excess Amount allocated as of such date, multiplied by
 - (2) The ratio of (i) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other prototype qualified defined contribution plans.

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- (f) Any Excess Amount attributed to this Plan will be disposed in the manner described in Section 5.01(d).

5.03 Definitions. For the purposes of this Article, the following definitions shall apply:

- (a) Annual Additions: The sum of the following amounts credited to a Participant's account for the Limitation Year:
 - (1) Employer Contributions;
 - (2) Forfeitures;
 - (3) Employee contributions; and
 - (4) Allocations under a simplified employee pension.

Amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan.

For this purpose, any Excess Amount applied under Sections 5.01(d) or 5.02(f) in the Limitation Year to reduce Employer Contributions will be considered Annual Additions for such Limitation Year.

- (b) Compensation: A Participant's wages, salaries, and fees for professional services and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treas. Reg. section 1.62-2(c))), and excluding the following:
 - (1) Employer Contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer Contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation; and
 - (2) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an

annuity contract described in section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee).

- (3) Notwithstanding the above, Compensation shall include:
- (a) any elective deferrals (as defined in section 402(g)(3) of the Code), and
 - (b) any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of sections 125, 132(f)(4) or 457 of the Code.

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such year.

- (c) Defined Contribution Dollar Limitation: \$40,000, as adjusted for increases in the cost-of-living in accordance with section 415(d) of the Code.
- (d) Employer: The Employer that adopts this Plan.
- (e) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

Any Excess Amount shall include allocable income. The income allocable to an Excess Amount is equal to the sum of allocable gain or loss for the Plan Year and the allocable gain or loss for the period between the end of the Plan Year and the date of distribution (the gap period). The Plan may use any reasonable method for computing the income allocable to an Excess Amount, provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income to Participants' Accounts.

- (f) Limitation Year: A calendar year, or the twelve (12) consecutive month period elected by the Employer in the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

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- (g) Maximum Permissible Amount: The maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:
- (1) The Defined Contribution Dollar Limitation, or
 - (2) One hundred percent (100%) (25% for Limitation Years before January 1, 2002) of the Participant's Compensation for the Limitation Year.

The compensation limit referred to in (2) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

VI. TRUST AND INVESTMENT OF ACCOUNTS

6.01 Trust. A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.

6.02 Investment Powers. The trustee or the Plan Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is controlled by Participants, pursuant to Section 13.03.

- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, notes, debentures, mortgages, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in

securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.

- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.

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- (f) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust. However, no person who is a fiduciary within the meaning of section 3(21)(A) of ERISA and regulations promulgated thereunder, and who receives full-time pay from the Employer may receive compensation from the Trust, except for expenses properly and actually incurred.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. Benefits under this Plan shall be paid only if the Plan Administrator, custodian or other person decides in

his/her discretion that the applicant is entitled to them. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

- 6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Plan Administrator, the Participant may direct his/her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer and shall not include any investment in collectibles, as defined in section 408(m) of the Code.
- 6.06 Valuation of Accounts. As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.
- 6.07 Participant Loan Accounts. Participant Loan Accounts shall be invested in accordance with Section 13.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Section 6.05.

VII. VESTING

- 7.01 Vesting Schedule. The portion of a Participant's Account attributable to Mandatory Participant Contributions and Voluntary Participant Contributions, and the earnings thereon, shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in the percentage of his/her Employer Contribution Account established under Section 4.01, 4.04, 18.02(a) and 19.02(a) determined pursuant to the schedule elected by the Employer in the Adoption Agreement.
- 7.02 Crediting Periods of Service. Except as provided in Section 7.03, all of an Employee's Periods of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions. If the Employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the Employer.

For purposes of determining years of service and Breaks in Service for the purposes of computing a Participant's nonforfeitable right to the Account

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balance derived from Employer Contributions, the twelve (12) consecutive month period will commence on the date the Employee first performs an hour of service and each subsequent twelve (12) consecutive month period will commence on the anniversary of such date.

- 7.03 Service After Break in Service. In the case of a Participant who has a Break in Service of at least five (5) years, all Periods of Service after such Breaks in Service will be disregarded for the purpose of determining the nonforfeitable percentage of the Employer-derived Account balance that accrued before such Break, but both pre-Break and post-Break service will count for the purposes of vesting the Employer-derived Account balance that accrues after such Break. Both Accounts will share in the earnings and losses of the fund.

In the case of a Participant who does not have a Break in Service of at least five (5) years, both the pre-Break and post-Break service will count in vesting both the pre-Break and post-Break Employer-derived Account balance.

In the case of a Participant who does not have any nonforfeitable right to the Account balance derived from Employer Contributions, years of service before a period of consecutive one (1) year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive one (1) year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior Breaks in Service.

If a Participant's years of service are disregarded pursuant to the preceding paragraph, such Participant will be treated as a new Employee for eligibility purposes. If a Participant's years of service may not be disregarded pursuant to the preceding paragraph, such Participant shall continue to participate in the Plan, or, if terminated, shall participate immediately upon reemployment.

- 7.04 Vesting Upon Normal Retirement Age. Notwithstanding Section 7.01 of the Plan, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan, if he/she is employed on or after his/her Normal Retirement Age.
- 7.05 Vesting Upon Death or Disability. Notwithstanding Section 7.01 of the Plan, in the event of Disability or death, a Participant or his/her Beneficiary shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan.

7.06 Forfeitures. Except as provided in Sections 7.04 and 7.05 of the Plan or as otherwise provided in this Section 7.06, a Participant who separates from service prior to obtaining full vesting shall forfeit that percentage of his/her Employer Contribution Account balance which has not vested as of the date such Participant incurs a Break in Service of five (5) consecutive years or, if earlier, the date such Participant receives, or is deemed under the provisions of Section 9.04 to have received, distribution of the entire Nonforfeitable Interest in his/her Employer Contribution Account.

No forfeiture will occur solely as a result of a Participant's withdrawal of Employee Contributions.

Forfeitures shall be allocated in the manner described in Section 4.02.

7.07 Reinstatement of Forfeitures. If the Participant returns to the employment of the Employer before incurring a Break in Service of five (5) consecutive years, any amounts forfeited pursuant to Section 7.06 shall be reinstated to the Participant's Employer Contribution Account on the date of repayment by the Participant of the amount distributed to such Participant from his/her Employer Contribution Account; provided, however, that if such Participant forfeited his/her Account balance by reason of a deemed distribution, pursuant to Section 9.04, such amounts shall be automatically restored upon the reemployment of such Participant. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs a Break in Service of five (5) consecutive years.

VIII. BENEFITS CLAIM

8.01 Claim of Benefits. A Participant or Beneficiary shall notify the Plan Administrator in writing of a claim of benefits under the Plan. The Plan Administrator shall take such steps as may be necessary to facilitate the payment of such benefits to the Participant or Beneficiary.

8.02 Appeal Procedure. If any claim for benefits is initially denied by the Plan Administrator, the claimant shall file the appeal with the Employer, whose decision shall be final, to the extent provided by Section 15.07.

IX. COMMENCEMENT OF BENEFITS

9.01 Normal and Elective Commencement of Benefits. A Participant who retires, becomes Disabled or incurs a severance from employment (separation from service for Plan Years beginning before 2002) for any other reason may elect by written notice to the Plan Administrator to have his or her vested Account balance benefits commence on any date, provided that such distribution complies with Section 9.02. Such election

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must be made in writing during the ninety (90) day period ending on the date as of which benefit payments are to commence. A Participant's election shall be revocable and may be amended by the Participant.

The failure of a Participant to consent to a distribution while a benefit is immediately distributable, within the meaning of section 9.02 of the Plan, shall be deemed to be an election to defer commencement of payment of any benefit.

- 9.02 Restrictions on Immediate Distributions. Notwithstanding anything to the contrary in Section 9.01 of the Plan, if the value of a Participant's vested Account balance is at least \$1,000, and the Account balance is immediately distributable, the Participant must consent to any distribution of such Account balance. The Participant's consent shall be obtained in writing during the ninety (90) day period ending on the date as of which benefit payments are to commence. No consent shall be required, however, to the extent that a distribution is required to satisfy section 401(a)(9) or 415 of the Code.

The Plan Administrator shall notify the Participant of the right to defer any distribution until the Participant's Account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy section 417(a)(3) of the Code, and shall be provided no less than thirty (30) and no more than ninety (90) days before the date as of which benefit payments are to commence. However, distribution may commence less than thirty (30) days after the notice described in the preceding sentence is given, provided (i) the distribution is one to which sections 401(a)(11) and 417 of the Code do not apply or, if the QJSA Election is made by the Employer in the Adoption Agreement, the waiver requirements of Section 17.04(a) are met; (ii) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and (iii) the Participant, after receiving the notice, affirmatively elects a distribution.

In addition, upon termination of this Plan if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer does not maintain another 401(a) defined contribution plan, the Participant's Account balance will, without the Participant's consent, be distributed to the Participant in a lump sum. However, if the Employer maintains another 401(a) defined contribution plan, the Participant's Account balance will be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

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An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained (if not deceased) the later of Normal Retirement Age or age sixty-two (62).

For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first plan year beginning after December 31, 1988, the Participant's vested Account balance shall not include amounts attributable to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code.

9.03 Transfer to Another Plan.

- (a) If a Participant becomes eligible to participate in another plan maintained by the Employer that is qualified under section 401(a) of the Code, the Plan Administrator shall, at the written election of such Participant, transfer all or part of such Participant's Account to such plan, provided the plan administrator for such plan certifies to the Plan Administrator that its plan provides for the acceptance of such a transfer. Such transfers shall include those transfers of the nonforfeitable interest of a Participant's Account made for the purchase of service credit in defined benefit plans maintained by the Employer. For purposes of this Plan, any such transfer shall not be considered a distribution to the Participant subject to spousal consent as described in Section 9.10.
- (b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (c) Definitions. For the purposes of Subsection (b), the following definitions shall apply:
 - (1) Eligible Rollover Distribution. Any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated

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beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and (iii) the portion of any other distribution(s) that is not includible in gross income.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (2) Eligible Retirement Plan. (i) an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code (collectively, an "IRA"); (ii) an annuity plan described in section 403(a) of the Code; (iii) an annuity contract described in section 403(b) of the Code, (iv) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan; or (v) a qualified plan described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee, under a qualified domestic relations order, as defined in section 414(p) of the Code.
- (3) Distributee. Participant; in addition, the Participant's surviving spouse and the spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.

- (4) Direct Rollover. A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

9.04 De Minimis Accounts. Notwithstanding the foregoing provisions of this Article, prior to January 1, 2002, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is not greater than the dollar limit under section 411(a)(11)(A) of the Code, the Participant's benefit shall be paid (to the extent it constitutes an Eligible Rollover Distribution) in the form of a direct rollover to the Plan Administrator's designated IRA, unless he/she affirmatively elects to receive a cash payment or a Direct Rollover in accordance with procedures established by the Plan Administrator.

On or after January 1, 2002, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is less than \$1,000, the Participant's benefit shall be paid as soon as practicable to the Participant in a single lump sum distribution. If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under section 411(a)(11)(A) of the Code, the Participant may elect to receive his/her Nonforfeitable Interest in his/her Account. Such distribution shall be made as soon as practicable following the request, in a lump sum.

For purposes of this Section, if a Participant's Nonforfeitable Interest in his/her Account is zero, the Participant shall be deemed to have received a distribution of such Nonforfeitable Interest in his/her Account.

- 9.05 Withdrawal of Voluntary Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Voluntary Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.
- 9.06 Withdrawal of Deductible Employee Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Deductible Employee Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.
- 9.07 In-Service Distribution from Rollover Account. Where elected by the Employer in the Adoption Agreement, a Participant that has a separate account attributable to rollover contributions to the Plan, may at any time elect to receive a distribution of all or any portion of the amount held in the Rollover Account.

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- 9.08 In-Service Distributions. Unless otherwise elected by the Employer in the Adoption Agreement, a Participant who has reached age 70-1/2 regardless of his Nonforfeitable Interest in his/her entire Employer Contribution Account, shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his vested Accounts. Such distributions may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.
- 9.09 Latest Commencement of Benefits. Notwithstanding anything to the contrary in this Article, benefits shall begin no later than the Participant's Required Beginning Date, as defined under Section 10.05, or as otherwise provided in Section 10.04.
- 9.10 Spousal Consent. Notwithstanding the foregoing, if the Employer elected the QJSA Election in the Adoption Agreement, a married Participant must first obtain his or her spouse's notarized consent to request a distribution (other than a Qualified Joint and Survivor Annuity), withdrawal, or rollover under this Article IX.

X. DISTRIBUTION REQUIREMENTS

10.01 General Rules.

- (a) Subject to the provisions of Article XII or XVII if so elected by the Employer in the Adoption Agreement, the requirements of this Article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Article X apply to calendar years beginning after December 31, 2002.

With respect to distributions under the Plan made in or for Plan Years beginning on or after January 1, 2002 and prior to January 1, 2003, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary.

- (b) All distributions required under this Article shall be determined and made in accordance with the regulations under section 401(a)(9) of the Code, and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.
- (c) Limits on Distribution Periods. As of the first Distribution Calendar Year, distributions to a Participant, if not made in a single-sum, may only be made over one of the following periods:

- (1) The life of the Participant,

- (2) The joint lives of the Participant and a designated Beneficiary,
 - (3) A period certain not extending beyond the life expectancy of the Participant, or
 - (4) A period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.
- (d) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article XVII, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

10.02 Time and Manner of Distribution

- (a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.
 - (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

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- (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 10.02(b), other than Section 10.02(b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 10.02(b) and Section 10.04, unless Section 10.02(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 10.02(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 10.03 and 10.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

10.03 Required Minimum Distributions During Participant's Lifetime

- (a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
- (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Section 1.401(a)(9)-9, Q&A-2, of the Final Income Tax Regulations using the Participant's age as of the Participant's birthday in the distribution calendar year; or

- (2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 10.03 beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

10.04 Required Minimum Distributions After Participant's Death

- (a) Death On or After Date Distributions Begin.
- (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
 - (A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (B) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday

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in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

- (C) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

- (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Required Distributions Begin.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date required distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 10.04(a).
- (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the

Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 10.02(b)(1), this Section 10.04(b) will apply as if the surviving spouse were the Participant.

10.05 Definitions

- (a) Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the regulations.
- (b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 10.02(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (c) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the regulations.
- (d) Participant's Account Balance. The Account Balance as of the last Accounting Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Accounting Date and decreased by distributions made in the valuation calendar year after the Accounting Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

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- (e) Required Beginning Date. The Required Beginning Date of a Participant is April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70-1/2), or the calendar year in which the Participant retires.

XI. MODES OF DISTRIBUTION OF BENEFITS

11.01 Normal Mode of Distribution. Unless an elective mode of distribution is elected as provided in Section 11.02, benefits shall be paid to the Participant in the form of a lump sum payment.

Notwithstanding the foregoing, where the Employer made the "QJSA Election" in the Adoption Agreement, unless an elective mode of distribution is elected in accordance with Article XVII, benefits shall be paid to the Participant in the form provided for in Article XVII.

11.02 Elective Mode of Distribution. Subject to the requirements of Articles X, XII and XVII, a Participant may revocably elect to have his/her Account distributed in any one (1) of the following modes in lieu of the mode described in Section 11.01:

- (a) Equal Payments. Equal monthly, quarterly, semi-annual, or annual payments in an amount chosen by the Participant continuing until the Account is exhausted.
- (b) Period Certain. Approximately equal monthly, quarterly, semi-annual, or annual payments, calculated to continue for a period certain chosen by the Participant.
- (c) Other. Any other sequence of payments requested by the Participant.
- (d) Lump Sum. Where the Employer did make the QJSA Election in the Adoption Agreement, a Participant may also elect a lump sum payment.

11.03 Election of Mode. A Participant's election of a payment option must be made in writing between thirty (30) and ninety (90) days before the payment of benefits is to commence.

11.04 Death Benefits. Subject to Article X (and Article XII or XVII if so elected by the Employer in the Adoption Agreement),

- (a) In the case of a Participant who dies before he/she has begun receiving benefit payments, the Participant's entire Nonforfeitable Interest shall then be payable to his/her Beneficiary within ninety

(90) days of the Participant's death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the provisions of Article X. The Beneficiary may elect to receive the death benefit in any of the forms available to the Participant under Sections 11.01 and 11.02. If the Beneficiary is the Participant's surviving spouse, and such surviving spouse dies before payment commences, then this Section shall apply to the beneficiary of the surviving spouse as though such surviving spouse were the Participant.

- (b) Should the Participant die after he/she has begun receiving benefit payments, the Beneficiary shall receive the remaining benefits, if any, that are payable, under the payment schedule elected by the Participant. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balances, including but not limited to, a lump sum distribution.

XII. SPOUSAL DEATH BENEFIT REQUIREMENTS

12.01 Application. Unless otherwise elected by the Employer in the Adoption Agreement, on or after January 1, 2006, the provisions of this Article shall take precedence over any conflicting provision in this Plan. The provisions of this Article, known as the "Beneficiary Spousal Consent Election," shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 12.04.

12.02 Spousal Death Benefit.

- (a) On the death of a Participant, the Participant's Vested Account Balance will be paid to the Participant's Surviving Spouse. If there is no Surviving Spouse, or if the Participant has waived the spousal death benefit, as provided in Section 12.03, such Vested Account Balance will be paid to the Participant's designated Beneficiary.
- (b) The Surviving Spouse may elect to have distribution of the Vested Account Balance commence within the ninety (90) day period following the date of the Participant's death, or as otherwise provided under Section 11.04. The Account balance shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions.

12.03 Waiver of Spousal Death Benefit.

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- (a) The Participant may waive the spousal death benefit described in Section 12.02 at any time; provided that no such waiver shall be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed to meet the requirements of this Section.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited.

12.04 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Spouse (Surviving Spouse): The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (b) Vested Account Balance: The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions,

Employee contributions (or both) at the time of death or distribution.

XIII. LOANS TO PARTICIPANTS

13.01 Availability of Loans to Participants.

- (a) If the Employer has elected in the Adoption Agreement to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Plan Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

13.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 13.01 of the Plan shall satisfy the following requirements:

- (a) Availability. Loans shall be made available to all Participants on a reasonably equivalent basis.
- (b) Nondiscrimination. Loans shall not be made to highly compensated Employees in an amount greater than the amount made available to other Employees.
- (c) Interest Rate. Loans must be adequately secured and bear a reasonable interest rate.
- (d) Loan Limit. No Participant loan shall exceed the present value of the Participant's Nonforfeitable Interest in his/her Account.
- (e) Foreclosure. In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.
- (f) Reduction of Account. Notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than one hundred percent (100%) of the Participant's nonforfeitable Account balance (determined without

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regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the nonforfeitable Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

- (g) Amount of Loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant or Beneficiary from the Plan and from all other plans of the Employer that are qualified employer plans under section 72(p)(4) of the Code shall not exceed the lesser of:
- (1) \$50,000, reduced by the excess (if any) of
 - (a) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over
 - (b) The outstanding balance of loans from the Plan on the date on which such loan is made; or
 - (2) One-half (1/2) of the value of the Participant's Nonforfeitable Interest in all of his/her Accounts under this Plan (or \$10,000, if greater, for loans prior to January 1, 2006).

For the purpose of the above limitation, all loans from all qualified employer plans, including 457(b) plans, under Code section 72(p)(4) of the Code are aggregated.

- (h) Application for Loan. The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (i) Length of Loan. The terms of any loan issued or renegotiated after December 31, 1993, shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least quarterly (except as otherwise provided in Treasury Regulation section 1.72(p)-1, Q&A-9 for certain leave of absence and military leave), over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time after the loan is made as the principal residence of the Participant, the five (5) year limit shall not

apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this Subsection (i), with a revised payment schedule (within such term) instituted at the end of such period of suspension. If the Participant fails to make any installment payment, the Plan Administrator may, according to Treasury Regulation 1.72(p)-1, allow a cure period, which cure period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due.

- (j) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (k) Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.

Unless waived by a Participant, any plan loan that is outstanding on the date that active duty military service begins will accrue interest at a rate of no more than 6% during the period of military service in accordance with the provisions of the Servicemembers Civil Relief Act (SCRA), 50 USC App. § 526 and subject to the notice requirements contained therein. This limitation applies even if loan payments are suspended during the period of military service as permitted under the Plan and Treasury regulations.

- (l) Security. The loan shall be secured by an assignment of that portion the Participant's right, title and interest in and to his/her Employer Contribution Account (to the extent vested), Participant Contribution Account, and Rollover Account that is equal to fifty percent (50%) of the Participant's Account (to the extent vested).
- (m) Assignment or Pledge. For the purposes of paragraphs (h) and (i), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (n) Spousal Consent. If the Employer elected the QJSA Election in the Adoption Agreement, the Participant must first obtain his or her spouse's notarized consent to the loan.
- (o) Other Terms and Conditions. The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply

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with legal requirements, to maintain the qualification of the Plan and Trust under section 401(a) of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Article.

13.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 13.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Plan shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

XIV. PLAN AMENDMENT, TERMINATION AND OPTIONAL PROVISIONS

14.01 Amendment by Employer. The Employer reserves the right, subject to Section 14.02 of the Plan, to amend the Plan from time to time by either:

- (a) Filing an amended Adoption Agreement to change, delete, or add any optional provision, or
- (b) Continuing the Plan in the form of an amended and restated Plan and Trust.

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under section 412(c)(8) of the Code. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's Account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his/her Employer-derived accrued benefit will not be less than his percentage computed under the plan without regard to such amendment.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

The Employer may (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy sections 415 or 416 of the Code because of the required aggregation of multiple plans, (3) amend administrative provisions of the trust or custodial document in the case of a nonstandardized plan and make more limited amendments in the case of a standardized plan such as the name of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the Plan's trust will participate, (4) add certain sample or model amendments published by the Internal Revenue Service or other required good faith amendments which specifically provide that their adoption will not cause the plan to be treated as individually designed, and (5) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions.

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14.02 Amendment of Vesting Schedule. If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, each Participant may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (a) Sixty (60) days after the amendment is adopted;
- (b) Sixty (60) days after the amendment becomes effective; or
- (c) Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

14.03 Termination by Employer. The Employer reserves the right to terminate this Plan. However, in the event of such termination no part of the Trust shall be used or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, except as provided in this Section.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in a suspense account, after all liabilities of the Plan to Participants and Beneficiaries have been satisfied or provided for, shall be paid to the Employer in accordance with the Code and regulations thereunder.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made by the Employer incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

14.04 Discontinuance of Contributions. A permanent discontinuance of contributions to the Plan by the Employer, unless an amended and

restated Plan is established, shall constitute a Plan termination. In the event of a complete discontinuance of contributions under the Plan, the Account balance of each affected Participant shall be nonforfeitable.

- 14.05 Amendment by Plan Administrator. The Plan Administrator may amend this Plan upon thirty (30) days written notification to the Employer; provided, however, that any such amendment must be for the express purpose of maintaining compliance with applicable federal laws and regulations of the Internal Revenue Service. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator, in writing, that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.
- 14.06 Optional Provisions. Any provision which is optional under this Plan shall become effective if and only if elected by the Employer and agreed to by the Plan Administrator.

XV. ADMINISTRATION

- 15.01 Powers of the Employer. The Employer shall have the following powers and duties:
- (a) To appoint and remove, with or without cause, the Plan Administrator;
 - (b) To amend or terminate the Plan pursuant to the provisions of Article XIV;
 - (c) To appoint a committee to facilitate administration of the Plan and communications to Participants;
 - (d) To decide all questions of eligibility (1) for Plan participation, and (2) upon appeal by any Participant, Employee or Beneficiary, for the payment of benefits;
 - (e) To engage an independent qualified public accountant, when required to do so by law, to prepare annually the audited financial statements of the Plan's operation;
 - (f) To take all actions and to communicate to the Plan Administrator in writing all necessary information to carry out the terms of the Plan and Trust; and

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- (g) To notify the Plan Administrator in writing of the termination of the Plan.

15.02 Duties of the Plan Administrator. The Plan Administrator shall have the following powers and duties:

- (a) To construe and interpret the provisions of the Plan;
- (b) To maintain and provide such returns, reports, schedules, descriptions, and individual Account statements, as are required by law within the times prescribed by law; and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports, descriptions, and statements as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law;
- (c) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan;
- (d) To determine the amount, manner, and time of payment of benefits hereunder;
- (e) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan;
- (f) To distribute assets of the Trust to each Participant and Beneficiary in accordance with Article X of the Plan;
- (g) To pay expenses from the Trust pursuant to Section 6.03 of the Plan; and
- (h) To do such other acts reasonably required to administer the Plan in accordance with its provisions or as may be provided for or required by law.

15.03 Protection of the Employer. The Employer shall not be liable for the acts or omissions of the Plan Administrator, but only to the extent that such acts or omissions do not result from the Employer's failure to provide accurate or timely information as required or necessary for proper administration of the Plan.

15.04 Protection of the Plan Administrator. The Plan Administrator may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Plan Administrator believes to have been signed by a duly designated official of the Employer.

- 15.05 Resignation or Removal of Plan Administrator. The Plan Administrator may resign at any time effective upon sixty (60) days prior written notice to the Employer. The Plan Administrator may be removed by the Employer at any time upon sixty (60) days prior written notice to the Plan Administrator. Upon the resignation or removal of the Plan Administrator, the Employer may appoint a successor Plan Administrator; failing such appointment, the Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, at fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.
- 15.06 No Termination Penalty. The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.
- 15.07 Decisions of the Plan Administrator. All constructions, determinations, and interpretations made by the Plan Administrator pursuant to Section 15.02(a) or (d) or by the Employer pursuant to Section 15.01(d) shall be final and binding on all persons participating in the Plan, given deference in all courts of law to the greatest extent allowed by applicable law, and shall not be overturned or set aside by any court of law unless found to be arbitrary or capricious, or made in bad faith.

XVI. MISCELLANEOUS

- 16.01 Nonguarantee of Employment. Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer, as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.
- 16.02 Rights to Trust Assets. No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner.
- 16.03 Nonalienation of Benefits. Except as provided in Sections 16.04 and 16.06 of the Plan, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person

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entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

- 16.04 Qualified Domestic Relations Order. Notwithstanding Section 16.03 of the Plan, amounts may be paid with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985.
- 16.05 Nonforfeitability of Benefits. Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the Nonforfeitable Interest to which he/she becomes entitled in accordance with the provisions of the Plan.
- 16.06 Incompetency of Payee. In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:
- (a) The parent of such person;
 - (b) The guardian, committee, or other legal representative, wherever appointed, of such person;
 - (c) The person with whom such person resides;
 - (d) Any person having the care and control of such person; or
 - (e) Such person personally.

The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge therefor.

- 16.07 Inability to Locate Payee. Anything to the contrary herein notwithstanding, if the Employer is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer Contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall

be reinstated, by means of an additional Employer contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or Beneficiary or if the Employer receives proof of death of such person, satisfactory to the Employer. To the extent not inconsistent with applicable law, any benefits lost by reason of escheat under applicable state law shall be considered forfeited and shall not be reinstated.

- 16.08 Mergers, Consolidations, and Transfer of Assets. The Plan shall not be merged into or consolidated with any other plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).
- 16.09 Employer Records. Records of the Employer as to an Employee's or Participant's Period of Service, termination of service and the reason therefor, leaves of absence, reemployment, Earnings, and Compensation will be conclusive on all persons, unless determined to be incorrect.
- 16.10 Gender and Number. The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.
- 16.11 Applicable Law. The Plan shall be construed under the laws of the State where the Employer is located, except to the extent superseded by federal law. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements.

In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control; provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under section 401(a) and 414(d) of the Code.

XVII. SPOUSAL BENEFIT REQUIREMENTS

- 17.01 Application. Effective as of January 1, 2006, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the provisions of this Article shall take precedence over any conflicting provision in this Plan. If elected, the provisions of this Article shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 17.05.

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- 17.02 Qualified Joint and Survivor Annuity. Unless an optional form of benefit is selected pursuant to a Qualified Election within the ninety (90) day period ending on the Annuity Starting Date, a married Participant's Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested Account Balance will be paid in the form of a Straight Life Annuity. The Participant may elect to have such annuity distributed upon the attainment of the Earliest Retirement Age under the Plan.
- 17.03 Qualified Preretirement Survivor Annuity. If a Participant dies before the Annuity Starting Date, then fifty percent (50%) of the Participant's Vested Account Balance shall be applied toward the purchase of an annuity for the life of the Surviving Spouse; the remaining portion shall be paid to such Beneficiaries (which may include such Spouse) designated by the Participant. Notwithstanding the foregoing, the Participant may waive the spousal annuity by designating a different Beneficiary within the Election Period pursuant to a Qualified Election. To the extent that less than one hundred percent (100%) of the vested Account balance is paid to the Surviving Spouse, the amount of the Participant's Account derived from Employee contributions will be allocated to the Surviving Spouse in the same proportion as the amount of the Participant's Account derived from Employee contributions is to the Participant's total Vested Account Balance. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death. Further, such Spouse may elect to receive any death benefit payable to him/her hereunder in any of the forms available to the Participant under Section 11.02.
- 17.04 Notice Requirements.
- (a) In the case of a Qualified Joint and Survivor Annuity as described in Section 17.02, the Plan Administrator shall, no less than thirty (30) days and no more than ninety (90) days prior to the Annuity Starting Date, provide each Participant a written explanation of: (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iii) the rights of a Participant's Spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. However, if the Participant, after having received the written explanation, affirmatively elects a form of distribution and the Spouse consents to that form of distribution (if necessary), benefit payments may commence less than 30 days after the written explanation was provided to the Participant, provided that the following requirements are met:

- (1) The Plan Administrator provides information to the Participant clearly indicating that the Participant has a right to at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity;
 - (2) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant;
 - (3) The Annuity Starting Date is after the date that the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and
 - (4) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins after the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.
- (b) In the case of a Qualified Preretirement Survivor Annuity as described in Section 17.03, the Plan Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Subsection (a) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last: (i) the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35); (ii) a reasonable period ending after the individual becomes a Participant; (iii) a reasonable period ending after Subsection (c) ceases to apply to the Participant; (iv) a reasonable period ending after this Article first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age thirty-five (35).

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two (2) year period beginning one (1) year prior

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to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

- (c) Notwithstanding the other requirements of this Section, the respective notices prescribed by this Section need not be given to a Participant if (1) the Plan "fully subsidizes" the costs of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, and (2) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Subsection (c), a plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the Participant may result from the Participant's failure to elect another benefit.

17.05 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Annuity Starting Date: The first day of the first period for which an amount is paid as an annuity or any other form.
- (b) Election Period: The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to the Account balance as of the date of separation, the Election Period shall begin on the date of separation.

Pre-age thirty-five (35) waiver: A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special Qualified Election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required under Section 17.04(a). Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or

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after such date shall be subject to the full requirements of this Article.

- (c) Earliest Retirement Age: The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- (d) Qualified Election: A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 17.04.

- (e) Qualified Joint and Survivor Annuity: An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's Vested Account Balance.

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- (f) Spouse (Surviving Spouse): The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (g) Straight Life Annuity: An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.
- (h) Vested Account Balance: The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

17.06 Annuity Contracts. Where benefits are to be paid in the form of a life annuity pursuant to the terms of this Article, a nontransferable annuity contract shall be purchased from a life insurance company and distributed to the Participant or Surviving Spouse, as applicable. The terms of any annuity contract purchased and distributed by the Plan shall comply with the requirements of this Plan and section 417 of the Code.

XVIII. FINAL PAY CONTRIBUTIONS

- 18.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Final Pay Contributions on behalf of each Participant equal to the equivalent of the accrued unpaid final pay, as defined in the Adoption Agreement ("Final Pay"), shall be contributed to the Plan.
- 18.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Final Pay Contributions may be made as either (a) Employer Final Pay Contributions, or (b) Employee Designated Final Pay Contributions, as described below.
- (a) Employer Final Pay Contributions. The Employer shall contribute to the Plan for each Participant the equivalent of a designated amount of accrued unpaid final pay upon termination of employment of the Participant, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law.

The Employer Final Pay Contributions shall be accounted for in the Employer Contribution Account.

- (b) Employee Designated Final Pay Contributions. The Employer shall contribute to the Plan for each Participant all or any portion of a Participant's Final Pay, as elected by the Participant. The Employer may limit the amount of Final Pay to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Final Pay Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Final Pay Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Final Pay Contribution.

- 18.03 Equivalencies. The Final Pay Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.

- 18.04 Excess Contributions. Final Pay Contributions are limited to the extent of applicable law and any Code limitation. No Final Pay Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

XIX. ACCRUED LEAVE CONTRIBUTIONS

- 19.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Accrued Leave Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid leave, as defined in the Adoption Agreement ("Accrued Leave"), shall be contributed to the Plan. Eligibility for Accrued Leave Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.

- 19.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Accrued Leave Contributions may be made as either (a)

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[September 10, 2007 Revised Draft – IRS Changes]

ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
ADOPTION AGREEMENT

The Employer hereby establishes a Money Purchase Plan and Trust to be known as the City of Plano Supplemental Savings Plan (the "Plan") in the form of the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust (MPP 01/01/06).

This Plan is an amendment and restatement of an existing defined contribution money purchase plan.

 X Yes No

If yes, please specify the name of the defined contribution money purchase plan which this Plan hereby amends and restates: City of Plano Supplemental Savings Plan.

I. Employer: City of Plano, Texas

II. The Effective Date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified: January 1, 2008 (e.g., January 1, 2006 for the MPP 01/01/06 Plan)

III. Plan Year will mean:

 () The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.03(f) of the Plan.)

 (X) The twelve (12) consecutive month period commencing on January 1, 2008 and each anniversary thereof.

IV. Normal Retirement Age shall be age 65 (not to exceed age 65).

V. ELIGIBILITY REQUIREMENTS:

1. The following group or groups of Employees are eligible to participate in the Plan:

- All Employees
- All Full-Time Employees
- Salaried Employees
- Non-union Employees
- Management Employees

- _____ Public Safety Employees
- _____ General Employees
- X Other Employees (specify describe the group(s) of eligible employees below)
the City Manager of the Employer

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer. Also, the eligibility requirements for participation in the Plan cannot be such that Employees become Participants only in the Plan Year in which the Employees terminate employment (i.e., stand-alone final pay plans).

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be:
 N/A (write N/A if an Employee is eligible to participate upon employment).

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21. Write N/A if no minimum age is declared.)

VI. CONTRIBUTION PROVISIONS

1. The Employer shall contribute as follows (choose all that apply):

(X) **Fixed Employer Contributions With Or Without Mandatory Participant Contributions.** (If section B or C is chosen, please complete section D. Section E is optional.)

A. Fixed Employer Contributions. The Employer shall contribute on behalf of each Participant N/A % of Earnings or \$ N/A for the Plan Year (subject to the limitations of Article V of the Plan).
Mandatory Participant Contributions

- X are required
- _____ are not required

to be eligible for this Employer Contribution.

B. Mandatory Participant Contributions for Plan Participation. A Participant is required to contribute (subject to the limitations of Article V of the Plan)

- (i) N/A % of Earnings,

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the election to participate in the Mandatory Participant Contribution portion of the Plan. Participation in the Mandatory Participant Contribution portion of the Plan shall begin the first of the month following the end of the election window.

An Employee's election is irrevocable and shall remain in force until the Employee terminates employment or ceases to be eligible to participate in the Plan. In the event of re-employment to an eligible position, the Employee's original election will resume. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

() **Fixed Employer Match of Voluntary Participant Contributions.**

The Employer shall contribute on behalf of each Participant ___% of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed ___% of Earnings or \$____. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.

() **Variable Employer Match Of Voluntary Participant Contributions.**

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

_____% of the Voluntary Participant Contributions made by the Participant for the Plan Year (not including Participant contributions exceeding ___% of Earnings or \$_____);

PLUS _____% of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Voluntary Participant Contributions exceeding in the aggregate ___% of Earnings or \$_____).

Employer Matching Contributions on behalf of a Participant for a Plan Year shall not exceed \$_____ or ___% of Earnings, whichever is ___ more or ___ less.

2. Each Participant may make a voluntary (unmatched), after-tax contribution, subject to the limitations of Section 4.05 and Article V of the Plan.

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Yes No

3. Employer contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than 30 days after the close of the plan year or in accordance with applicable law): within 30 days after the end of the Plan Year.
4. Participant contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than 30 days after the close of the plan year or in accordance with applicable law): as soon as administratively feasible, but, in all events, within 30 days after the date of deduction.

VII. EARNINGS

Earnings, as defined under Section 2.09 of the Plan, shall include:

- (a) Overtime Yes No
- (b) Bonuses Yes No
- (c) Other Pay (*specifically describe any other types of pay to be included below*)

- VIII. The Employer will permit rollover contributions in accordance with Section 4.11 of the Plan.

Yes No

IX. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Sections 5.02 of the Plan).

1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.02(a) through (f) of the Plan will apply unless another method has been indicated below.

- () Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount,

and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)

2. The limitation year is the following 12-consecutive month period: the Plan
Year.

X. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements and (2) the concurrence of the Plan Administrator. (For the blanks below, enter the applicable percent – from 0 to 100 (with no entry after the year in which 100% is entered), in ascending order.)

<u>Period of Service Completed</u>	<u>Percent Vested</u>
Zero	<u>100</u> %
One	<u> </u> %
Two	<u> </u> %
Three	<u> </u> %
Four	<u> </u> %
Five	<u> </u> %
Six	<u> </u> %
Seven	<u> </u> %
Eight	<u> </u> %
Nine	<u> </u> %
Ten	<u> </u> %

XI. Loans are permitted under the Plan, as provided in Article XIII:

 X Yes No

XII. Age 70-1/2 in-service distributions are permitted under the Plan as provided in Section 9.08.

 Yes (Default) X No

XIII. In-service distributions of the Rollover Account are permitted under the Plan as provided in Section 9.07.

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XIV. Yes X No
SPOUSAL PROTECTION

The Plan will provide the following level of spousal protection (select one):

 X A. Participant Directed Election. The normal form of payment of benefits under the Plan is a lump sum. The Participant can name any person(s) as the Beneficiary of the Plan, with no spousal consent required.

 B. Beneficiary Spousal Consent Election (Article XII). The normal form of payment of benefits under the Plan is a lump sum. Upon death, the surviving spouse is the Beneficiary, unless he or she consents to the Participant's naming another Beneficiary. (This is the default provision under the Plan if no selection is made.)

 C. QJSA Election (Article XVII). The normal form of payment of benefits under the Plan is a 50% qualified joint and survivor annuity with the spouse (or life annuity, if single). In the event of the Participant's death prior to commencing payments, the spouse will receive an annuity for his or her lifetime.

XV. FINAL PAY CONTRIBUTIONS

The Plan will provide for final pay contributions if either A or B below is selected. (Must also select Fixed Employer Contributions With or Without Mandatory Participant Contributions (item VI.1.A (or VI.1.B or VI.1.C if "picked up").)

() A. **Employer Final Pay Contribution.** The Employer shall contribute on behalf of each Participant _____% of Final Pay to the Plan (subject to the limitations of Article V of the Plan) for the year of termination.

Final Pay shall be defined as (select one):

- 1. Accrued unpaid vacation
- 2. Accrued unpaid sick leave
- 3. Accrued unpaid vacation and sick leave
- 4. Other (*insert definition of final pay*)

that would otherwise be payable to the Employee upon termination.

() B. **Employee Designated Final Pay Contribution.** Each Employee eligible to participate in the Plan shall be given the opportunity at enrollment to irrevocably elect to contribute _____% (*insert fixed percentage of final pay to be contributed*) or up to _____% (*insert maximum percentage of final*

pay to be contributed) of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

Final Pay shall be defined as (select one):

- 1. ___ Accrued unpaid vacation
- 2. ___ Accrued unpaid sick leave
- 3. ___ Accrued unpaid vacation and sick leave
- 4. ___ Other (*insert definition of final pay*)

that would otherwise be payable to the Employee upon termination.

Once elected, an Employee's election shall remain in force and may not be revised or revoked. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

XVI. ACCRUED LEAVE CONTRIBUTIONS

The Plan will provide for accrued unpaid leave contributions if selected below. (Must also select Fixed Employer Contributions With or Without Mandatory Participant Contributions (item VI.1.A (or VI.1.B or VI.1.C if "picked up").)

1. An eligible Participant is defined as:

- ___ All Participants,
- ___ Participants within ___ (insert number) years of Normal Retirement Age, or
- ___ Other: _____ (*define class of Participants*).

2. Accrued Leave shall be defined as (select one):

- a. ___ Accrued unpaid vacation
- b. ___ Accrued unpaid sick leave
- c. ___ Accrued unpaid vacation and sick leave
- d. ___ Other (*insert definition of accrued unpaid leave*)

that would otherwise be payable to the Employee.

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3. Amount of Accrued Leave Contributions

A. **Employer Accrued Leave Contribution.** The Employer shall contribute as follows (choose one of the following options):

() For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant the unused Accrued Leave in excess of _____ (*insert number of hours/days/weeks*) to the Plan (subject to the limitations of Article V of the Plan).

() For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant _____ % of unused Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

B. **Employee Designated Final Pay Contribution.**

Each eligible Participant shall be given the opportunity at enrollment to irrevocably elect to contribute _____ % (*insert fixed percentage of accrued unpaid leave to be contributed*) or up to _____ % (*insert maximum percentage of accrued unpaid leave to be contributed*) of Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

XVII. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

XVIII. The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan.

XIX. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

XX. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

XXI. An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code to the extent provided in applicable IRS revenue procedures and other official guidance.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this _____ day of December, 2008.

EMPLOYER

ICMA RETIREMENT CORPORATION
777 North Capital St., NE
Washington, DC 20002-4290
202-962-8096

By: _____

By: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

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MPP 01/01/06



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	12/22/08	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Development Business Center		Initials	Date
Department Head	Frank F. Turner	Executive Director	<i>[Signature]</i>	12/12/08
Dept Signature:		City Manager	<i>[Signature]</i>	12/15/08
Agenda Coordinator (include phone #): Sherry Jackson - Ext. 7122				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS AND PINNACLE AMS DEVELOPMENT COMPANY, LLC FOR DEVELOPMENT OF EASTSIDE STATION - PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
CHANGING NAME ON DEVELOPMENT AGREEMENT FROM PINNACLE AMS DEVELOPMENT COMPANY, LLC TO SOUTHERN/PINNACLE AMS DEVELOPMENT COMPANY, LLC.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS AND PINNACLE AMS DEVELOPMENT COMPANY, LLC FOR DEVELOPMENT OF EASTSIDE STATION – 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 Amendment to Development Agreement Between the City of Plano, Texas and Pinnacle AMS Development Company, LLC for Development of Eastside Station - Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Amendment"); and,

WHEREAS, upon full review and consideration of the Amendment, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or, in his absence, 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 Amendment, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

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

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

DULY PASSED AND APPROVED this the _____ day of _____, 2008.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

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STATE OF TEXAS §
 §
COUNTY OF COLLIN §

**AMENDMENT TO
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLANO,
TEXAS AND PINNACLE AMS DEVELOPMENT COMPANY, LLC FOR
DEVELOPMENT OF EASTSIDE STATION - PLANO**

THIS AMENDMENT ("Amendment") is entered into by and between the CITY OF PLANO, a Texas municipal corporation of Collin County, Texas (the "City"), acting by and through its duly authorized officers, and SOUTHERN/PINNACLE AMS DEVELOPMENT COMPANY, LLC, a Texas limited liability company ("Pinnacle");

RECITALS:

WHEREAS, the Plano City Council adopted Resolution No. _____ on _____, approving that certain agreement titled "Development Agreement With Pinnacle AMS Development Company, LLC For Development of Eastside Station –Plano" (the "Development Agreement"), and authorizing the City Manager to execute same by affixing his hand and the City Seal; and

WHEREAS, on December 22, 2008, the City Council consented to the Assignment of the Development Agreement to Southern/Pinnacle AMS Development Company, LLC; and

WHEREAS, City and Southern/Pinnacle have agreed to amend the Development Agreement as hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

1. Section 1.A.1 of the Development Agreement is amended in its entirety to read as follows:

"1. Pinnacle will acquire fee title to the real property located at 930 15th Street, Plano, Texas 75074 by no later than June 1, 2009."

2. Section 1.B.3. of the Development Agreement is amended in its entirety to read as follows:

"3. Pinnacle will obtain all necessary permits from the City, which shall not be unreasonably withheld, conditioned or delayed by the City and begin construction of the Development no later than October 1, 2009. Construction shall be deemed to have begun when Pinnacle actually commences site work (i.e., demolition, grading or clearing) on the Property;"

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3. Section 8.B. of the Development Agreement is amended in its entirety to read as follows:

“B. Notwithstanding the above, in the event Pinnacle does not commence construction of the Development by the later of October 10, 2009 or six months from City and DART’s approval of the Plans and issuance of the permits for the Development, the City’s sole remedy shall be that the City grant of the Property shall become null and void and Pinnacle shall execute any and all documents necessary to convey the Property to the City. All expenses associated with the conveyance of the Property back to the City, including reasonable attorney fees, shall be the responsibility of Pinnacle.”

4. Section 8.C. of the Development Agreement is amended in its entirety to read as follows:

“C. If Pinnacle commences construction of the Development and Public Improvements identified in the Budget by October 10, 2009 but fails to complete the entire Development by August 1, 2011, subject to the cure provisions in Section 8 City may, as an alternative to, but not in addition to the remedies set forth in Section 8A above, be entitled to the remedy of payment from Pinnacle, not as a penalty but as liquidated damages, an amount using the following formula: $A \times B = C$, where A is the amount of the Construction Allowance actually advanced to Pinnacle by the City, B is the percentage of the Development not ready for occupancy as of August 1, 2011, and C is the amount of liquidated damages to which the City is entitled.”

5. For all relevant purposes, the term “Pinnacle” as it is used in the Development Agreement shall be amended to mean and refer to Southern/Pinnacle AMS Development Company, LLC.

6. The address for notices to Pinnacle set forth in Section 11 of the Development Agreement is changed to:

Southern/Pinnacle AMS Development Company, LLC
501 Corporate Center Drive, Suite 600
Franklin, Tennessee 37067

7. Except as expressly amended by this Amendment, the Development Agreement remains in full force and effect as provided therein.

8. By joining in the execution of this Amendment, Southern/Pinnacle AMS Development Company, LLC expressly acknowledges and represents that (i) it is a limited liability company formed under Texas law, (ii) it has qualified to do business in Texas, and (iii) it hereby expressly assumes all of the obligations of Pinnacle AMS Development Company LLC under the Development Agreement for the balance of the term of the Development Agreement.

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EXECUTED on the _____ day of December, 2008, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. _____ (R) approved by the City Council on December 22, 2008, acting through its duly authorized officials.

CITY OF PLANO:

APPROVED AS TO FORM:

Thomas H. Muehlenbeck, City Manager

Diane C. Wetherbee, City Attorney

SOUTHERN/PINNACLE AMS
DEVELOPMENT COMPANY, a Texas
limited liability company

By: _____
Name:
Title:

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date: 12/22/08		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Development Business Center		Initials	Date	
Department Head	Frank F. Turner	Executive Director	<i>[Signature]</i>	12/12/08	
Dept Signature:		City Manager	<i>[Signature]</i>	12/15/08	
Agenda Coordinator (include phone #): Sherry Jackson - Ext. 7122					

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ASSIGNMENT OF DEVELOPMENT AGREEMENT BY AND BETWEEN PINNACLE AMS DEVELOPMENT COMPANY, LLC, SOUTHERN/PINNACLE AMS DEVELOPMENT COMPANY, LLC AND THE CITY OF PLANO, TEXAS FOR DEVELOPMENT OF EASTSIDE STATION - PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(s):

COMMENTS:

SUMMARY OF ITEM

APPROVING TERMS AND CONDITIONS OF AN ASSIGNMENT OF DEVELOPMENT AGREEMENT WITH CITY OF PLANO AND SOUTHERN/PINNACLE AMS DEVELOPMENT COMPANY, LLC.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ASSIGNMENT OF DEVELOPMENT AGREEMENT BY AND BETWEEN PINNACLE AMS DEVELOPMENT COMPANY, LLC, SOUTHERN/PINNACLE AMS DEVELOPMENT COMPANY, LLC AND THE CITY OF PLANO, TEXAS FOR DEVELOPMENT OF EASTSIDE STATION – 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 Assignment of Development Agreement by and between Pinnacle AMS Development Company, LLC, Southern/Pinnacle AMS Development Company, LLC and the City of Plano, Texas for development of Eastside Station – Plano, a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereinafter called “Assignment”); and,

WHEREAS, upon full review and consideration of the Assignment, 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 Assignment, 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 Assignment 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 Assignment.

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

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ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT is made as of the ___ day of December, 2008 (the "Effective Date"), by and between PINNACLE AMS DEVELOPMENT COMPANY, LLC, a Texas limited liability company ("Assignor") and SOUTHERN/PINNACLE AMS DEVELOPMENT COMPANY, LLC, a Texas limited liability company ("Assignee").

RECITALS:

A. Assignor entered into that certain Development Agreement Between The City of Plano, Texas and Pinnacle AMS Development Company, LLC For Development of Eastside Station – Plano (the "Development Agreement") dated as of June 9, 2008 by and between Assignor and the City of Plano, a Texas municipal corporation of Collin County, Texas (the "City"), a copy of which Development Agreement is attached hereto as Exhibit A.

B. Assignor desires to assign to Assignee all of its right, title and interest in and to the Development Agreement; and

C. Assignee wishes to assume all of Assignor's rights and obligations under the Development Agreement.

ASSIGNMENT

In consideration of the foregoing premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment and Assumption. Assignor does hereby assign, transfer and convey unto Assignee and Assignee's successors and assigns, all rights, title, duties, obligations and interests of Assignor in and to the Development Agreement. Assignee accepts the assignment of the Development Agreement and does hereby assume and undertake to abide by the same according to its terms and conditions.

2. Indemnification. Assignee shall defend, indemnify and hold harmless Assignor from and against any and all "Claims" (as defined hereinafter) asserted against or incurred by Assignor as a result of any acts or omissions, occurring on or after the Effective Date, in connection with the Development Agreement. Assignor shall defend, indemnify and hold harmless Assignee from and against any and all Claims asserted against or incurred by Assignee as a result of any acts or omissions, occurring prior to the Effective Date, in connection with the Development Agreement. As used herein, the term "Claims" shall mean all claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees, whether suit is instituted or not).

3. Default. In the event either party to this Assignment breaches its obligations hereunder, it shall pay all costs and expenses of enforcement, including court costs and reasonable attorneys' fees, occasioned by such breach.

4. Binding. This Assignment shall: (a) inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns; and (b) be construed in accordance with the laws of the State of Texas, without regard to the application of choice of law principles.

5. Counterparts. This Assignment may be executed in any number of counterparts, and all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment effective as of the day and date first above written.

ASSIGNOR:

PINNACLE AMS DEVELOPMENT
COMPANY, LLC, a Texas limited liability
company

By: _____

Print Name: _____

Title: _____

ASSIGNEE:

SOUTHERN/PINNACLE AMS
DEVELOPMENT COMPANY, a Texas
limited liability company

By: Southern Land Company, LLC, a
Tennessee limited liability company
Its: Manager

By: _____

Print Name: _____

Title: _____

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CONSENT

The City of Plano, Texas has joined in the execution of the foregoing Assignment of Development Agreement for the purpose of consenting to the assignment and assumption as set forth in this Assignment of Development Agreement, the City of Plano, Texas hereby acknowledges that such assignment and assumption meets its requirements under Section 17.B of the Development Agreement, and the City of Plano, Texas hereby releases Assignor from any and all obligations under the Development Agreement.

CITY OF PLANO, TEXAS,
a Texas municipal corporation

By: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Print Name: _____

Title: _____

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EXHIBIT A

Development Agreement

U-6

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLANO,
TEXAS AND PINNACLE AMS DEVELOPMENT COMPANY, LLC FOR
DEVELOPMENT OF EASTSIDE STATION - PLANO**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Plano, a Texas municipal corporation of Collin County, Texas (the "City"), acting by and through its duly authorized officers, and Pinnacle AMS Development Company, LLC, a Texas limited liability company ("Pinnacle");

RECITALS:

WHEREAS, the City is authorized pursuant to the laws of Texas and its Home Rule Charter to enter into agreements with persons or entities intending to undertake any development on real property for the purposes of providing supporting public facilities and services; and

WHEREAS, Pinnacle desires to develop approximately 3.0 acres located at the southeast corner of 15th Street and I Avenue of which 1.5 acres is owned by the City of Plano and as shown in Exhibit "A" attached hereto ("the Property"); and

WHEREAS, Pinnacle has proposed a development on the Property in substantial compliance with a preliminary project design and concept plan prepared by Pinnacle attached hereto as Exhibit "B" (which design and concept plan, together with all additions, changes and amendments thereto approved by Pinnacle and the City, is referred to in this Agreement as the "Plan") ; and

WHEREAS, Pinnacle's proposed development is located in Tax Increment Financing District No. 2 and is in keeping with the intent of that reinvestment zone to promote sound growth; and

WHEREAS, a portion of the proposed public improvements that are to be dedicated to the public are to be funded through the revenue derived by Tax Increment Financing District No. 2; and

WHEREAS, Pinnacle's proposed development is consistent with the goals and objectives as set forth in *Downtown Plano, A Vision and Strategy for Creating a Transit Village* which was adopted by the City Council by Resolution No. 99-5-14, dated May 10, 1999, and

WHEREAS, the development of the Property in accordance with the Plan by Pinnacle will contribute important direct and indirect economic and social benefits to the City including, but not limited to, the creation of a mixed-use, pedestrian-oriented, residential development in close proximity to the DART railway station, and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to Pinnacle in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

WHEREAS, it is essential to the City's public health, safety and general welfare to assure that the Development is supported by adequate levels of public facilities and services; and

WHEREAS, the City Council has adopted Resolution No. 2008-5-34(R) on May 27, 2008, approving this Agreement with Pinnacle and authorizing the City Manager to execute same by affixing their hand and the City Seal;

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

SECTION 1. PINNACLE'S OBLIGATIONS

As consideration for the obligations to be performed by the City as enumerated in Section 2 of this Agreement, Pinnacle agrees to the following:

- A. Prior to closing on the City's portion of the Property:
 1. Pinnacle will acquire fee title to the real property located 930 15th Street , Plano, Texas 75074;
 2. Pinnacle will complete and obtain approval of plans to include zoning, preliminary site plan, and filing of a preliminary plat for the Development;
 3. Pinnacle provides to the reasonable satisfaction of the City an economic overview letter from any of Pinnacle's bankers, mortgages or such other qualified person or entity attesting, to their knowledge, Pinnacle's financial ability to complete its obligations under this Agreement;
 4. DART will provide approval of the use of a portion of its right-of-way adjacent to the Property for a pedestrian walkway and the conveyance of an

easement to the City of Plano for the construction, use and maintenance of improvements related to the walkway (the "DART Easement"); and

5. Pinnacle provides Plans and reasonable assurances that it will construct a parking garage within the Development and provide an easement ("Parking Space Easement") to the City a portion of which will include 100 parking spaces for the exclusive use of the City. The terms and conditions of the Parking Space Easement shall be agreed upon by Pinnacle and the City as a condition precedent to any obligation of Pinnacle to acquire property under this Agreement.

B. After closing on the Property

1. Pinnacle will construct and convey by easement 100 parking spaces at or below grade within a parking garage on the Development for the exclusive use of the City without charge and that such use shall commence within 24 months of the date of the conveyance of the Property to Pinnacle. City may use the parking spaces for vehicle parking and any other lawful uses consistent with the activities of the City with the consent of Pinnacle, which consent shall not be unreasonably withheld, conditioned or delayed by Pinnacle. Notwithstanding the foregoing, the City may not lease or assign the parking spaces for a commercial enterprise.

2. Pinnacle causes, supervises, manages and completes the construction and design of not less than 200,000 square feet of gross residential, retail, and other non-residential space (which space is exclusive of plazas, decks, walkways, parking and outdoor common areas and contains not less than 15,000 square feet for non-residential uses) (hereafter the "Development") on the Property, which will substantially conform to the Plan (Exhibit "B"), and which when completed (and when the Public Improvements have also been completed) shall have a net private investment value of not less than Twenty Million Dollars (\$20,000,000.00). The Project Completion Budget (the "Budget"), attached hereto as Exhibit "D" and incorporated herein by this reference, sets forth the proposed nature and projected total costs of the Development and the related Public Improvements (as that term is defined in Subsection D of this Section). The Development will be the property of Pinnacle, except insofar as Pinnacle will convey easements over the Property to the City as may be necessary in connection with any Public Improvements constructed on or over the Property;

3. Pinnacle will obtain all necessary permits from the City, which shall not be unreasonably withheld, conditioned or delayed by the City and begin construction of the Development no later than January 1, 2009. Construction shall be deemed to have begun when Pinnacle actually commences site work (i.e., demolition, grading or clearing) on the Property;

4. Pinnacle shall be responsible for the construction of all Public Improvements in substantial conformity to the Plan as prepared by the architect of record or civil engineer, subject to all necessary City regulatory approvals which shall not be unreasonably withheld, conditioned or delayed, and for supervision and management of construction of the Public Improvements. The Public Improvements (as that term is used in this Agreement) shall include all of the proposed storm sewer, drainage, utility, paving, lighting, landscape, hardscape and other improvements required by the City, both on-site and off-site, that are described or referred to in Exhibit "B" attached to this Agreement. The cost of construction of the streetscape and sidewalks along 15th Street, I Avenue, and 14th Street shall be reimbursed by the City as described in Section 2 below. The construction of the walkway between the DART Light Railway and the development shall be conditioned on the conveyance of the DART Easement to the City and DART's and the City's approval of the plans for such walkway and other public improvements as well as the award of a grant administered by the North Central Texas Council of Governments (NCTCOG) or approval of an alternative source of funding. The DART Easement shall provide the City with the right, subject to DART's approval, to allow third parties to construct and maintain the Public Improvements within the DART Easement area;

5. All common areas, open spaces and landscaping improvements on the Property and all landscaping improvements on the Property in areas abutting public rights-of-way along the perimeter of the Property, shall be the responsibility of Pinnacle. Maintenance of all hardscape and landscaping in public property (14th Street, 15th Street and I Avenue) adjacent to the Property and extending to nearest curb of such public rights-of-way and to the east boundary of the DART Easement on the east side of the Property (collectively, the "Public Property") shall be the responsibility of Pinnacle. Landscaping and streetscaping in the Public Property shall be in accordance with the specifications and standards set forth in the Plan.

6. Pinnacle will be responsible for maintaining, repairing and replacing all landscaping, sidewalks, curbing, paving and related improvements in the Public Property in accordance with the City's standard right-of-way maintenance practices; and

7. Pinnacle shall be responsible for all maintenance and operation expenses associated with the Development.

SECTION 2. CITY'S OBLIGATIONS

As consideration for the obligations to be performed by Pinnacle as enumerated in Section 1 of this Agreement, the City agrees to the following:

DEVELOPMENT AGREEMENT

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A. The City of Plano shall grant to Pinnacle the Property described in **Exhibit "A"** in "As Is" condition; except the City shall, as Pinnacle's sole remedy for Hazardous Materials claims, provide to Pinnacle for a period of five years a certificate of insurance or certificate of self-insurance providing coverage to Pinnacle in the total amount of One Million One Hundred Thousand Dollars (\$1,100,000) against any and all claims, lawsuits, judgments, costs and expenses incurred in connection with the injury, damage or other harm incurred by City's current or former tenants, licensees, invitees or such other occupants of the Property arising from any exposure to Hazardous Materials located on the Property prior to the City's grant of the Property to Pinnacle. Coverage is limited to claims resulting from claimant's substantially or materially exposure to Hazardous Materials on the Property not caused in whole or in part by Pinnacle, its agents, lessees or employees. For purposes of this Agreement, the term "Hazardous Material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Clean Water Act, as amended, or any other federal, state or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced or subsequently enacted. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. A prerequisite to the City's grant of the Property to Pinnacle is an approval by DART, within 60 days of the date of this Agreement, of the use of DART's right-of-way in such areas as more fully described in **Exhibit "C"**, for a pedestrian walkway and the conveyance of the DART Easement to the City of Plano for construction, use and maintenance of improvements related to the walkway and which shall provide sufficient authority to allow Pinnacle to perform such construction and maintenance of improvements related to the walkway. To the extent DART does not approve the use of its right of way within 60 days, either party has the right to terminate this Agreement;

B. The City agrees, subject to the conditions contained herein, to advance monthly funds for the Public Improvements and streetscape improvements made to Public Property in an amount up to but not to exceed in the aggregate the maximum of Two Hundred Thousand Dollars (\$200,000.00) as indicated in the Budget as the Construction Allowance (herein so called). Pinnacle will pay actual costs of completion of Public Improvements to the extent such aggregated total costs exceed the Construction Allowance. The Construction Allowance will be available to Pinnacle on an "aggregate cost" basis, as opposed to a "line-item cost" basis, such that cost savings realized with respect to discreet line-item allocations in the Budget will be freely available for use in connection with any cost overruns experienced as to other line-item allocations, provided that in no event will the

aggregate funds advanced by the City exceed the Construction Allowance. To the extent actual costs of Public Improvements are less than the Construction Allowance, any remainder shall be retained by the City. Advances of funds to Pinnacle out of the Construction Allowance will be made by the City on a percentage completion basis upon written request by Pinnacle. In connection with each such written request for payment, Pinnacle shall provide evidence of expenses paid and costs incurred and confirmation from the project engineer as to the percentage of work completed. Advances of Construction Allowance funds will be made in accordance with the line-item allocations indicated in the Budget for the Construction Allowance. In the event a "cost savings" is achieved for any line-item, determined as of the completion of work for such line-item, the amount of any such line-item cost savings will become available as "contingency funds" to supplement any other line-item of Construction Allowance funds as to which the actual cost of completion exceeds the amount of the line-item allocation. The City may seek reimbursement of any Public Improvement costs from Tax Increment Financing Funds. The source of funding (including grants) for all Public Improvements paid for by the City is at the discretion of the City and may include reimbursement of costs from Tax Increment Financing District 2 Funds. The City and Pinnacle will coordinate and jointly approve the design of the Development and the Public Improvements;

C. The City will reimburse Pinnacle 90% of the actual project costs for any improvements or such other work completed within DART's right-of-way up to a maximum of \$900,000. The City may use grants or payments from other governmental sources including but not limited to Tax Increment Financing District 2 revenue to pay this obligation; and

D. The City will repair or replace all sidewalks, curbing and related improvements it damages. The City will also be responsible for repairing any damage caused by City work crews or contractors engaged by the City to any part of the Public Improvements, irrigation system or systems within, on or under Public Property and the rights-of-way within the DART Easement, whether inside or outside the perimeter of the Property.

SECTION 3. DESIGN AND CONSTRUCTION PROCUREMENT

A. Design management for the Public Improvements and the Development will be provided by the architect for the Development or such other party as shall be mutually agreed to by the parties to this Agreement.

B. Procurement of construction for the Public Improvements must be in accordance with the following provisions:

1. All Plans for the Public Improvements shall be submitted to the City Engineer for review and approval, which shall not be unreasonably withheld, conditioned or delayed. All Plans shall comply with the standards and requirements for similar developments located in the City, unless otherwise approved by the City in its reasonable discretion for this Development.
2. Pinnacle shall use its best efforts to insure that the Public Improvements are completed in a timely manner in accordance with the construction contract documents, plans and specifications.
3. Any construction contract for the construction of the Public Improvements shall specify that the contractor shall look solely to Pinnacle concerning any claim under the contract. For each such construction contract Pinnacle shall acquire and maintain or require its general contractor to acquire and maintain, during any period for which the Development of the Property is under construction, comprehensive general liability insurance in the amount of the construction contract or \$1,000,000, whichever is greater. Such insurance shall cover any and all claims which might arise out of the construction contract, whether by the contractor, a subcontractor, materialman or otherwise. All such insurance shall: (a) be issued by a carrier which is rated "B+" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, and (b) name Pinnacle and City as an additional insured. Certified copies of all of such policies shall be delivered to the City upon the execution of a construction contract; provided, however, that the City, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance together with the declaration page of such policies, along with the endorsement naming the City as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, Pinnacle and City shall receive written notice of such cancellation, non-renewal or modification.
4. The construction contract shall require, among other things, that the contractor provide performance and payment bonds or other lawful surety in a form acceptable to the City.
5. In accordance with the City's Subdivision Ordinance, Article 5.10c as amended, all electric utility lines and wires, terminals and other facilities and equipment shall be constructed, placed or located underground.
6. All project designs, drawings, site plans and other documents produced by Pinnacle in connection with the Development and the Public Improvements, including those attached to this Agreement, shall remain the property of Pinnacle. However, in exchange for Pinnacle's acceptance of the above-described reimbursement from the City, the City will retain all necessary rights to use such portion of the Plans created for public facilities and infrastructure, and all

assignable rights in the boundary survey and environmental site assessment of the Property obtained by Pinnacle.

SECTION 4. FORCE MAJEURE

It is expressly understood and agreed by the parties to this Agreement that if the substantial completion of the construction of any the Development and Public Improvements contemplated hereunder is delayed by reason by war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, or acts of the other party, its affiliates/related entities and/or their contractors, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

SECTION 5. TERM

The term of this Agreement shall begin on the date of execution, and end upon the complete performance of all obligations and conditions precedent by parties to this Agreement; provided, however, that the obligations of the City to pay Pinnacle for unpaid Public Improvement costs pursuant to Section 2.A of this Agreement which accrued during the term of this Agreement, but which is not paid prior to the expiration of the term of this Agreement, shall survive.

SECTION 6. AUTHORITY OF PINNACLE

Pinnacle represents and warrants to the City that Pinnacle is duly formed, validly existing and in good standing under the laws of the State of Texas. Pinnacle has full power, authority and legal right to execute and deliver this Agreement. This Agreement constitutes a legal, valid, and binding obligation of Pinnacle and the City, enforceable in accordance with its terms.

SECTION 7. EVENTS OF DEFAULT

A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement, or if the representation provided for in Section 8 is not true or correct. A party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default by the defaulting party, or, with the giving of notice or passage of time, or both, would constitute a default by the defaulting party under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party requires or proposes to require with respect to curing the default.

SECTION 8. REMEDIES AVAILABLE TO THE CITY

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A. If a default prior to closing on the Property shall occur and continue, after thirty (30) days' written notice to cure default, the City may, at its option, terminate this Agreement without any further obligation or duty to perform. If a default after closing on the Property occurs, the City may (1) pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, or (2) recover as liquidated damages for the breach an amount equal to two times the fair market value of the Property on the date of termination of this Agreement as determined by a certified commercial real estate appraiser mutually agreeable to the parties but such damages to be adjusted *pari passu* as the construction of the Development is completed (i.e., 30% of Development completed, as determined by construction draws, then damages would be 70% of two times the fair market value); provided, however, that if Pinnacle shall within the thirty (30) day period after notice of the breach commence action to cure such default but is unable, by reason of the nature of the performance required, to cure the default within such period, and if Pinnacle continues such action thereafter diligently and without unnecessary delays, Pinnacle shall not be in default hereunder until the expiration of a period of time as may be reasonably necessary to cure such failure, provided further, however, that in any event Pinnacle shall be in default hereunder if such failure is not cured on or before ninety (90) days after receipt by Pinnacle of the above-described written notice of default and demand for performance. In the event of any termination of this Agreement due to any such default, Pinnacle will remain entitled to recover from the City any Construction Allowance funds for Public Improvements earned through the date of termination.

B. Notwithstanding the above, in the event Pinnacle does not commence construction of the Public Improvements identified in the Budget by the later of January 1, 2009 or six months from City and DART's approval of the Plans and issuance of the permits for the Development, the City's sole remedy shall be that the City grant of the Property shall become null and void and Pinnacle shall execute any and all documents necessary to convey the Property to the City. All expenses associated with the conveyance of the Property back to the City, including reasonable attorney fees, shall be the responsibility of Pinnacle.

C. If Pinnacle commences construction of the Public Improvements identified in the Budget by October 1, 2008 but fails to complete the entire Development by July 1, 2010, subject to the cure provisions in Section 8, City may, as an alternative to, but not in addition to the remedies set forth in Section 8A above, be entitled to the remedy of payment from Pinnacle, not as a penalty but as liquidated damages, an amount using the following formula: $A \times B = C$, where A is the amount of the Construction Allowance actually advanced to Pinnacle by the City, B is the percentage of the Development not ready for occupancy as of July 1, 2010, and C is the amount of liquidated damages to which the City is entitled.

D. In addition to the remedies set forth in Section 8A(1) above and the cure provisions set forth in Section 8A, if Pinnacle fails to construct or maintain the parking spaces as described in Section 1.B.1. above for the exclusive use and enjoyment of the City, Pinnacle will provide alternative parking spaces on the Property or at another location mutually agreeable with the City.

SECTION 9. REMEDIES AVAILABLE TO PINNACLE

If the City is in default of this Agreement, and said default shall occur and continue after thirty (30) days' written notice to cure default (unless otherwise provided in this Agreement), Pinnacle shall be entitled, at its option, to any or all of the following remedies (A) pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, (B) terminate this agreement without any further obligation or duty to perform, (C) bring suit for damages against the City; provided, however, that if the City shall within the thirty (30) day period after notice of the breach commence action to cure such default but is unable, by reason of the nature of the performance required, to cure the default within such period, and if the City continues such action thereafter diligently and without unnecessary delays, the City shall not be in default hereunder until the expiration of a period of time as may reasonably be necessary to cure such failure, provided further, however, that in any event the City shall be in default hereunder if such failure is not cured on or before ninety (90) days after receipt by the City of the above-described written notice of default and demand for performance. In the event of any termination of this Agreement due to any such default, Pinnacle will remain entitled to recover from the City any Construction Allowance funds for Public Improvements earned through the date of termination. Notwithstanding the above, City does not waive any rights, immunities or defenses that may be available to it under Texas or federal law.

SECTION 10. NOTICES

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mails by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for City, to:

City of Plano, Texas
Attention: City Manager
1520 Avenue K
P. O. Box 860358
Plano, Texas 75086-0358

If intended for Pinnacle, to:

Pinnacle AMS Development Company LLC
Attention: Kent Plemons
14001 Dallas Parkway, Suite 750
Dallas, Texas 75240

SECTION 11. GIFT TO PUBLIC SERVANT

A. City may terminate this Agreement immediately if Pinnacle has knowingly offered, conferred, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

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B. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

C. Notwithstanding any other legal remedies, City may require Pinnacle to remove any employee of Pinnacle from the development of the Public Improvements who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Pinnacle as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

SECTION 12. APPLICABLE LAWS

This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws.

SECTION 13. VENUE AND GOVERNING LAW

This Agreement is performable in Collin County, Texas and venue of any action arising out of this Agreement shall be exclusively in Collin County, Texas. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

SECTION 14. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

SECTION 15. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

SECTION 16. CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

SECTION 17. SUCCESSORS AND ASSIGNS

A. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. Provided, however, this Agreement shall not be assigned without the prior consent of Pinnacle and the Plano City Council, which approvals shall not be unreasonably withheld.

B. An assignment or delegation of this Agreement to an Affiliate of Pinnacle shall not require City Council approval and shall not result in a breach of the Agreement if the Affiliate of Pinnacle expressly assumes all of the obligations of Pinnacle under this Agreement for the balance of the term of this Agreement and provides evidence establishing the relationship between Pinnacle and an Affiliate. Pinnacle shall notify the City in writing, however, within 30 days of such assignment. "Affiliates", as used herein, includes any parent, sister, partner, joint venturer, equity investor or subsidiary entity of Pinnacle; any entity in which either of Pinnacle, a major shareholder, owns an equity interest or is a joint venturer or partner (whether general or limited).

SECTION 18. ENTIRE AGREEMENT

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

SECTION 19. INCORPORATION OF RECITALS

The recitals set forth herein are intended, and are hereby deemed to be a part of this Agreement.

EXECUTED on the 9th day of June, 2008, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 2008-5-34 (R) approved by the City Council on May 27, 2008, acting through its duly authorized officials.

CITY OF PLANO, TEXAS, a home rule municipal corporation

By: 
Thomas H. Muehlenbeck, City Manager

APPROVED AS TO FORM:



Diane C. Wetherbee, City Attorney

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LIST OF EXHIBITS

EXHIBIT A	Property Legal Description
EXHIBIT B	Design and Concept Plan
EXHIBIT C	DART Right-of-Way Legal Description
EXHIBIT D	Project Completion Budget

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BEING a tract of land situated in the Joseph Klepper Survey, Abstract No. 213, in the City of Plano, Collin County, Texas, and being all of a tract of land described as Lot 1, Block 3 of PLANO JUSTICE CENTER, an addition to the City of Plano, Collin County, Texas, according to the plat thereof recorded under Instrument Number 2003-0077340 of the Land Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod found in the north right-of-way line of 14th Street (a variable width public right-of-way) for the southwest corner of a called 1.4872 acre tract of land described in deed to J & A Family Partners, LTD, recorded in Volume 3888, Page 374 of the Land Records of Collin County, Texas and the southeast corner of the subject tract and the beginning of a curve to the right;

THENCE southwesterly, with the north right-of-way line of 14th Street, with said curve to the right, through a central angle of 16°41'59", having a radius of 370.00 feet, and a chord bearing and distance of South 75°04'29" West, 107.46 feet, an arc distance of 107.84 feet to a 1-inch iron rod found for the end of the curve, same being the southeast corner of a corner clip for the intersection of said 14th Street and Avenue I (a 40-foot wide public right-of-way);

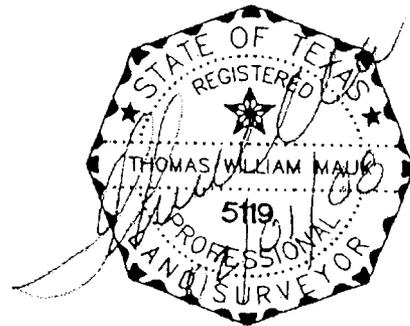
THENCE with said corner clip, North 54°02'32" West, a distance of 27.94 feet to a 1-inch iron rod found for the northwest corner of said corner clip;

THENCE leaving said corner clip and with the east right-of-way line of Avenue I, North 00°14'30" West, a distance of 519.30 feet to a point for the southwest corner of a corner clip for the intersection of said Avenue I and 15th Street;

THENCE with said corner clip, North 44°26'34" East, a distance of 28.44 feet to a point for the northeast corner of said corner clip;

THENCE leaving said corner clip and with the south right-of-way line of 15th Street (a 77-foot wide public right-of-way at this location), North 89°07'38" East, a distance of 104.56 feet to a point in the west line of said 1.4872 acre tract;

THENCE leaving the south right-of-way line of 15th Street and with the common line of said 1.4872 acre tract and the subject tract, South 00°27'07" East, a distance of 564.99 feet to the **POINT OF BEGINNING** and containing 1.5693 acres of land.



LOT 1, BLOCK 3
 PLANO JUSTICE CENTER
 JOSEPH KLEPPER SURVEY,
 ABSTRACT NO. 213
 CITY OF PLANO
 COLLIN COUNTY, TEXAS

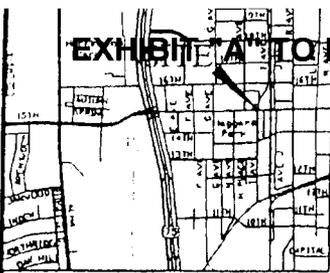
2 OF 2 SHEET	Scale:	1" = 100'
	Designed by:	KFA
	Drawn by:	TW
	Checked by:	TWM
	Date:	JANUARY 31, 2008
	Project No.:	0644101A

12700 Park Central Drive, Suite 1800
 Dallas, Texas 75281
 Tel. No. (972) 770-1300
 Fax No. (972) 238-3820

PRINTED BY: [Name] LAST NAME: [Name]
 NUMBER OF SHEETS: 28 OF 28
 INSTRUMENT NO.: 2003-0077340

EXHIBIT A
 PAGE 1 OF 2

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15th STREET
77-FOOT WIDE PUBLIC RIGHT-OF-WAY

P.K. NAIL FOUND
5/8" IRSC

N 44°26'34" E
28.44'

N 89°07'38" E
104.56'

*JOSEPH KLEPPER SURVEY
ABSTRACT NO. 213*

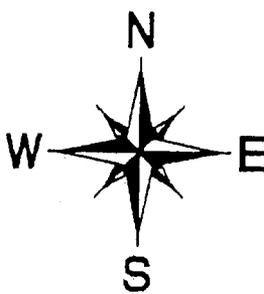
AVENUE I
40-FOOT WIDE PUBLIC RIGHT-OF-WAY

N 00°14'30" W
519.30'

1.5693 ACRES
LOT 1, BLOCK 3
PLANO JUSTICE CENTER
INST. NO. 2003-0077340
L.R.C.C.T.

S 00°27'07" E
564.99'

1.4872 ACRES
J & A FAMILY
PARTNERS, LTD
VOL. 3888, PG. 374
L.R.C.C.T.



VISIBILITY, ACCESS & MAINTENANCE EASEMENT
INST. NO. 2003-0077340
L.R.C.C.T.

N 54°02'32" W
27.94'

14th STREET
VARIABLE WIDTH
PUBLIC RIGHT-OF-WAY

POINT OF BEGINNING

$\Delta=16°41'59"$
 $R=370.00'$
 $L=107.84'$
 $CB=S75°04'29"W$
 $CL=107.46'$

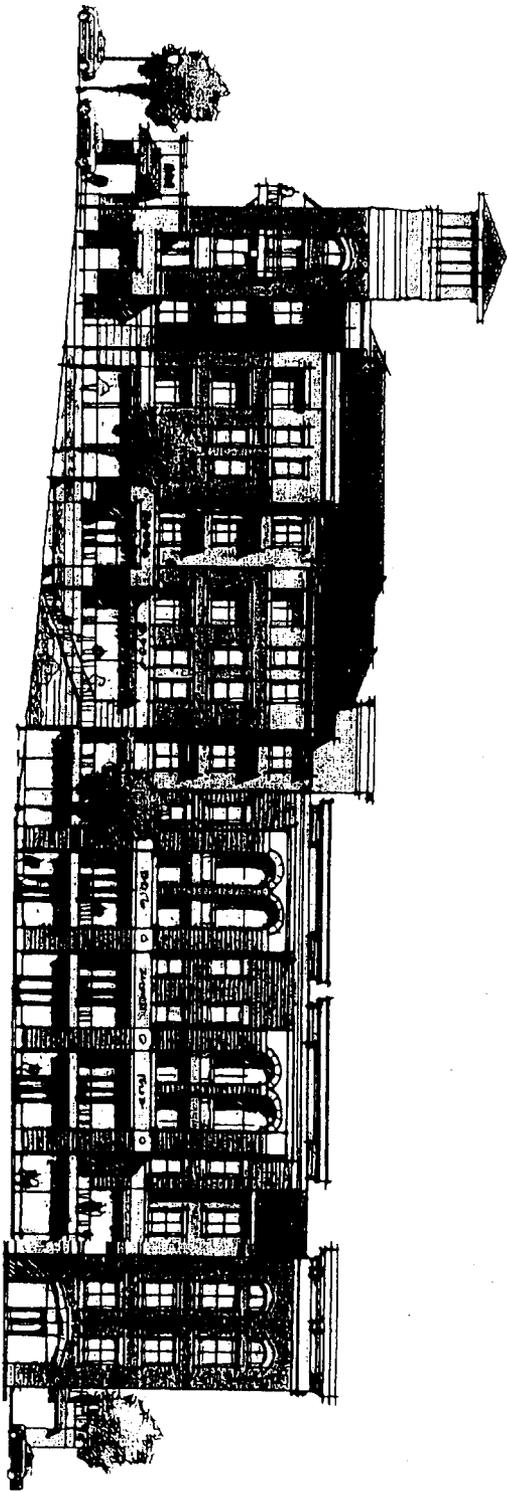
LOT 1, BLOCK 3
PLANO JUSTICE CENTER
JOSEPH KLEPPER SURVEY,
ABSTRACT NO. 213
CITY OF PLANO
COLLIN COUNTY, TEXAS

1 of 2 SHEET	Scale:	1" = 100'
	Designed by:	KHA
	Drawn by:	TJW
	Checked by:	TWM
	Date:	JANUARY 31, 2008
	Project No.:	00940400

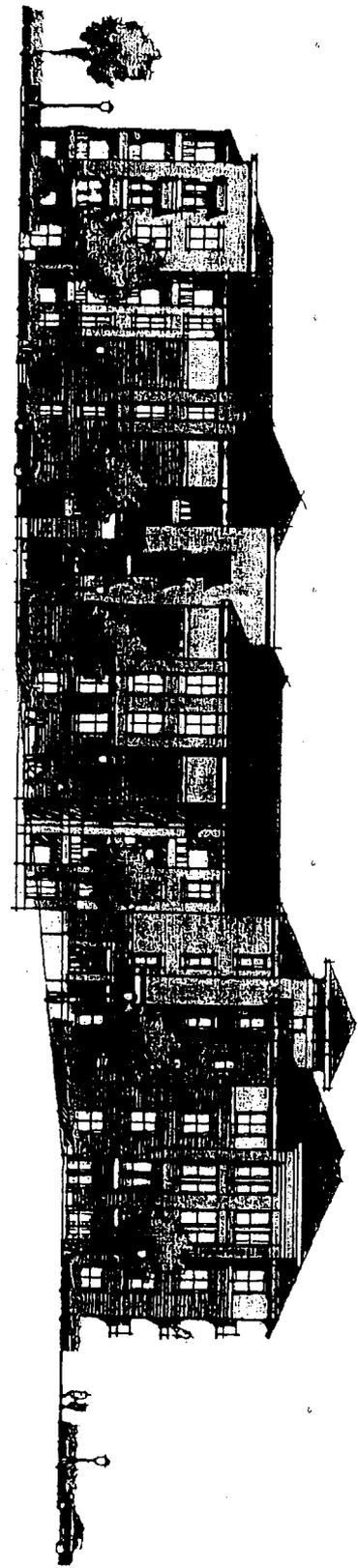
Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75244
Tel. No. (972) 770-1300
Fax No. (972) 250-3600

DATE PLOTTED: 1/31/08
PLOTTER: HP DesignJet 1200C
DWG NAME: 00940400.DWG
USER: TWM

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CONCEPTUAL NORTH ELEVATION

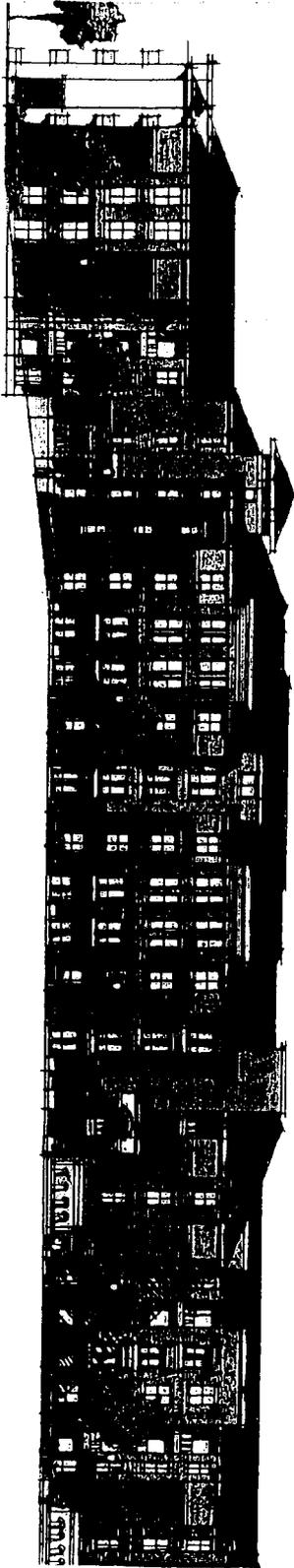


CONCEPTUAL SOUTH ELEVATION

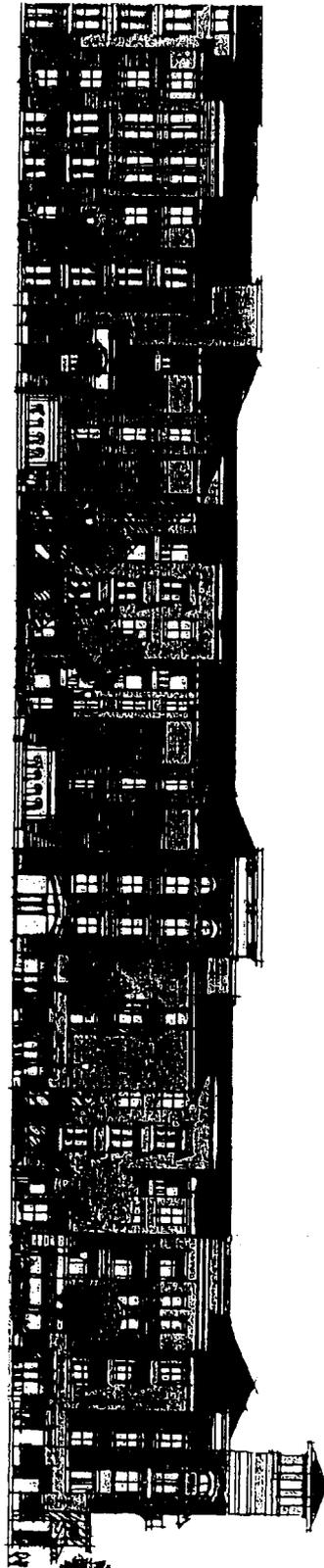
EXHIBIT B
 PAGE 1 OF 4

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CONCEPTUAL EAST ELEVATION

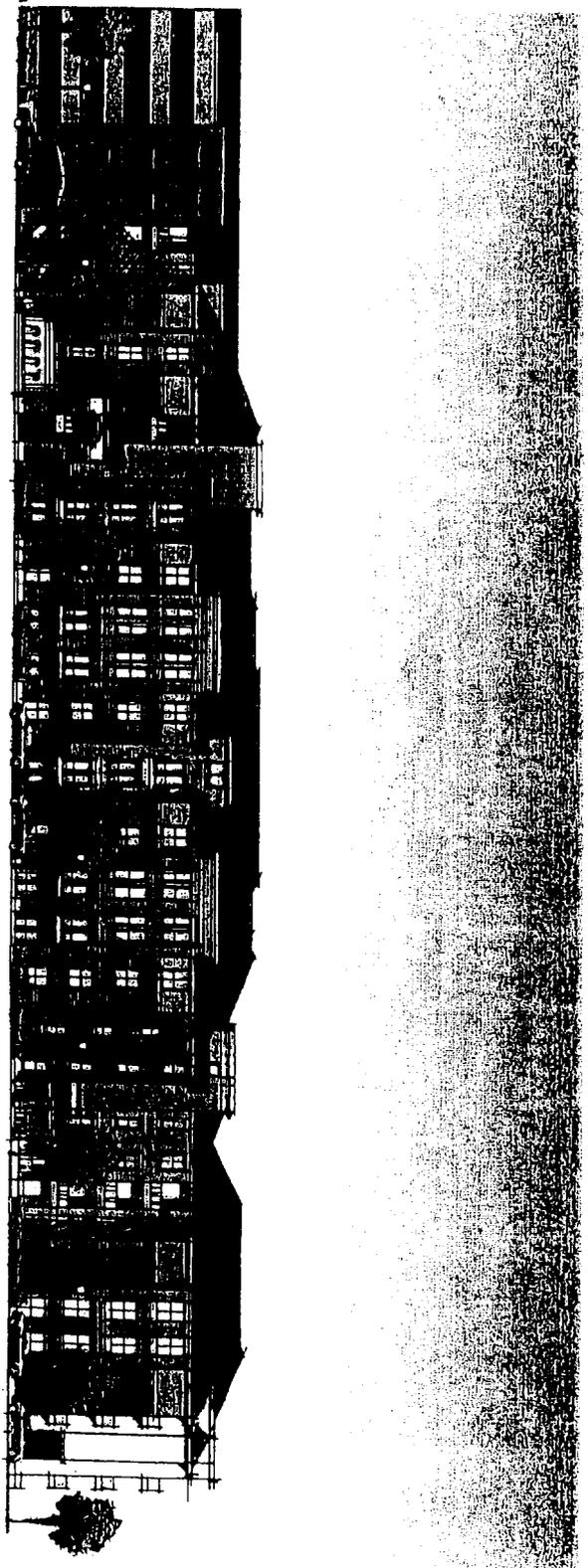
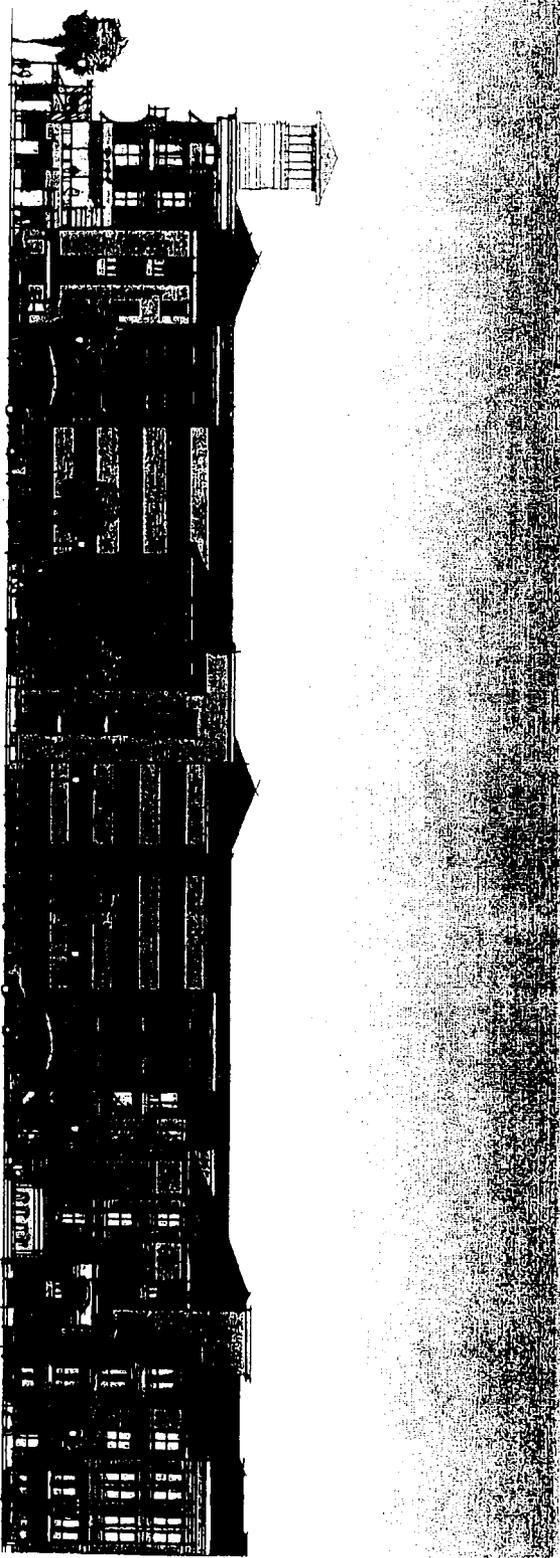


BC
O



U-24

CONCEPTUAL WEST ELEVATION
PLANO, TEXAS

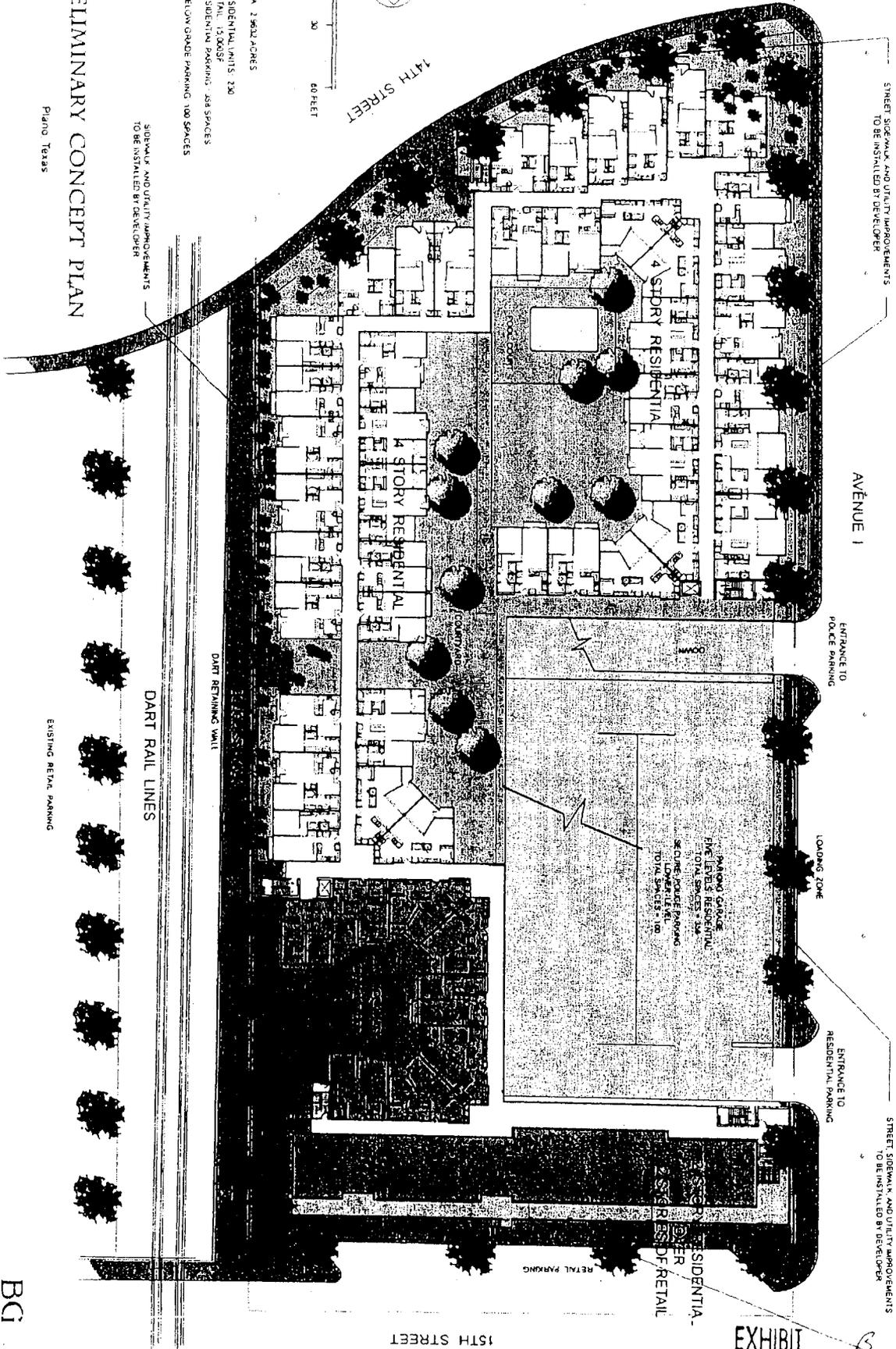


04-07-06



EXHIBIT B
PAGE 3 OF 4

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PRELIMINARY CONCEPT PLAN

PHANO TEXAS

SIDEWALK AND UTILITY IMPROVEMENTS TO BE INSTALLED BY DEVELOPER

AREA 2.500 ACRES
 RESIDENTIAL UNITS 200
 RETAIL 10,000 SQ FT
 RESIDENTIAL PARKING 100 SPACES
 RETAIL BELOW GRADE PARKING 100 SPACES

DART RETAINING WALL

DART RAIL LINES

EXISTING RETN. PARKING

15TH STREET

14TH STREET

AVENUE 1

ENTRANCE TO POLICE PARKING

LOADING ZONE

ENTRANCE TO RESIDENTIAL PARKING

PADING GARAGE
 FIVE LEVELS RESIDENTIAL
 TOTAL SPACES 334
 SCHEME PARKING
 TOTAL SPACES 100

RETAIL
 RESIDENTIAL
 RETAIL PARKING

STREET SIDEWALK AND UTILITY IMPROVEMENTS TO BE INSTALLED BY DEVELOPER

STREET SIDEWALK AND UTILITY IMPROVEMENTS TO BE INSTALLED BY DEVELOPER

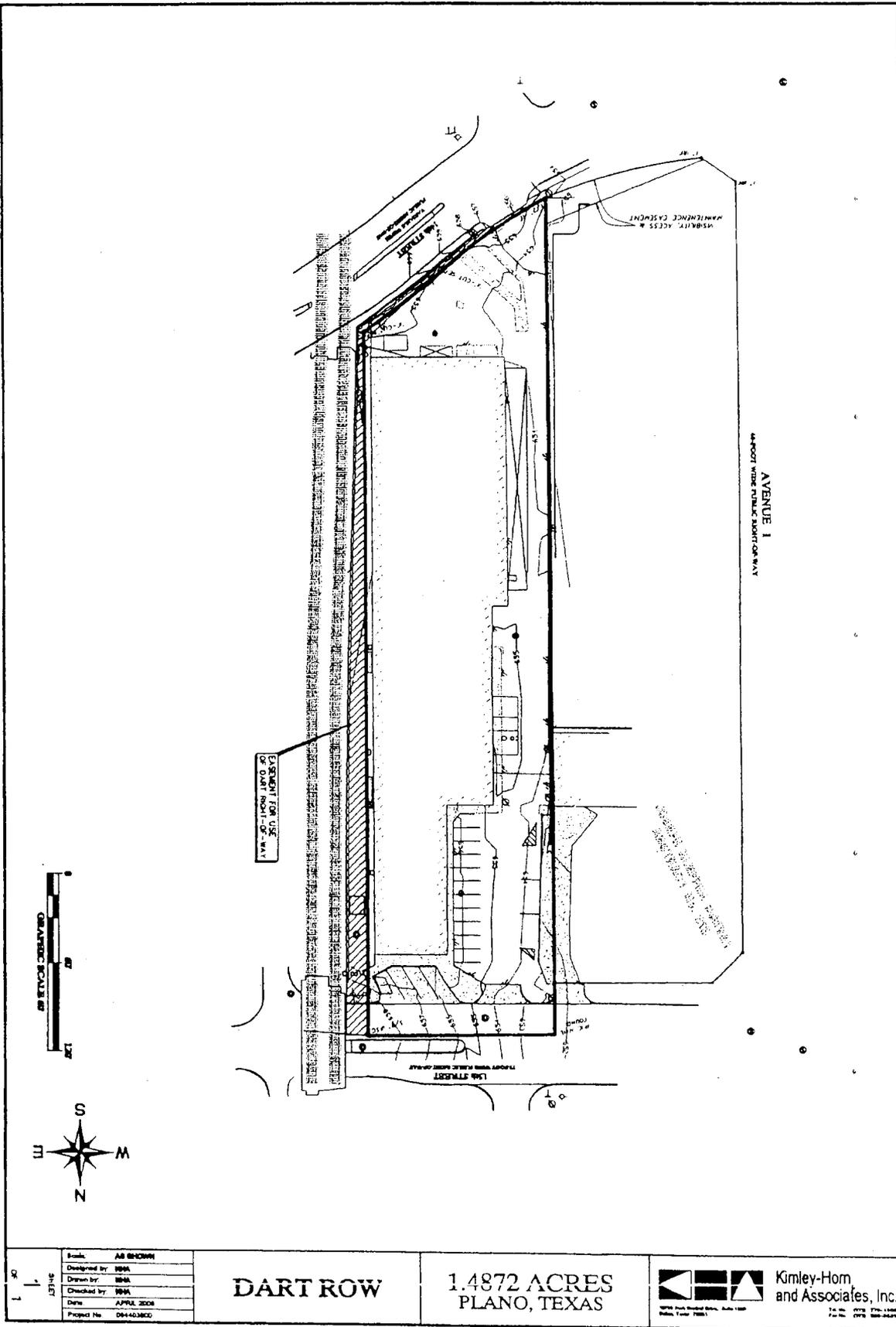
EXHIBIT PAGE 4 OF 4

DATE 05 19 08 JOB # 071132



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File: C:\GML\64403800\Draw\Exhibits\DART Exhibit 20080424.DWG (Layout) 4/24/2008 5:48pm
 3x01



DART ROW

**1.4872 ACRES
 PLANO, TEXAS**



**Kimley-Horn
 and Associates, Inc.**

EXHIBIT C
 PAGE 1 OF 4

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EXHIBIT "A"

**DALLAS AREA RAPID TRANSIT (DART)
RIGHT-OF-WAY EASEMENT
JOSEPH KLEPPER SURVEY, ABSTRACT No. 213
CITY OF PLANO, COLLIN COUNTY, TEXAS**

BEING a tract of land situated in the Joseph Klepper Survey, Abstract No. 213, in the City of Plano, Collin County, Texas, and being part of a tract of land described in deed to Texas Central Railway Company, recorded in Book W, Page 244 of the Deed Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8-inch iron rod w/ "KHA" cap found in the intersection of the westerly line of the beforementioned Texas Central Railway Company tract and the south right-of-way line of 15th Street (a 77-foot wide public right-of-way) for the northeast corner of a called 1.6099 acre tract of land described in deed to J & A Family Partners, Ltd., recorded under Instrument Number 97-0028103 of the Land Records of Collin County, Texas;

THENCE leaving the east line of the 1.6099 acre tract with the extension of the south right-of-way line of 15th Street and across the Texas Central Railway Company tract, North 89°07'36" East, a distance of 13.37 feet to a point for corner;

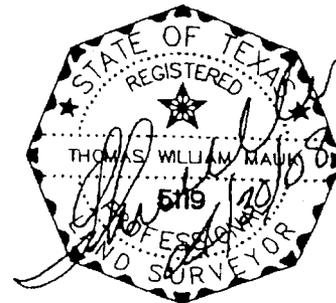
THENCE leaving the extension of the south right-of-way line of 15th Street and continuing across the Texas Central Railway Company tract with the westerly face of an existing retaining wall, the following courses and distances to wit:

- South 00°25'35" East, a distance of 49.37 feet to a point for corner;
- South 00°02'05" East, a distance of 51.98 feet to a point for corner;
- South 00°09'27" West, a distance of 50.52 feet to a point for corner;
- South 00°50'50" West, a distance of 49.77 feet to a point for corner;
- South 00°59'05" West, a distance of 50.33 feet to a point for corner;
- South 01°12'57" West, a distance of 49.78 feet to a point for corner;
- South 01°37'41" West, a distance of 49.50 feet to a point for corner;
- South 01°44'08" West, a distance of 50.56 feet to a point for corner;
- South 01°36'50" West, a distance of 49.97 feet to a point for corner;
- South 01°18'57" West, a distance of 10.80 feet to a point for corner;
- South 00°31'11" West, a distance of 10.69 feet to a point for corner in the extension of the curving north right-of-way line of 14th Street (a variable width public right-of-way), recorded in Volume 5159, Page 2694 of the Deed Records of Collin County, Texas, for the beginning of a non-tangent curve to the left;

THENCE with the curving extension of the north right-of-way line of 14th Street, Southwesterly, with the curve to the left, through a central angle of 00°36'59", having a radius of 435.00 feet, and a chord bearing and distance of South 57°21'25" West, 4.68 feet, an arc distance of 4.68 feet to an "X" cut in concrete found in the east line of the 1.6099 acre tract;

THENCE leaving the north right-of-way line of 14th Street with the common line of the 1.6099 acre tract and the Texas Central Railway Company tract, North 00°16'57" West, a distance of 475.51 feet to the **POINT OF BEGINNING** and containing 0.1112 acres (4868 square feet) of land.

Bearing system based upon the Texas Coordinate System of 1983 North Central Texas Zone (grid Azimuth).

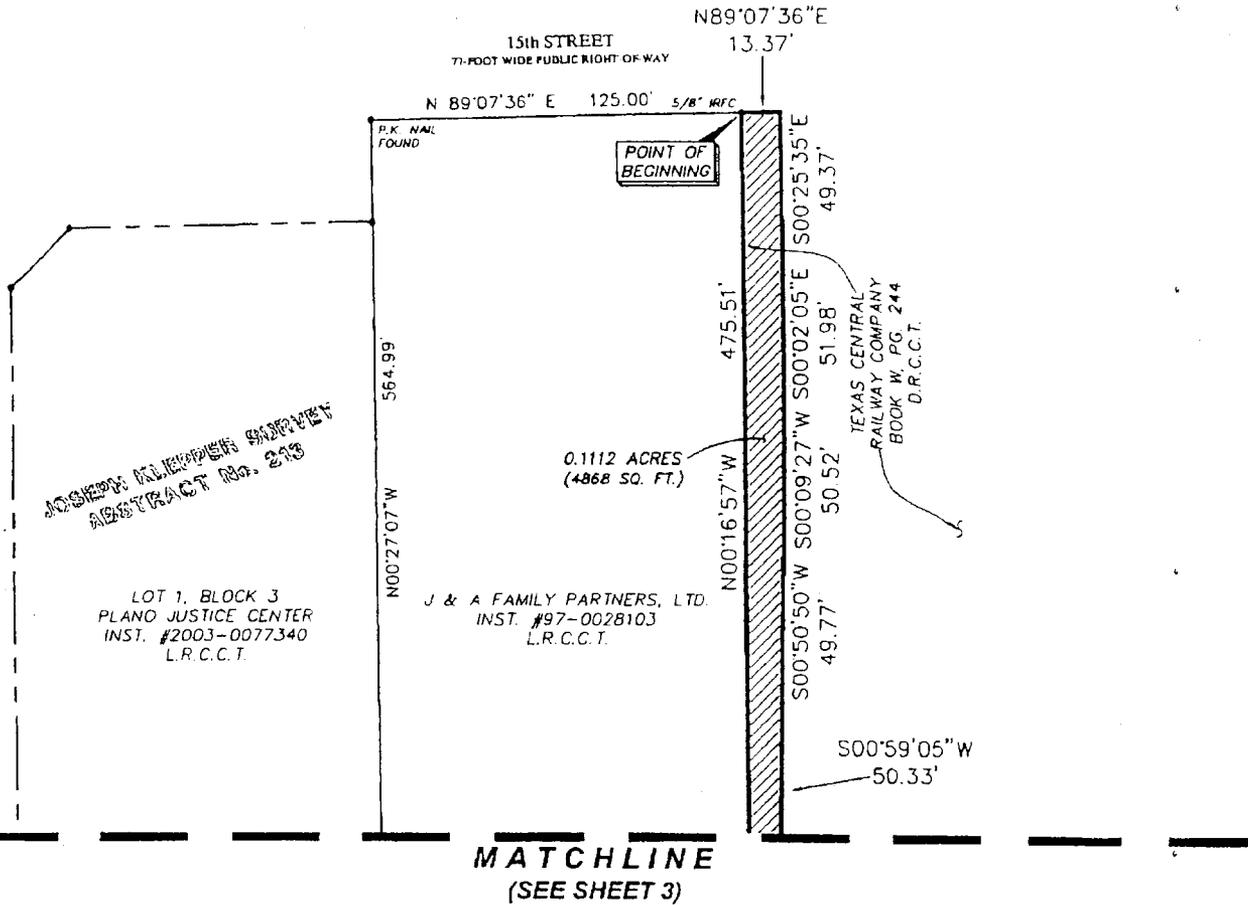


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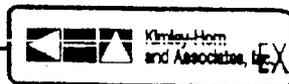
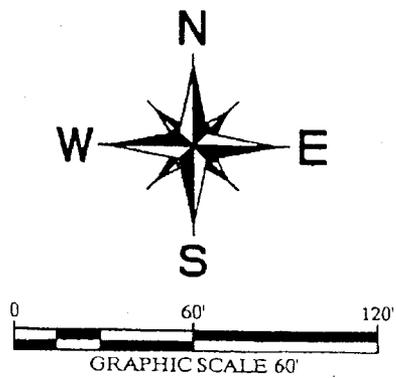
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EXHIBIT "B"

DALLAS AREA RAPID TRANSIT (DART)
RIGHT-OF-WAY EASEMENT
JOSEPH KLEPPER SURVEY, ABSTRACT No. 213
CITY OF PLANO, COLLIN COUNTY, TEXAS



LEGEND:
 PG. = PAGE
 INST. = INSTRUMENT
 L.R.C.C.T. = LAND RECORDS OF COLLIN COUNTY, TEXAS
 D.R.C.C.T. = DEED RECORDS OF COLLIN COUNTY, TEXAS



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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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:	12/22/08		Reviewed by Legal <i>JS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering		<i>[Signature]</i>	Date	<i>12.11.08</i>
Department Head	Alan Upchurch		Executive Director	<i>[Signature]</i>	<i>12/12/08</i>
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i>	<i>12/12/08</i>
Agenda Coordinator (include phone #):		Irene Pegues Ext. 7198 <i>[Signature]</i>			

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 A LICENSING AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS; PROVIDING TERMS AND CONDITIONS FOR THE PURCHASE OF DIGITAL AERIAL PHOTOGRAPHY IN THE AMOUNT OF \$8,651; AUTHORIZING EXECUTION OF THE LICENSE AGREEMENT 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: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		30,334	0	30,334
Encumbered/Expended Amount		-7,056	0	-7,056
This Item		-8,651	0	-8,651
BALANCE		14,627	0	14,627

FUND(S): WATER & SEWER FUND

COMMENTS: Funds are included in the 2008-09 Water & Sewer Fund. This interlocal, in the amount of \$8,651, will leave a current year balance of \$14,627 for other contractual professional services.

STRATEGIC PLAN GOAL: Interlocal agreements for aerial photography relate to the City's Goal of Service Excellence.

SUMMARY OF ITEM

A license agreement between the North Central Council of Governments (NCTCOG) and the City of Plano where NCTCOG will provide 2009 digital aerial photography for use by the City of Plano for an amount not to exceed \$8,651.

List of Supporting Documents:

Resolution
License Agreement

Other Departments, Boards, Commissions or Agencies

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING A LICENSING AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS; PROVIDING TERMS AND CONDITIONS FOR THE PURCHASE OF DIGITAL AERIAL PHOTOGRAPHY IN THE AMOUNT OF \$8,651; AUTHORIZING EXECUTION OF THE LICENSE AGREEMENT BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the North Central Texas Council of Governments (hereinafter called "NCTCOG") has an interest in assisting local governments in providing information for planning, engineering, public safety, and municipal management; and;

WHEREAS, the City of Plano (hereinafter called "City") wishes to update its geographic information system database to include the most current digital aerial photography available through NCTCOG; and

WHEREAS, the City has determined that the acquisition of the digital aerial photography provides a valuable resource for a multitude of uses throughout the City and thus serves a valid public purpose; and

WHEREAS, the City has been presented a proposed License Agreement by and between City of Plano and NCTCOG in the amount of **EIGHT THOUSAND, SIX HUNDRED FIFTY ONE AND 00/100 DOLLARS (\$8,651)**, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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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 be become effective from and after its passage.

DULY PASSED AND APPROVED THIS THE 22ND DAY OF DECEMBER, 2008.

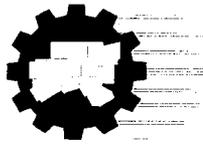
Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



North Central Texas Council of Governments

**AGREEMENT BETWEEN
THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS AND
CITY OF PLANO**

WHEREAS, the North Central Texas Council of Governments (NCTCOG) has an interest in assisting local governments in providing information for planning, engineering, public safety, and municipal management;

WHEREAS, the **CITY OF PLANO** (Entity), wishes to have its map-based information system include the 2009 digital aerial photography, 2007 elevation contours, and/or 2007 planimetrics and has determined that the creation of this resource provides information for a multitude of uses throughout the Entity and thus serves a valid public purpose;

WHEREAS, the Entity requires this information to accomplish this purpose and has determined that NCTCOG can fulfill this need, and NCTCOG is willing to reciprocate; and

NOW THEREFORE, the parties, Entity and NCTCOG, agree to the following terms and conditions regarding the creation of digital aerial photography, elevation contours, and/or planimetrics.

I. LICENSE AGREEMENT

The personnel specified in Appendix A will serve as points of contact for their respective organizations. The following provisions are a license agreement between NCTCOG and the Entity with respect to data products that are identified in section II. NCTCOG is the owner of and has the right to grant a license to use the said data products free of all liens, claims, encumbrances, and other restrictions and without otherwise violating any rights of any third party, including any patent, copyright, trade secret, or other proprietary rights.

The NCTCOG data product may be distributed to the Entity on CD-ROM, DVD, or portable hard drive. The Entity will need to install and operate the NCTCOG data product on properly configured and compatible computer equipment running third party system and application software supplied by the Entity. The Entity will also need to insure that any required data not supplied by NCTCOG is in proper format and no other software or equipment having an adverse impact on the NCTCOG product is present.

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A. Licensed Operating Environment

- (1) Operating Equipment. In exchange for monetary consideration listed in section III, the Entity will be granted an exclusive operation license to install, store, load, execute, and display (collectively, "Use") the NCTCOG data product on as many local area networks and/or end-user workstations as the Entity reasonably needs in support of its own operation (the "Licensed Operating Environment"). Any software components of the NCTCOG data product are provided in machine-readable executable format only.
- (2) Authorized Users. Unless otherwise agreed in writing, the NCTCOG data product will be used by Entity officials, officers, employees, and authorized contractors only ("Authorized Users"). A contractor shall be deemed authorized to Use the data products by the Entity or NCTCOG if such Use is incidental to a larger relationship between the contractor and the Entity, and is used for purposes no greater than reasonably needed to achieve the objectives of an actual project undertaken in connection with that relationship. The contractor must agree in writing to be bound by the provisions of this Agreement.

B. Permitted Uses

- (1) Use of NCTCOG Products. The Entity's Authorized Users may Use the NCTCOG data product in the Licensed Operating Environment for any use that furthers the Entity's internal operations or in furtherance of the Entity's mission.
- (2) Use of Generated Output or Other Data. Except as stated, the Entity will own all original works of authorship it may independently create. Digital output from the Entity's Use of the NCTCOG Data Product may be resized as desired and printed on black and white, color printers, or map plotters. Such printed hardcopies may be distributed to the Entity's officers, employees, citizens, contractors, or other persons in the regular course of business for their internal use or in connection with an actual transaction. Such printed output may be further copied, photographed, or reproduced digitally on the Internet. The Entity may charge a fee for such hardcopy printouts that exceed the actual direct cost of production. Without the prior written consent of NCTCOG, the Entity may not otherwise provide copied, digitized, reproduced, transmitted or disseminated, in whole or in part, any of the original digital data product in any form.

II. OBLIGATIONS

Upon delivery of the products, NCTCOG shall invoice the Entity for the stipulated amounts listed below.

Product	Amount
2009 Aerial Photography	8650.656
2007 Elevation Contours	0
Planimetrics (based on 2007 aerials)	0
Total	8650.656

You have agreed to the payment terms listed below and have secured the total amount with purchase order (PO) number _____ (Please enter a PO number if blank).

Payment Years

FY 2009

Invoice Dates

Delivery date

If your payment is spread across two fiscal years you will be invoiced 50% of the total amount each year. Upon receipt of the first invoice, the Entity had thirty (30) days to review the products and pay said invoice or the remaining amount owed to the North Central Texas Council of Governments (NCTCOG).

III. TERMINATION

The parties agree that the Entity may terminate this Agreement by providing thirty (30) days written notice to NCTCOG. Such notice shall be given to NCTCOG at the address set forth under its signature below. In the event of such termination, NCTCOG shall reimburse to the Entity pro-ratable portion of the contracted amount for services rendered. The Entity would also reimburse NCTCOG for staff time billed to the project up to termination.

11/11/2008

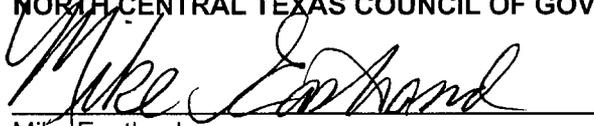
V-6

IV. AFFIDAVIT OF PROHIBITED INTEREST

NCTCOG acknowledges and represents it is aware of the laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render this Agreement null and void.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

 11/11/08
Date

Mike Eastland
Executive Director
616 Six Flags Drive, Suite 200
Arlington, Texas 76011

CITY OF PLANO

Signature Date

Name: _____

Title: _____

Street Address: _____

City, State, Zip: _____

APPROVED AS TO FORM:

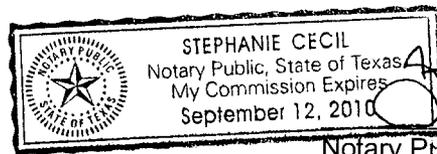


ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF TARRANT)

BEFORE ME, the undersigned authority, on this day personally appeared Mike Eastland known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the above for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this the 11 day of November, 2008.



Stephanie Cecil

Notary Public in and for the State of Texas

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF COLLIN)

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of the _____ the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this the _____ day of _____, 20____.

Notary Public in and for the State of Texas

V-8 11/11/2008

APPENDIX A**NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS**

	MAIN CONTACT		ADDITIONAL CONTACT	
Name:	Shelley Stenoien		Mick Maguire	
Title:	Senior Information Analyst		RIS Program Manager	
Department	Research and Information Services		Research and Information Services	
Organization:	NCTCOG		NCTCOG	
Street Address:	616 Six Flags Drive, Suite 200		616 Six Flags Drive, Suite 200	
City, State, Zip	Arlington, Texas 76011		Arlington, Texas 76011	
Phone/Fax:	(817) 695-9156	(817) 640-4428	(817) 704-2519	(817) 640-4428
E-mail:	sbroyles@nctcog.org		mmaguire@nctcog.org	



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	12/22/08	Reviewed by Legal <i>PM</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan Wpchurch	Executive Director	<i>[Signature]</i>	<i>12/15/08</i>
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	<i>12/16/08</i>
Agenda Coordinator (include phone #):		I. Pegues, ext. 7152		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A resolution of the City Council of the City of Plano, Texas, repealing resolution 2005-10-24(R); adopting new criteria and procedures for the Safe Streets Program (SSP), to provide for the Planning & Zoning Commission to assume the responsibilities of the Transportation Advisory Committee.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
On October 31, 2008, the Transportation Advisory Committee (TAC) was dissolved through the annual City Council Sunset Committee Review process. The Safe Streets Program (SSP), founded on City Resolution 2001-2-15(R), required the TAC as an independent review committee to assist with appeals on decisions made by the Transportation Engineering Division. After review of remaining committees and their assigned duties, staff determined that the Planning & Zoning Commission is best suited to absorb the independent review/advisory responsibilities of the SSP. The attached agenda item repeals City Resolution 2005-10-24(R) and recommends that the duties formerly delegated to the Transportation Advisory Committee for the SSP be assumed by the Planning & Zoning Commission				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Safe Streets Program (SSP) Procedure				

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, REPEALING RESOLUTION 2005-10-24(R); ADOPTING NEW CRITERIA AND PROCEDURES FOR THE SAFE STREETS PROGRAM (SSP), TO PROVIDE FOR THE PLANNING & ZONING COMMISSION TO ASSUME THE RESPONSIBILITIES OF THE TRANSPORTATION ADVISORY COMMITTEE.

WHEREAS, on February 12, 2001, the City Council of the City of Plano, Texas, adopted Resolution No. 2001-2-15(R) creating the Safe Streets Program ("SSP") implementing the criteria and procedures for the installation and removal of traffic management devices on residential and collector streets within the City of Plano, Texas; and

WHEREAS, after further review by the City Council and the Transportation Advisory Committee, the SSP adopted by Resolution No. 2001-2-15(R) was revised and amended by Resolution No. 2001-8-18(R); and

WHEREAS, the SSP was most recently revised and amended by Resolution No. 2005-10-24(R); and

WHEREAS, the City Council adopted Resolution No. 2008-9-14 repealing the ordinance establishing the Transportation Advisory Committee; and

WHEREAS, pursuant to further study and input from the Transportation Engineering staff, Planning & Zoning Commission, and the public, staff is recommending that the duties formerly delegated to the Transportation and Advisory Committee for the SSP be assumed by the Planning & Zoning Commission; and

WHEREAS, the City Council has been presented a revised document entitled Safe Streets Program Procedure ("SSP Procedure") incorporating the aforementioned recommendation, a substantial copy of which is attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, upon full review and consideration thereof and all matters attendant and related thereto, the City Council is of the opinion that the SSP Procedure should be approved and adopted.

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

Section I. Resolution No. 2005-10-24(R) adopted by the City Council on October 24, 2005, is hereby repealed in its entirety.

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Section II. The revised Safe Streets Program Procedure ("SSP Procedure") attached hereto as Exhibit "A" 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, is hereby in all things approved.

Section III. This Resolution shall become effective immediately upon its passage and the attached Procedure shall be effective for all applications filed thereafter.

PASSED AND APPROVED THIS THE 22ND DAY OF DECEMBER, 2008.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

SAFE STREETS PROGRAM (SSP) PROCEDURE

The Safe Streets Program (SSP) Procedure is designed to address concerns about speeding, cut-through traffic, overall traffic volume, or other safety concerns on residential streets. There are three primary types of actions included in the program: evaluation and installation of traffic management devices, substitution of traffic management devices, and removal of traffic management devices.

I. Evaluation and Installation of Traffic Management Devices

Only residential (Type G) streets and residential collector (Type F) streets, (as defined on the City's Thoroughfare Plan) with a 30 miles per hour speed limit and only one travel lane in each direction of travel are eligible for consideration for the installation of traffic management devices. The following process is used when considering installation of traffic management devices on residential or residential collector streets.

A. Process Initiation

1. To initiate the process, a resident, hereby known as the Sponsor, submits a written request to the Transportation Engineering Division (TED) to consider the installation of traffic management devices on a specified street or streets where speed, volume or other factors raise traffic safety concerns.
2. The Sponsor shall live within the Notice Area. (See Section VIII for Sponsor and Notice Area definitions.) Although the formal Notice Area is not defined until later in the process, the TED shall make a preliminary review to verify that the Sponsor lives within the area.
3. The TED evaluates the request and defines the Target Area where safety concerns are present.

B. TED Evaluation

The TED performs a preliminary evaluation to determine if traffic safety issues exist. If traffic safety issues are determined to exist, the TED performs an evaluative traffic study for seven (7) consecutive days in the Target Area to determine traffic volumes and speeds.

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EXHIBIT "A"

1. Minimum Traffic Volume and Speed Criteria

In order to participate in the SSP, speed and volume criteria must be met. An average 85th percentile speed shall be calculated by averaging the five highest daily 85th percentile traffic speeds from the results of monitoring on the Target Street during the evaluative traffic study. An average traffic volume shall be calculated by averaging the five highest daily, two-way traffic volumes from the results of monitoring on the Target Street during the evaluative traffic study. The average speed and average volume shall meet the following minimum speed and volume criteria in order to qualify for participation in the Safe Streets Program:

a. Average Traffic Volume

The average two-way traffic volume shall exceed

- 2,000 vehicles per day on residential collector streets
- 500 vehicles per day on residential streets

and

b. Average 85th Percentile Traffic Speed

The average 85th percentile traffic speed shall exceed the authorized speed limit by at least

- 5 MPH for residential collector streets with households facing street
- 7 MPH for residential collector streets without households facing street
- 5 MPH for residential streets

2. Traffic Volume and/or Speed Criteria Waiver

The Traffic Engineer may request the Planning & Zoning Commission (P&Z) to determine whether the minimum volume and/or speed criteria should be waived if the circumstances, as a whole, warrant further study for participation in the SSP. The presence of a school, church, hospital, recreation center, park, or senior center facility in the Target Area is an example of a circumstance that may warrant a waiver of one or both of the minimum criteria in B.1 above.

EXHIBIT "A"

3. Waiting Period for Future Request

If the TED determines that a request does not qualify for the consideration of traffic management calming devices, the TED shall not re-study the area until at least one hundred eighty (180) calendar days after the end date of the evaluative study.

C. Petition Process for Participation in the SSP

1. If the traffic volume and speed criteria are met or a waiver is granted by the P&Z, the TED shall provide a petition for the Sponsor to circulate in the Notice Area. The Sponsor must obtain the signature of residents representing at least 20% of the number of households in the Notice Area before participation in the SSP shall be considered. Only one signature per household shall be counted towards the necessary percentage.
2. The petition must be returned to the TED no later than forty-five (45) calendar days after the petition is made available to the Sponsor by the TED. If the 45th day falls on a weekend or holiday, the petition shall be due on the next business day. The due date shall be noted on the petition.
3. If the petition is not returned by the due date or does not contain the required number of signatures, the petition is considered to have failed, the SSP process is halted, and the area is subject to the required waiting period.

D. Increased Police Enforcement Efforts

If the traffic volume and speed criteria are met or a waiver is granted by the P&Z and a successful petition for participation is submitted, the TED requests the Police Department to begin increased enforcement efforts in the Target Area, based on available resources, for a period of sixty (60) calendar days.

E. Follow-up Traffic Study

At the end of the increased police enforcement period, the TED conducts a follow-up traffic study to determine if traffic safety issues have been alleviated.

If traffic safety issues are alleviated, the Sponsor is informed in writing of the actions taken to address the concern(s) and participation in the SSP ceases. The area is not eligible to initiate the SSP process again until at least one (1) year after the completion of the follow-up traffic study.

If traffic safety issues still exist, participation in the SSP process continues with the development of a Temporary Traffic Management Plan.

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F. Temporary Traffic Management Plan

1. Plan Components

The TED works with the Sponsor to develop a Temporary Traffic Management Plan, which may include:

- a. Placing informational signs or sending out informational fliers on the proposed Target Street(s) that provide a hotline number for residents to report traffic safety offenses and designate the street as a Safe Streets Program target. The hotline number shall be listed through the Police Department. Hotline calls from the neighborhood that provide identifying license plate numbers, location, and time of the alleged violation, shall result in letters sent to registered owners of the vehicle; and/or
- b. The installation of reflectorized pavement markers, pavement striping, traffic safety signing, distribution of educational materials, and special studies on the traffic safety impact of temporary traffic management devices (e.g., chicanes); and/or
- c. The temporary installation of traffic management devices including, but not limited to, speed cushions, chicanes, traffic diverters, speed tables, traffic circles, and lane narrowing islands.

Speed humps no higher than 3 inches in height may be installed on residential streets.

Speed humps may not be installed on residential collector streets.

Speed tables at least 22 feet in length and no higher than 3 inches may be installed on residential collector streets.

2. Continued Increased Enforcement

As resources permit, the Police Department shall continue increased enforcement efforts in the Target Area to identify trends, times, and patterns from hotline responses and other data provided by the TED.

3. Designation of Notice Area

The Notice Area is described in Section VIII. The TED shall prepare a list of household addresses in the Notice Area. In the case of a multi-family facility (greater than four [4] dwelling units per building), a survey package shall only be sent to the manager's office of the complex.

EXHIBIT "A"

4. Temporary Traffic Management Plan Approval Survey
 - a. When the traffic management plan has been developed, a survey package shall be mailed, via regular first class mail, to each of the household addresses in the Notice Area. The survey package shall include information describing the plan, supporting materials (such as maps, typical design drawings, etc.), and a survey response card for return to the City.
 - b. Each household address is permitted one approval/disapproval vote in a survey.
 - c. The households in the Notice Area shall have thirty (30) calendar days from the date of the letter to return the survey response cards to the City. In order to be counted in the survey response, the survey response cards shall be either postmarked by the due date if mailed or, if delivered, received by the TED before 5:00 p.m. on the due date or by 5:00 p.m. on the next business day if the due date falls on a weekend or holiday. Five (5) business days following the due date shall be permitted for mailed responses to be received by the TED.
 - d. A reminder package with a second survey response card shall be sent out to household addresses in the Notice Area for which no survey response is received within fifteen (15) calendar days from the date of the letter. (If the 15th day falls on a weekend or holiday, the next business day shall be used.) The reminder survey response card is due on the same date as the original survey response card. No additional time is granted for a response.
 - e. Only one survey card from a Notice Area household address shall be counted. In the event both an initial and reminder card are received within the specified time period from the same address, the following shall apply:
 - If both cards have the same response, a single response shall be tallied.
 - If the cards have different responses, the card with the later postmark, if mailed, or latest received date, if delivered, shall be tallied.
 - f. Only original survey cards shall be counted in a survey tally. Photocopies or reproductions are not included in the response tally.

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EXHIBIT "A"

5. Required Survey Responses

- a. Responses must be received from more than 50% of the household addresses in the Notice Area for the process to proceed. If more than 50% of Notice Area households respond to the survey, and, of these respondents, at least 55% approve the traffic management plan, the Notice Area residents are considered to be in support of the plan and the survey is considered to be successful. (Note: The use of the term successful, succeeds, or succeed to describe a survey result at other places in this document shall refer to surveys in which the return and approve rates listed in this paragraph are met unless other values are noted.)
- b. If a response is received from 50% or less of the household addresses in the Notice Area or, if less than 55% of the responses approve even if responses were received from more than 50% of the addresses in the Notice Area, the Notice Area residents are considered to be in opposition of the plan and the survey is considered to have failed. In this case, the SSP process is halted, a letter outlining the survey results and request status is sent to the Sponsor, and the area is subject to the waiting period. (Note: The use of the term failed or fails to describe a survey result at other places in this document shall refer to surveys in which the return and approve rates listed in this paragraph exist unless other values are noted.)

6. Required Waiting Period

If the traffic management plan survey fails, the area may not be restudied for a period of at least one (1) year from the due date of the survey. A restudy request shall start at the beginning (Section I.A.) of the SSP process.

7. Appeal of Traffic Management Plan

If a simple majority of the households in the Notice Area disagree with the TED's proposed traffic management plan, they may appeal that decision to the P&Z.

a. Request Submission

To appeal, a resident of the Notice Area (as used for the distribution of the traffic management plan) must file a written notice with the TED within fifteen (15) calendar days of the date of the traffic management plan letter. The notice shall include the name, address, and phone number of the person making the appeal, the basis for the appeal, and the action requested. This appeal is limited to

EXHIBIT "A"

challenging the minimum traffic volume or speed criteria or type of device(s) proposed in the Temporary Traffic Management Plan.

b. Petition Process

1. The TED shall prepare a petition for the requestor to circulate in the Notice Area to verify area support. The requestor must obtain the signature of residents representing more than 50% of the number of households in the Notice Area before an appeal shall be considered. Only one signature per household shall be counted towards the necessary percentage.
2. The petition must be returned to the TED no later than thirty (30) calendar days after the petition is made available to the requestor by TED. If the 30th day falls on a weekend or holiday, the petition shall be due on the next business day. The due date shall be noted on the petition.

c. Area Resident Notification

1. If the petition is returned by the due date and the required number of signatures is included, the TED shall, within ten (10) business days of the receipt of the petition, send a written notification of the appeal to all households within the Notice Area.
2. The appeal shall be scheduled for consideration at the next available P&Z meeting.
3. The due date of the survey cards for the traffic management plan being appealed is typically before the appeal can be scheduled and heard by the P&Z. The appeal process does not terminate or suspend the survey process. The survey cards for the traffic management plan shall continue to be due for return during the appeal process. The results of the survey shall be tallied but no action shall be taken until after the P&Z rules on the appeal.
4. If the petition is not returned by the due date or does not contain the required number of signatures, the petition is considered to have failed and the appeal process is terminated. The results of the traffic management plan survey are tallied to determine future action.

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EXHIBIT "A"

- d. Appeal Ruling by P&Z
 1. If the P&Z approves the appeal, the traffic management plan process is halted and action, as determined appropriate by the P&Z and the TED, shall be taken.
 2. If the appeal is denied, the results of the survey done as part of the traffic management plan are used to determine future action. If the survey was successful, the traffic management plan proceeds with the installation of the devices. If the survey failed, participation in the SSP is halted. Future participation is subject to the required waiting period for the traffic management plan.

8. Temporary Device Installation and Test Period

- a. Following a successful survey for a Temporary Traffic Management Plan, the City shall schedule the devices for installation.
- b. The temporary devices included in the Temporary Traffic Management Plan shall remain in place for a period of at least one hundred eighty (180) but not more than two hundred forty (240) calendar days following installation. Whenever feasible, devices should remain in place until the permanent plan survey process is completed.
- c. During this period, the TED shall hold a meeting for residents to comment on the temporary devices and to discuss options for developing the Permanent Traffic Management Plan.
- d. Additional plan modifications, effectiveness studies, and neighborhood reporting may occur during the temporary period at the discretion of the TED.
- e. At the end of the temporary period, the TED conducts a follow up traffic study to evaluate traffic volumes and speeds.

G. Permanent Traffic Management Plan:

While the Temporary Traffic Management Plan is in place, the TED works with the Sponsor to develop a Permanent Traffic Management Plan.

A Permanent Traffic Management Plan may not include speed humps on residential collector streets. Speed humps no higher than 3 inches in height may be installed on residential streets. Speed tables at least 22 feet in length and no higher than 3 inches may be installed on residential collector streets.

EXHIBIT "A"

1. Traffic Management Plan Approval Survey

When the Permanent Traffic Management Plan has been developed, the same survey process used for the Temporary Traffic Management Plan shall be followed. (See Section I.F.4.)

2. Required Survey Responses

If the survey is successful (more than 50% of Notice Area households respond to the survey, and, of these respondents, at least 55% approve the Permanent Traffic Management Plan), the City shall schedule the devices for installation.

3. Required Waiting Period

If the Permanent Traffic Management Plan survey fails, the area shall not be restudied for a period of at least one (1) year from the due date of the survey and shall restart at the beginning (Section I.A.) of the SSP process.

4. Appeal of Permanent Traffic Management Plan:

If a simple majority of the households whose property is located in the Notice Area disagree with the TED's proposed Permanent Traffic Management Plan, they may appeal that decision to the P&Z. The appeal process is the same as that described in Section I.F.7. for the appeal of a Temporary Traffic Management Plan.

II. Substitution of Traffic Management Devices Process

The following process addresses cases where the substitution of a different type of permanent traffic management device is desired in place of one or more existing permanent traffic management devices.

A. Eligible Devices

1. Any permanent traffic management device shall be in place for at least one year before it is eligible for consideration under the Substitution of Traffic Management Devices Process. The substitution process does not apply to temporary traffic management devices.
2. Only traffic management devices approved by the TED may be substituted for existing devices. Speed humps no higher than 3 inches in height may be installed on residential streets. Speed humps may not be installed on residential collector streets. Speed tables at least 22 feet in length and no higher than 3 inches may be installed on residential collector streets.

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EXHIBIT "A"

B. Substitution Request Submission

1. To initiate a substitution request, a resident, hereby known as the Sponsor, submits a written request to the Transportation Engineering Division (TED) to consider the substitution of one or more existing permanent traffic management devices. The request shall include the name, address, and phone number of the Sponsor and a description of the desired substitution.
2. The Sponsor shall live in the Notice Area. The Notice Area, as defined in the Section VIII, shall be used for any traffic management device substitution request regardless of when the device was installed.
3. The TED shall prepare a list of household addresses in the Notice Area.

C. Substitution Petition Process

1. The TED shall provide a petition for the Sponsor to circulate in the Notice Area. The Sponsor must obtain the signature of residents representing at least 10% of the number of households in the Notice Area before substitution shall be considered. Only one signature per household shall be counted towards the necessary percentage.
2. The petition must be returned to the TED no later than forty-five (45) calendar days after the petition is made available to the Sponsor by the TED. If the 45th day falls on a weekend or holiday, the petition shall be due on the next business day. The due date shall be noted on the petition.
3. If the petition is not returned by the due date or does not contain the required number of signatures, the petition is considered to have failed, the substitution process is halted, and the area is subject to the required waiting period.

D. Substitution Survey Process

If the petition is returned by the due date and the required number of signatures is included, the TED shall prepare a Substitute Traffic Management Plan. When the traffic management plan has been developed, a survey package shall be mailed to the household addresses in the Notice Area using the survey process described in Section I.F.4. This is the same survey process as used for the Temporary and Permanent Traffic Management Plans.

EXHIBIT "A"

E. Required Substitution Survey Responses

1. Responses must be received from more than 50% of the household addresses in the Notice Area for the process to proceed. If more than 50% of Notice Area households respond to the survey, and, of these respondents, at least 55% approve of the substitution request, the survey is considered to be successful.
2. If a response is received from 50% or less of the household addresses in the Notice Area or, if less than 55% of the responses approve even if responses were received from more than 50% of the household addresses in the Notice Area, the survey is considered to have failed, the substitution process is halted, and the area is subject to the required waiting period.
3. If the survey is successful, the existing devices shall be removed and substitute traffic management devices shall be installed according to the approved Substitute Traffic Management Plan. Once installed, these devices must remain in place for at least two years.

F. Required Waiting Period

If the petition or the Substitute Traffic Management Plan survey fails, the area may not be restudied for a period of one year from the due date of the survey and shall restart at the beginning of the SSP substitution process.

III. Removal of Traffic Management Devices Process

The following process addresses cases where residents of the Notice Area desire the removal of one or more existing permanent traffic management devices.

A. Eligible Devices

Any permanent traffic management device shall be in place for at least one year before it is eligible for the Removal of Traffic Management Devices Process. The removal process does not apply to temporary traffic management devices.

B. Removal Request Submission

1. To initiate the process, a resident, hereby known as the Sponsor, submits a written request to the Transportation Engineering Division (TED) to consider the removal of one or more existing permanent traffic management devices. The request shall include the name, address, and phone number of the Sponsor and a description of the desired removal.

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EXHIBIT "A"

2. The Sponsor shall live in the Notice Area. The Notice Area, as defined in the Section VIII, is used for any traffic management device removal request regardless of when the device was installed.
3. The TED shall prepare a list of household addresses in the Notice Area.

C. Removal Petition Process

The petition process for requesting the removal of permanent traffic management devices is the same as used for substitution requests (see Section II.C.) except that at least 20% of the number of households in the Notice Area must sign the petition before removal shall be considered.

D. Removal Survey Process

If the petition is returned by the due date and the required number of signatures is included, the TED shall send surveys to the addresses in the Notice Area using the survey process described in Section I.F.4. This is the same survey process as used for the temporary and Permanent Traffic Management Plans and for substitution requests.

E. Required Removal Survey Responses

1. Responses must be received from more than 50% of the household addresses in the Notice Area for the process to proceed. If more than 50% of Notice Area households respond to the survey and, of these respondents, at least 60% approve of the removal, the survey is considered to be successful.
2. If a response is received from more than 50% of the household addresses in the Notice Area and less than 60% but at least 50% of the responses approve of the removal, the substitution option shall automatically begin at the survey process described in Section II.D.
3. If a response is received from 50% or less of the household addresses in the Notice Area or, if less than 50% of the responses approve even if responses were received from more than 50% of the household addresses in the Notice Area, the survey is considered to have failed, the removal process is halted, and the area is subject to the required waiting period.
4. If the survey is successful, the TED shall coordinate the removal of the traffic management devices. Notices shall be sent to the residents in the Notice Area advising of the planned removal. A notice shall also be sent to the Police Department.

EXHIBIT "A"

F. Required Waiting Periods

1. Should a request for the removal of permanent traffic management devices result in device removal, a request for reinstallation shall not be considered until at least two years after the date they were removed.
2. If a removal request petition or survey fails, the area may not be reconsidered for the removal process for a period of one year from the due date of the petition or survey that failed.

IV. Adjacent, Multiple, and Simultaneous requests

- A. An adjacent request is a request to study a section of a Target Street that connects to or overlaps with the Notice Area for an active request along the same Target Street.
- B. A multiple request involves one or more requests on streets that are within the Notice Area for a Target Street with an active request but are not located on the same Target Street. Multiple requests include cases where the requests on the various streets are all submitted at the same time and cases where requests on some of the streets are submitted separately from the others.
- C. Simultaneous requests are requests that ask to participate in an SSP process for a Target Street or street section which already has an active request. The secondary request may be for the same area, for a portion of the original area, or for a larger area than the original area.
- D. Adjacent, multiple, and simultaneous requests will not generally be permitted. However, in the event an adjacent, multiple, or simultaneous request is received, the TED will review the request to determine if it is in the best interest of the Target Street to permit and coordinate the requests. Factors such as the status and progress of the original request and the necessary change in notice area must be reviewed to make the determination. Adjacent, multiple, and simultaneous requests will be reviewed and considered on a case-by-case basis by the TED.

V. City Right of Installation and/or Removal

- A. The City Council reserves the right to direct the installation and/or removal of any traffic management devices at any time at its own discretion and without adherence to this policy or procedures.
- B. The TED may take actions to mitigate conditions that are determined to be hazardous or contributing to significant operational problems. These actions may include modifications to existing devices, substitution of different devices for existing devices, or removal of one or more devices.

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VI. Appeals

A. Miscellaneous

1. Appeals of proposed Temporary and Permanent Traffic Management Plans shall follow the process listed in Section I.F.7. and I.G.4., respectively.
2. The results of a required survey response, including the required response percentage and the required approval margin, shall not be considered as a basis for an appeal.

B. TED Decisions

1. TED decisions related to this policy may be appealed to the P&Z. A written notice of the appeal shall be submitted in writing to the TED, at least thirty (30) calendar days prior to the next regularly scheduled P&Z meeting.
2. The appeal shall list the requestor's name, address, and phone number and state the basis for the appeal and relief requested.

C. P&Z Decisions

1. Decisions of the P&Z may be appealed to the City Council by any two (2) members of the City Council or by the Traffic Engineer. Residents seeking to appeal a P&Z decision must contact members of the City Council or the Traffic Engineer directly. The TED shall not request an appeal on their behalf.
2. Any appeal of a P&Z decision to the City Council or Traffic Engineer shall be made within thirty (30) calendar days of the P&Z's decision, be in writing, and state the reasons for the appeal and the relief requested.
3. The City Council's decision shall be final.

VII. Traffic Management Device Materials and Cost - Standard Materials

- A. The City of Plano shall determine standard materials for use for traffic management devices used in the SSP. The materials used shall consider cost, durability, and operational factors. Cost factors include installation, maintenance, replacement, and removal costs. Operational factors include the installation requirements, the effectiveness, the appearance, the estimated useful life, and the removal requirements. The TED shall determine the standard material types to be used.

EXHIBIT "A"

- B. The cost of providing or removing temporary or standard permanent traffic management devices is borne by the City. No resident participation is required.
- C. Materials that are relatively easy to install, remove, and minimize the structural impact on the roadway shall be used for Temporary Traffic Management Plans.
- D. The City shall not be responsible for installation or maintenance of any landscaping improvements.

VIII. Definitions:

Active Request - An active request is one for which a written request has been received by the TED and the request is still proceeding through the SSP process. A request would not be considered active if any of the following circumstances are true:

1. A written request has not yet been received by the TED,
2. The volume and/or speed criteria are not satisfied,
3. The required number of petition signatures and/or petition submission date were not met,
4. The required number of survey responses and the required percentage of supporting responses were not met, or
5. The request is ineligible due to any of the required waiting periods.

Household - Any property developed or undeveloped on a platted lot in a residential zoning district.

Major Arterial Road - The four to six lane streets usually found every mile throughout the city, which commonly divide Plano into neighborhoods. These roadways are typically the Type B, B+, C, D, E, and E+ roadways designated on the Thoroughfare Plan.

Notice Area - The area including the households abutting (on the front or the side) the portion of the Target Street in which the traffic management device is proposed (or existing), plus a distance of one thousand (1,000) feet along said street from the outermost traffic management devices. This area includes parallel streets one block over when at least one connection path exists within one thousand (1,000) feet of the Target Street up to the point of intersection with, but not crossing, a major arterial road. The TED may expand the Notice Area if there is a school, park, recreation center, church, hospital, or senior citizen facility adjacent to the Notice Area.

In the event there is a Major Arterial Road within the 1,000 foot distance along the Target Street from the outermost traffic management device, the Notice Area for that end of the Target Street shall terminate at the intersection of the Major Arterial Road. Additionally, parallel streets that are otherwise within the Notice Area but are separated from the Target Street by creeks, drainage

EXHIBIT "A"

- channels, open spaces, or other barriers preventing normal vehicular access to the Target Street shall not be considered to be in the Notice Area.
- Park - Park and private open space as listed in the Parks Master Plan.
- P&Z - Planning & Zoning Commission of the City of Plano
- Residential Collector Street - Type "F" streets as designated on the City of Plano Thoroughfare Plan. Residential streets constructed with a 36' cross section shall be considered residential collector streets even if they are not individually shown on the Thoroughfare Plan.
- Residential Street - Type "G" streets as designated on the City of Plano Thoroughfare Plan. Residential streets constructed with a 26' cross section shall be considered residential streets even if they are not individually shown on the Thoroughfare Plan.
- Senior Citizen Facility - Any facility whose primary purpose is providing services to the elderly.
- Sponsor - A person residing in the Notice Area that coordinates the SSP Process with City Staff for installation, removal, or substitution. The Sponsor is responsible for notifying the HOA and Notice Area residents of any actions or decisions of the TED or the P&Z except as noted in this policy. (Sponsor information, including but not limited to name, address, and phone number, shall be disclosed by the City upon request.)
- Target Area - The households immediately adjacent to and along the designated portion of the Target Street.
- Target Street - The street which is subject of, and evaluated for, a traffic management plan. This is the street that is either requested for device installation or for the substitution or removal of one or more existing devices.
- TED - Transportation Engineering Division of the City of Plano Engineering Department
- Thoroughfare Plan - Shows the general location and the design standards of the roadways and serves as a guide to the Community Investment Program (CIP) in regard to street construction. Copies of the Thoroughfare Plan are available through the City Planning Department.
- Traffic Engineer - The Transportation Engineering Manager of the City of Plano or the Manager's authorized representative.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget <i>c.s.</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	12/22/08	Reviewed by Legal <i>JST</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Finance		Initials	Date
Department Head	Denise Tacke <i>DT</i>	Executive Director	<i>JMC</i>	<i>12/15/08</i>
Dept Signature:		City Manager		
Agenda Coordinator (include phone #):		Katherine Crumbley X7479 <i>KCA</i>		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND RAISING CANE'S USA LLC, A LOUISIANA LIMITED LIABILITY COMPANY; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years
Budget		0	12,391,869	12,391,869
Amount Approved by Council		0	-45,000	-246,750
This Item		0	-42,400	0
BALANCE		0	12,304,469	-246,750
FUND(S): ECONOMIC DEVELOPMENT INCENTIVE FUNDS				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Diverse Business Center.				
SUMMARY OF ITEM				
A request from Raising Cane's USA for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City. Raising Cane's USA also agrees to retain, create or transfer 53 full time jobs.				
List of Supporting Documents:				
Economic Development Incentive Agreement				

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND RAISING CANE'S USA LLC, A LOUISIANA LIMITED LIABILITY COMPANY; 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 Economic Development Incentive Agreement By and Between the City of Plano, Texas and Raising Cane's USA LLC, a Louisiana limited liability company, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or, 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

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City"), and Raising Cane's USA LLC, a Louisiana Limited Liability Corporation, (hereinafter referred to as the ("Company"), acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the Company is engaged in the restaurant industry; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, Company agrees to occupy 24,813 square feet of office space at Legacy Place I, 5800 Tennyson Parkway, 2nd Floor, Plano, Texas 75024 (the "Property") and to retain, transfer or create 53 full time jobs on the Property by June 30, 2009 and maintain those positions for the full term of this Agreement; and

WHEREAS, the investment in new personal property and the retention, creation or transfer of at least 53 full time jobs at occupancy to the City of Plano will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

**Article I
Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Commencement Date" shall mean the earlier of the occupancy of the Property or January 31, 2009, whichever occurs first.

"Effective Date" shall mean the last date on which all of the parties hereto have executed this Agreement.

"Event of Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in Plano.

"Job Equivalent" shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours annually.

**Article II
Term**

The term of this Agreement shall begin on the Commencement Date and continue until July 31, 2013 unless sooner terminated as provided herein.

**Article III
Obligations of Company**

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

(a) Occupy a minimum of 24,813 square feet of office space on the Property for a period of 4.5 years from the commencement date of this Agreement; and

(b) Create or transfer 48 new Job Equivalents to the Property on or before January 31, 2009, and employ an additional 5 Job Equivalents on the Property by June 30, 2009, and to maintain the total of 53 Job Equivalents on the Property for the remainder of the term of this Agreement; and

(c) Use reasonable efforts to utilize Plano hotels as preferred locations for any Company sponsored events that involve over-night stays.

Article IV

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Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a one-time cash grant of Forty-Two Thousand Four Hundred Dollars (\$42,400.00) for the occupancy of 24,813 square feet of office space on the Property for the term of this Agreement and to retain, transfer or creation 48 Job Equivalents on the Property by January 31, 2009; an additional 5 Job Equivalents on the Property by June 30, 2009; and to maintain these 53 Job Equivalents for the term of the Agreement.

Grant Payments. Except as otherwise indicated, payment under this Agreement shall be paid within thirty (30) days after the Company occupies the Property and verifies to the City on the Initial Certification attached hereto as Exhibit "A" that it has retained, created or transferred 53 Job Equivalents to the Property as provided in Article III (a) and (b) above.

4.03 **Refunds.**

(a) In the event the Company, for any 180 consecutive days during the term of this Agreement, allows new Job Equivalents at the Property to fall below 53, and such drop is not the result of an Event of Force Majeure, Company shall refund to City an amount equal to Eight Hundred Dollars (\$800.00) for each job equivalent that falls below 53. For the purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer shall certify to the City by January 31, 2010 and by January 31 of each year thereafter during the term of this agreement the actual number of Job Equivalents at the Property for the preceding calendar year using the Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30 days of written demand for payment.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the violation.

**Article V
Termination**

5.01 This Agreement terminates upon any one or more of the following:

- (a) By mutual written agreement of the parties;
- (b) Upon expiration of the Term;
- (c) By either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a

nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and

(d) By either party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above shall survive the termination of this Agreement.

**Article VI
Miscellaneous**

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

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With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company: (if before relocation)
Raising Cane's Chicken Fingers
Attention: Mr. Brad Sanders
Senior Vice President of Development
301 Main Street, Suite 700
Baton Rouge, Louisiana 70801

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

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

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this _____ day of _____, 2008.

ATTEST:

CITY OF PLANO, TEXAS, a home rule municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

RAISING CANE'S USA LLC, a Louisiana Limited Liability Corporation

By: _____
Name
Title

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EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

I hereby certify that RAISING CANE'S USA LLC, has retained, transferred or created 53 Job Equivalents on the Property and is in compliance with each applicable term as set forth in Article III of the Agreement to Resolution No. _____(R) as of _____, and is entitled to receive payment under the terms of the Agreement.

ATTEST:

RAISING CANE'S USA LLC, a Louisiana
Limited Liability Corporation

By: _____
Name
Title

Date

NOTE:

This Certificate of Compliance should be mailed to:

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

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that RAISING CANE'S USA LLC, is in compliance with each applicable term as set forth in the Agreement to Resolution No. _____(R) as of _____. Job Equivalents on the Property have not fallen below 53 for any 180 consecutive day period since the commencement of this Agreement. If the number herein reported is below the number required to be maintained pursuant the Agreement I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31st of each year this Agreement is in force.

ATTEST:

RAISING CANE'S USA LLC, a Louisiana
Limited Liability Corporation

By:

Name
Title

Date

NOTE:

This Certificate of Compliance should be mailed to:

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

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 12/22/2008		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Finance		Initials	Date
Department Head	Denise Tacke <i>DT</i>	Executive Director		
Dept Signature:		City Manager	<i>DM</i>	<i>12/16/08</i>
Agenda Coordinator (include phone #): Katherine Crumbley X7479				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND ROMACORP, INC., (DBA TONY ROMA'S), A DELAWARE CORPORATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years
Budget		0	12,391,869	12,391,869
Amount Approved by Council		0	-45,000	-291,750
This Item		0	-17,000	0
BALANCE		0	12,329,869	-246,750
FUND(s): ECONOMIC DEVELOPMENT INCENTIVE FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's Goal of Diverse Business Center				
SUMMARY OF ITEM				
A request from RomaCorp, Inc. for an Economic Development incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax sales for the City. RomaCorp, Inc. agrees to retain, transfer or create 15 full time jobs and add business personal property improvements of a taxable value not less than \$80,000.				
List of Supporting Documents:				
Economic Development Incentive Agreement				

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND ROMACORP, INC., (DBA TONY ROMA'S), A DELAWARE CORPORATION; 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 Economic Development Incentive Agreement By and Between the City of Plano, Texas and RomaCorp, Inc., (DBA Tony Roma's), a Delaware corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or, 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 22nd day of December, 2008.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City"), and Romacorp, Inc. (dba Tony Roma's), a Delaware Corporation, acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Romacorp, Inc., (dba Tony Roma's), (hereinafter referred to as the "Company") is a nationwide restaurant chain; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company agrees to occupy not less than 6,700 square feet of office space located at 1700 Alma Drive, Suite 400, Plano, Texas 75075, (the "Property") for the full term of this Agreement; add business personal property improvements on the Property of not less than Eighty Thousand Dollars (\$80,000.00) and to retain, transfer or create 15 Job Equivalents on the Property by December 31, 2008 and maintain those positions for the full term of this Agreement; and

WHEREAS, the retention, creation or transfer of 15 Job Equivalents at the Property within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

**Article I
Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Commencement Date” shall mean the earlier of the date of occupancy of the Property by the Company or December 31, 2008, whichever occurs first.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company’s operations in the City.

“Job Equivalent” shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours (inclusive of holidays, vacation and sick leave) annually.

**Article II
Term**

The term of this Agreement shall begin on the Commencement Date and continue until March 1, 2012, unless sooner terminated as provided herein.

**Article III
Obligations of Company**

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- (a) Occupy not less than 6,700 square feet of office space on the Property on or before December 31, 2008;
- (b) Add business personal property improvements to the Property of a value of not less than Eighty Thousand Dollars (\$80,000.00);
- (c) Retain, create or transfer 15 Job Equivalents to the Property on or before December 31, 2008;

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(d) Maintain those Job Equivalents for the full term of this Agreement; and

(e) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

**Article IV
Economic Development Grant**

4.01 **Grant.** The City agrees to provide the Company a one-time cash grant of Fifteen Thousand Dollars (\$15,000.00) for the occupancy of 6,700 square feet of office space on the Property, business personal property improvements on the Property of Eighty Thousand Dollars (\$80,000.00) and to assist in the retention, transfer or addition of 15 new Job Equivalent positions to the Property. In addition to the 15 new Job Equivalent positions, the City will provide a cash grant of One Thousand Dollars (\$1,000.00) for each management-level Job Equivalent position added up to a maximum grant of Two Thousand Dollars (\$2,000.00). The Company agrees to maintain those Job Equivalents (for which a grant is received under this Agreement) throughout the term of this Agreement as provided in Section 4.03 below.

4.02 **Grant Payments.** Except as otherwise indicated, payment by the City under this Agreement shall be made within thirty (30) days after the Company verifies to the City on the Initial Certification attached hereto as Exhibit "A" that the Company has met its initial obligations as set forth in Article III (a), (b), and (c) above.

4.03 **Refunds.**

(a) In the event the Company allows Job Equivalents at the Property to fall below 15 Job Equivalents for 180 consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to One Thousand Dollars (\$1,000.00) for each Job Equivalent that falls below 15. For the purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer shall certify to the City by January 31, 2010 and by January 31 of each year thereafter during the term of this agreement the actual number of Job Equivalents at the Property for the preceding calendar year using the Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30 days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

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**Article V
Termination**

5.01 This Agreement terminates upon any one or more of the following:

- (a) By mutual written agreement of the parties;
- (b) Upon expiration of the term of this Agreement;

(c) By either party upon written notice to the other, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and

(d) By either party upon written notice to the other if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above in this Section 5.02 shall survive the termination of this Agreement.

**Article VI
Miscellaneous**

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified

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mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
Romacorp, Inc. (dba Tony Roma's)
Attention: Ken Myers
Chief Operating Officer
9304 Forest Lane, Suite 200
Dallas, TX 75243
With cc to: General Counsel

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the

intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this _____ day of _____, 2008.

ATTEST:

CITY OF PLANO, TEXAS, a home rule municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck

CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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ATTEST:

ROMACORP, INC. (DBA TONY
ROMA'S), a Delaware Corporation

By: _____
Ken Myers
Chief Operating Officer

EXHIBIT "A"

CERTIFICATE OF COMPLIANCE

I hereby certify that ROMACORP, INC. (DBA TONY ROMA'S) has occupied not less than 6,700 square feet of retail space on the Property, has added business personal property improvements to the Property of a value of not less than Eighty Thousand Dollars (\$80,000.00) and has hired/transferred/retained 15 Job Equivalents to the Property, and is in compliance with subsections (a), (b) and (c) of Article III of the Agreement to Resolution No. _____(R) as of _____, and is entitled to receive payment under the terms of that Agreement.

ATTEST:

ROMACORP, INC. (DBA TONY ROMA'S), a Delaware Corporation

By: _____

Name:

Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

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

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EXHIBIT "B"

CERTIFICATE OF COMPLIANCE

I hereby certify that ROMACORP, INC. (DBA TONY ROMA'S), is in compliance with each applicable term as set forth in Article III of the Agreement to Resolution No. _____(R) as of _____. The term of the Agreement is December 1, 2008 through March 1, 2012. "The number of new, transferred or retained Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below 15 for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance." If the number herein reported is below the number required to be maintained pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

ATTEST:

ROMACORP, INC. (DBA TONY ROMA'S), a Delaware Corporation

By:

Name:

Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

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

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget <i>C.S.</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 12/22/2008		Reviewed by Legal <i>WJ</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Finance		Initials	Date	
Department Head	Denise Tacke <i>jt</i>		Executive Director		
Dept Signature:		City Manager	<i>JK</i>	<i>12/15/08</i>	
Agenda Coordinator (include phone #): Katherine Crumbley X7479 <i>KC</i>					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND MARKETNET INC, A TEXAS CORPORATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	12,391,869		12,391,869
Amount Approved by Council		0	-45,000	-246,750	-291,750
This Item		0	-15,500	0	-15,500
BALANCE		0	12,331,369	-246,750	12,084,619
FUND(s): ECONOMIC DEVELOPMENT INCENTIVE FUND					
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's Goal of Diverse Business Center					
SUMMARY OF ITEM					
A request from MarketNet, Inc. for an Economic Development incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax sales for the City. MarketNet, Inc. agrees to retain, transfer or create 31 full time jobs and add business personal property improvements of a taxable value not less than \$150,000.					
List of Supporting Documents:					
Economic Development Incentive Agreement					

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND MARKETNET INC, A TEXAS CORPORATION; 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 Economic Development Incentive Agreement By and Between the City of Plano, Texas and MarketNet, Inc., a Texas Corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or, 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

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City"), and MarketNet, Inc., a Texas Corporation, acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, MarketNet, Inc., (hereinafter referred to as the "Company") is a full-service web design and development company; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company agrees to occupy not less than 10,000 square feet of office space located at 5360 Legacy Drive, Suite 175, Plano, Texas 75024, (the "Property") for the full term of this Agreement; add business personal property improvements on the Property of a taxable value of not less than One Hundred and Fifty Thousand Dollars (\$150,000.00) and to retain, transfer or create 31 Job Equivalents on the Property by December 31, 2008 and maintain those positions for the full term of this Agreement; and

WHEREAS, the business personal property improvements to the Property and the retention, creation or transfer of 31 Job Equivalents at the Property within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

**Article I
Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Commencement Date" shall mean the earlier of the date of occupancy of the Property by the Company or December 31, 2008, whichever occurs first.

"Effective Date" shall mean the last date on which all of the parties hereto have executed this Agreement.

"Event of Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

"Job Equivalent" shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours (inclusive of holidays, vacation and sick leave) annually.

**Article II
Term**

The term of this Agreement shall begin on the Commencement Date and continue until December 30, 2013, unless sooner terminated as provided herein.

**Article III
Obligations of Company**

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- (a) Occupy not less than 10,000 square feet of office space on the Property on or before December 31, 2008;
- (b) Add business personal property improvements to the Property of a taxable value of not less than One Hundred and Fifty Thousand Dollars (\$150,000.00);
- (c) Retain, create or transfer 31 Job Equivalents to the Property on or before December 31, 2008;

- (d) Maintain those Job Equivalents for the full term of this Agreement; and
- (e) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a one-time cash grant of Fifteen Thousand Five Hundred Dollars (\$15,500.00) for the occupancy of not less than 10,000 square feet of office space on the Property; addition of business personal property improvements on the Property of a taxable value of not less than One Hundred and Fifty Thousand Dollars (\$150,000.00); and the retention, transfer or creation of 31 Job Equivalent positions on the Property by December 31, 2008. The Company agrees to maintain the 31 Job Equivalents throughout the term of this Agreement as provided in Section 4.03 below.

4.02 **Grant Payments.** Except as otherwise indicated, payment by the City under this Agreement shall be made within thirty (30) days after the Company verifies to the City on the Initial Certification attached hereto as Exhibit "A" that the Company has met its initial obligations as set forth in Article III, subsections (a), (b) and (c) above.

4.03 **Refunds.**

(a) In the event the Company allows Job Equivalents at the Property to fall below 31 Job Equivalents for 180 consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Five Hundred Dollars (\$500.00) for each Job Equivalent that falls below 31. For the purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer shall certify to the City by January 31, 2010 and by January 31 of each year thereafter during the term of this agreement the actual number of Job Equivalents at the Property for the preceding calendar year using the Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30 days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 31.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

Article V

Termination

5.01 This Agreement terminates upon any one or more of the following:

- (a) By mutual written agreement of the parties;
- (b) Upon expiration of the term of this Agreement;
- (c) By either party upon written notice to the other, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and
- (d) By either party upon written notice to the other if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above in this Section 5.02 shall survive the termination of this Agreement.

Article VI Miscellaneous

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other

address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
MarketNet, Inc.
Attention: Alan Bach
Vice President
5360 Legacy Drive, Suite 175
Plano, Texas 75024
With cc to: General Counsel

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal,

invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this _____ day of _____, 2008.

ATTEST:

CITY OF PLANO, TEXAS, a home rule municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck

CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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ATTEST:

MARKETNET, INC., a Texas Corporation

By: _____

Name:

Title:

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

I hereby certify that MARKETNET, INC. has occupied not less than 10,000 square feet of office space on the Property, has made business personal property improvements on the Property of a taxable value of not less than One Hundred and Fifty Thousand Dollars (\$150,000.00); and has retained, transfered or added 31 Job Equivalent positions to the Property. MARKETNET, INC. is in compliance with subsections (a), (b) and (c) of Article III of the Agreement to Resolution No. _____(R) as of _____, and is entitled to receive payment under the terms of that Agreement.

ATTEST:

MARKETNET, INC., a Texas Corporation

By:

Name:

Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

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

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EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that MARKETNET, INC., is in compliance with each applicable term as set forth in Article III of the Agreement to Resolution No. _____(R) as of _____. The term of the Agreement is December 31, 2008 through December 30, 2013. "The number of new, transferred or retained Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below 31 for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance." If the number herein reported is below the number required to be maintained pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

ATTEST:

MARKETNET, INC., a Texas Corporation

By:

Name:

Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

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