

PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON MARCH 20, 2007, FOLLOWED BY PRELIMINARY OPEN MEETING IMMEDIATELY THEREAFTER, 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 | 15 min. |
| | A. Respond to questions and receive legal advice on agenda items | | |

PRELIMINARY OPEN MEETING

- | | | | |
|-------|--|---------|---------|
| I. | Consideration and action resulting from Executive Session discussion | Council | 5 min. |
| II. | Personnel Appointments | Council | 10 min. |
| | A. Public Arts Committee | | |
| III. | Discussion and Direction Regarding Texas Music Sundown Concert Series at the Oak Point Amphitheater | Wear | 15 min. |
| IV. | Police Department Racial Profiling Report | Rushin | 5 min. |
| V. | Police Department Performance Measures | Rushin | 10 min. |
| VI. | Council items for discussion/action on future agendas | Council | 5 min. |
| VII. | Consent and Regular Agenda | Council | 5 min. |
| VIII. | Council Reports | Council | 5 min. |
| | A. Council May Receive Information, discuss and provide direction on the following reports: | | |
| | B. Council may receive reports from its other members who serve as liaisons to boards, commissions, and committees | | |

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: March 20, 2007

CALL TO ORDER: 7:00 p.m.

INVOCATION: Reverend Larry McGuire
First Baptist Church - Plano

PLEDGE OF ALLEGIANCE: Representatives of Boys & Girls Clubs of
Collin County - Plano

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>Keep Plano Beautiful Commission</u> Rob Sippl</p> <p><u>Senior Citizens Advisory Board</u> Jim Hudson</p> <p><u>THE CITY SECRETARY RECEIVES SPEAKER CARDS AT THE BEGINNING OF THE MEETING</u></p> <p><u>COMMENTS OF PUBLIC INTEREST</u></p> <p><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> <p><u>BOARD AND COMMISSION REPORT</u></p> <p>Transportation Advisory Committee – Michael Copeland, Chair</p> <p><u>CONSENT AGENDA</u></p> <p><u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	<p><u>Approval of Minutes</u> February 26, 2007</p> <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p>	
(b)	<p>Bid No. 2007-62-C for Overhead Door and Gate Inspection and Maintenance to Johnson Equipment Company in the estimated annual amount of \$50,020. This will establish an annual fixed price contract with three optional one-year renewals.</p>	
(c)	<p>Bid No. 2007-92-B for the 2006-2007 Residential Concrete Pavement Rehabilitation Project, Zones K8, L8 & J6N to Jerusalem Corporation in the amount of \$637,539. This project involves the replacement of street and alley pavement in the residential areas on the west side of the City, bounded by Legacy Drive on the south, Red River Drive on the east, Hedgcoxe Road on the north and Independence Parkway on the west.</p>	
(d)	<p>Bid No. 2007-60-C for Security Control Systems Maintenance Package to The Systems Group, Inc. dba SystemsGroup, SGI Protective Services, Silver Star Protective Services, in the estimated annual amount of \$46,562. This will establish an annual fixed price contract with three optional one-year renewals.</p>	
(e)	<p>Bid No. 2007-63-C for Custodial Services – Various Locations to UBM Enterprise, Inc. in the estimated annual amount of \$962,273. This will establish an annual fixed price contract, with three optional one-year renewals.</p>	
(f)	<p>Bid No. 2007-72-C to establish an annual fixed price contract for Traffic Control Devices/Signal Equipment items 1-9 to Requisite Inc. in the estimated amount of \$31,304. Item 10, Conflict Monitors, will be re-bid. This will establish an annual fixed price contract with three City optional renewals.</p> <p>Purchase from Existing Contract/Agreement: (Purchase of products/services through Cooperative Purchasing Interlocal Contract with another governmental/quasi-governmental agency or an additional purchase from current City of Plano annual purchase agreement).</p>	
(g)	<p>To approve the purchase of two (2) Spartan/General Pumper's and one (1) Spartan/General Pumper with Elevated Master Stream for the Fire Department in the amount of \$1,490,804 from Emergency Vehicles of Texas through an existing contract/agreement with HGAC Cooperative Purchase Program and authorizing the City Manager to execute all necessary documents. (#JC14 & JA01)</p>	
(h)	<p>To approve the purchase of six (6) Panasonic Toughbook Laptops with mounting equipment and installation in the amount of \$31,341 from Portable Computer Systems, through an existing Department of Information Resources (DIR) contract; and authorizing the City Manager to execute all necessary documents. (DIR-VPC-03-039)</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(i)	To approve the purchase of a Bomb Response Vehicle for the Police Department in the amount of \$200,000 from LDV Incorporated through a Texas Building and Procurement Commission contract, and authorizing the City Manager to execute all necessary documents. (TXMAS #4-23V020).	
(j)	To approve the purchase of a Mini-ANDROS II Vehicle for the Police Department in the amount of \$81,153 from Remotec Incorporated through a Texas Building and Procurement Commission-Multiple Award Schedule contract, and authorizing the City Manager to execute all necessary documents. (TXMAS #GSA-84).	
(k)	To approve the purchase of material testing services for the Parker Road Estates West Water Rehabilitation Project, in the amount of \$35,026 from Kleinfelder, Inc., through an existing contract/agreement, and authorizing the City Manager to execute all necessary documents. (Contract # 2005-265-D)	
(l)	To approve the purchase of labor and materials for the Roof Replacement Project at Stadium Pump Station, in the amount of \$66,797, from Tremco Incorporated, through an existing contract/agreement with Texas Cooperative Purchasing Network (TCPN), and authorizing the City Manager to execute all necessary documents. (TCPN Vendor Contract No. R4611)	
	Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)	
(m)	To approve an Engineering Contract by and between the City and Birkhoff, Hendricks & Conway, L.L.P., in the amount of \$127,500, for Dallas North Trunk Sewer Replacement Rehabilitation, Phase III, and authorizing the City Manager to execute all necessary documents. This agreement is for engineering design to include the replacement of about 4,300 linear feet of 24-inch to 36-inch diameter sewer line along the President George Bush Turnpike.	
	Change Order: (Change to current City of Plano contract allowable under State law)	
(n)	To Birkhoff, Hendricks & Conway, L.L.P. increasing the Professional Services Contract by \$6,500 for Dallas North Trunk Sewer Main Rehabilitation, Contract Modification No. 1.	
(o)	To Miller Pipeline Corporation, increasing the contract by \$37,237 for the Sanitary Sewer Rehabilitation Requirements Contract 2004, Project No. 5470, Renewal, Change Order No. 1, Bid No. P069-04	
(p)	To Tri-Con Services, Inc. increasing the contract by \$58,085 for Avenue P, Park to 18 th Street/Ridgetop Lane, Change Order No. 6 (2006-51-B).	
	<u>Adoption of Resolutions</u>	
(q)	To authorize continued participation with the Atmos Cities Steering Committee; and authorizing the payment of 10 cents per capita to the Atmos Cities Steering Committee to fund regulatory and related activities related to Atmos Energy Corporation; authorizing the City Manager to take such action and execute such documents as necessary and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(r)	To appoint the City Manager to be Plan Administrator of the 457 Deferred Compensation Plan; setting forth duties of the Plan Administrator; and providing an effective date.	
(s)	To ratify the terms and conditions of an Interlocal Agreement between the cities of Prosper and Plano for Administration Services to be provided to Prosper by Plano; authorizing its execution by the City Manager; and providing an effective date.	
(t)	To authorize the participation of the City in the action styled <u>City of Webster and the Webster Economic Development Corporation vs. Carole Keeton Strayhorn, in Her Official Capacity as Comptroller of Public Accounts for the State of Texas</u> currently pending in the 261 st District Court of Travis County, and/or to pursue such other remedies and matters relating to sales tax allocation; authorizing the expenditure of funds; and providing an effective date.	
(u)	To authorize a partial refund of property taxes and fees in the amount of \$330 pursuant to Section 43.148(a) of the Texas Local Government Code to property owners disannexed from the City of Plano; authorizing the City Manager to take such action and execute such documents as necessary to effectuate said refund approved herein; and providing an effective date.	
<u>Adoption of Ordinances</u>		
(v)	To abandon all right, title and interest of the City, in and to that certain drainage easement recorded in Volume 4247, Page 1762 and that certain drainage easement recorded in Clerk File No. 92-0002185 of the Land Records of Collin County, Texas, being situated in the John D. Martin Survey, Abstract No. 603, which is located within the City limits of Plano, Collin County, Texas quitclaiming all right, title and interest of the City in such easements to the abutting property owner, Plano Pointe West, L.P., to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date.	
(w)	To repeal Ordinance No. 93-11-14, codified as Subsection “Central Expressway,” a paragraph under Section 12-74 of Chapter 12 (Traffic Code) of the Code of Ordinances of the City of Plano; adopting a new subsection “Central Expressway” of Section 12-74 of Chapter 12 (Traffic Code) of the Code of Ordinances to establish prima facie maximum speed limits for motor vehicles operating upon certain sections of Central Expressway within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a penalty clause, a severability clause, a savings clause, and an effective date.	
(x)	To amend Article I. In General, of Chapter 17. Police, of the City of Plano Code of Ordinances by adding Section 17-2 to codify the authority of police officers to enforce State laws and City ordinances; and providing an effective date.	
(y)	To adopt and enact Supplement Number 77 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(z)	<p>To revise Section 2-301 of Article XVI Self-Sufficiency Committee of Chapter 2 Administration of the Code of Ordinances of the City of Plano to add one member to be appointed by Plano Housing Authority; providing a repealer clause, a severability clause, and an effective date.</p> <p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	<p>Public Hearing and an ordinance as requested in Zoning Case 2007-01 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend 5.7± acres located at the northeast corner of Preston Road and Old Shepard Place in the City of Plano, Collin County, Texas, from Planned Development-189-Retail/General Office to Planned Development-186-Retail/General Office; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Old Shepard Place II, Ltd.</p>	
(2)	<p>Discussion and direction regarding adoption of an ordinance to amend Chapter 21, Article II, Division 4, Drought Contingency Plan, Section 21.60.1(J) and 21.60.1(N) of the Code of Ordinances of the City of Plano; revising the existing water zone map to include a morning watering schedule and evening watering schedule for the purpose of improving the operations of the City’s water system; providing a repealer clause, a savings clause; a severability clause; and providing an effective date.</p>	
(3)	<p>Public Hearing and receive Staff report on the City’s Juvenile Curfew Ordinance No. 94-11-11; action to continue, repeal or modify the current ordinance.</p>	
(4)	<p>Public Hearing pursuant to Chapter 26 of the Texas Parks and Wildlife Code pertaining to the use or taking of a portion of a City of Plano Park and known as the Wellington Site for an amendment to a Communications Facilities License Agreement for cellular equipment attached to and at the base of the existing TXU electric transmission tower.</p>	
(5)	<p>An ordinance to approve a project requiring the use or taking of a portion of City of Plano public park land, known as the Wellington Site; providing for a determination that there is no feasible and prudent alternative to the proposed use or taking of the park land; and that the proposed project includes all reasonable planning to minimize harm to the land and the park and recreation area resulting from the use; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(6)	<p>A resolution to approve the terms and conditions of an amendment to a Communications Facilities License Agreement by and between the City of Plano, Texas, and Dallas MTA, L.P., a Texas Limited Partnership, d/b/a Verizon Wireless, to locate, place, attach, install, and operate, telecommunications ground equipment in certain specific portions of City of Plano public park land, known as the Wellington Site, authorizing its execution by the City Manager, and providing an effective date.</p>	
(7)	<p>Public Hearing pursuant to Chapter 26 of the Texas Parks and Wildlife Code pertaining to the use or taking of a portion of a City of Plano Park and known as the Bronze Leaf Site for a Communications Facilities License Agreement for cellular equipment attached to and at the base of the existing TXU electric transmission tower.</p>	
(8)	<p>An ordinance to approve a project, requiring the use or taking of a portion of City of Plano public park land, known as the Bronze Leaf Site; providing for a determination that there is no feasible and prudent alternative to the proposed use or taking of the park land; and that the proposed project includes all reasonable planning to minimize harm to the land and the park and recreation area resulting from the use; and providing an effective date.</p>	
(9)	<p>A resolution to approve the terms and conditions of a Communications Facilities License Agreement by and between the City of Plano, Texas, and T-Mobile Texas, L.P. by T-Mobile West Corporation, a Delaware Corporation, to locate, place, attach, install, and operate, telecommunications ground equipment in certain specific portions of City of Plano public park land, known as the Bronze Leaf Site, authorizing its execution by the City Manager, and providing an effective date.</p>	
(10)	<p>Public Hearing pursuant to Chapter 26 of the Texas Parks and Wildlife Code pertaining to the use or taking of a portion of a City of Plano Park and known as the Blue Ridge Site for a Communications Facilities License Agreement for cellular equipment attached to and at the base of the existing TXU electric transmission tower.</p>	
(11)	<p>An ordinance to approve a project, requiring the use or taking of a portion of City of Plano public park land, known as the Blue Ridge Park Site; providing for a determination that there is no feasible and prudent alternative to the proposed use or taking of the park land; and that the proposed project includes all reasonable planning to minimize harm to the land and the park and recreation area resulting from the use; and providing an effective date.</p>	
(12)	<p>A resolution to approve the terms and conditions of a Communications Facilities License Agreement by and between the City of Plano, Texas and T-Mobile Texas, L.P. by T-Mobile West Corporation, a Delaware Corporation, to locate, place, attach, install, and operate, telecommunications ground equipment in certain specific portions of City of Plano public park land, known as the Blue Ridge Site, 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>	



March 14, 2007

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

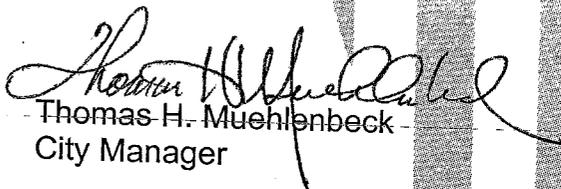
Honorable Mayor and City Council:

We will begin Tuesday evening in Executive Session where we will receive advice from the City Attorney's Office.

The Preliminary Open Meeting agenda will consist of an appointment to the Public Arts Committee. There will also be discussion and direction requested regarding a concert series at Oak Point Amphitheater. Chief Rushin will present the Police Department's racial profiling report and discuss its annual performance measures.

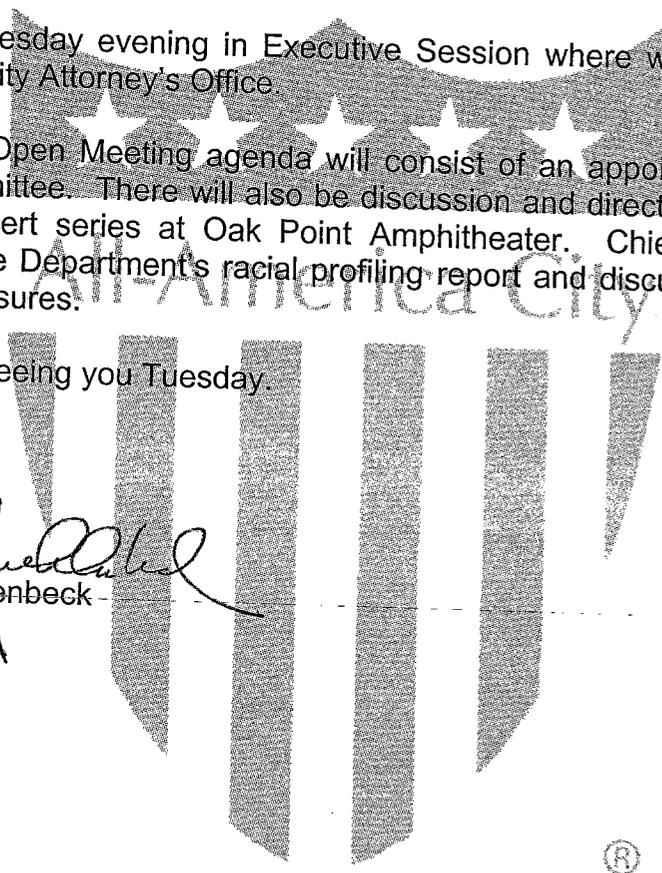
I look forward to seeing you Tuesday.

Sincerely yours,



Thomas H. Muehlenbeck
City Manager

THM/dz



- Pat Evans
Mayor
- Scott Johnson
Mayor Pro Tem
- Sally Magnuson
Deputy Mayor Pro Tem
- Shep Stahel
Place 1
- Loretta Ellerbe
Place 3
- Harry LaRosiliere
Place 5
- Jean Callison
Place 7
- Lee Dunlap
Place 8

- Thomas H. Muehlenbeck
City Manager

MEMO

DATE: March 14, 2007

TO: Honorable Mayor and City Council
City Manager Muehlenbeck
City Secretary Bealke

FROM: Di Zucco, Assistant City Secretary 

RE: Personnel Appointments/Reappointments
Executive and Worksession Meetings

The following personnel appointments/reappointments will be considered at the March 20, 2007 Council Meeting.

<u>Executive Session</u>	<u>Worksession Meeting</u>
<u>No items for consideration</u>	<u>Public Arts Committee</u> Resignation of Michael Coleman (Term Expires 10-07) Consideration of Member and Chair

*Down
IIa*

Memorandum

Date: March 14, 2007
To: Tom Muehlenbeck, City Manager
From: Jim Wear, Creative Arts Manager
Subject: Proposal for Texas Music Sundown Concert Series at Oak Point Amphitheater

The attached is an executive summary of a proposal for presentation by the City of Plano of a Texas Music Sundown Concert Series at the Amphitheater in Oak Point Park and Nature Preserve during the current fiscal year. With the successful opening of this beautiful facility in 2006 Plano gained a valuable new cultural asset which will be enjoyed by the citizens for many years to come.

The purpose of creation of the amphitheater was to establish, along with the adjacent special events area, the necessary infrastructure for large scale community events. In the first year of operation, attendance was strong (averaging better than 500 per event) at live concerts presented by local radio stations at the amphitheater. The country music concerts presented by KHYI radio were especially well attended, with over 800 attendees at one of their events.

Successful presentation of more events at the amphitheater will draw large numbers of citizens to Oak Point Park and Nature Preserve, raising awareness of the park as it develops. In addition, a well-promoted concert series at this venue will help to promote Plano as a destination for visitors. In time, once the audiences grow to full potential, there could be measurable impact on hotel occupancy.

In developing a plan for this concert series, staff has worked with Rod Kennedy and Associates, a highly experienced firm specializing in the production of musical events and festivals. Mr. Kennedy was the founder of the Kerrville Folk Festival and has planned and produced successful concert series for a number of cities in Texas and around the nation. His professional reputation and credibility in the music business will lend much to our prospects for launching this series.

As the attached summary indicates, first year revenues are conservatively estimated at \$70,000, which amounts to slightly more than 75% of the projected expenses for the series. In future years, the gap between revenue and expense will close as the audiences build. The City of Plano can expect to reach a break-even point for this program in four to five years. The benefits to the community in terms of enhanced quality of life and regional awareness of the city should prove well worth the initial investment.

We seek direction from the Council on proceeding with plans for this project.

Cc: Rod Hogan, Executive Director, Public Services and Operations
Don Wendell, Director of Parks and Recreation

Tom Muehlenbeck

NOTE: No additional monies are requested for ordinary expenses we incur for operation of the amphitheater, such as trailer rental, maintenance, janitorial services, contract labor, supplies and materials. (\$34,000 for year) These are already included in FY 06-07 Budget.

3/14/2007

Executive Summary
Proposal for Texas Music Sundown Concerts
At Oak Point Amphitheater in Plano, TX

Submitted by Rod Kennedy and Associates
Special Events Consulting
Kerrville / Fort Lauderdale

Summary:

Rod Kennedy and Associates, a highly experienced firm specializing in the production of musical events and festivals, has submitted a proposal to provide a menu of services in production of a series of five concerts on various Thursday evenings at the Amphitheater at Oak Point Park. He has made preliminary arrangements with a number of established performers and secured a hold on their services for the following dates:

June 14, 2007	Terri Hendrix and Ruthie Foster
July 12, 2007	Eliza Gilkyson and Tom Russell
August 9, 2007	Jimmy LaFave and Gary P. Nunn
Sept. 6, 2007	Billy Jonas and Trout Fishing in America
October 11, 2007	Albert & Gage and Kelly Willis

Mr. Kennedy has submitted a marketing plan for the series, along with projected expense and revenue budgets. The marketing plan would begin as early as April 12, 2007, with a press reception and initial round of press releases.

The Expense Budget has the following general categories:

General Ledger & Season Expenses	\$ 3,288.02
Event Expenses:	\$ 77,744.25
Services of Rod Kennedy & Assoc.	\$ 6,695.00
Opening Reception	\$ 3,000.00

TOTAL PROJECTED EXPENSE: \$ 90,727.27

The Revenue Budget submitted by Kennedy & Associates is more optimistic than I believe is realistic the first year. My adjusted figures are:

50% of 150 single reserved tickets @ \$35 = \$2,625 x 5 concerts =	\$ 13,125
50% of 850 general admission tickets @ \$25 = \$10,625 x 5 concerts =	\$ 53,125
15% of concession revenue (500 people x \$10 X 5 concerts x .15)	\$ 3,750

TOTAL PROJECTED REVENUE: \$ 70,000.00

Services to be provided by Rod Kennedy and Associates include:

Booking, contracting of performers, rider compliance, press list assistance,
Consulting, accounting, on site supervision of events, pre-series brochure
Preparation, writing of press releases, program copy, photos and layout.

Mr. Kennedy would also be available for press events and other promotion.

NOTE: No additional monies are requested for ordinary expenses we incur for operation of the amphitheater, such as trailer rental, maintenance, janitorial services, contract labor, supplies and materials. (\$34,000 for year) These are already included in FY 06-07 Budget.

3/14/2007

Handwritten: 3/14/07

Preliminary Open Meeting Agenda Item IV

Police Department Racial Profiling Report

Chief Rushin

Preliminary Open Meeting Agenda Item V

Police Department Performance Measures

Chief Rushin



P.O. Box 860358
Plano, Texas 75086-0358
972-424-5678
Fax 972-424-0099
<http://www.planopolice.org>

MEMORANDUM

DATE: March 14, 2007
TO: Bruce D. Glasscock, Executive Director
FROM: Gregory W. Rushin, Chief of Police
SUBJECT: 2006 Organizational Performance Measures Update

The Plano Police Department's mission statement is to provide outstanding Police Services, in partnership with the community, to maintain a safe environment that contributes to the quality of life. We measure our success in achieving this mission with four (4) organizational performance measures:

- (1). Crime Rate
- (2). Traffic Safety
- (3). Priority Response Time
- (4). Quality of Service

(1). Crime Rate

Each year, law enforcement agencies from across the country submit their crime data to the FBI for compilation and comparison utilizing the same criteria and definitions for each jurisdiction. The FBI reports these crime statistics in the Uniformed Crime Report (UCR). In this report crime is reflected on a ratio per 1,000 residents, which allows for comparison of cities with different populations.

In the UCR "major crime" is defined by the FBI as homicide, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft. There are two types of major crime, "violent crime" and "property crimes." Violent crime consists of homicide, rape, robbery, and aggravated assault; while property crime consists of burglary, larceny, and motor vehicle theft. The key indicator in these statistics for comparison to other cities is the "major crime rate per 1000 citizens".

For 2006, the major crime rate in Plano decreased from 38 to 37 per 1,000 citizens. The violent crime rate per 1,000 citizens decreased 0.7%, while the property crime rate per 1,000 citizens decreased 2.9%. There were 8578 property crimes reported, but only 737 violent crimes; therefore, property crimes occurred at a rate of nearly 12 times that of violent crimes.

During 2006, the City of Plano was ranked by Morgan-Quitno Press as the 41st safest city in the United States. We were also honored as the 2nd safest city in the State of Texas, and the safest city in North Texas.

(2). Traffic Safety

A primary goal of the Plano Police Department is to maintain safe streets. The success of this is measured by the incidence of crashes and resulting injuries and deaths. In 2006 there was a 0.3% decrease in crashes, a 5.9% decrease in crashes with injuries, and a 43.8% reduction in the number of crash-related fatalities. It is believed that these accomplishments were made possible through a combination of traffic safety initiative efforts, which included:

- A 17.1% increase in the number of traffic stops made by officers:
- A 69.3% rise in the total of warning citations issued; and
- Implementation of the Automated Red Light Camera Enforcement Program (see data below).

The Plano Automated Red Light Camera Enforcement Program began on March 1st, 2006, with operations at the following four intersections:

1. Westbound 15th Street @ Independence Parkway
2. Westbound Park Boulevard @ Ventura Drive
3. Eastbound Spring Creek Parkway @ Custer Road
4. Eastbound Legacy Drive @ Dallas Parkway

On October 24, 2006, a fifth approach went on-line at:

5. Westbound Legacy Drive @ Dallas Parkway

Four Additional locations became active on January 31, 2007 at:

6. Southbound Coit Rd @ Spring Creek Pkwy
7. Eastbound Parker Rd @ Dallas Pkwy
8. Eastbound Plano Pkwy @ Dallas Pkwy
9. Northbound Jupiter Rd @ Plano Pkwy

A survey is being conducted at:

10. Southbound Coit Rd @ Park Blvd

We are waiting on TX DOT approval for the following locations

11. Northbound Preston @ Spring Creek
12. Southbound Preston @ Plano Parkway
13. Eastbound 121 @ Custer Road
14. Eastbound SH 121 @ Dallas Parkway

A 15th approach is being determined

15. location to be determined - to replace Avenue K & Park because design of intersection does not allow for construction of cameras

Since the red light cameras were installed, crashes have decreased significantly at the first four monitored intersections, as indicated below:

Crashes at the first four monitored intersections YTD from March 1st through December 31st

Type	2005	2006	Change
Red Light Violation Crashes	37	25	-32.4%
Total Intersection Crashes	79	40	-49.4%
Rear-end Crashes	14	21	+50%

Our Mission:

To provide outstanding police services, in partnership with the community, to maintain a safe environment that contributes to the quality of life.

Crashes city-wide YTD January 1st through December 31st, 2005 versus 2006

Type	2005	2006	% Change
Fatality Crashes	16	9	-43.75%
Total Crashes	6068	6048	-.3%
Injury Crashes	2039	1918	-5.9%
Red Light Violation Crashes	543	497	-6.8%
Rear-End Crashes	1464	1378	-5.9%

(3). Priority Response Times

Average patrol officer response time to high priority calls for service decreased again this year, by 4.3% from 5.31 minutes to 5.08 minutes; while overall response time increased 3.7% from 8.18 minutes to 8.48 minutes. Response times are reviewed on a monthly basis to ensure that our patrol deployment is adequate to maintain a quick response to emergencies and a good response to all priority calls for service.

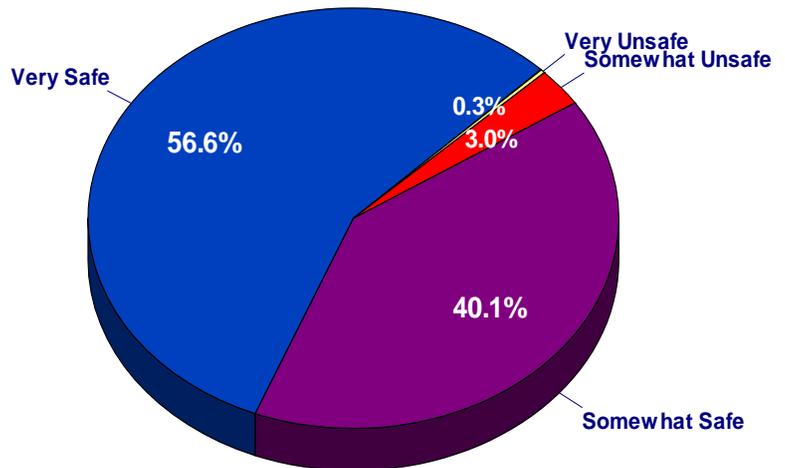
(4). Quality of Service

Each year, the police department determines quality of service through two types of citizen surveys. The quarterly surveys are sent to citizens who actually received police services, while the end-of-year survey is a random sampling of the community-at-large. Respondents to our end-of-year survey indicated that roughly one out of three had contact with the police department during 2006. The types of contacts varied and included things like reporting a crime, attending a crime prevention talk, receiving a home security survey, chatting with an officer on neighborhood patrol, helping locate a special needs child, and assisting motorists.

97% of those surveyed feel safe in Plano.

Perception of Safety

How safe do you feel in Plano?



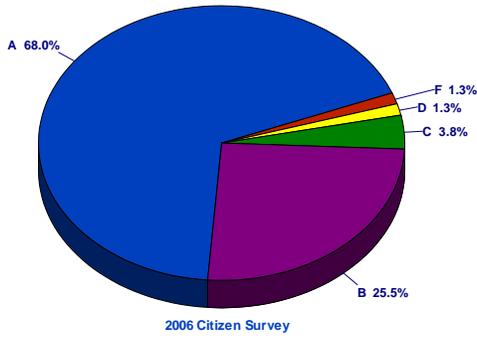
2006 Citizen Survey

Our Mission:

To provide outstanding police services, in partnership with the community, to maintain a safe environment that contributes to the quality of life.

Quality of Police Services

Rate the overall quality of Plano Police service

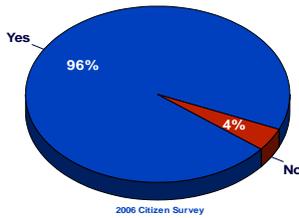


94% of citizens gave the quality of Police Services an A or B grade (68% - A, and 26% - B).

96% felt that department employees performed as expected, and that their calls were handled properly.

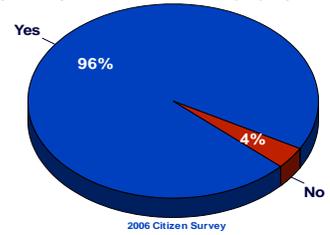
Employee Performance

Did employee perform to your expectations?



Call Handling

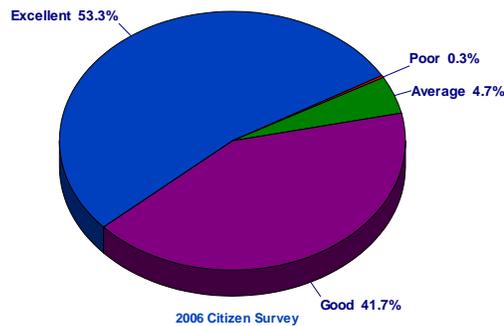
Do you feel your call for service was properly handled?



Finally, 95% of the citizens believe that the quality of life in Plano is excellent or good.

Quality of Life in Plano

Rate the overall quality of life in Plano



Our Mission:

To provide outstanding police services, in partnership with the community, to maintain a safe environment that contributes to the quality of life.

Discussion/Action Items for Future Council Agendas

2007

March 26

Cultural Affairs Commission
Mobility Report
DART Report
Comprehensive Monthly Financial Report

3-year Financial Forecast

April 9

Public Arts Committee

April 13 – Annual Police Awards Banquet, Reflections on Spring Creek, 7 p.m.

April 23

Community Relations Commission
Mobility Report
DART Report
Comprehensive Monthly Financial Report

May 14

Heritage Commission

May 24 – District 3 Neighborhood Roundtable, PSA StarCenter, 7 p.m.

May 28 – Memorial Day

May 29

Planning and Zoning Commission
Mobility Report
DART Report
Comprehensive Monthly Financial Report

June 11

Transition & Revitalization Commission

June 21 – 24, TCMA Conference, San Antonio

VI-a
1

June 25

Board of Adjustment
Mobility Report
DART Report
Comprehensive Monthly Financial Report

July 4 – Independence Day

July 23

Building Standards Commission
Mobility Report
DART Report
Comprehensive Monthly Financial Report

July 25

(Budget Session)

August 13

Retirement Security Plan Committee

August 23 – District 4 Neighborhood Roundtable, PSA StarCenter, 7 p.m.

August 27

Parks and Recreation Planning Board
Mobility Report
DART Report
Comprehensive Monthly Financial Report

September 3 – Labor Day

September 10

Self Sufficiency Committee

September 24

Plano Housing Authority
Mobility Report
DART Report
Comprehensive Monthly Financial Report

October 7 – 10, ICMA Conference, Pittsburgh

VI-b

October 8
TIF #1 & #2 Boards

October 18 – District 2 Neighborhood Roundtable, Sockwell Center, 7 p.m.

October 22
Youth Advisory Committee
Mobility Report
DART Report
Comprehensive Monthly Financial Report

November 7 – 9, TML Conference, Dallas

November 12
Technology Commission

November 13 – 17, NLC Conference, New Orleans

November 22 & 23 – Thanksgiving Holidays

November 27
Mobility Report
DART Report
Comprehensive Monthly Financial Report

December 10

December 18
Mobility Report
DART Report
Comprehensive Monthly Financial Report

December 24 & 25 – Christmas & Winter Holidays

VI-C

Transportation Advisory Committee

Plano City Council Update

March 20, 2007

Michael W. Copeland

TAC Chairman

2

Issues Addressed in 2006

- Safe Streets Program
- Red Light Camera Support
- Share the Road Campaign Support
- Citizen concerns on specific issues

Plan for 2007

- How can we provide more meaningful input for the Council?
- What transportation issues are Plano citizens facing that we should assist in addressing?
- How can we better represent the citizens of Plano?

ju

TAC Ideas

- Earlier involvement in development plans
- Traffic impact studies – where appropriate
- Coordination with zoning changes – perhaps assist P&Z on transportation aspects
- Not looking to duplicate or rubber stamp
- TAC seeks to add value to a vibrant process already in place

TAC Transportation Issues

- Public transportation – especially for seniors
 - Shuttles, vans, etc.
- Road user safety – Share the Road Campaign
- Pedestrian friendly policies and opportunities during reconstruction / rehabilitation of an aging infrastructure – improve “walkability” of Plano

5

6

TAC

Thank You!



**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
February 26, 2007**

COUNCIL MEMBERS

Pat Evans, Mayor
Scott Johnson, Mayor Pro Tem
Sally Magnuson, Deputy Mayor Pro Tem
Shep Stahel
Loretta Ellerbe
Harry LaRosiliere
Jean Callison
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
Elaine Bealke, City Secretary

Mayor Evans called the meeting to order at 5:07 p.m., Monday, February 26, 2007, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Council Member Callison arrived at 5:15 p.m. Mayor Evans then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice and to discuss Litigation, Section 551.071, and discuss Real Estate, Section 551.072 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 6:16 p.m. in the Council Chambers where the following matters were discussed:

Consideration and Action Resulting From Executive Session Discussion

No items were brought forward.

Personnel Appointments

Keep Plano Beautiful Commission

Upon a motion made by Council Member Stahel and a second by Council Member Dunlap, the Council voted 8-0 appoint Rob Sippl to an interim term expiring in October of 2008.

Public Arts Committee

Council Member Ellerbe advised that this appointment is deferred at this time.

Senior Citizens Advisory Board

Upon a motion made by Deputy Mayor Pro Tem Magnuson and a second by Council Member Dunlap, the Council voted 8-0 to appoint Jim Hudson to an interim term expiring in October of 2008.

DART Report

DART Board of Representatives Pope spoke to receipt of the first quarter performance report, stated that ridership has held steady, and that the DART Board Chair will travel to Washington D.C. to meet regarding appropriation of the full-funding grant. He spoke to the sales tax exemption bill being filed, responded to the Council that discussions are continuing regarding a seamless transportation system, and further stated that the timetable for expanding parking at the Parker Road Station should be toward year's end.

Comprehensive Monthly Financial Report

Director of Finance McGrane presented the Comprehensive Monthly Finance Report for the month of January and stated that the report is on the City web site for viewing under the heading of the Finance Department. He stated that the General Fund is ahead of last year's numbers based primarily on property tax receipts, the Water and Sewer Fund is down from last year due to reduced water usage, and that overall expenditures are tracking well. Mr. McGrane spoke to the annualized sales tax index and reviewed the three-year sales tax growth rate. He stated that unemployment continues to drop, single-family housing starts are increasing and spoke to Hotel/Motel Occupancy Tax comparisons. Mr. McGrane spoke to the Treasury Pool equity and portfolio diversification.

Mobility Report

Traffic Engineering Manager Neal spoke to the term "the intelligent city" and how this applies to an intelligent transportation system. He spoke to the annual loop detector survey being looked at and percentages of loop failures. He stated that red light cameras are helping to improve this situation and lower these percentages. Mr. Neal spoke to synchronization benchmarks and to uniform power backup systems addressing traffic lights that go out due to power failures.

Council Items for Discussion/Action on Future Agendas

No items were brought forward.

Consent Agenda

Council Member Stahel advised that he will be stepping down on Consent Item "B," Bid for implementation of the Altiris Total Management Suite to Dell Marketing, L.P. and Consent Item "E," Purchase of Netqos Network Management Software and Consulting due to possible conflicts of interest.

Council Reports

Deputy Mayor Pro Tem Magnuson stated that she and other Council Members attended Collin County Day in Austin.

Council Members Ellerbe and Dunlap and Mayor Pro Tem Johnson spoke to attending a recent downtown Plano meeting and stated that a review was presented regarding what businesses are currently there and what has closed, that it was a positive meeting, and that individuals from the surrounding area were there as well.

Mayor Evans spoke to she and Executive Director Hogan attending a rally for Clean Air Cities in Waco followed by hearings related to the TXU coal plants. She spoke to red-light camera hearings held, stated that Executive Director Glasscock and Police Chief Rushin presented testimony, and further spoke to deliberations regarding the use of dollars resulting from tickets issued.

Nothing further was discussed. Mayor Evans recessed the meeting at 6:49 p.m.

Pat Evans, Mayor

ATTEST

Elaine Bealke, City Secretary

PLANO CITY COUNCIL
February 26, 2007

COUNCIL MEMBERS

Pat Evans, Mayor
Scott Johnson, Mayor Pro Tem
Sally Magnuson, Deputy Mayor Pro Tem
Shep Stahel
Jean Callison
Loretta L. Ellerbe
Harry LaRosiliere
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
Elaine Bealke, City Secretary

Mayor Evans convened the Council into the Regular Session on Monday, February 26, 2007, at 7:06 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Reverend Alice Coder of First United Methodist Church – Plano.

The Pledge of Allegiance was led by Cub Scout Pack 265 of Huffman Elementary.

Mayor Evans read a proclamation recognizing *Colorectal Cancer Awareness Month*.

Mayor Evans presented certificates of appreciation to Holly R. Linskie for her service on the Keep Plano Beautiful Commission and Michael Coleman for his service on the Public Arts Committee.

Mayor Evans administered oaths of office to Michael Coleman as an incoming member of the Planning and Zoning Commission and to Javed Azam as an incoming member of the Technology Commission.

COMMENTS OF PUBLIC INTEREST

No one appeared to speak.

BOARD AND COMMISSION REPORT

Environmental Education and Community Outreach Supervisor Merchant introduced Keep Plano Beautiful Commission Chair John Caldwell who spoke regarding the mission of the board to help Plano residents reduce litter, beautify the community, and increase the involvement of children. He stated that one goal of the board is to increase community involvement and awareness through expanded public relations and spoke regarding the Environmental Community Awards presented and participation in City parades and the Plano Balloon Festival. Mr. Caldwell stated that another goal is to create a more beautiful and litter-free community and spoke regarding the Great American Cleanup, Adopt-A-Highway Program, HOA Beautification Grant Program, HOA Neighborhood Dumpster Program, Cigarette Litter Education Program and other accomplishments. He spoke to a third goal being to create business resource support for the board's efforts and to collaborating with local businesses and community organizations to build a volunteer base. Mr. Caldwell spoke to an upcoming retreat for members to review programs. Ms. Merchant advised the Council that conducting a litter index is part of the Keep America Beautiful Program and that Staff currently does not have a comparison to neighboring cities, but will request this information. She spoke to receipt of positive comments regarding the City of Plano's program at conferences. Deputy Mayor Pro Tem Magnuson spoke to the City hosting Keep Texas Beautiful last year.

CONSENT AGENDA

Upon the request of Council Member Stahel, Consent Agenda Items "B" and "E" were removed for individual consideration due to possible conflicts of interest.

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

Approval of Minutes [Consent Agenda Item "A"]

February 12, 2007

Approval of Expenditures

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

Bid No 2007-74-B for Dallas North Trunk Main Rehabilitation to Miller Pipeline Company in the amount of \$3,915,952. The project consists of the rehabilitation of sanitary sewer along Plano Parkway from west of Coit Road to east of Independence Parkway. [Consent Agenda Item "C"] (See Exhibit "A")

Bid No 2007-79-B for Tulane – East of Preston Road to McMahon Contracting, LP in the amount of \$231,002. The project consists of construction of approximately 400 feet of the two westbound lanes of Tulane Drive, east of Preston Road, including a right-turn lane at Preston Road. [Consent Agenda Item “D”] (See Exhibit “B”)

Purchase from Existing Contract/Agreement: (Purchase of products/services through Cooperative Purchasing Interlocal Contract with another governmental/quasi-governmental agency or an additional purchase from current City of Plano annual purchase agreement).

To approve the purchase of one (1) Mack Granite 24” Flat Bed Tandem Axle Truck for Compost Operations in the amount of \$109,904 from Dallas Mack Sales through an existing contract/agreement with Texas Association School Buyboard Purchase Program, and authorizing the City Manager to execute all necessary documents. (#208-04) [Consent Agenda Item “F”]

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

To approve an Engineering Contract by and between the City and GSWW, Inc., in the amount of \$150,050, for Electro Scan 2007 and authorizing the City Manager to execute all necessary documents. This agreement is for an engineering study to include infiltration/inflow testing of certain existing sanitary sewers and a report to be used for future sanitary sewer rehabilitation in the City of Plano. [Consent Agenda Item “G”]

To approve an Engineering Contract by and between the City and Halff Associates, Inc., in the amount of \$75,175, for Dallas North Trunk Sewer Main Rehab – Phase II and authorizing the City Manager to execute all necessary documents. This agreement is for the engineering design to rehabilitate the Dallas North Trunk Sewer Main from east of Independence Parkway to west of Custer Road. [Consent Agenda Item “H”]

Reimbursement of Oversize Participation

To approve and authorize reimbursement to Wattsec, Ltd. for oversize paving and water line participation in the amount of \$378,191 on Parkwood Boulevard and Windhaven Parkway. [Consent Agenda Item “I”]

Adoption of Resolutions

Resolution No. 2007-2-11(R): To find Rodney D. Patten is entitled to defense representation pursuant to City Code of Ordinances in connection with the matter of Richard Jean Florance, Jr. v. Jerry Buchmeyer, Robert J. Davis, Matthews etc. LLP, Brenda Taylor, Collin County TX, State of Texas, et. al.; and providing an effective date. [Consent Agenda Item “J”]

Resolution No. 2007-2-12(R): To appoint William J. Roberts and James P. Reid to serve for two year terms as investigators as required by Section 2-104 of the Code of Conduct of the City of Plano; and providing an effective date. [Consent Agenda Item “K”]

Resolution No. 2007-2-13(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas, and the North Central Texas Council of Governments providing terms and conditions for the funding for Clean Fleet Vehicle Project; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item “L”]

Adoption of Ordinance

Ordinance No. 2007-2-14: To transfer the sum of \$4,500,000 from the Water & Sewer Fund Unappropriated Fund Balance to the Water & Sewer CIP Fund Appropriation for Fiscal Year 2006-07 for the purpose of providing additional funding for Emergency Sewer Repair; amending the budget of the City and Ordinance 2006-9-9, as amended, to reflect the actions taken herein; declaring this action to be a case of public necessity; and providing an effective date. [Consent Agenda Item “M”]

END OF CONSENT

Due to possible conflicts of interest, Council Member Stahel stepped down from the bench on the following two items.

Bid No. 2007-71-B for implementation of the Altiris Total Management Suite to Dell Marketing, L.P. in the amount of \$115,837. [Consent Agenda Item “B”] (See Exhibit “C”)

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Callison, the Council voted 7-0 to approve Bid No. 2007-71-B for implementation of the Altiris Total Management Suite to Dell Marketing, L.P. in the amount of \$115,837.

Purchase from Existing Contract/Agreement: To authorize the purchase of Netqos Network Management Software and Consulting in the amount of \$190,000 from Anixter, Inc. through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-271) [Consent Agenda Item “E”]

Upon a motion made by Deputy Mayor Pro Tem Magnuson and seconded by Council Member Callison, the Council voted 7-0 to authorize the purchase of Netqos Network Management Software and Consulting in the amount of \$190,000 from Anixter, Inc. through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents.

Council Member Stahel resumed his seat at the bench.

Public Hearing and adoption of Ordinance No. 2007-2-15 as requested in Zoning Case 2006-29 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 75.5± acres located at the northwest corner of Spring Creek Parkway and Tennyson Parkway in the City of Plano, Denton and Collin Counties, Texas, from Commercial Employment to Single-Family Residence Attached, Patio Home, and Single-Family Residence-9; 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: Welwood-Hawkins Homes Tabled 12-11-06 and 01-22-07 [Regular Agenda Item “1”]

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

Director of Planning Jarrell advised the Council that the Future Land Use Plan designates the property as appropriate for low intensity office uses and that most of the surrounding area is zoned Commercial Employment. She advised that upon review, the Planning and Zoning Commission considered the rezoning appropriate and stated that although it is separated by Spring Creek Parkway from single-family property to the south, they felt this was not a barrier to being considered a part of that neighborhood. Ms. Jarrell further stated that the Commission felt the topography, shape and size of the development did not lend itself to the type of corporate campuses nearby and considered the flood plain and greenbelt separation.

Ms. Jarrell responded to the Council regarding access provided to adjacent property and options for maintenance of the lake such as it being placed in a drainage easement where the City has the right but not necessarily the responsibility for maintenance, the homeowners' association retaining ownership and maintenance, or commercial participation when the north side develops. She stated that the City is not necessarily obligated to maintenance, but spoke to circumstances that might affect drainage systems of the City and to provisions allowing assessment to abutting property owners. Ms. Jarrell stated that there is no easement at this point to allow access to the property.

Mayor Evans opened the Public Hearing. Cheryl Williams of Zone Systems, representing the applicant, advised that the intent for the creek/floodplain and lake is that they are amenities owned and maintained by the homeowners' association. She spoke to the growing demand for luxury housing of all types in the City and the location being appropriate due to its natural extension of residential development to the south and the unique physical characteristics of the property. Ms. Williams spoke regarding the increase in property valuation that will occur, adequate infrastructure in place, minimal impact on schools, and support in the area. No one else spoke either for or against the request. The Public Hearing was closed.

Ordinance No. 2007-2-15 (cont'd)

Ms. Jarrell responded to the Council, stating that the Subdivision Ordinance governs the way drainage areas are treated and contains a provision for the City to enter if necessary, to do maintenance and repairs and to assess abutting property owners. She spoke to working out details in the subdivision plat stage. Ms. Jarrell stated that Commercial Employment zoning does not have a height limit, but does include setback requirements from residential development.

Upon a motion made by Council Member Callison and seconded by Deputy Mayor Pro Tem Magnuson, 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 75.5± acres located at the northwest corner of Spring Creek Parkway and Tennyson Parkway in the City of Plano, Denton and Collin Counties, Texas, from Commercial Employment to Single-Family Residence Attached, Patio Home, and Single-Family Residence-9 as requested in Zoning Case 2006-29 and as recommended by the Planning and Zoning Commission; 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. 2007-2-15.

Transmittal of Fiscal Year 2005-2006 Affirmative Action Report [Regular Agenda Item "2"]

Director of Human Resources Ross advised the Council that the data sources used for the report are the City of Plano PeopleSoft System and 2000 US Census Information with comparison based on the Collin County civilian labor force and the City of Plano employee workforce. She advised that the level of females in the City has been consistent from 2004 through 2006 and that with regard to ethnicity, we mirror the county's labor force. Ms. Ross spoke to those positions that may be typically low in terms of female or minority representation, review of utilization analysis and ongoing education and recruitment efforts. Ms. Ross reviewed statistics related to new hires, promotions, applications received and candidates tested. She spoke to recruitment efforts and the City's philosophy in terms of affirmative action to make sure that all job opportunities are open and that there is a level playing field. Ms. Ross spoke to the City providing professional development and training opportunities for employees. She advised that the Community Relations Commission accepted the report and that it is presented for Council consideration. Council Member Dunlap spoke to the possible impacts of DART and the availability of affordable housing and Ms. Ross advised she would look into those areas.

Upon a motion made by Deputy Mayor Pro Tem Magnuson and seconded by Council Member Dunlap, the Council voted 8-0 to accept the 2005-2006 Affirmative Action Report.

Ordinance No. 2007-2-16: To amend Ordinance No. 2006-5-9 as codified in Article VIII. Special Events of Chapter 11 Licenses and Business Regulations of the Code of Ordinances of the City of Plano by deleting the exception of funeral processions and official activities of governmental agencies from the application of this ordinance; adding the exception of motorcades from the application of this ordinance; providing for notification of adjacent property owners along a proposed parade route; and other related matters; providing a repealer clause, a savings clause; a severability clause and providing an effective date. Tabled 02-12-07 [Regular Agenda Item “3”]

Upon a motion made by Council Member Ellerbe and seconded by Council Member Stahel, the Council voted 8-0 to remove the item from the table.

City Attorney Wetherbee spoke to concerns raised by members of the community regarding application of the ordinance and review by Staff to determine the types of activities that might require police protection, street closure, etc. She advised that if a motorcade is traveling through the City in compliance with all traffic laws, there would be no need for regulation and further that funeral processions complying with laws would not need a permit.

Upon a motion made by Deputy Mayor Pro Tem Magnuson and seconded by Council Member Ellerbe, the Council voted 8-0 to amend Ordinance No. 2006-5-9 as codified in Article VIII. Special Events of Chapter 11 Licenses and Business Regulations of the Code of Ordinances of the City of Plano by deleting the exception of funeral processions and official activities of governmental agencies from the application of this ordinance; adding the exception of motorcades from the application of this ordinance; providing for notification of adjacent property owners along a proposed parade route; and other related matters; providing a repealer clause, a savings clause; a severability clause and providing an effective date; and further to adopt Ordinance No. 2007-2-16.

Public Hearing pursuant to Chapter 26 of the Texas Parks and Wildlife Code pertaining to use or taking of a portion of Legacy Trail located in the City of Plano for Force Main Easements to North Texas Municipal Water District. [Regular Agenda Item “4”]

Director of Parks and Recreation Wendell advised that this is a request for the granting of an easement to the North Texas Municipal Water District for a sanitary sewer line through a portion of Legacy Trail greenbelt in far northwest Plano. He stated that in accordance with Chapter 26, the Council may make a determination that there is no feasible and prudent alternative to the using of the parkland for this purpose and that the project includes all reasonable planning to minimize harm to the parkland resulting from the use. Mr. Wendell stated that the Parks and Recreation Planning Board has reviewed the request and recommends approval.

Bruce Cole of the North Texas Municipal Water District advised the Council that the line requested is part of the Upper East Fork Collection System which serves most of Plano and several other cities and directs flow from the west side of the City ending at the Wilson Creek Treatment Plant. He spoke to the growth in both Plano and Frisco and stated that expansion will take place in two phases with the first primarily in Plano including two additional pumps at the Preston Road Lift Station and a force main from the lift station to the west Rowlett Creek Interceptor in the City of Allen. Mr. Cole spoke to the second phase, which would run from there to the Wilson Creek Interceptor in McKinney.

Robert McGee of Freese and Nichols spoke to consideration of the alignment and stated that it would result in minimal tree removal, does not interfere with wetlands mitigation areas, and has a minimal impact on developed residential areas. He spoke to avoidance of trees along the route and stated that the three trees removed will be replaced. Mr. McGee spoke to hike and bike trails that would remain open during construction, restoration of disturbed areas by seeding, and stated that the contractor would be responsible for site safety. He spoke to the contractor being limited to opening no more than 150 feet of trench at any one time during construction and stated that no trench would be left open overnight. Mr. McGee spoke to the importance of tree preservation and advised that all trees were tagged and the design developed to protect as many as possible. He provided information on a tentative schedule with the bid opening and award in April and pipe construction completed in the fall.

Council Member Dunlap spoke to possible consideration of sprigging or sodding. Mr. Wendell responded to the Council, stating that the method of reestablishment would depend on when the project is completed, spoke to possible sodding, the lack of irrigation in the area and working to ensure the park is restored as quickly as possible.

Council Member Ellerbe stated concern that during construction some may park heavy vehicles under trees for shade. Jeff Paine of Freese and Nichols advised that contractors are directed to utilize City of Plano details with regard to tree protection which include fencing and the prohibition of excavation fill in the drip line and that the district will have inspectors in the field to monitor compliance. Mr. Cole clarified that the term "force main" is used for a pumped waste water line. Mayor Evans opened the Public Hearing. No one spoke either for or against the request. The Public Hearing was closed.

Ordinance No. 2007-2-17: To approve a project granting four permanent sanitary sewer force main easements to the North Texas Municipal Water District requiring the use or taking of a portion of City of Plano public park land, known as Legacy Trail; providing for a determination that there is no feasible and prudent alternative to the proposed use or taking of the park land; and that the proposed project includes all reasonable planning to minimize harm to the land and the park and recreation area resulting from the use; and providing an effective date. [Regular Agenda Item "5"]

Upon a motion made by Council Member Dunlap and seconded by Council Member Callison, the Council voted 8-0 to approve a project granting four permanent sanitary sewer force main easements to the North Texas Municipal Water District requiring the use or taking of a portion of City of Plano public park land, known as Legacy Trail as recommended by the Parks and Recreation Planning Board; providing for a determination that there is no feasible and prudent alternative to the proposed use or taking of the park land; and that the proposed project includes all reasonable planning to minimize harm to the land and the park and recreation area resulting from the use; and providing an effective date; and further to adopt Ordinance No. 2007-2-17.

Resolution No. 2007-2-18(R): To approve the granting of four permanent sanitary sewer force main easements to the North Texas Municipal Water District being in the Crystal Creek Addition, Preston Creek Addition, Hidden Creek Estates, Phase 3 & 4, and Villages of White Rock Creek, Phase Four, Collin County, Texas across a portion of City of Plano park known as Legacy Trail and authorizing the execution of the easements by the City Manager; and providing an effective date. [Regular Agenda Item "6"]

Upon a motion made by Council Member Stahel and seconded by Mayor Pro Tem Johnson, the Council voted 8-0 to approve the granting of four permanent sanitary sewer force main easements to the North Texas Municipal Water District being in the Crystal Creek Addition, Preston Creek Addition, Hidden Creek Estates, Phase 3 & 4, and Villages of White Rock Creek, Phase Four, Collin County, Texas across a portion of City of Plano park known as Legacy Trail and authorizing the execution of the easements by the City Manager; and providing an effective date; and further to adopt Resolution No. 2007-2-18(R).

There being no further discussion, Mayor Evans adjourned the meeting at 8:20 p.m.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, 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:	3/20/07		Reviewed by Legal <i>W</i>	<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>DMC</i> 3/5/07	
Agenda Coordinator (include phone #): Dianna Wike Ext. 7549					

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

CAPTION

Award/Rejection of Bid/Proposal for Bid No 2007-62-C for Overhead Door and Gate Inspection and Maintenance to Johnson Equipment Company in the estimated annual amount of \$50,020.00.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	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 FUND

COMMENTS: This item approves price quotes. Expenditures will be made in the Facilities Maintenance Department within approved budget appropriations. The estimated annual amount is \$50,020.

STRATEGIC PLAN GOAL: Overhead door and gate inspection and maintenance relates to the City's Goal of Service Excellence.

SUMMARY OF ITEM

Annual Contract With Renewals

Staff recommends bid of Johnson Equipment Company in the estimated annual amount of \$50,020.00 be accepted as the lowest responsible bidder, conditioned upon timely execution of any necessary contract documents. This will establish an annual fixed price contract, with three optional one-year renewals for the purchase of Overhead Door and Gate Inspection and Maintenance.

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

CITY OF PLANO

BID NO. 2007-62-C OVERHEAD DOOR AND GATE INSPECTION AND MAINTENANCE

BID RECAP

Bid opening Date/Time: January 31, 2007 @ 3:30pm

Number of Vendors Notified: 562

Vendors Submitting "No Bids": 5

Number of Bids Submitted: 5

Anytime Access Gate Overhead Door Co
Tour Landscape Management, Inc.
Johnson Equipment Company
Overhead Door Company
All Facility Services

Bids Evaluated Non-Responsive to Specification: 1

Recommended Vendor(s):

Johnson Equipment Company (\$50,020.00)

Dianna Wike

February 27, 2007

Dianna Wike, Buyer

Date

b-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: 3/20/07		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Public Works Administration / Michael Rapplean		Initials	Date	
Department Head	Jimmy Foster	Executive Director	<i>[Signature]</i>	3-9-07	
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	3/9/07	
Agenda Coordinator (include phone #): Margie Stephens (X4104)					

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

CAPTION

Award, Rejection of Bids/Proposals, Bid No. 2007-92-B for the 2006- 2007 Residential Concrete Pavement Rehabilitation Project, , Zones K8, L8 & J6N to Jerusalem Corporation in the amount of \$637,539.00

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	3,688,646	4,811,354	4,000,000	12,500,000
Encumbered/Expended Amount	3,688,646	-726,028	0	-4,414,674
This Item		-637,539	0	-637,539
BALANCE		3,447,787	4,000,000	7,447,787

FUND(S): CAPITAL RESERVE

COMMENTS: Funds are included in the 2006-07 Capital Reserve Fund. This item, in the amount of \$637,539, will leave a current year balance of \$3,447,787 for the Residential Concrete Replacement project.

STRATEGIC PLAN GOAL: Residential concrete replacement relates to the City's Goal of Safe, Efficient Travel.

SUMMARY OF ITEM

Staff recommends the bid of Jerusalem Corporation in the amount of \$ 637,539.00 be accepted as the lowest responsible bid for the project conditioned upon timely execution of all necessary documents.

This project involves the replacement of street and alley pavement in the residential areas on the west side of the City, bounded by Legacy Drive on the south, Red River on the east, Hedgcoxe Road on the north and Independence on the west.

The secondary vendor being recommended is Hencie International in the amount of \$693,082.20.

Engineer's estimate for this project is \$765,000.00.

List of Supporting Documents: Bid Tabulation Location Map	Other Departments, Boards, Commissions or Agencies
---	--

**CITY OF PLANO
BID TABULATION
2007-92-B**

**2006-2007 Residential Concrete Pavement Rehabilitation
Project-Zones K8, L8, J6 N - PROJECT NO. 5795
Thursday, March 8, 2007 @ 3:00 PM**

CONTRACTOR	BID BOND	TOTAL BID
Jerusalem Corp.	Yes	\$ 637,539.00
Hencie Int'l, Inc.	Yes	\$ 693,082.20
Ken-Do Contracting, LP	Yes	\$ 783,370.75
Ed Bell Construction Company	Yes	\$ 849,876.00
McMahon Contracting, LP	Yes	\$ 851,447.50
Jim Bowman Construction Co., LP	Yes	\$ 977,995.60

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

Sharron Mason

March 8, 2007

Sharron Mason, Buyer

Date

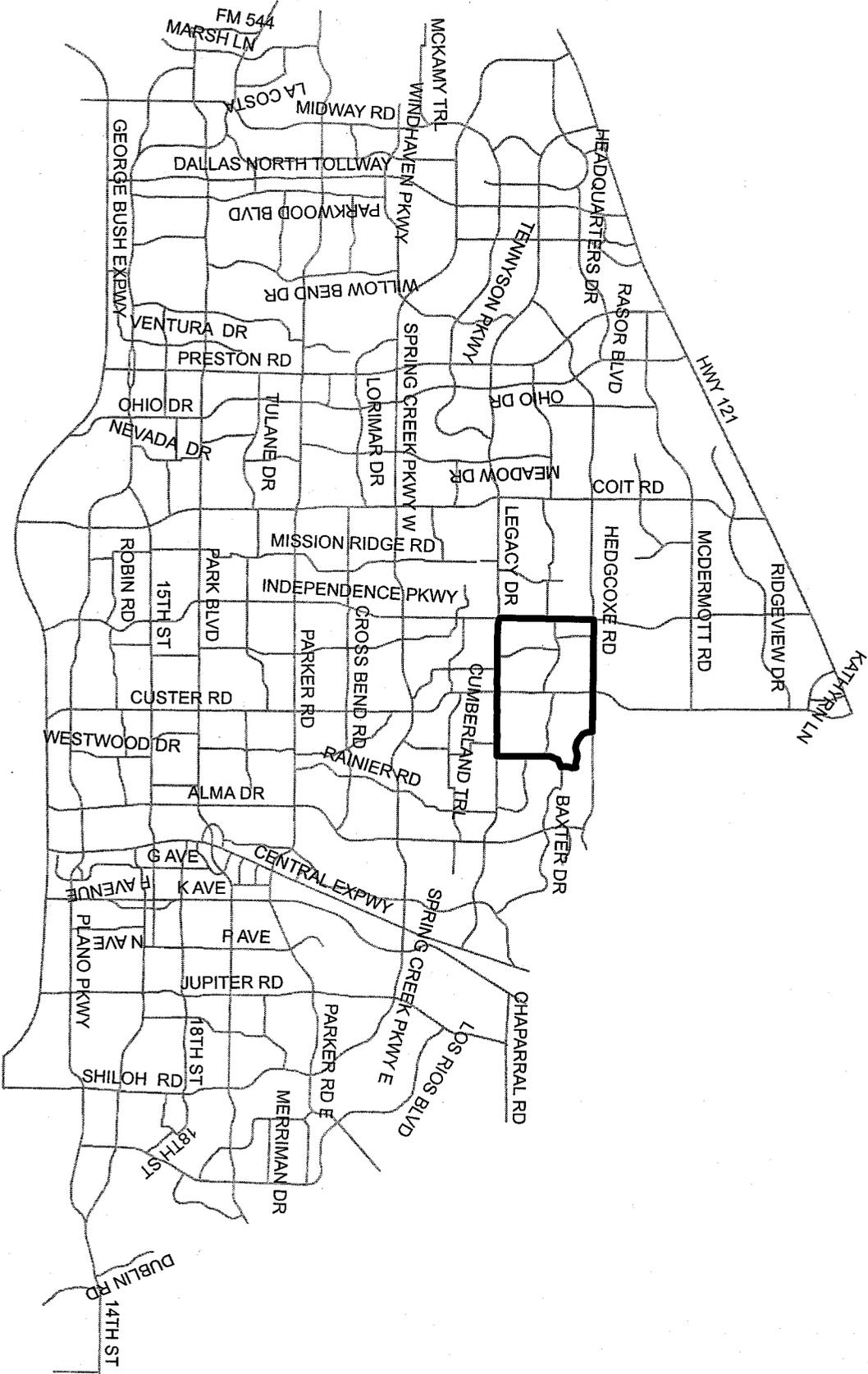
"BID TABULATION STATEMENT"

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

C-2

**2006-2007 RESIDENTIAL CONCRETE PAVEMENT REHABILITATION PROJECT
ZONES K8, L8 & J6N**



C-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:	3/20/07		Reviewed by Legal <i>W</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Purchasing		Initials	Date	
Department Head	Mike Ryan	Executive Director			
Dept Signature:	<i>MR</i>	City Manager	<i>JM</i>	3/20/07	
Agenda Coordinator (include phone #):	Dianna Wike Ext. 7549				

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

CAPTION

Award/Rejection of Bid/Proposal for Bid No 2007-60-C for Security Control Systems Maintenance Package to The Systems Group, Inc. dba SystemsGroup, SGI Protective Services, Silver Star Protective Services, in the estimated annual amount of \$46,561.50.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	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 FUND

COMMENTS: This item approves price quotes. Expenditures will be made in the Facilities Maintenance Department within approved budget appropriations. The estimated annual amount is \$46,562.

STRATEGIC PLAN GOAL: Security control systems maintenance relates to the City's Goal of Service Excellence.

SUMMARY OF ITEM

Annual Contract With Renewals

Staff recommends bid of The Systems Group, Inc. dba SystemsGroup, SGI Protective Services, Silver Star Protective Services, in the estimated annual amount of \$46,561.50 be accepted as the lowest responsible bidder, conditioned upon timely execution of any necessary contract documents. This will establish an annual fixed price contract, with three optional one-year renewals for the purchase of Security Control Systems Maintenance Package.

List of Supporting Documents:
Bid Summary

Other Departments, Boards, Commissions or Agencies

CITY OF PLANO

BID NO. 2007-60-C SECURITY CONTROL SYSTEMS MAINTENANCE PACKAGE

BID RECAP

Bid opening Date/Time: February 8, 2007 @ 3:30pm

Number of Vendors Notified: 258

Vendors Submitting "No Bids": 4

Number of Bids Submitted: 1

SYSTEMSgroup

Bids Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s):

SYSTEMSgroup

(\$46,561.50)

Dianna Wike

March 1, 2007

Dianna Wike, Buyer

Date

d-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:	3/20/07		Reviewed by Legal <i>W</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Purchasing		Initials	Date	
Department Head	Mike Ryan		Executive Director		
Dept Signature:	<i>Dianna Wike</i>		City Manager	<i>W</i>	<i>3/19/07</i>
Agenda Coordinator (include phone #): Dianna Wike Ext. 7549					
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 Best Value Bid No 2007-63-C for Custodial Services – Various Locations to UBM Enterprise, Inc. in the estimated annual amount of \$962,272.95.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2006-07	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 FUND					
COMMENTS: This item approves price quotes. Expenditures will be made in the Facilities Service Department within approved budget appropriations. The estimated annual amount is \$962,273.					
STRATEGIC PLAN GOAL: Custodial services for City facilities relate to the City's Goal of Service Excellence.					
SUMMARY OF ITEM					
Annual Contract With Renewals					
Staff recommends bid of UBM Enterprise, Inc., in the estimated annual amount of \$962,272.95 be accepted as the best value, and conditioned upon timely execution of any necessary contract documents. This will establish an annual fixed price contract, with three optional one-year renewals for the purchase of Custodial Services – Various Locations.					
List of Supporting Documents: Bid Summary			Other Departments, Boards, Commissions or Agencies		

CITY OF PLANO

BEST VALUE BID NO. 2007-63-C CUSTODIAL SERVICES – VARIOUS LOCATIONS

BID RECAP

Bid opening Date/Time: February 7, 2007 @ 3:30pm

Number of Vendors Notified: 442

Vendors Submitting "No Bids": None

Number of Bids Submitted: 14

Final Combined Evaluation Score

UBM Enterprise, Inc.
Jany Mex, Inc.

4.26
3.08

Number of Bids Over Budget – Not Evaluated: 9

Bids Evaluated Non-Responsive to Specification: 3

Recommended Vendor(s):

UBM Enterprise, Inc.

(\$962,272.95)

Dianna Wike

February 28, 2007

Dianna Wike, Buyer

Date

e-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:	3/20/07		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> 3/5/07	
Agenda Coordinator (include phone #):	Becky Johansen x 4396				

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

CAPTION

Award, rejection of Bids/Proposals, conditional acceptance of lowest responsive, responsible bid/proposal to establish an annual fixed price contract for Traffic Control Devices / Signal Equipment items 1-9 in the estimated amount of \$31,304.00. Item 10 will be re-bid. (2007-72-C)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	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): **WAREHOUSE FUND**

COMMENTS: This item approves price quotes. Expenditures will be made in various departments within the approved budget appropriations. The estimated annual amount is \$31,304.

STRATEGIC PLAN GOAL: Traffic control devices/signal equipment parts relate to the City's goal of "Safe, Efficient Travel."

SUMMARY OF ITEM

Staff recommends bid of Requisite Inc. (Items 1-9) in the estimated amount of \$31,304.00 be accepted as the lowest responsive, responsible bidder meeting specifications for Traffic Control Devices / Signal Equipment. This will establish an annual fixed price contract with three City optional renewals. Item 10 - Conflict Monitors- will be re-bid. (2007-72-C)

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

CITY OF PLANO

BID NO. 2007-72-C TRAFFIC CONTROL DEVICES / SIGNAL EQUIPMENT

BID RECAP

Bid opening Date/Time: February 15, 2007 @ 4:00pm

Number of Vendors Notified: 329

Vendors Submitting "No Bids": 10

Number of Bids Submitted: 1

Requisite Inc.

Bids Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s):

Requisite Inc. \$31,304.00

Becky Johansen

Becky Johansen, Buyer

February 19, 2007

Date

f-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:	3/20/07	Reviewed by Legal <i>ws</i>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Fleet & Equipment Services		Initials	Date
Department Head	Mark Jerome	Jimmy Foster	<i>JF</i>	3-12-07
Dept Signature:	<i>[Signature]</i>		<i>JF</i>	3-12-07
Agenda Coordinator (include phone #): Linda M. Robinson x4180				

ACTION REQUESTED:

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

CAPTION

Approval of the purchase of two (2) Spartan/General Pumper's and one (1) Spartan/General Pumper with Elevated Master Stream in the amount of \$1,490,804.00 from Emergency Vehicles of Texas through an existing contract/agreement with HGAC Cooperative Purchase Program and authorizing the City Manager or his designee to execute all necessary documents. (#JC14 & JA01)

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR: 06/07 & 07/08	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	455,000		455,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-1,490,804	0	-1,490,804
BALANCE	0	-1,035,804	0	-1,035,804

FUND(S): EQUIPMENT REPLACEMENT FUND

COMMENTS: Funds are included in the FY 2006-07 approved budget for the replacement purchase of (1) Pumper with Compressed Air Foam upgrade for the Fire Department. (1) Additional Pumper and (1) Aerial Pumper is scheduled to be replaced in FY 2007-08. The cost of these early replacements is within the anticipated budget amount for FY 2007-08. By ordering the replacements early, the City will save money and will take delivery of the Fire Trucks earlier in FY 2007-08.

STRATEGIC PLANO GOAL: Vehicle replacement relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Equipment Services request the purchase of two Spartan/General Pumper's and one Spartan/General Pumper w/Elevated Master Stream through HGAC Cooperative Purchase Program, awarded to Emergency Vehicles of Texas. These are scheduled replacements for FY 06-07 for unit #47333 and approved for early replacement per FY 07-08 for units #47334 and #47335 for Dept. 552/Fire.

The City is authorized to purchase from a Local Cooperative Organization pursuant to Chapter 271, Subchapter F of the Texas Local Govt. Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (HGAC #JC14 & JA01)

Total purchase for all three pumper's including buyboard fee is \$1,490,804.00



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents:
Memo, Agenda, Quote Sheet

Other Departments, Boards, Commissions or Agencies

g-2



MEMORANDUM

Date: March 5, 2007
To: Steve Tillman, Senior Buyer
From: Reid Choate, Technical Coordinator
Subject: Request to purchase two (2) Spartan/General Pumper's through HGAC Cooperative Purchase Program, Contract #JC14 and one (1) Spartan/General Safety Aerial through HGAC Cooperative Purchase Program, Contract #JA01 awarded to Emergency Vehicles of Texas.

	<u>Contract # JC14</u>	<u>Contract #JA01</u>	
Base Price:	\$230,565.00 x 2 = \$461,130.00	\$440,987.00	
Published Options:	\$214,931.00 x 2 = \$429,862.00	\$144,112.00	
Unpublished Options:	\$ 10,079.00 x 2 = \$ 20,158.00	\$(-7,445.00)	
Buyboard Fee:	00	\$ 2,000.00	
PURCHASE PRICE:	\$911,150.00	+ \$579,654.00	= \$1,490,804.00
BUDGET AMOUNT:	\$935,000.00	+ \$600,000.00	= \$1,535,000.00

NOTE: These are scheduled replacements in FY 06-07 ERF for unit #47333 and FY 07-08 for units #47334 and #47335 approved for early replacement for Dept. 552/Fire. Account 071-8421, Suppl 00071001; Account 552-8416, Suppl 71552036.

Please reference Requisition No. 904237.

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

Cc: Jimmy Foster
Mark Jerome
Mike Malone
Bob Acker
Diane Palmer
Stephen Teiper

J-3

CITY OF PLANO

03/02/07

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P.O. Number 904237 OR

Cost Center 071

Supplier EMERGENCY VEHICLES OF TEXAS
6000 HUDDLESTON ST
FT WORTH TX 76137

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

Ordered 03/02/07 Freight
Requested 03/02/07 Order Taken By
Delivery

Description	Ordered	UOM	Unit Price	Extended Price	Request Date
SPARTAN PUMPERS	2	EA	230,565.0000	461,130.00	03/02/07

CONTRACT JC14
REQUEST TO PURCHASE TWO (2)
SPARTAN/GENERAL PUMPER'S
THROUGH HGAC COOPERATIVE
PURCHASING PROGRAM, CONTRACT #JC14
AND ONE (1) SPARTAN/GENERAL SAFETY
AERIAL THROUGH HGAC COOPERATIVE
PURCHASING PROGRAM, CONTRACT #JA01
AWARDED TO EMERGENCY VEHICLES OF
TEXAS.
NOTE: THESE ARE SCHEDULED REPLACEMENTS
IN FY06/07 ERF FOR UNIT 47333 AND FY07/08 FOR
UNITS 47334 AND 47335 APPROVED FOR EARLY
REPLACEMENT FOR DEPT. 552/FIRE.
ACCOUNT 071-8421.
SUPPLEMENT 00071001.
ACCOUNT 552-8416.
SUPPLEMENT 71552036.

CONTRACT #JC14
PURCHASE PRICE FOR TWO (2) \$911,150.00.
BUDGET AMOUNT FOR TWO (2) \$935,000.00.

CONTRACT #JA01
PURCHASE PRICE FOR ONE (1) \$579,654.00.
BUDGET AMOUNT FOR ONE (1) \$600,000.00.

TOTAL PRICE FOR REQUISITION: \$1,490,804.00.
BUDGETED AMOUNT FOR REQUISITION: \$1,535,000.00.

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CITY OF PLANO

03/02/07

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Description	Ordered	UOM	Unit Price	P.O. Number Extended Price	904237 Request Date	OR
PUBLISHED OPTIONS CONTRACT JC14	2	EA	214,931.0000	429,862.00	03/02/07	
UNPUBLISHED OPTIONS CONTRACT JC14	2	EA	10,079.0000	20,158.00	03/02/07	
SPARTAN AERIAL CONTRACT JA01	1	EA	440,987.0000	440,987.00	03/02/07	
PUBLISHED OPTIONS CONTRACT JA01	1	EA	144,112.0000	144,112.00	03/02/07	
UNPUBLISHED OPTIONS CONTRACT JA01	1	EA	7,445.0000-	7,445.00-	03/02/07	
H-GAC ADMIN. FEE		EA	.0000	2,000.00	03/02/07	
				Total Order		
TermDue upon receipt				1,490,804.00		

g.5



Fire Apparatus PROPOSAL

DATE: February 13, 2007

This proposal has been prepared for:

**CITY OF PLANO FIRE DEPARTMENT
1901 AVENUE K
PLANO, TEXAS 75086**

We hereby propose to furnish to you, subject to proper execution of the attached agreement by you and by an officer of this Company in Fort Worth, Texas the following apparatus and equipment to be built in accordance with the attached specifications:

QUANTITY	MODEL	UNIT PRICE
TWO (2)	ROSENBAUER-GENERAL DIVISION CUSTOM PUMPER, ALUMINUM RESCUE STYLE BODY, ROBINSON ROLL-UP DOORS, REAR MOUNT WATEROUS PUMP SYSTEM, WATEROUS 200-P CAFS FOAM SYSTEM, SPARTAN GLADIATOR 10" RAISED ROOF CAB/CHASSIS, DETROIT DIESEL SERIES 60 ENGINE, EVS4000 ALLISON AUTOMATIC RETARDER TRANSMISSION	\$ 455,575.00 EACH
TOTAL APPARATUS COST FOR TWO (2) UNITS		\$ 911,150.00

g/c

Delivery will be **F.O.B. Plano, Texas** and will be made approximately 365 calendar days after receipt of the signed contract.

Terms of payment are NET ON DELIVERY, unless otherwise stated.

This proposal shall expire unless accepted within 30 days after the date first set above. This expiration date may be extended, in writing, at the discretion of the Company.

EMERGENCY VEHICLES OF TEXAS, INC.

By: _____



Ed Beene, President

EMERGENCY VEHICLES OF TEXAS, INC.

6000 HUDDLESTON STREET

FORT WORTH, TEXAS 76137

1-888-347-3868

8-7

CUSTOMIZED PRODUCT PRICING SUMMARY BASED ON CONTRACT

Product Description: Spartan, 4-Door, Full-Tilt, Aluminum Pumper, Extruded Aluminum Body,
Single Axle, 1250 GPM Pump, Side-Mounted Pumper

Number of Units: ONE (1)

* The following details shall be provided with Purchase Order
from End User to H-GAC for customized products:

A.	Base Bid Price as in Bid/Contract No. JC14	(per single unit)	\$ 230,565.00
B.	Published Options added to Base Bid.....	(per single unit).....	\$ 214,931.00
C. PER UNIT SUB TOTAL:		\$ 445,496.00

Change Order Provisions (if applicable):

D.	Dollar value of Unpublished Options <u>added</u> to base bid price <u>per unit</u>	\$ 53,399.00
E.	Dollar value of Contract Items <u>per unit</u> <u>deleted</u> from Base Bid total.....	\$ 43,320.00
F.	PER UNIT CHANGE ORDER SUB TOTAL: (Change Order not to exceed 25% of "C") (Change order 2.2%)	\$ 10,079.00
G.	Order total without H-GAC fee for ONE (1) units	SUB TOTAL: \$ 455,575.00
H.	H-GAC Administrative Fee (from Fee Schedules)	
I.	Non-Equipment Charges (ie. Cost of Factory Trips, etc.)	
<hr/>		
J.	TOTAL PURCHASE PRICE INCLUDING H-GAC	\$ 455,575.00

K. COMMENTS AND NOTES:
FEE IS INCLUDED WITH THE AERIAL APPARATUS

J-8



Fire Apparatus PROPOSAL

DATE: February 13, 2007

This proposal has been prepared for:

CITY OF PLANO FIRE DEPARTMENT
1901 AVENUE K
PLANO, TEXAS 75086

We hereby propose to furnish to you, subject to proper execution of the attached agreement by you and by an officer of this Company in Fort Worth, Texas the following apparatus and equipment to be built in accordance with the attached specifications:

QUANTITY	MODEL	UNIT PRICE
ONE (1)	ROSENBAUER-GENERAL DIVISION CUSTOM 60' REAR MOUNT AERIAL LADDER, EXTRUDED ALUMINUM BODY, 500 GALLON POLY TANK, SIDE MOUNT CONTROL PANEL, ROBINSON ROLL-UP DOORS, 1250 GPM SINGLE STAGE PUMP, SPARTAN GLADIATOR 4-DOOR CUSTOM CAB/CHASSIS, DETROIT DIESEL SERIES 60 455 HP ENGINE, ALLISON AUTOMATIC TRANSMISSION	\$ 577,654.00
	HGAC ADMINISTRATION FEE	\$ 2,000.00
	TOTAL COST OF APPARATUS	\$ 579,654.00

J-9

Delivery will be **F.O.B. Plano, Texas** and will be made approximately 365 calendar days after receipt of the purchase order.

Terms of payment are NET ON DELIVERY, unless otherwise stated.

This proposal shall expire unless accepted within 30 days after the date first set above. This expiration date may be extended, in writing, at the discretion of the Company.

EMERGENCY VEHICLES OF TEXAS, INC.

By: 

Ed Beene, President

EMERGENCY VEHICLES OF TEXAS, INC.

6000 HUDDLESTON STREET

FORT WORTH, TEXAS 76137

1-888-347-3868

PLANO 60 FT. AERIAL

2/13/07

PAGE 2

J 10

CUSTOMIZED PRODUCT PRICING SUMMARY BASED ON CONTRACT

Product Description: Spartan, 4-Door, Full-Tilt, Aluminum Pumper, Extruded Aluminum Body,
Single Axle, 75' Rear Mount Steel Ladder

Number of Units: ONE (1)

* The following details shall be provided with Purchase Order
from End User to H-GAC for customized products:

A.	Base Bid Price as in Bid/Contract No. JA01	(per single unit)	\$ 440,987.00
B.	Published Options added to Base Bid.....	(per single unit).....	\$ 144,112.00
C. PER UNIT SUB TOTAL:		\$ 585,099.00
Change Order Provisions (if applicable):			
D.	Dollar value of Unpublished Options <u>added</u> to base bid price <u>per unit</u>		\$ 110,504.00
E.	Dollar value of Contract Items <u>per unit</u> <u>deleted</u> from Base Bid total.....		\$ 117,949.00
F.	PER UNIT CHANGE ORDER SUB TOTAL: (Change Order not to exceed 25% of "C") (Change order 1.2%)		\$ (7,445.00)
G.	Order total without H-GAC fee for ONE (1) units	SUB TOTAL:	\$ 577,654.00
H.	H-GAC Administrative Fee (<i>from Fee Schedules</i>)		\$ 2,000.00
I.	Non-Equipment Charges (<i>ie. Cost of Factory Trips, etc.</i>)		
<hr/>			
J.	TOTAL PURCHASE PRICE INCLUDING H-GAC		\$ 579,654.00

K. COMMENTS AND NOTES:

J-11



**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:	03/20/07		Reviewed by Legal <i>MS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Technology Services		Initialed	Date	
Department Head	David Stephens	Executive Director	<i>MS</i>	03-28-07	
Dept Signature:	<i>David Stephens</i>	City Manager	<i>MS</i>	<i>3/28/07</i>	
Agenda Coordinator (include phone #):		Lisa Prunty, Ext. 7342			

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

CAPTION

Authorize the purchase of (6) Panasonic Tough book Laptops with mounting equipment and installation in the amount of \$31,341.00 from Portable Computer Systems., through an existing Department of Information Resources (DIR) contract; and authorizing the City Manager or his designee to execute all necessary documents. (DIR-VPC-03-039)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	31,341	0	31,341
Encumbered/Expended Amount	0	0	0	0
This Item	0	-31,341	0	-31,341
BALANCE	0	0	0	0

FUND(s): **PC REPLACEMENT (058) AND SUSTAINABILITY FUND (045)**

COMMENTS: Funds are included in the FY 2006-07 operating budget for PC and laptop replacements, related equipment and installation.

STRATEGIC PLAN GOAL: The periodic replacement of laptops relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Technology Services recommends Council approve expenditure of \$31,341.00 to Portable Computer Systems through the Department of Information Resources (DIR) for Panasonic Tough book Laptops with mounting equipment and installation. Ruggedized laptops for Environmental Waste Services. 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 and State Law requiring the local government to seek competitive bids for the items. (DIR-VPC-03-039)

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



portablecomputersystems
 Corporate Headquarters
 12851 West 43rd Drive
 Unit #2
 Golden, CO 80403

Quote 003828

Print Date 02/27/07
 Quote Valid Date 03/29/07

Prices are valid until the date shown above.

Inside Sales Rep Amy Hale
 amyh@portablecomputersystems.com
 Phone: 888/219-8699
 Fax: 940/683-4314

Remit payments to: Customer:
 Portable Computer Systems, Inc. City of PlanoPlano, TX
 PO Box 17127
 Denver, CO 80217

Salesperson Saul Delgado
 Phone: 713/995-9665

Quotation

Customer	Requested By	F.O.B.	Terms		
PLA006	Becky Morales	Origination	Net 30 Upon Approval		
Item Number	Description / Comments	Quantity	Unit Price	Extended Price	
CF-30CTQAZBM	Core Duo 1.66Ghz,13.3" Touch,512MB,80GB,802.11,Win XP,Blue Tooth	6.000	3569.00	21414.00	
CF-SVCLTNF3Y	PANASONIC TOUGHBOOK PROTECTION PLUS (3 YEARS) - free limited time	6.000	0.00	0.00	
CF-VDR301U	COMBO DRIVE MM POCKET CF-30	1.000	245.00	245.00	
CF-WEB2912	CF-29 Vehicle Port rep W/DUAL HIGH-GAIN WIRELESS CONNECTOR 2.0- Compatible with CF-30 but limited to 1 USB port on dock, screen brightness may be temporarily delayed in extreme cold temperatruue , ie below 0 (CF-30 pricing & part # dock unavailable to quote at this time)	6.000	532.00	3192.00	
GJ-PAN-CF27	INTERFACE PLATE FOR THE PANASONIC 27/28/29 MOBILE DOCK	6.000	58.00	348.00	
PA1555-968	Lind auto adapter with bare wire	6.000	95.00	570.00	
CG-MP	CHARGE GUARD	6.000	71.00	426.00	
7110-0315	SCREEN SUPPORT	6.000	44.00	264.00	
-----	Mounts for 2002 Chevy C2500 & 2006 Chevy C1500	0.000	0.00	0.00	
DS-122	CHEVY MOUNT TAHOE 2000 NEWER & Mounts for 2006 Chevy C1500	4.000	79.00	316.00	

Notes TX DIR Contract #: DIR-VPC-03-039

Terms

Payment Terms shall be as stated on this quote. A service charge of 1-1/2% per month will be charged on all past due balances. All costs of collections, including reasonable attorney's fees shall be paid by the customer. Returned merchandise will not be accepted without authorization and will be subject to a 20% restocking fee. Returns must be made within 30 days of invoice date. Custom-made equipment may not be returned for any credit. Warranties: PCS sells the products as set forth in this invoice without any express or implied warranties. In the event of any product defect of nonconformity, the Buyer's remedies shall be the warranties provided by the Manufacturer. Buyer shall not be entitled to any incidental, consequential or special damages of any kind.

Subtotal does not include taxes, shipping or other incidental charges unless otherwise indicated

(Continued)

A-2



portablecomputersystems
 Corporate Headquarters
 12851 West 43rd Drive
 Unit #2
 Golden, CO 80403

Quote 003828

Print Date 02/27/07
 Quote Valid Date 03/29/07

Prices are valid until the date shown above.

Inside Sales Rep Amy Hale
 amyh@portablecomputersystems.com
 Phone: 888/219-8699
 Fax: 940/683-4314

Remit payments to: Customer:
 Portable Computer Systems, Inc. City of PlanoPlano, TX
 PO Box 17127
 Denver, CO 80217

Salesperson Saul Delgado
 Phone: 713/995-9665

Quotation

Customer	Requested By	F.O.B.	Terms		
PLA006	Becky Morales	Origination	Net 30 Upon Approval		
Item Number	Description / Comments	Quantity	Unit Price	Extended Price	
DS-LOWER-9	GAMBER JOHNSON - 9" LOWER POLE	4.000	34.00	136.00	
QADJ-UPPER-M	QUICK ADJ UPPER TUBE ASSY 8"	4.000	72.00	288.00	
DS-CLEVIS	GAMBER JOHNSON - TILT SWIVEL FOR DS BASE	4.000	51.00	204.00	
LAC02WUDS	Support Brace	4.000	34.00	136.00	
-----	Mounts for 2001 Chevy S-10 Entended Cab	0.000	0.00	0.00	
DS-120	GAMBER CHEVY S-10	1.000	79.00	79.00	
DS-LOWER-9	GAMBER JOHNSON - 9" LOWER POLE	1.000	34.00	34.00	
QADJ-UPPER-M	QUICK ADJ UPPER TUBE ASSY 8"	1.000	72.00	72.00	
DS-CLEVIS	GAMBER JOHNSON - TILT SWIVEL FOR DS BASE	1.000	51.00	51.00	
LAC02WUDS	Support Brace	1.000	34.00	34.00	
-----	Mounts for 2003 Ford F150	0.000	0.00	0.00	

Notes TX DIR Contract #: DIR-VPC-03-039

Terms

Payment Terms shall be as stated on this quote. A service charge of 1-1/2% per month will be charged on all past due balances. All costs of collections, including reasonable attorney's fees shall be paid by the customer. Returned merchandise will not be accepted without authorization and will be subject to a 20% restocking fee. Returns must be made within 30 days of invoice date. Custom-made equipment may not be returned for any credit. Warranties: PCS sells the products as set forth in this invoice without any express or implied warranties. In the event of any product defect of nonconformity, the Buyer's remedies shall be the warranties provided by the Manufacturer. Buyer shall not be entitled to any incidental, consequential or special damages of any kind.

(Continued)

Subtotal does not include taxes, shipping or other incidental charges unless otherwise indicated

A-3



portablecomputersystems
 Corporate Headquarters
 12851 West 43rd Drive
 Unit #2
 Golden, CO 80403

Quote 003828

Print Date 02/27/07
 Quote Valid Date 03/29/07

Prices are valid until the date shown above.

Inside Sales Rep Amy Hale
 amyh@portablecomputersystems.com
 Phone: 888/219-8699
 Fax: 940/683-4314

Remit payments to: Customer:
 Portable Computer Systems, Inc. City of PlanoPlano, TX
 PO Box 17127
 Denver, CO 80217

Salesperson Saul Delgado
 Phone: 713/995-9665

Quotation

Customer	Requested By	F.O.B.	Terms		
PLA006	Becky Morales	Origination	Net 30 Upon Approval		
Item Number	Description / Comments	Quantity	Unit Price	Extended Price	
DS-112	2003 FORD EXPEDITION DS-BASE	1.000	86.00	86.00	
DS-LOWER-9	GAMBER JOHNSON - 9" LOWER POLE	1.000	34.00	34.00	
QADJ-UPPER-M	QUICK ADJ UPPER TUBE ASSY 8"	1.000	72.00	72.00	
DS-CLEVIS	GAMBER JOHNSON - TILT SWIVEL FOR DS BASE	1.000	51.00	51.00	
LAC02WUDS	Support Brace	1.000	34.00	34.00	
-----	Other Pricing	0.000	0.00	0.00	
CF-K29HD8041	80 GB Hard Drive (part # for this may change for the CF-30)	1.000	327.00	327.00	
-----	Toughbook pricing represents limited time promotional price when purchased with Panasonic services/warranty on same Purchase Order. Pricing subject to increase if no services/warranty is purchased	0.000	0.00	0.00	
CF-WMBA501G-G	1GB MEMORY UPGRADE- third party	6.000	163.00	978.00	
INSTALL	Installation - includes all expenses	6.000	325.00	1950.00	
Notes TX DIR Contract #: DIR-VPC-03-039 Terms Payment Terms shall be as stated on this quote. A service charge of 1-1/2% per month will be charged on all past due balances. All costs of collections, including reasonable attorney's fees shall be paid by the customer. Returned merchandise will not be accepted without authorization and will be subject to a 20% restocking fee. Returns must be made within 30 days of invoice date. Custom-made equipment may not be returned for any credit. Warranties: PCS sells the products as set forth in this invoice without any express or implied warranties. In the event of any product defect of nonconformity, the Buyer's remedies shall be the warranties provided by the Manufacturer. Buyer shall not be entitled to any incidental, consequential or special damages of any kind.					

(Continued)

Subtotal does not include taxes, shipping or other incidental charges unless otherwise indicated

h-4



portablecomputersystems
 Corporate Headquarters
 12851 West 43rd Drive
 Unit #2
 Golden, CO 80403

Quote 003828

Print Date 02/27/07
 Quote Valid Date 03/29/07

Prices are valid until the date shown above.

Inside Sales Rep Amy Hale
 amyh@portablecomputersystems.com
 Phone: 888/219-8699
 Fax: 940/683-4314

Remit payments to: Portable Computer Systems, Inc.
 PO Box 17127
 Denver, CO 80217

Customer: City of PlanoPlano, TX

Salesperson Saul Delgado
 Phone: 713/995-9665

Quotation

Customer	Requested By	F.O.B.	Terms		
PLA006	Becky Morales	Origination	Net 30 Upon Approval		
Item Number	Description / Comments	Quantity	Unit Price	Extended Price	
-----	Physical Inspection may be required to confirm mounting equipment	0.000	0.00	0.00	
Notes TX DIR Contract #: DIR-VPC-03-039					
Terms Payment Terms shall be as stated on this quote. A service charge of 1-1/2% per month will be charged on all past due balances. All costs of collections, including reasonable attorney's fees shall be paid by the customer. Returned merchandise will not be accepted without authorization and will be subject to a 20% restocking fee. Returns must be made within 30 days of invoice date. Custom-made equipment may not be returned for any credit. Warranties: PCS sells the products as set forth in this invoice without any express or implied warranties. In the event of any product defect of nonconformity, the Buyer's remedies shall be the warranties provided by the Manufacturer. Buyer shall not be entitled to any incidental, consequential or special damages of any kind.					
				Subtotal 31341.00	

Finished

Subtotal does not include taxes, shipping or other incidental charges unless otherwise indicated

Interoffice Memo

Date: 02/21/07
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: New Portable Laptops for the replacement of Solid Waste Laptops

We recommend purchasing the replacement ruggedized laptops for our Solid Waste Department from Portable Computer Systems. The laptops shall be Panasonic Toughbooks as specified on the attached specifications. The State of Texas Contract is DIR-VPC-03-039. We are requesting council approve a not to exceed amount of \$ 31,341.00 to Portable Computer Systems.





**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:	3/20/07	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Purchasing	Initials	Date	
Department Head	Mike Ryan	Executive Director		
Dept Signature:	<i>Glenna Hayes</i>	City Manager	<i>GH</i>	<i>3/20/07</i>
Agenda Coordinator (include phone #):		Glenna Hayes x 7074		
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				
<i>Purchase from Existing Contract/Agreement to authorize the purchase of a Bomb Response Vehicle in the amount of \$200,000 from LDV Incorporated through a Texas Building and Procurement Commission contract, and authorizing the City Manager or his designee to execute all necessary documents. (TXMAS #4-23V020).</i>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0		0	
Encumbered/Expended Amount	0	0	0	0
This Item	0	200,000	0	200,000
BALANCE	0	200,000	0	200,000
FUND(S): Grant Fund (2006 UASI Grant 13.566)				
Comments: Funds are available in the 2006 UASI Homeland Security Grant Fund for the purchase of a bomb response vehicle.				
STRAGIC PLAN GOAL: Bomb response equipment relates to the City's Goal of "Service Excellence".				
SUMMARY OF ITEM				
Purchasing staff recommends Council approve expenditure not to exceed \$200,000 to LDV Incorporated for the purchase of a Bomb Response Vehicle through the use of Texas Building and Procurement Commission 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 local government to seek competitive bids for item(s). Funding is provided through the 2006 UASI Grant and department funds. (TXMAS #4-23V020)				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

2-1



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

received
2/13/07

MEMORANDUM

DATE: February 9, 2007
TO: *gwr* Gregory W. Rushin, Chief of Police
FROM: Steve Copling, Lieutenant, Homeland Security
SUBJECT: Purchase of Bomb Response Truck

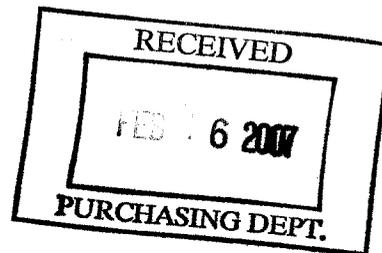
The Plano Police Department received a \$200,000.00 grant from the 2006 Urban Area Security Initiative (UASI) for the purchase of a bomb response truck.

The vehicle chosen for this purchase will be manufactured by LDV Inc., a Burlington, Wisconsin, company with 30 years of experience building such specialized vehicles as mobile command posts, mobile crime labs, Hazmat/rescue vehicles, and bomb response trucks. LDV built Plano Police Department's mobile command vehicle.

The bomb response truck the police department will purchase is a General Service Administration (GSA) vehicle listed as part of the Texas Multiple Award Schedule (TXMAS) contract, and will not be purchased through a competitive bid process. Officers from the Police Department's Bomb Squad have traveled to Laredo, Texas, to inspect their bomb truck, one that was purchased off the same TXMAS contract and is nearly identical to the truck Plano PD will be buying.

The 2006 UASI grant performance date is February 28, 2008, giving us one year to take delivery of this vehicle. The build time for the truck is expected to be approximately six months. With the Plano Bomb Squad responding to 30 callouts in 2006, taking delivery of this vehicle as soon as possible is a high priority.

GWR/SC/jw



i-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:	3/20/07	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Purchasing	Initials	Date	
Department Head	Mike Ryan	Executive Director		
Dept Signature:	<i>Glenn Palmer</i>	City Manager	<i>Glenn</i>	<i>3/20/07</i>
Agenda Coordinator (include phone #):		Glenna Hayes x 7074		
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				
<i>Purchase from Existing Contract/Agreement to authorize the purchase of a Mini-ANDROS II Vehicle in the amount of \$81,153.00 from Remotec Incorporated through a Texas Building and Procurement Commission-Multiple Award Schedule contract, and authorizing the City Manager or his designee to execute all necessary documents. (TXMAS #GSA-84).</i>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0		0	
Encumbered/Expended Amount	0	0	0	0
This Item	0	81,153	0	81,153
BALANCE	0	81,153	0	81,153
FUND(S): Grant Fund (LETPP Grant 567) and General Fund (532)				
Comments: Funds are available in the 2006 LETPP Grant Fund for the purchase of a robot vehicle, \$80,000, and funds are available in the Police Department budget for freight charges in the amount of \$1,153. STRAGIC PLAN GOAL: Remote bomb robot equipment relates to the City's Goal of "Service Excellence".				
SUMMARY OF ITEM				
Purchasing staff recommends Council approve expenditure not to exceed \$81,153.00 to Remotec Incorporated for the purchase of a Mini-ANDROS II Vehicle through the use of Texas Building and Procurement Commission – Multiple Award Schedule (GSA #84). 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 item(s). Funding is provided through the 2006 LETPP Grant and department funds.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		



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

MEMORANDUM

DATE: March 1, 2007
TO: Greg Rushin, Chief of Police
FROM: Steve Copling, Lieutenant, Homeland Security
SUBJECT: Purchase of Bomb Robot

The Plano Police Department received \$80,000.00 from a 2006 Urban Area Security Initiative (UASI) LETPP grant for the purchase of a bomb robot.

The robot chosen for this purchase will be the Remotec Mini-Andros II, which is the industry standard for American law enforcement EOD for small robots. All law enforcement bomb techs in the United States are certified at one location – the Hazardous Devices School (HDS) at the Redstone Arsenal in Huntsville, Alabama. The instructors at HDS train all certified bomb techs on Remotec bomb robot products. HDS is the only location where bomb techs can get certified in robot operation. The one week robot school is required and part of the bomb tech certification program.

There is no other small robot on the market that fits the law enforcement bomb robot requirements (lifting capability, ability to climb stairs, arm manipulation) for the price. While there are other small robots on the market, they are all less desirable operationally, as well as tens of thousands of dollars more than the Mini-Andros II.

The purchase of the Mini Andros II will be made from Texas Multiple Award Schedule (TXMAS) contract #GSA-84 in the amount of \$81,153.00 with funds provided by the LETPP Grant (\$80,000) and Police Department (\$1,153.00).

The 2006 LETPP grant performance date is February 28, 2008, giving us one year to take delivery of the robot. The build time for the robot is expected to be approximately four months.

SC

J-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:	3/20/07	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Engineering Department		Initials	Date
Department Head	Alan L. Upchurch	Executive Director	<i>[Signature]</i>	3/13/07
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	3/13/07
Agenda Coordinator (include phone #):	Irene Pegues (7198)			Project No. 5580
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 material testing services for the Parker Road Estates West Water Rehabilitation Project, in the amount of \$35,026.00 from Kleinfelder, Inc., through an existing contract/agreement, and authorizing the City Manager or his designee to execute all necessary documents. (Contract # 2005-265-D)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2006-07	Prior Year (CIP Only)	Current Year	Future Years
Budget		278,055	1,629,945	0
Encumbered/Expended Amount		-278,055	-1,492,602	0
This Item		0	-10,046	0
BALANCE		0	127,297	0
FUND(S): WATER CIP				
COMMENTS: Funds are included in the 2006-07 Water CIP. This increase (causing the contract to exceed \$25,000), in the amount of \$10,046, will leave a current year balance of \$127,297 for the Parker Road Estates West Water Rehab project.				
STRATEGIC PLAN GOAL: Materials testing services relate to the City's Goal of Livable and Sustainable Community.				
SUMMARY OF ITEM				
Staff recommends approval of this expenditure for construction material testing, an addition of \$10,046.00, for a total amount of \$35,026.00. Kleinfelder, Inc. is one of the six contracted vendors for this service during 2006-07. This is to increase the original agreement from \$24,980.00 for additional testing required for the project. The project consisted of the replacement of residential water mains.				
Funding is available from the Water Community Investment Program; therefore, staff recommends approval.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Revised Exhibit C		N/A		

R-1

REVISED EXHIBIT "C"							
COST ESTIMATE & FEE SCHEDULE							
Kleinfelder							
Construction Testing Budget Estimate							
City of Plano - Parker Road Estates West Water Rehabilitation - Project 5580							
	Unit	Unit Price	Orig. Quant.	Rev. Quant.	Subtotal	Increase	
SOILS							
Moisture Density	ea.	\$ 140.00	6	6	\$ 840.00	\$ -	
Atterberg Limits	ea.	\$ 50.00	6	6	\$ 300.00	\$ -	
Minus 200 Sieve	ea.	\$ 30.00	6	6	\$ 180.00	\$ -	
Technician soil services	hr	\$ 42.00	90	132	\$ 5,544.00	\$ 1,764.00	
Nuclear Field Density	ea.	\$ 20.00	135	180	\$ 3,600.00	\$ 900.00	
Trip Charge	ea.	\$ 38.00	45	60	\$ 2,280.00	\$ 570.00	
		Subtotal			\$ 12,744.00		
CONCRETE							
Technician concrete services	hr	\$ 42.00	90	155	\$ 6,510.00	\$ 2,730.00	
Reinf. Steel Observation	hr	\$ 42.00	30	30	\$ 1,260.00	\$ -	
Concrete Test Cylinders	ea	\$ 15.00	180	265	\$ 3,975.00	\$ 1,275.00	
Cylinder Pick up	ea	\$ 75.00	28	43	\$ 3,225.00	\$ 1,125.00	
Coring Machine	dy	\$ 125.00	2	2	\$ 250.00	\$ -	
Conc. Cores	ea	\$ 55.00	10	10	\$ 550.00	\$ -	
Trip Charge	ea.	\$ 38.00	45	64	\$ 2,432.00	\$ 722.00	
		Subtotal			\$ 18,202.00		
MANAGEMENT							
Project Manager	hr	\$ 120.00	26	34	\$ 4,080.00	\$ 960.00	
Technician III	hr	\$ 51.00	0	0	\$ -	\$ -	
Administrative Services	hr	\$ 45.00	0	0	\$ -	\$ -	
		Subtotal			\$ 4,080.00		
		Grand Total			\$ 35,026.00	\$ 10,046.00	

K-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:	3/20/07	Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Facilities		Initials	Date
Department Head	Alan Upchurch	Executive Director	<i>[Signature]</i>	<i>3/13/07</i>
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	<i>3/13/07</i>
Agenda Coordinator (include phone #):		Amy Powell X5513 <i>AP</i>		

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 labor and materials for the Roof Replacement Project at Stadium Pump Station, in the amount of \$66,797.00, from Tremco Incorporated, through an existing contract/agreement with Texas Cooperative Purchasing Network (TCPN), and authorizing the City Manager or his designee to execute all necessary documents. (TCPN Vendor Contract No. R4611)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	67,000	0	67,000
Encumbered/Expended Amount	0	-1,258	0	-1,258
This Item	0	66,797	0	66,797
BALANCE	0	-1,055	0	-1,055

FUND(s): CAPITAL RESERVE

COMMENTS: Funds are included in the 2006-07 Capital Reserve. This item, in the amount of \$66,797, will exceed the current year balance by \$1,055 for the Stadium Pump Station project. The overage will be covered through reallocation from the Asbestos Testing and Removal project.

STRATEGIC PLAN GOAL: Roof replacement relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Request approval of bid from Tremco Incorporated, to replace the roof at the Stadium Pump Station located at FM 544 and Shiloh Road. Tremco Incorporated to include all labor and Energy Star Certified materials to install the new roof, in the amount of \$66,797.00. The City is authorized to purchase from a Local Cooperative Organization pursuant to Section 271 Subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for Items. (Texas Cooperative Purchasing Network (TCPN) Vendor No. R4611)

List of Supporting Documents:

Other Departments, Boards, Commissions or Agencies

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Tremco Incorporated

950 Benbrook Circle, Lantana, TX 76226

TREMCO

J. Roger Pound

940.728.0266 Office
940.728.0267 Fax
rpound@tremcoinc.com

January 9, 2007

Mr. Richard Medlen
Facilities Maintenance Superintendent
City of Plano
4850 E. 14th Street
Plano, TX 75074

Re: Stadium Pump Station Roof Replacement

Dear Mr. Medlen,

I am writing to provide you a brief narrative, outlining project requirements for the Stadium Pump Station building. The scope of work below describes the roof inspected and the type of roofing work to be completed.

Each assembly will be installed in accordance with applicable design agencies and codes, including the National Roofing Contractors Association (NRCA), Factory Mutual (FM), Underwriters Laboratories (UL), the International Building Code and Primary Manufacturer's Installation Guidelines Manuals. The specification has been reviewed and stamped by an architect. Please note the following:

Stadium Pump Station Roof: Replacement

1. Remove existing roof down to the deck.
2. Sweep debris from the deck.
3. Apply primer to the deck.
4. Install 2 ½" polyisocyanurate insulation to the deck.
5. Install 1" wood fiberboard insulation over the polyisocyanurate.
6. Install 2 plies of type VI glass felts in hot asphalt.
7. Install an Energy Star Certified white granulated cap sheet in asphalt.
8. Install Hypalon flashing membrane on all curbs and parapet wall.
9. Apply Energy Star Certified aluminum coating to all Hypalon.
10. Install new coping cap on the parapet wall.
11. Receive 15-Year Full System Warranty.
12. Project will last approximately 6 days, and will be supervised by a Technical Inspector.
13. **TCPN Proposed Cost for the Restoration and Replacement: \$ 66,796.73**

Prudent levels of expert inspection and supervision have been included within this scope of work. Cost estimates were priced in accordance with the terms; conditions and criteria established by The Cooperative Purchasing Network.

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Tremco Incorporated

950 Benbrook Circle, Lantana, TX 76226

TREMCO

Should you have any questions, or require further assistance, please call me on my cell phone at (972) 948-1095. Thank you.

Sincerely,



J. Roger Pound
Tremco, Incorporated

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WEATHERPROOFING TECHNOLOGIES, INCORPORATED

Spec Number	WORK DESCRIPTION	UNIT	BID AMOUNT	QUANTITY	PROJECT AMOUNT
TREMCO COMMERCIAL LINE ITEM PRICING					
CITY OF PLANO					
TCPN CONTRACT #R4611					
PUMP HOUSE RE-ROOF					
QUOTE #5001529					
1/9/2007					
B.1.1	Demolition of roof insulation, per inch of depth	SF	\$ 0.41	11,400	\$ 4,674.00
1	Roof deck insulation, Isocyanurate in 4' x 4' or 4' x 8' sheets with fiberglass facers 2.5 inches thick, R17.8 installed, hot application	SF	\$ 1.23	5,700	\$ 7,011.00
B.1.9	Roof deck insulation, fiberboard in 4' x 4', 1" thick, R-2.78, applied Type IV asphalt (or appropriate) asphalt, coated six sides	SF	\$ 0.61	5,700	\$ 3,477.00
D.1.1	Remove built-up roof, multi-ply aggregate, non-asbestos, 1" thick or less	SF	\$ 0.74	5,700	\$ 4,218.00
D.1.16	Built-up roof, base sheet, 1 ply Type VI fiberglass, 1 ply modified bitumen sheet, fire rated, Type IV asphalt (15 year roof)	SF	\$ 2.81	5,700	\$ 16,017.00
D.1.36	Flashing membrane, CSPE	SF	\$ 5.43	900	\$ 4,887.00
19.3	Sweep loose aggregate from roof membrane	SF	\$ 0.34	5,700	\$ 1,938.00
19.4.1	Prime substrate	SF	\$ 0.23	5,700	\$ 1,311.00
F.1.26	Metal coping, galvanized steel, 24 gauge, standing seam	SF	\$ 11.28	200	\$ 2,256.00
I.1.6	Reflash existing roof drain	EA	\$ 177.30	8	\$ 1,418.40
3	Warranty 15 year option roofs under 10,000 sq ft minimum charge		\$ 1,600.00	1	\$ 1,600.00
L.1.4	Fork Truck	Per Hour	\$ 90.00	5	\$ 450.00
L.1.11	Architect.Cost by state/region		15%		
				SUB TOTAL	\$ 56,607.40
7	Multiplier for roofs less than 10,000 square feet		18%		\$ 10,189.33
				TOTAL PROJECT	\$ 66,796.73
				COST	



**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: 3/20/07		Reviewed by Legal <i>wj</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department: Engineering			Initials	Date	
Department Head: Alan L. Upchurch	Executive Director		<i>[Signature]</i>	3/13/07	
Dept Signature: <i>[Signature]</i>	City Manager		<i>[Signature]</i>	3/13/07	
Agenda Coordinator (include phone #): Pegues (7198)		(Project No. 5793)			

ACTION REQUESTED:

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

CAPTION

Approval of an engineering contract by and between the City and Birkhoff, Hendricks & Conway, L.L.P., in the amount of \$127,500, for Dallas North Trunk Sewer Replacement Rehabilitation, Phase III, and authorizing the City Manager or his designee to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	127,500	0	127,500
Encumbered/Expended Amount	0	0	0	0
This Item	0	-127,500	0	-127,500
BALANCE	0	0	0	0

FUND(S): SEWER CIP

COMMENTS: Funds were approved by supplemental appropriation for the Dallas North Trunk Sewer Main, Phase I project. This item, in the amount of \$127,500, will be funded through a transfer from the Dallas North Trunk Sewer Main, Phase I to the Dallas North Trunk Sewer Main, Phase III project.

STRATEGIC PLAN GOAL: Engineering contracts for sanitary sewer rehabilitation relate to the City's Goals of Livable and Sustainable Community.

SUMMARY OF ITEM

This agreement with Birkhoff, Hendricks & Conway, L.L.P., is for engineering design of the Dallas North Trunk Sewer Replacement Rehabilitation, Phase III, to include the replacement of about 4,300 linear feet of 24-inch to 36-inch diameter sewer line along the President George Bush Turnpike. The contract fee is \$127,500 and is detailed as follows:

Preliminary Engineering	\$55,000
Final Engineering	38,000
Bidding Phase Services	3,400
Construction Administration	5,000
Additional Services	26,100
Total	\$127,500

Funding is available from the Sewer Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost \$2,200,000.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Engineering Services Agreement Location Map	N/A

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**DALLAS NORTH TRUNK SEWER REPLACEMENT REHABILITATION
PHASE III**

PROJECT NO. 5793

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **BIRKHOFF, HENDRICKS & CONWAY, L.L.P.**, a **TEXAS** Limited Liability Partnership, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **DALLAS NORTH TRUNK SEWER REPLACEMENT REHABILITATION, PHASE III**, project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

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III. Schedule of Work

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

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

VII. Indemnity

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

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

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

VIII. Independent Contractor

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

IX. Assignment and Subletting

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

X. Audits and Records/Prohibited Interest

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

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

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XI. Contract Termination

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

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

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

XIV. Complete Contract

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

XV. Mailing of Notices

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

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

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

Birkhoff, Hendricks & Conway, L.L.P.
7502 Greenville Avenue #220
Dallas, Texas 75231
Attn: John Birkhoff, Managing Partner

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

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D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

SIGNED on the date indicated below.

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

DATE: _____

BY: _____
John Birkhoff
MANAGING PARTNER

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:



Diane C. Wetherbee
CITY ATTORNEY

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ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2007, by **JOHN BIRKHOFF, 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 _____, 2007, 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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EXHIBIT "A"

SCOPE OF SERVICES

Dallas North Trunk Sewer Replacement Rehabilitation
Phase III
Project No. 5793
CIP No. 34-46690

Part I. PRELIMINARY DESIGN

- A. Prepare preliminary sewer line plans based on the alignment being established 7.5 to 8.0 feet behind President George Bush Turnpike Right-of-Way.
 1. Calculate preliminary horizontal alignment. Use of large radius will be included.
 2. Establish preliminary vertical alignment without drop manholes if possible.
 3. Locate utility crossings and nearby adjacent utilities, and other nearby improvements as identified from field surveys and information provided by utility companies and other record drawings. Coordinate Dig-Tess to locate utility lines along proposed area.
 4. Line size for the trunk sewer shall be 30-inches in diameter.
 5. Include with each manhole polytriplex fiberglass lining.
- B. Work with affected utilities such as Water, Gas, Telephone, Cable TV, and Electric to obtain information for horizontal and vertical data for their facilities. Identify which utilities must be protected or relocated.
- C. Prepare preliminary specifications based on the North Central Texas Council of Governments, Standard Specifications.
- D. Work with City to explore various pipe materials for use on project (PVC profile and fiberglass).
- E. Develop preliminary opinion of probable construction cost.
- F. Submit three half-scale (11" x 17" sheets) sets of preliminary plans, and outline of specifications to the City for review.
- G. Meet with the City to discuss preliminary plans and specifications.

- H. Distribute the preliminary plans to local utility companies and obtain information regarding impacts to their facilities based on these plans.
- I. Submit with monthly pay request, a monthly report of progress completed on the project.

Part II. FINAL DESIGN

- A. Revise preliminary plans incorporating comments from the City.
- B. Incorporate comments from the utility companies.
- C. Finalize plan and profiles for proposed trunk sewer replacement.
- D. Design appurtenances such as special connections, special utility crossing details, etc.
- E. Finalize specifications and bidding documents.
- F. Prepare construction detail sheet.
- G. Complete quantity take-off and prepare opinion of probable construction cost based on final plans.
- H. Prepare final bid documents including bid proposal forms, construction plans, specifications, and contract documents.
- I. Prepare an SWPPP.
- J. Prepare TxDOT Utility Permit for City.
- K. Submit with monthly pay request, a monthly report of progress completed on the project.

Part III. BIDDING PHASE

- A. Assist the City staff in advertising for bids. This will include e-mailing "Notice to Contractors" to contractors experienced in this type of construction. City will have Notice published in local newspaper.
- B. Sell bidding documents to potential bidders and their suppliers and other parties.
- C. Provide bidding documents to Dodge Reports, City's geotechnical lab and to other publishers.

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- D. Conduct a pre-bid conference at City facilities.
- E. Assist during opening of bids and provide bidding tally sheets.
- F. Provide bid tabulation to City and contractors who submitted bids.
- G. Obtain the following information from the lowest bidder:
 - 1. Past work history,
 - 2. Physical resources to produce the project.

Formulate opinion from information received and provide the City a recommendation for award of the construction contract.

- H. After award of contract, furnish thirteen sets of prints of the final plans, specifications and contract documents to the City for construction use by the City and Contractor.

Part IV. CONSTRUCTION PHASE

- A. Conduct pre-construction conference.
- B. Attend coordination meetings with contractor, quality control personnel, and City representatives to discuss strategy, problem areas, progress, and any required coordination.
- C. Review shop drawings and other submittal information which the Contractor submits. This review is for the benefit of the Owner and covers only general conformance with information given by the Contract Documents. The contractor is to review and stamp their approval on submittals prior to submitting to the Engineer. Review by the Engineer does not relieve the Contractor of any responsibilities, safety measures or the necessity to construct a complete and workable facility in accordance with the Contract Documents.
- D. Provide written responses to requests for information or clarification to City or Contractor.

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Part V. ADDITIONAL SERVICES

A. Survey for Design

Horizontal and vertical location of the existing facilities, including existing pavement, fences, and utility appurtenances such as water valves, fire hydrants and manholes will be obtained. Contact Dig-Tess and have them locate existing utilities.

In areas where known underground utilities may conflict with the proposed interceptor, attempt to have the utility owner uncover their facilities. Field tie these facilities once they are exposed.

1. Preliminary Design

- (a) Establish control network for the creation of survey baselines.
- (b) Establish survey baseline.
- (c) Tie right-of-way lines and corners if found, property lines and corners if found, buildings, trees 2-inches in diameter and larger, fence lines, and other visible surface features to the survey baseline within the proposed route.
- (d) Identify horizontal and vertical locations of existing sanitary sewer manholes.
- (e) When underground utilities are exposed, tie to survey baseline.
- (f) Tie survey to City of Plano monument system

2. Final Design

Contact utility companies and request them to locate and uncover utilities, which cross or come close to the proposed interceptor. Perform field surveys to tie the horizontal and vertical locations of these utilities when uncovered.

3. Quality Control Surveys

Provide 8-hours of survey time upon request of on-site representative to check contractor's staking.

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B. Geotechnical Investigation

Provide a geotechnical investigation along proposed waterline alignment. The geotechnical investigation will include approximately 3 Nx-size soil borings to a depth of approximately 15-feet along the proposed trunk sewer route. Laboratory tests will be performed to estimate soil conditions and to develop design parameters. A brief engineering report will be prepared outlining findings and recommendations. Soil samples will be retained for 60-days following submittal of final report. No environmental studies of any nature are included.

C. Prepare Record Drawings

Prepare record drawings based on Contractor mark-ups and submit one full-size black-line set to the Construction Inspector for review. Upon review and approval, submit one full-size black-line set and one CD-ROM disk containing scanned images 11" x 17" final "as-built" black-line drawings (with "as-built" stamps bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order.

D. Prepare Metes and Bounds Description Based on Deed Information

1. Prepare a metes and bounds description and 8½ " x 11" exhibit for each of approximately 4 easements and 4 abandonment easements.
2. Perform deed research to identify property which trunk sewer will cross.

E. Reproduction

Cost to reproduce preliminary and final documents, along with copies of documents for construction use.

F. Quality Control Survey

Provide field survey crew at City's request for Quality Control Checking. 8 hours of survey time established.

Part VI. EXCLUSIONS

Services specifically excluded from this scope include, but are not necessarily limited to the following:

- A. Providing an on-site representative.
- B. Environmental impact statements and assessments.
- C. Fees for permits or advertising.
- D. Certification that work is in accordance with plans and specifications.
- E. Environmental cleanup.
- F. Landscape architecture.
- G. Flood plain reclamation plans.
- H. Title searches.
- I. Trench safety designs.
- J. Services in connection with condemnation hearings.
- K. Preliminary engineering report.
- L. Phasing of Contractors work.
- M. On-site safety precautions, programs and responsibility.
- N. Consulting services by others not included in proposal.
- O. Revisions and/or change orders as a result of revisions after completion of original design (unless to correct error on plans).
- P. Title searches, boundary surveys, or property surveys.

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EXHIBIT "B"

COMPLETION SCHEDULE

A. Notice to Proceed	January 23, 2007
B. Commence Field Surveys	February 3, 2007
C. Submit Preliminary Plans to City	February 23, 2007
D. Receive Comments Back From City	March 2, 2007
E. Complete Final Plans	March 16, 2007
F. Submit to TCEQ	March 16, 2007
G. Advertise Project	March 22, 2007
Open Bids	April 12, 2007
Award Contract	April 2007
Notice to Proceed	May 2007

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EXHIBIT "C"

PAYMENT SCHEDULE

The following is a summary of the estimated charges for the various elements of the proposed services:

	<u>Fee</u>
Part I: Preliminary Engineering	\$55,000.00
Part II: Final Engineering	\$38,000.00
Part III: Bidding Phase Services	\$3,400.00
Part IV: Construction Administration	<u>\$5,000.00</u>
Subtotal:	\$101,400.00
Part V: Additional Services	
A. Design Surveys	\$4,480
B. Geotechnical Evaluations	\$4,000
C. Easement Preparation (10)	\$15,000
D. Reproduction	\$1,000
E. QA/QC Survey	\$1,120
F. Survey Instrument Rental	<u>\$500</u>
Subtotal:	\$26,100
Maximum Fee Not to Exceed:	<u>\$127,500</u>

Payment for services shall be salary cost times a multiplier of 2.35, overtime at straight time x 1.5, expenses times a multiplier of 1.15, mileage at 0.50¢ per mile.

Overtime will be expended to expedite the project. Field Surveys will occur on Saturday and Sunday.

The maximum overall fee established herein shall not be exceeded without written authorization from the City, based on increased scope of services.

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EXHIBIT "D"
ENGINEERING
INSURANCE

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

1. General Insurance Requirements:

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

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

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

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

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

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

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

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

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

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

2.2 Professional Errors and Omissions

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

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

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ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

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

7M-20

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

INSURANCE AGENT'S STATEMENT

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

- 26. The above policy(s) carry the following deductibles: _____

Full limits of coverage available for:
 General Liability _____
 Automobile Liability _____

Professional Liability _____

- 27. Liability policies are (indicate):

OCCURRENCE []

CLAIMS MADE []

Signature

Date

Insurance Agent (Print)

Name of Insured

Date

M-21

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

BIRKHOFF, HENDRICKS & CONWAY, L.L.P.

By:

Signature

JOHN BIRKHOFF

Print Name

MANAGING PARTNER

Title

Date

STATE OF TEXAS

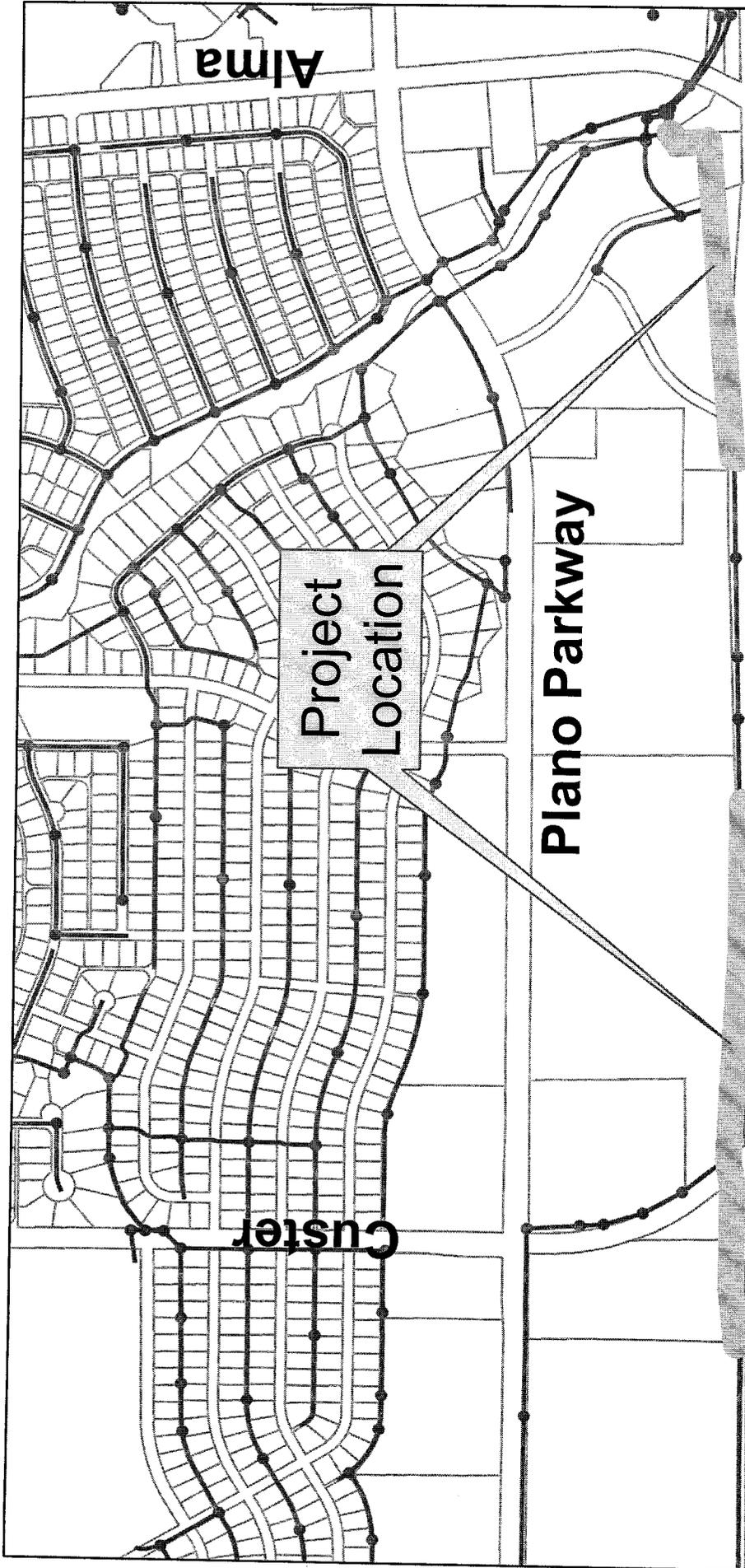
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§
§

COUNTY OF DALLAS

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2007.

Notary Public, State of Texas

M-22



Project No. 5793
Dallas North Trunk
Sewer System Rehabilitation
Phase III

M-2.3



**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:	03/20/07		Reviewed by Legal <i>ws</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering		Initials	Date	
Department Head	Alan L. Upchurch	Executive Director	<i>[Signature]</i>	3/13/07	
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	3/13/07	
Agenda Coordinator (include phone #):	Irene Pegues (7198)			(Project No. 5772)	

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

CAPTION

To Birkhoff, Hendricks & Conway, L.L.P. increasing the professional services contract by \$6,500 for Dallas North Trunk Sewer Main Rehabilitation, Contract Modification No. 1.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	4,500,000	0	4,500,000
Encumbered/Expended Amount	0	-3,940,852	0	-3,940,852
This Item	0	-6,500	0	-6,500
BALANCE	0	552,648	0	552,648

FUND(S): SEWER CIP

COMMENTS: Funds were approved by supplemental appropriation for the Dallas North Trunk Sewer Main, Phase I project. This change order (increasing the contract to exceed \$25,000), in the amount of \$6,500, will leave a current year balance of \$552,648 for the Dallas North Trunk Sewer Main, Phase I project.

STRATEGIC PLAN GOAL: Design services for sanitary sewer rehabilitation relate to the City's Goals of Livable and Sustainable Community.

SUMMARY OF ITEM

Additional design services are required to prepare the project for bidding and contract award. This contract modification requires City Council approval because the revised contract amount now exceeds \$25,000.

The revised contract amount is \$31,400.

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

M-1

CONTRACT MODIFICATION

**DALLAS NORTH TRUNK SEWER MAIN REHABILITATION
PROJECT NO. 5772**

**PURCHASE ORDER NO. 143205
CIP NO. 46618**

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 December 19, 2006, 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. To add bidding services to the contract. This includes handling of documents during the bidding phase. Sending Notice to Contractors to firms experienced in pipe bursting across the nation.
2. Attendance at Pre Bid Meeting.
3. Preparing Addenda to add additional record drawings, additional repair locations, change in pipe, preparing CIPP specification to change the 36 inch bursting to 36 inch lining.
4. Meeting with pipe supplier to obtain current information on pipe and associated costs.
5. Overnight delivery of Addenda to contractors holding plans.
6. Completing by Kleinfelder three soil borings along route for contractor information.
7. Attending the bid opening, checking references and making recommendation for award of construction contract to the City.

Compensation:

For additional services provided pursuant to this Modification, City shall pay Consultant an amount not to exceed \$6,500. Such payment shall be made in accordance with the payment terms specified in the Contract.

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GPC:MOD1-DNT-BHC-5772

MODIFICATION NO. 1

Dallas North Trunk Sewer Main Rehabilitation, Project No. 5772

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	\$ 24,900.00
Contract Amount (Including Previous Modifications)	\$ 24,900.00
Amount, Modification No. 1	\$ 6,500.00
Revised Contract Amount	\$ <u>31,400.00</u>
Total Percent Increase Including Previous Modifications	26.10%

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

Print

Title: City Manager

Print

Title: Managing Partner

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Diane C. Wetherbee, City Attorney

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ACKNOWLEDGMENTS

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the _____ day of _____, 2007, 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 _____, 2007, by **Thomas H. Muehlenbeck, City Manager of the City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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:	3/20/07		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Public Works Administration / Michael Rappaport		Initials	Date	
Department Head	Jimmy Foster	Executive Director	<i>[Signature]</i>	3-8-07	
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	3/8/07	
Agenda Coordinator (include phone #): Margie Stephens (X4104)					

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

CAPTION

To Miller Pipeline Corporation, increasing the contract by \$37,237.45 for the Sanitary Sewer Rehabilitation Requirements Contract 2004, Project No. 5470, Renewal, Change Order No. 1, Bid No. P069-04.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	2,821,728	3,309,272	3,000,000	9,131,000
Encumbered/Expended Amount	-2,821,728	-3,309,192	0	-6,130,920
This Item	0	-37,237	0	-37,237
BALANCE	0	-37,157	3,000,000	2,962,843

FUND(s): SEWER CIP

COMMENTS: Funds are included in the 2006-07 Sewer CIP. This change order, in the amount of \$37,237, will exceed the current year balance by \$37,157 for the I&I Repair (Service Contracts) project. The overage will be covered through reallocation from the Redevelopment Capacity Improvements project.

STRATEGIC PLAN GOAL: I&I repairs relate to the City's Goals of Safe, Livable Neighborhoods.

SUMMARY OF ITEM

This change order is for additional work on the final work order of the renewal contract. This is an annual requirements contract with one renewal that was renewed on April 4, 2005. During progress on the last work order, sanitary sewer mains and laterals were found encased in concrete which required additional work that was not included in the renewal contract. Unit costs were also adjusted at renewal due to oil prices increasing, construction material and PVC plastic liner costs.

This contract started in September 2004 to rehabilitate sanitary sewer mains using trenchless technology. During the original contract and its renewal term, 51,524 linear feet or 9.75 miles of 8 inch sanitary sewer main have been rehabilitated to prevent infiltration and inflow of ground water.

Staff recommends approval of Change Order No. 1. The total Contract will be \$1,654,937.45, which is a 2.30% increase of the original contract amount of \$1,617,700.00.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Change Order No. 1	

Q-1

CHANGE ORDER NO. 1

**SANITARY SEWER REHABILITATION REQUIREMENTS CONTRACT 2004
PROJECT NO.5470
PURCHASE ORDER NO. 357440
CIP NO.34-48861
BID NO. P069-04**

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 **MILLER PIPELINE CORPORATION** for the **SANITARY SEWER REHABILITATION REQUIREMENTS CONTRACT 2004, RENEWAL**, dated April 4, 2005.

B. DESCRIPTION OF CHANGE

This change order is for additional work that was required to complete the last work order of the contract. This is an annual requirements contract that was awarded by Council with one renewal period. Items 100 -120 were the unit prices for the original contract. Items 100A -120A were the unit prices agreed to at the renewal point of the contract. During the first work order of the renewal contract, the contractor requested additional unit price increases due to oil prices increasing construction material and PVC plastic cost for the liner. Contractor provided documentation confirming these cost increases.

C. EFFECT OF CHANGE

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

ITEM NO.	ITEM DESCRIPTION	ORIGINAL QUANTITY	REVISED QUANTITY	UNIT	UNIT PRICE	AMOUNT OF CHANGE
100	Trenchless Rehab 8"	19,500	0	LF	\$29.60	\$ (577,200.00)
101	Trenchless Rehab 10"	1500	0	LF	\$32.00	\$ (48,000.00)
102	Trenchless Rehab 12"	1600	0	LF	\$36.00	\$ (57,600.00)
103	R/R Conc. Sidewalk	10000	0	SF	\$5.50	\$ (55,000.00)
104	R/R 6' Conc. St. Paving	7260	0	SY	\$36.00	\$ (261,360.00)
105	R/R 8" Conc. St. Paving	500	0	SY	\$57.00	\$ (28,500.00)
106	R/R 7" Conc. Aly Paving	1500	0	SY	\$27.00	\$ (40,500.00)
107	Trench Foundation Mat'l	1000	0	CY	\$17.50	\$ (17,500.00)
108	6" Monolithic Curb	1000	0	LF	\$3.40	\$ (3,400.00)
109	Pt Rep 8" ,0-6' D, 0-10'L	20	0	Each	\$500.00	\$ (10,000.00)
110	Pt Rep 10" ,0-10'D,0-10'	5	0	Each	\$550.00	\$ (2,750.00)
111	Pt Rep 8" ,0-6' D, + LF	10	0	LF	\$50.00	\$ (500.00)
112	Pt Rep 10" ,0-610'D,+ LF	10	0	LF	\$60.00	\$ (600.00)
113	Replace 4" Lateral	600	0	Each	\$550.00	\$ (330,000.00)
114	F/I 48" Manhole 0-6' Dpt	20	0	Each	\$2600.00	\$ (52,000.00)

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115	F/I 48" MH add. Depth	10	0	VF	\$150.00	\$(1,500.00)
116	F/I Cleanout	600	0	Each	\$205.00	\$(123,000.00)
117	F/I Trench Safety Sys.	20000	0	LF	\$0.07	\$(1,400.00)
118	F/I Trench Safety Plan	1	0	LS	\$1500.00	\$(1,500.00)
119	F/I Const. Barricading	1	0	LS	\$2900.00	\$(2,900.00)
120	Erosion Control	1	0	LS	\$2490.00	\$(2,490.00)
100A	Trenchless Rehab 8"	0	6255	LF	\$31.30	\$195,781.50
101A	Trenchless Rehab 10"	0	347	LF	\$32.50	\$11,277.50
102A	Trenchless Rehab 12"	0	792	LF	\$36.50	\$28,908.00
103A	R/R Conc. Sidewalk	0	6136	SF	\$5.75	\$35,282.00
104A	R/R 6' Conc. St. Paving	0	1448.7	SY	\$37.75	\$54,688.43
107A	Trench Foundation Mat'l	0	319	CY	\$18.00	\$5,742.00
108A	6" Monolithic Curb	0	92	LF	\$3.50	\$322.00
109A	Pt Rep 8" ,0-6' D, 0-10'L	0	3	Each	\$300.00	\$900.00
113A	Replace 4" Lateral	0	151	Each	\$665.00	\$100,415.00
114A	F/I 48" Manhole 0-6' Dpt	0	2	Each	\$2,650.00	\$5,300.00
116A	F/I Cleanout	0	133	Each	\$100.00	\$13,300.00
117A	F/I Trench Safety Sys.	0	2512	LF	\$0.07	\$175.84
118A	F/I Trench Safety Plan	0	0.26	LS	\$1,500.00	\$390.00
119A	F/I Const. Barricading	0	0.26	LS	\$2,900.00	\$754.00
120A	Erosion Control	0	0.26	LS	\$2,500.00	\$650.00
100B	Trenchless Rehab 8"	0	18,131	LF	\$32.10	\$582,005.10
103B	R/R Conc. Sidewalk	0	17,286	SF	\$6.00	\$103,716.00
104B	R/R 6' Conc. St. Paving	0	2358.8	SY	\$45.00	\$106,146.00
106B	R/R 7" Conc. Aly Paving	0	874.8	SY	\$40.00	\$34,992.00
107B	Trench Foundation Mat'l	0	551	CY	\$18.00	\$9,918.00
108B	6" Monolithic Curb	0	284	LF	\$5.00	\$1,420.00
113B	Replace 4" Lateral	0	429	Each	\$692.00	\$296,868.00
114B	F/I 48" Manhole 0-6' Dpt	0	8	Each	\$2,950.00	\$23,600.00
115B	F/I 48" MH add. Depth	0	16	VF	\$160.00	\$2,560.00
116B	F/I Cleanout	0	345	Each	\$100.00	\$34,500.00
117B	F/I Trench Safety Sys.	0	3144	LF	\$0.07	\$220.08
118B	F/I Trench Safety Plan	0	0.74	LS	\$1,500.00	\$\$1,110.00
119B	F/I Const. Barricading	0	0.74	LS	\$2,900.00	\$2,146.00
120B	Erosion Control	0	0.74	LS	\$2,500.00	\$1,850.00
	TOTAL					\$37,237.45

Original Contract Amount	<u>\$ 1,617,700.00</u>
Contract Amount (Including Previous Change Orders)	<u>\$ 1,617,700.00</u>
Amount, Change Order No. 1	<u>\$ 37,237.45</u>
Revised Contract Amount	<u><u>\$ 1,654,937.45</u></u>
Total Percent Increase Including Previous Change Orders	<u>2.30%</u>

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add 0 day(s) to this contract as this is an annual requirements contract:

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

E. AGREEMENT

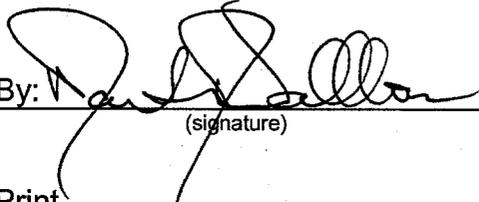
By the signatures below, duly authorized agents of the City of Plano, Texas and Miller Pipeline Corporation, do hereby agree to append this Change Order No. 1 to the renewal contract between themselves, dated April 4, 2005.

OWNER: CITY OF PLANO

CONTRACTOR: MILLER PIPELINE CORPORATION

An Indiana Corporation licensed to do business in the State of Texas

By: _____
(signature)

By: 
(signature)

Print Name: _____

Print Name: Mark R. Wallborn

Print Title: _____

Print Title: Sr. Vice President

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney

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ACKNOWLEDGMENTS

STATE OF INDIANA §
 §
COUNTY OF MARION §

This instrument was acknowledged before me on the 19th day of February, 2007, by **MARK R. WALLBOM, SR. VICE PRESIDENT** of **MILLER PIPELINE CORPORATION**, an Indiana corporation, on behalf of said corporation.

Emma R. Belick
Notary Public, State of Indiana

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2007, by **THOMAS H. MUEHLENBECK, CITY MANAGER** of the **City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		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:	3/20/07		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Engineering Department			Initials	Date
Department Head	Alan L. Upchurch		Executive Director	<i>[Signature]</i>	3/13/07
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i>	3/13/07
Agenda Coordinator (include phone #):	Irene Pegues (7198)		(Project No. 5511 & 5630)		
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 Tri-Con Services, Inc. increasing the contract by \$58,084.60 for Avenue P, Park to 18 th Street/Ridgetop Lane, Change Order No. 6 (2006-51-B).					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS	
Budget	975,338	907,662	0	1,883,000	
Encumbered/Expended Amount	-975,338	-807,846	0	-1,783,184	
This Item	0	-58,085	0	-58,085	
BALANCE	0	41,731	0	41,731	
FUND(S): STREET IMPROVEMENT CIP					
COMMENTS: Funds are included in the 2006-07 Street Improvement CIP. This change order, in the amount of \$58,085, will leave a current year balance of \$41,731 for the P Avenue – Park to 18 th Street and Ridgetop Lane projects.					
STRATEGIC PLAN GOAL: Street construction relates to the City's Goal of Safe, Efficient Travel.					
SUMMARY OF ITEM					
This change order is for various additional quantity overruns as measured in the field. Additional sidewalk and driveway are the majority of this work.					
Staff recommends approval of Change Order No. 6. The contract total will be \$2,265,244.80, which includes change orders of 5.37% of the original contract amount of \$2,149,820.00					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Change Order No. 6			N/A		
Location Map					

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CHANGE ORDER NO. 6

**AVENUE P - PARK TO 18TH STREET
RIDGETOP LANE**

PROJECT NOS. 5511 & 5630

**PURCHASE ORDER NO. 102958
CIP NOS 33-31402, 36-68913 & 34-48875, & 33-31325
BID NO. 2006-51-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 **TRI-CON SERVICES, INC.**, for the **AVENUE P – PARK BOULEVARD TO 18TH STREET** project, dated **JANUARY 9, 2006**.

B. DESCRIPTION OF CHANGE

The change order is for additional quantities of paving due to quantity changes as measured in the field.

C. EFFECT OF CHANGE

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

- continued on Page 2 -



Avenue P Paving and Drainage CIP No. 33-31402						
ITEM NO.	ITEM DESCRIPTION	ORIGINAL QUANTITY	REVISED QUANTITY	UNIT	UNIT PRICE	AMOUNT OF CHANGE
1.01	Remove & dispose existing conc pavement	12,791.0	12894.00	SY	\$7.00	721.00
1.02	Remove & dispose existing driveway	296.0	699.00	SY	\$7.00	2,821.00
1.03	Remove & dispose existing alley approach	382.0	454.00	SY	\$7.00	504.00
1.04	Remove & dispose existing conc sidewalk	2,013.0	2402.00	SY	\$7.00	2,723.00
1.07	Remove & dispose existing SSMH	6.0	8.00	EA	\$500.00	1,000.00
1.10	Remove & dispose exist storm drain (30"RCP)	192.0	200.00	LF	\$10.00	80.00
1.13	Sawcut existing concrete (full depth)	823.0	826.00	LF	\$3.50	10.50
1.14	Remove & dispose existing concrete RIPRAP	512.0	519.00	SY	\$1.00	7.00
1.15	Remove & dispose existing split rail fence	85.0	155.00	LF	\$10.00	700.00
1.18	Unclassified Excavation	4,523.0	5045.50	CY	\$8.50	4,441.25
1.20	Reinforced concrete alley pavement	382.0	458.69	SY	\$32.00	2,454.08
1.21	Reinforced concrete driveway	355.0	681.21	SY	\$32.00	10,438.72
1.23	Concrete Sidewalk	1,447.0	2432.13	SY	\$28.00	27,583.64
1.24	Barrier Free Ramps	26.0	27.00	EA	\$600.00	600.00
1.27	Lime Subgrade 6" @ 6% (27lbs/SY)	13,186.0	13276.27	SY	\$1.50	135.41
1.28	Lime	177.5	198.42	TN	\$110.00	2,300.10
1.38	Installation of Trail Ramp, including brick, and Bollard, complete in place	0	115.00	SF	\$9.80	\$1,127.00
Sub Total Ave P Paving & Drainage: CIP No. 33-31402						57,646.70
Ridgetop Paving CIP No. 33-31325						
ITEM NO.	ITEM DESCRIPTION	ORIGINAL QUANTITY	REVISED QUANTITY	UNIT	UNIT PRICE	AMOUNT OF CHANGE
4	Lime	17.5	18.00	TN	\$115.00	57.50
6	Longitudinal butt joint	810	834.00	LF	\$5.00	120.00
13	Sodding	1043	1129.80	SY	\$3.00	260.40
SubTotal Ridgetop Paving: CIP No. 33-31325						437.90

Original Contract Amount	\$ 2,149,820.00
Contract Amount (Including Previous Change Orders)	\$ 2,207,140.20
Amount, Change Order No. 6	\$ 58,084.60
Revised Contract Amount	\$ 2,265,224.80
Total Percent Increase Including Previous Change Orders	5.37%

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D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add 0 days to this project:

Original Contract Time	200 working days
Amount (Including Previous Change Orders)	<u>215</u> working days
Amount, Change Order No. 6	<u>0</u> working days
Revised Contract Time	<u>215</u> working days
Total Percent Increase Including Previous Change Orders	7.50%

E. AGREEMENT

By the signatures below, duly authorized agents of the City of Plano, Texas, and **TRI-CON SERVICES, INC.**, do hereby agree to append this Change Order No. 6 to the original contract between themselves, dated January 9, 2006.

**OWNER
CITY OF PLANO**

**CONTRACTOR
TRI-CON SERVICES, INC.**

By: _____
(Signature)

By: _____
(signature)

Print
Name: Thomas H. Muehlenbeck

Print
Name: _____

Print
Title: City Manager

Print
Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney

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ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2007, by _____, _____ of TRI-CON SERVICES, INC., a Texas corporation, on behalf of said corporation.

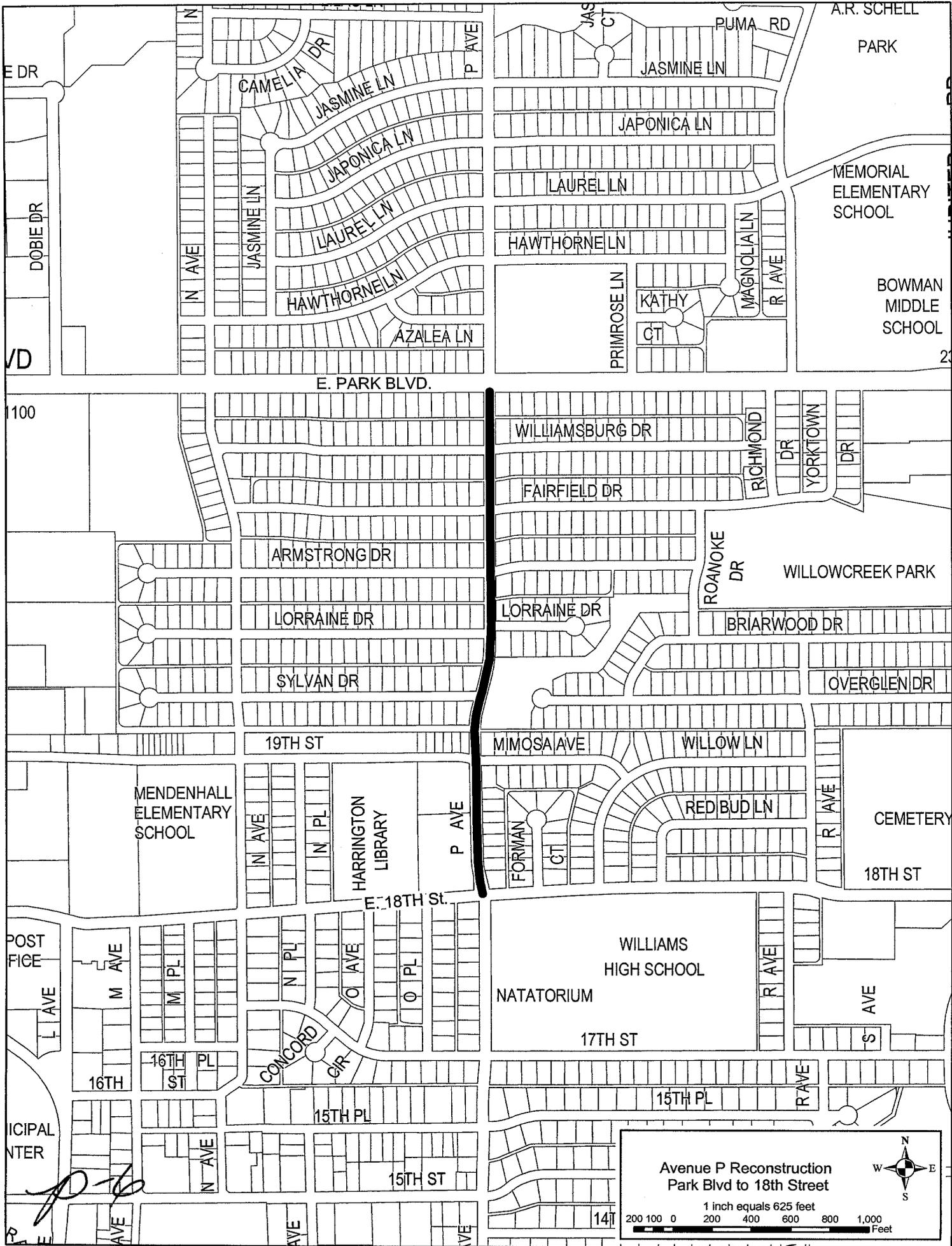
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2007, 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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E DR
DOBIE DR
VD
N AVE
CAMELIA DR
JASMINE LN
JAPONICA LN
LAUREL LN
HAWTHORNE LN
AZALEA LN
P AVE
JAS CT
PUMA RD
JASMINE LN
JAPONICA LN
LAUREL LN
HAWTHORNE LN
MAGNOLIA LN
R AVE
PRIMROSE LN
KATHY CT

A.R. SCHELL PARK
MEMORIAL ELEMENTARY SCHOOL
BOWMAN MIDDLE SCHOOL

E. PARK BLVD.
1100
WILLIAMSBURG DR
FAIRFIELD DR
ARMSTRONG DR
LORRAINE DR
SYLVAN DR
RICHMOND DR
YORKTOWN DR
ROANOKE DR
WILLOWCREEK PARK
BRIARWOOD DR
OVERGLEN DR

MENDENHALL ELEMENTARY SCHOOL
HARRINGTON LIBRARY
P AVE
FORMAN CT
WILLOW LN
REDBUD LN
CEMETERY
18TH ST

POST OFFICE
M AVE
M PL
16TH ST
CONCORD CIR
15TH PL
15TH ST
N AVE
O AVE
O PL
E. 18TH ST
WILLIAMS HIGH SCHOOL
NATATORIUM
17TH ST
R AVE
S AVE
15TH PL
R AVE

MICIPAL CENTER
14TH



**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:	3/20/2007	Reviewed by Legal <i>pu</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Customer and Utility Services		Initials	Date
Department Head	Mark Israelson	Executive Director	<i>RA</i>	3-12-07
Dept Signature:	<i>[Signature]</i>	City Manager	<i>RA</i>	3-12-07
Agenda Coordinator (include phone #):		Nancy Rodriguez X7510		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION AUTHORIZING CONTINUED PARTICIPATION WITH THE ATMOS CITIES STEERING COMMITTEE; AND AUTHORIZING THE PAYMENT OF 10 CENTS PER CAPITA TO THE ATMOS CITIES STEERING COMMITTEE TO FUND REGULATORY AND RELATED ACTIVITIES RELATED TO ATMOS ENERGY CORPORATION; AUTHORIZING THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY 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:	06/07	Prior Year (CIP Only)	Current Year	Future Years
Budget		0	162,100	0
Encumbered/Expended Amount		0	-101,550	0
This Item		0	-25,295	0
BALANCE		0	35,255	0
FUND(S): GENERAL				
COMMENTS: This resolution, if approved, provides funding to the Atmos Cities Steering Committee in the amount of \$25,295 for the continuation of the City of Plano's membership and payment of the City's assessment in the amount of \$.10 per capita.				
STRATEGIC PLAN GOAL: Membership with the Atmos Steering Committee relates to the City's Goal of "Service Excellence."				
SUMMARY OF ITEM				
This resolution authorizes the City of Plano to retain membership with the Atmos Cities Steering Committee to protect the interests of the City of Plano and of the customers of Atmos Energy Corporation, Mid-Tex Division residing and conducting business within our City limits.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Memo to City Council				

Q-1

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING CONTINUED PARTICIPATION WITH THE ATMOS CITIES STEERING COMMITTEE; AND AUTHORIZING THE PAYMENT OF 10 CENTS PER CAPITA TO THE ATMOS CITIES STEERING COMMITTEE TO FUND REGULATORY AND RELATED ACTIVITIES RELATED TO ATMOS ENERGY CORPORATION; AUTHORIZING THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano is a regulatory authority under the Gas Utility Regulatory Act (GURA) and has exclusive original jurisdiction over the rates and services of Atmos Energy Corporation, Mid-Tex Division (Atmos) within the municipal boundaries of the city; and

WHEREAS, the Atmos Cities Steering Committee (ACSC) has historically intervened in Atmos rate proceedings and gas utility related rulemakings to protect the interests of municipalities and gas customers residing within municipal boundaries; and

WHEREAS, ACSC is participating in Railroad Commission dockets and projects, as well as court proceedings, affecting gas utility rates; and

WHEREAS, the City of Plano is a member of ACSC; and

WHEREAS, in order for ACSC to continue its participation in these activities which affects the provision of gas utility service and the rates to be charged, it must assess its members for such costs;

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

Section I. That the City of Plano is authorized to continue its membership with the Atmos Cities Steering Committee to protect the interests of the City of Plano and protect the interests of the customers of Atmos Energy Corporation, Mid-Tex Division residing and conducting business within the City of Plano limits.

Section II. It is further authorized to pay its assessment to the ACSC in the amount of 10 cents (\$0.10) per capita based on the population figures for the City of Plano shown in the latest TML Directory of City Officials.

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Section III. A copy of this Resolution and approved assessment fee payable to "Atmos Cities Steering Committee" shall be sent to:

Mary Bunkley, Treasurer
Atmos Cities Steering Committee
c/o Arlington City Attorney's Office, Mail Stop 63-0300
Post Office Box 90231
Arlington, Texas 76004-3231.

DULY PASSED AND APPROVED this the _____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Q-3



**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:	3/20/07	Reviewed by Legal <i>JS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	City Manager		Initials	Date
Department Head	Thomas Muehlenbeck	Executive Director		
Dept Signature:		City Manager	<i>JRM</i>	3/27/07
Agenda Coordinator (include phone #): Lynne Jones - 7109				
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, APPOINTING THE CITY MANAGER TO BE PLAN ADMINISTRATOR OF THE 457 DEFERRED COMPENSATION PLAN; SETTING FORTH DUTIES OF THE PLAN ADMINISTRATOR; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
This item appoints the City Manager as the Plan Administrator of the 457 Deferred Compensation Plan and sets forth his duties as the Administrator of the Plan.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
n/a		n/a		

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MEMORANDUM

DATE: February 27, 2007
TO: Thomas H. Muehlenbeck, City Manager
FROM: Diane C. Wetherbee, City Attorney *DW*
SUBJECT: 457 Deferred Compensation Plan Administrator

Attached is the Resolution appointing you as Plan Administrator for the 457 Deferred Compensation Plan. This Resolution confirms your duties as Plan Administrator and is ready for submission to the Council.

I met with LaShon and Al Monday morning on the progress of conforming your duties with the Plan documents. Many of these are either complete or in progress. If you have any questions, please let me know.

DW/lj
Attachment

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPOINTING THE CITY MANAGER TO BE PLAN ADMINISTRATOR OF THE 457 DEFERRED COMPENSATION PLAN; SETTING FORTH DUTIES OF THE PLAN ADMINISTRATOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano has employees rendering valuable services; and

WHEREAS, on August 22, 2005, the City Council passed Resolution No. 2005-8-12(R) establishing a 457 deferred compensation plan ("Plan") for its employees enabling the City to provide reasonable retirement security for its employees, while providing increased flexibility in its personnel management system, and assisting in the attraction and retention of competent personnel; and

WHEREAS, Resolution No. 2005-8-12(R) provided for the Plan to be administered by the ICMA Retirement Corporation and for the City Manager to be coordinator of the Plan; and

WHEREAS, in addition to the duties performed by ICMA Retirement Corporation, there are responsibilities for a Plan Administrator to act on behalf of the City for certain discretionary decisions and to execute duties in the Trust Document governing the Plan; and

WHEREAS, the City Council desires to appoint the City Manager as the Plan Administrator ("Plan Administrator") of the Plan and set forth his duties as the Administrator.

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

Section I. The City Council hereby appoints the City Manager as the Plan Administrator ("Plan Administrator") of the 457 deferred compensation plan.

Section II. As Plan Administrator of the Plan, the City Manager shall perform those discretionary duties as described for the Plan Administrator in the Texas Gov't. Code Chapter 609, as the same may be amended from time to time, as well as those duties described by the Trust Document for the 457 deferred compensation plan. The Plan Administrator will also provide periodic monitoring of the Plan. As Plan Administrator, the City Manager is authorized to use all available resources, both internal and external, to assist him in the

performance of these duties. He may also delegate duties as long as he retains the responsibility for the actions thereof.

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

DULY PASSED AND APPROVED this the ____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee

Diane C. Wetherbee, CITY ATTORNEY

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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 <i>C.S.</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 3/20/07		Reviewed by Legal <i>pa</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Public Service Business Center		Initials	Date
Department Head	James R. Hogan	Executive Director		
Dept Signature:		City Manager	<i>JA</i>	3-12-07
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, RATIFYING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BETWEEN THE CITIES OF PROSPER AND PLANO FOR ADMINISTRATION SERVICES TO BE PROVIDED TO PROSPER BY PLANO; 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 checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2007	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 FUND				
COMMENTS: Approval of this item will allow the City of Plano to be paid an hourly rate of \$80/hour for the provision of administrative services to the City of Prosper. The total amount to be received is not to exceed \$30,000.				
STRATEGIC PLAN GOAL: Providing administrative services related to the City's Goal of Diverse Business Center.				
SUMMARY OF ITEM				
AGREEMENT BETWEEN CITIES OF PLANO AND PROSPER FOR ADMINISTRATIVE SERVICES TO BE PROVIDED TO PROSPER BY PLANO AT THE RATE OF \$80.00 PER HOUR, NOT TO EXCEED \$30,000.00.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
EXHIBIT 'A'				

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BETWEEN THE CITIES OF PROSPER AND PLANO FOR ADMINISTRATION SERVICES TO BE PROVIDED TO PROSPER BY 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 agreement for City management services, which include but are not limited to, planning and development, budget, and personnel management between the City of Prosper and the City of Plano, a substantial copy of which is attached hereto as Exhibit 'A' and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be ratified, and 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 interest of the City of Plano and its citizens, are hereby in all things approved.

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

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

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DULY PASSED AND APPROVED this the _____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

INTERLOCAL AGREEMENT BETWEEN THE CITIES OF PROSPER AND PLANO FOR ADMINISTRATIVE SERVICES TO BE PROVIDED TO PROSPER BY PLANO

WHEREAS, the City of Prosper ("Prosper"), a home-rule municipal corporation has the immediate need for City management services, which include but are not limited to, planning and development, budget, and personnel management; and

WHEREAS, the City of Plano ("Plano"), a home-rule municipal corporation has available personnel to assist the City of Prosper in performing administrative services; and

WHEREAS, Prosper and Plano are local governments and wish to contract for these administrative services pursuant to Chapter 791 of the Texas Government Code; and

WHEREAS, the City of Prosper has current revenues available to satisfy its fees and/or expenses incurred pursuant to this Agreement.

NOW, THEREFORE, this Agreement is made and entered into by the Cities of Prosper and Plano as permitted by Chapter 791 of the Texas Government Code and for the mutual consideration stated herein.

**ARTICLE I.
SERVICES TO BE PERFORMED**

Plano, through its designated employee, under the supervision and direction of the City of Prosper's Mayor, shall provide city management services to Prosper. Plano will provide a senior manager to perform the City management functions for the City of Prosper on a temporary basis. The senior manager shall serve as an independent contractor providing City management services and shall not be considered, at any time, an employee of the City of Prosper.

**ARTICLE II.
PAYMENT**

Prosper agrees to pay the City of Plano for these administrative services at the rate of **EIGHTY AND 00/100 DOLLARS (\$80.00)** per hour. Plano agrees to invoice the City of Prosper monthly for services required hereunder. Each month, Plano shall submit an invoice to Prosper generally describing the services incurred and the time spent. Payment is due within thirty (30) days of receipt of

invoice. Prosper agrees it shall be responsible for all expenses, i.e., travel from Plano to Prosper and outside of the Dallas-Ft. Worth area, telephone charges, reproduction costs, which shall be invoiced at cost. Travel mileage will be reimbursed at the rate of .445 cents per mile and made payable directly to Plano's representative. The total amount under this Agreement, including expenses, shall not exceed **THIRTY THOUSAND DOLLARS AND 00/100 DOLLARS (\$30,000.00)** without the prior approval of the parties to this Agreement.

**ARTICLE III.
EFFECTIVE DATE/TERMINATION**

This Agreement shall be effective upon execution by the parties and shall continue in effect until the agreed payment has been exhausted. However, either party may terminate this Agreement earlier by giving five (5) days written notice to the other. Notice shall be given by mail or facsimile to the party at the following:

City of Plano
Attn: Tom Muehlenbeck, City Manager
P.O. Box 860358
Plano, Texas 75086-0358
Fax No. 972-423-9587

City of Prosper
Attn: _____
Address: _____
Fax No. _____

The obligation to pay for any services incurred prior to termination shall survive termination.

**ARTICLE IV.
MISCELLANEOUS PROVISIONS**

1. Indemnification. To the extent allowed by law, each party agrees to release, defend, indemnify, and hold harmless the other (and its officers, agents and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments and costs, including reasonable attorneys' fees and expenses, in any way arising out of, related to or resulting from its performance under this Agreement, or caused by its negligent acts or omissions (or those of its respective officers, agents, employees, or any other

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third parties for whom it is legally responsible) in connection with performing this Agreement.

2. Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The parties agree that this Agreement is performed in Collin and Denton Counties, Texas, and that exclusive venue shall lie in Collin County, Texas.

3. Severability Clause. The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

4. Modification and Assignment. This Agreement embodies the entire agreement between the parties and may only be modified in writing executed by all parties.

This Agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. No party will assign or transfer an interest in this Agreement without the written consent of the other parties.

5. Governmental Immunity Reserved. It is expressly understood and agreed that, in the execution of this Agreement, the parties do not waive, nor shall they be deemed hereby to have waived any immunity or defense that would otherwise be available to them against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

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

Date: _____

By: _____
THOMAS H. MUEHLENBECK
City Manager

APPROVED AS TO FORM:

Diane Wetherbee, City Attorney

sl

CITY OF PROSPER, TEXAS, a general law municipal corporation

Date: _____

By: _____
Name: _____
MAYOR

APPROVED AS TO FORM:

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 2007 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 2007 by _____, Mayor of the **CITY OF PROSPER, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

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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:	3/20/07		Reviewed by Legal	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable
Department:	Legal		Initials	Date
Department Head	Diane Wetherbee		Executive Director	
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i> 3/28/07
Agenda Coordinator (include phone #): Lynne Jones - 7109				

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 PARTICIPATION OF THE CITY IN THE ACTION STYLED CITY OF WEBSTER AND THE WEBSTER ECONOMIC DEVELOPMENT CORPORATION VS. CAROLE KEETON STRAYHORN, IN HER OFFICIAL CAPACITY AS COMPTROLLER OF PUBLIC ACCOUNTS FOR THE STATE OF TEXAS CURRENTLY PENDING IN THE 261ST DISTRICT COURT OF TRAVIS COUNTY, AND/OR TO PURSUE SUCH OTHER REMEDIES AND MATTERS RELATING TO SALES TAX ALLOCATION; AUTHORIZING THE EXPENDITURE OF FUNDS; 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

This Resolution authorizes the City's participation in the City of Webster and the Webster Economic Development Corporation vs. Carole Keeton Strayhorn, in Her Official Capacity as Comptroller of Public Accounts for the State of Texas lawsuit and/or pursue other legal remedies arising out of similar sales tax allocation issues that have adversely affected the City.

List of Supporting Documents:
n/a

Other Departments, Boards, Commissions or Agencies
n/a

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING THE PARTICIPATION OF THE CITY IN THE ACTION STYLED CITY OF WEBSTER AND THE WEBSTER ECONOMIC DEVELOPMENT CORPORATION VS. CAROLE KEETON STRAYHORN, IN HER OFFICIAL CAPACITY AS COMPTROLLER OF PUBLIC ACCOUNTS FOR THE STATE OF TEXAS CURRENTLY PENDING IN THE 261ST DISTRICT COURT OF TRAVIS COUNTY, AND/OR TO PURSUE SUCH OTHER REMEDIES AND MATTERS RELATING TO SALES TAX ALLOCATION; AUTHORIZING THE EXPENDITURE OF FUNDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, there is currently pending in the 261st District Court of Travis County an action styled City of Webster and the Webster Economic Development Corporation vs. Carole Keeton Strayhorn, in Her Official Capacity as Comptroller of Public Accounts for the State of Texas (the "Pending Action"); and

WHEREAS, the City Council of the City of Plano, Texas hereby finds that it is in the public interest and in the best interests of its citizens to participate in the Pending Action and/or pursue other legal remedies for the benefit of the City arising out of similar sales tax allocation issues that have adversely affected the City (the "Sales Tax Issues"); and

WHEREAS, the City Council further finds that it is in the public interest and best interests of its citizens to participate therein in conjunction with other cities and political subdivisions that are similarly affected.

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

Section I. The findings and recitations contained in the preamble are incorporated herein by reference.

Section II. The City of Plano hereby authorizes the City Attorney, or her designee to take whatever legal action on behalf of the City she deems necessary to pursue and protect the City's interests with regard to the Sales Tax Issues, including (a) intervention in the pending Action and/or pursuing other legal and administrative remedies she deems advisable to protect the City's interests, (b) participating in a coalition of other similarly situated cities and political subdivisions ("Coalition"), and (c) retaining such outside legal counsel and expert witnesses that she may deem advisable.

Section III. The City Attorney is directed to participate in a Coalition in order to help defray and share the costs of litigation and to further promote the public interest. Each member of the Coalition shall be responsible for a percentage of the total legal costs and expenses based on the following formula: Divide the City's total debited by the Comptroller by the Coalition's total debited by the Comptroller to arrive at a percentage.

Section IV. The City Manager, or his designee is hereby authorized to make the expenditures provided for in this Resolution.

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

DULY PASSED AND APPROVED this the ____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, 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: 3/20/07		Reviewed by Legal <i>W</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Planning			
Department Head	Phyllis Jarrell	Executive Director	Initials: _____ Date: 3/13/07	
Dept Signature:	<i>P. Jamell</i>	City Manager	<i>[Signature]</i> 5/10/07	
Agenda Coordinator (include phone #):		Lynn Trotter, ext. 7156		

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

AUTHORIZING A PARTIAL REFUND OF PROPERTY TAXES AND FEES IN THE AMOUNT OF \$330 PURSUANT TO SECTION 43.148(A) OF THE TEXAS LOCAL GOVERNMENT CODE TO PROPERTY OWNERS DISANNEXED FROM THE CITY OF PLANO; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE SAID REFUND APPROVED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR: 2006-2007	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	-300	0	-300
BALANCE	0	-300	0	-300

FUND(S): GENERAL FUND

COMMENTS: This refund of property taxes for disannexed property was not included in the 2006-2007 budget. However, the boundary adjustment was approved by City Council and funding for the refund will be made available from savings in the non-departmental budget in an amount of \$330.

STRATEGIC PLAN GOAL: This refund of property taxes and fees for disannexed property relates to the City's Goal of Premier City in Which to Live.

SUMMARY OF ITEM

At its February 12, 2007, meeting, City Council approved a boundary adjustment with the City of Richardson that effectively disannexed a small tract of land owned by Tom Kartsotis. State law requires that the cities refund the amount of property taxes and fees paid by the owner, minus the cost of services provided to the property. The Budget Department has determined that a \$330 refund is owed to Mr. Kartsotis.

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

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING A PARTIAL REFUND OF PROPERTY TAXES AND FEES IN THE AMOUNT OF \$330 PURSUANT TO SECTION 43.148(a) OF THE TEXAS LOCAL GOVERNMENT CODE TO PROPERTY OWNERS DISANNEXED FROM THE CITY OF PLANO; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE SAID REFUND APPROVED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano by Ordinance No. 2007-2-6, dated February 12, 2007, disannexed property described in Exhibit "A" (Property) attached hereto belonging to Mr. Tom Kartsotis; and

WHEREAS, pursuant to Section 43.148(a) of the Texas Local Government Code, Mr. Kartsotis as a landowner in the area disannexed is entitled to receive the amount of money collected by the city in property taxes and fees paid to it by him during the period that the area was a part of the city less the amount of money that the city spent for the direct benefit of the area during that period; and

WHEREAS, the City of Plano has determined that Mr. Kartsotis as the owner of the Property is entitled to a partial refund of property taxes and fees in the amount of \$330.

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

Section I. The City Council hereby finds and determines that the amount of money collected by the city in property taxes and fees from Mr. Tom Kartsotis during the period that the Property was a part of the city less the amount of money that the city spent for direct benefit of the Property during that period is \$330.

Section II. The City Manager or his designee is hereby authorized to take such action and execute such documents as necessary to effectuate the payment of the Refund to Mr. Kartsotis. Payment shall be made not later than June 4, 2007.

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

DULY PASSED AND APPROVED THIS THE 20TH DAY OF MARCH, 2007.

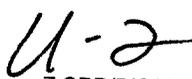
Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY


Z:ORD/DISANNEXATION REFUND RESOLUTION (PJ)



**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:	3/20/07	Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering	Initials	Date	
Department Head	Alan L. Upchurch	Executive Director	<i>[Signature]</i>	3/18/07
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	3/19/07
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>[Signature]</i>	Proj #5278	
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				
Abandoning all right, title and interest of the City, in and to that certain drainage easement recorded in Volume 4247, Page 1762 and that certain drainage easement recorded in Clerk File No. 92-0002185 of the Land Records of Collin County, Texas, being situated in the John D. Martin Survey, Abstract No. 603, which is located in the City of Plano, Collin County, Texas quitclaiming all right, title and interest of the City in such easements to the abutting property owner, Plano Pointe West, L.P., to the extent of its interest; authorizing the City Manager, or in his absence an Executive Director, to execute any documents deemed necessary; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	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				
With the development of the Pointe West Addition, new drainage facilities and easements are being provided. Therefore, the existing temporary easements are no longer required.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map		n/a		

V-1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, ABANDONING ALL RIGHT, TITLE AND INTEREST OF THE CITY, IN AND TO THAT CERTAIN DRAINAGE EASEMENT RECORDED IN VOLUME 4247, PAGE 1762 AND THAT CERTAIN DRAINAGE EASEMENT RECORDED IN CLERK FILE NO. 92-0002185 OF THE LAND RECORDS OF COLLIN COUNTY, TEXAS BEING SITUATED IN THE JOHN D. MARTIN SURVEY, ABSTRACT NO. 603 WHICH IS LOCATED WITHIN THE CITY LIMITS OF PLANO, COLLIN COUNTY, TEXAS; QUITCLAIMING ALL RIGHT, TITLE AND INTEREST OF THE CITY IN SUCH EASEMENTS TO THE ABUTTING PROPERTY OWNER, PLANO POINTE WEST, L.P., TO THE EXTENT OF ITS INTEREST; AUTHORIZING THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR, TO EXECUTE ANY DOCUMENTS DEEMED NECESSARY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano has been requested to abandon all right, title and interest of the City in and to that certain drainage easement recorded in Volume 4247, Page 1762 and that certain drainage easement recorded in Clerk File No. 92-0002185 of the Land Records of Collin County, Texas, being situated in the John D. Martin Survey, Abstract No. 603 (hereinafter called "Easements"), which are located within the City Limits of Plano, Collin County, Texas, and which are more particularly described in Exhibits "A-1" and "A-2" attached hereto and incorporated herein by reference; and

WHEREAS, the Property Owner has filed with the City a Petition for Abandonment, a copy of which is attached hereto as Exhibit "B" (without attached Exhibits) and made a part hereof by reference; and

WHEREAS, the Engineering Department has determined that there will be no detrimental effect on the City if the Easements are abandoned and quitclaimed to the abutting Property Owner; and has advised that the Easements should be abandoned;

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

Section I. All the right, title and interest of the City of Plano, Texas, in and to the Easements is hereby abandoned, and all right, title and interest of the City in and to the Easements is hereby quitclaimed to the abutting Property Owner in accordance with its respective interest. A certified copy of this Ordinance may be recorded in the Collin County Land Records to reflect this abandonment and quitclaim. The City Manager, or in his absence an Executive Director, is hereby authorized to execute on behalf of the City of Plano, Texas, any instruments necessary to complete the abandonment and quitclaim of the Easements by the City of Plano.

Section II. The abandonment and quitclaim is without prejudice to any and all improvements, facilities, equipment or lines of any public utility, municipal or otherwise, if any, which are presently located within any portion of the Easements. Any such utility

V-2

shall have the continued right to locate, maintain, repair, reconstruct, preserve or relocate improvements, facilities, equipment or lines in such portion of the Easements.

Section III. The City Council hereby finds and determines that the abandonment of the Easements is in the public interest of the City of Plano, Texas, and its citizens, and will inure to the benefit of the public generally.

Section IV. This Ordinance shall become effective immediately upon its passage as set forth below.

DULY PASSED AND APPROVED this the _____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

V-3

METES AND BOUNDS DESCRIPTION

**STATE OF TEXAS
COUNTY OF COLLIN**

BEING a 0.041 acre tract of land situated in JOHN D. MARIN SURVEY, ABSTRACT NO. 603, County of Collin, Texas and being part of a called 10.3843 acre tract of land described in a deed to Plano Pointe West, LP recorded in Instrument No. 20060518000676650 and Instrument No. 20060519000680110, Deed Records, Collin County, Texas and being all the certain Drainage Easement described in a deed recorded in Volume 4247, Page 1762, Deed Records, Collin County, Texas and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod found in the northerly line of Windhaven Parkway (120' right of way) and being in the westerly line of a called 0.4161 acre tract of land described in a deed to Plano Pointe West, LP recorded in Instrument No. 20060518000676660, Deed, Records, Collin County, Texas;

THENCE along said northerly line of Windhaven Parkway as follows:

South 89 degrees 34 minutes 27 seconds West, a distance of 25.16 feet to a 1/2 inch iron rod found for corner;

North 07 degrees 35 minutes 19 seconds East, a distance of 5.10 feet to a 1/2 inch iron rod found for corner;

South 89 degrees 19 minutes 23 seconds West, a distance of 219.78 feet to a 1/2 inch iron rod found, and being the beginning of a curve to right whose chord bears North 85 degrees 55 minutes 21 seconds West, a distance of 238.72 feet;

In a northwesterly direction along said curve to right having a central angle of 09 degrees 30 minutes 33 seconds, a radius of 1440.00 feet, an arc distance of 238.99 feet to the **POINT OF BEGINNING**, and being the beginning of a compound curve to the right whose chord bears North 80 degrees 16 minutes 22 seconds West for a distance of 45.00 feet;

In a northwesterly direction along said curve to the right having a central angle of 01 degrees 47 minutes 26 seconds , a radius of 1440.00 feet, an arc distance of 45.00 feet to a point for corner;

THENCE North 09 degrees 44 minutes 14 seconds East, a distance of 40.00 feet to a point;

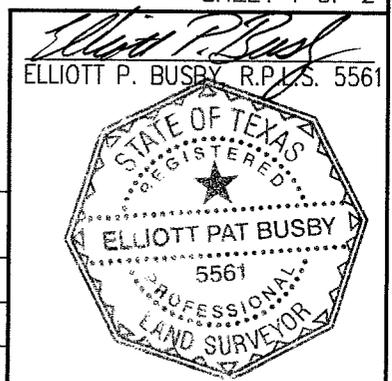
THENCE South 80 degrees 15 minutes 46 seconds East, a distance of 45.00 feet to a point;

THENCE South 09 degrees 44 minutes 14 seconds West, a distance of 40.00 feet the **POINT OF BEGINNING** and containing a computed area of 0.041 acres or 1,806 square feet of land.

SHEET 1 OF 2

BASIS OF BEARINGS:

Final Plat of Windhaven Parkway Right-Of-Way Dedication as recorded in Volume M, Page 150, P.R.D.C.T.
Northerly line of Windhaven Parkway (N 89°19'23" E).



 <p>p i a r s ENGINEERING 730 E. Park Blvd., Suite 210 Plano, TX 75074 (972) 422-0077 Fax (972) 422-0075</p>					<p>EXHIBIT A-1</p>				
					<p>ABANDON 25' DRAINAGE EASEMENT</p>				
					<p>PLANO POINTE WEST, LP</p>				
					<p>PLANO, COLLIN COUNTY, TEXAS</p>				
DRAWN BY	CHECKED BY	SCALE	DATE	JOB NO.					
EB	EB	1"=100'	6/11/06	06-020					

V-4

TRAMMELL CROW COMPANY NO. 43
VOLUME 3486, PAGE 54, D.R.C.C.T.



JOHN D. MARTIN SURVEY,
ABSTRACT NO. 603

PLANO POINTE WEST, LP
INSTR. NO. 2006051800676650 &
INSTR. NO. 20060519000680110
D.R.C.C.T.

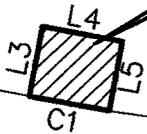
MIDWAY PARK
CAB. H, PG. 346
D.R.C.C.T.
LOT 6

LINE TABLE		
L1	S89°34'27"W	25.16'
L2	N07°35'19"E	5.10'
L3	N09°44'14"E	40.00'
L4	S80°15'46"E	45.00'
L5	S09°44'14"W	40.00'

CURVE TABLE
C1 $\Delta=01^{\circ}47'26''$ R=1440.00' L=45.00' CB=N80°16'22"W CD=45.00'

MADERA COURT
EXISTING 50' ROW

0.041 ACRE OR 1,806 S.F.
PROPOSED ABANDONMENT OF
DRAINAGE EASEMENT
VOL. 4247, PG. 1762
D.R.C.C.T.



$\Delta=09^{\circ}30'33''$
R=1440.00'
L=238.99'
CB=N85°55'21"W
CD=238.72'

S89°19'23"W 219.78' L1

POINT OF COMMENCING

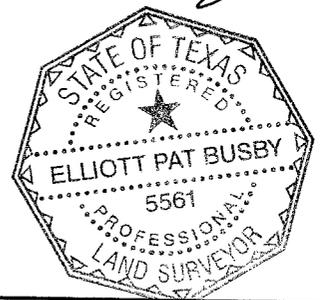
WINDHAVEN PARKWAY
(VARIABLE WIDTH R.O.W.)

SHEET 2 OF 2

BASIS OF BEARINGS:

Final Plat of Windhaven Parkway Right-Of-Way Dedication as recorded
in Volume M, Page 150, P.R.D.C.T.
Northerly line of Windhaven Parkway (N 89°19'23" E).

Elliott P. Busby
ELLIOTT P. BUSBY, R.P.L.S. 5561



P i a r s
ENGINEERING
730 E. Park Blvd, Suite 210 Plano, TX 75074
(972) 422-0077 Fax (972) 422-0075

EXHIBIT A-1

ABANDON 25' DRAINAGE EASEMENT

PLANO POINTE WEST, LP

PLANO, COLLIN COUNTY, TEXAS

DRAWN BY	CHECKED BY	SCALE	DATE	JOB NO.
EB	EB	1"=100'	6/11/06	06-020

V-5

METES AND BOUNDS DESCRIPTION

**STATE OF TEXAS
COUNTY OF COLLIN**

BEING a 0.061 acre tract of land situated in JOHN D. MARTIN SURVEY, ABSTRACT NO. 603, County of Collin, Texas and being part of a called 10.3843 acre tract of land described in a deed to Plano Pointe West, LP recorded in Instrument No. 2006051800676650 and instrument No. 20060519000680110, Deed Records, Collin County, Texas and being part of a called 0.4161 acre tract of land described in a Quitclaim Deed to Plano Pointe West,, LP recorded in Instrument No. 20060518000676660, Deed Records, Collin County, Texas and being all that certain 25 foot Drainage Easement described in a deed recorded in County Clerk's No. 92-0002185, Deed Records, Collin County, Texas more particularly described as follows:

BEGINNING at a 1 inch iron rod found in the northerly right of way line of Windhaven Parkway (120 foot right of way) and being the southwest corner of Midway Park recorded in Cabinet H, Page 346, Plat Records, Collin County, Texas;

THENCE South 89 degrees 34 minutes 27 seconds West, along said northerly line of Windhaven Parkway, a distance of 25.16 feet to an iron rod found for corner;

THENCE North 07 degrees 37 minutes 53 seconds East a distance of 108.50 feet to a point;

THENCE South 82 degrees 19 minutes 30 seconds east, along the westerly line of said Midway Park, a distance of 25.00 feet to a point;

THENCE South 07 degrees 40 minutes 41 seconds West a distance of 104.95 feet to the **POINT OF BEGINNING** and containing a computed area of 0.061 acres or 2,664 square feet of land.

SHEET 1 OF 2

BASIS OF BEARINGS:

Final Plat of Windhaven Parkway Right-Of-Way Dedication as recorded in Volume M, Page 150, P.R.D.C.T.
Northerly line of Windhaven Parkway (N 89°19'23" E).

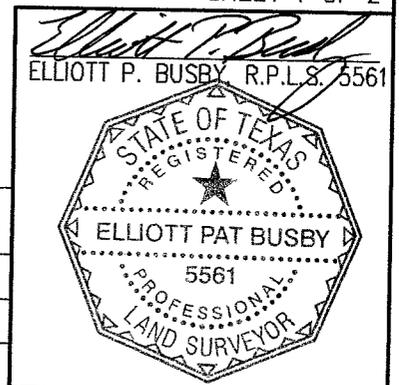


EXHIBIT A-2

ABANDON 25' DRAINAGE EASEMENT

PLANO POINTE WEST, LP

PLANO, COLLIN COUNTY, TEXAS

				
DRAWN BY	CHECKED BY	SCALE	DATE	JOB NO.
EB	EB	1"=100'	6/11/06	06-020

V-6

TRAMMELL CROW COMPANY NO. 43
VOLUME 3486, PAGE 54, D.R.C.C.T.

CITY OF PLANO
LOT 23, BLOCK 1
MIDWAY PARK
C.C.# 96-0007673
D.R.C.C.T.

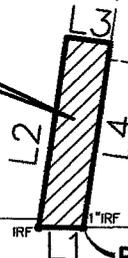


JOHN D. MARTIN SURVEY,
ABSTRACT NO. 603

PLANO POINTE WEST, LP
INSTR. NO. 2006051800676650 &
INSTR. NO. 20060519000680110
D.R.C.C.T.

LINE TABLE		
L1	S89°34'27"W	25.16'
L2	N07°37'53"E	108.50'
L3	S82°19'30"E	25.00'
L4	S07°40'41"W	104.95'

0.061 ACRE OR 2,663 S.F.
PROPOSED ABANDONMENT OF
25' DRAINAGE EASEMENT
C.C.#92-0002185
D.R.C.C.T.



POINT OF BEGINNING

MADERA COURT
EXISTING 50' ROW

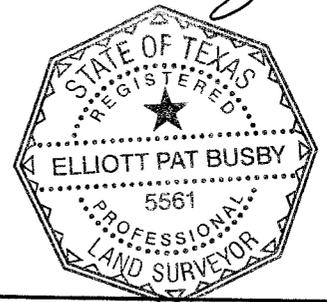
WINDHAVEN PARKWAY
(VARIABLE WIDTH R.O.W.)

SHEET 2 OF 2

BASIS OF BEARINGS:

Final Plat of Windhaven Parkway Right-Of-Way Dedication as recorded
in Volume M, Page 150, P.R.D.C.T.
Northerly line of Windhaven Parkway (N 89°19'23" E).

Elliott P. Busby
ELLIOTT P. BUSBY, R.P.L.S. 5561



Spiars
ENGINEERING

730 E. Park Blvd, Suite 210 Plano, TX 75074
(972) 422-0077 Fax (972) 422-0075

EXHIBIT A-2

ABANDON 25' DRAINAGE EASEMENT

PLANO POINTE WEST, LP

PLANO, COLLIN COUNTY, TEXAS

DRAWN BY	CHECKED BY	SCALE	DATE	JOB NO.
EB	EB	1"=100'	6/11/06	06-020

V-7

EXHIBIT "B"

PETITION FOR ABANDONMENT

[For Easement Abandonment]

We, the undersigned, (hereinafter "Owners"), being all of the owners of real property abutting **a 0.041 acre Drainage Easement situated in the John D. Martin Survey, Abstract No. 603, Collin County, Texas, described in a deed recorded in Volume 4247, Page 1762, Deed Records, Collin County, Texas and a 0.061 acre Drainage Easement situated in the John D. Martin Survey, Abstract No. 603, Collin County, Texas, described in a deed recorded County Clerk's File No. 92-0002185, Deed Records, Collin County, Texas** (hereinafter called "Easement"), more particularly described by metes and bounds in the field note description attached hereto and incorporated herein as **Exhibit "A-1"** do hereby request that the City of Plano, Texas (called "City") abandon the Easement.

1. The Owners are requesting the abandonment of the Easement for the following reasons:
STORM DRAINAGE IMPROVEMENTS AND NEW EASEMENT DEDICATION ELIMINATE THE NEED FOR THE EXISTING EASEMENTS.
2. The following public interest will be served as a result of the abandonment:
ALLOWS RESIDENTIAL DEVELOPMENT OF THE PROPERTY ACCORDING TO CITY ZONING.
3. Unless the City determines that this abandonment is exempt from payment of fair market value, the Owners agree to pay to the City the fair market value of the Easement as determined by an appraisal obtained by the City (called "Price"). The appraisal shall be conclusive as to the fair market value. The Owners shall reimburse the City for the cost of the appraisal and other costs incident to the abandonment (called "Costs"). The Price and Costs shall be paid to the City prior to the abandonment. Should the Plano City Council decide not to abandon the Easement, the Price shall be returned to the Owners, but the Costs shall be retained by the City. Each Owner's share of the Price and Costs shall be in the same proportion as their abutting ownership as hereinafter defined.
4. If the Owners are providing a replacement easement for the Easement requested to be abandoned herein, Owners will attach a metes and bounds description or plat identifying the replacement easement and attach same to this Petition as **Exhibit "B-1"**.
5. The Owners hereby represent and affirm to the City that no other property owner, lessee, tenant or easement or license holder uses the Easement to access or to serve their property.

EXHIBIT "B"

6. The Owners further agree to release, defend, indemnify and hold the City, its officers, agents and employees harmless from and against any and all claims, losses, demands, suits, judgments and costs, including reasonable and necessary attorney's fees and expenses, arising out of, related to or resulting from the abandonment of the Easement by City.
7. The Owners understand and agree that the abandonment is in the sole discretion of the Plano City Council. The Owners also understand and agree that the Easement will be abandoned to them in proportion to their abutting ownership. The abutting ownership will be determined by the number of linear feet of frontage adjacent to the Easement owned by each property owner. Based on the foregoing, the Owners hereby represent and affirm that they have searched the public land records and determined that the abutting ownership is in the following proportions:

POINTE WEST, L.P. 100%

8. Owners shall also prepare a map or drawing showing the Easement to be abandoned along with a designation of all abutting property owners. This map or drawing shall be attached hereto and incorporated herein as **Exhibit "C-1"**.
9. Owners shall also prepare a separate field note description for each portion of the Easement to be released to each abutting property owner. This description shall be attached hereto and incorporated herein as **Exhibit "D-1"**.

[Remainder of page blank]

V-9

EXHIBIT "B"

10. The undersigned officers and/or agents of the Owners hereby represent and affirm that they have the necessary authority to execute this Petition for Abandonment on behalf of the Owners.

Plano Pointe West L.P.

Typed Name of Owner

16610 Dallas Parkway, Suite 2000

Address

Dallas, Texas 75248

City, State and Zip



Signature of Owner

1/18/07

Date:

Contact Person for Property Owners:

Name: Matt Dorsett, Spiars Engineering

Phone No: 972-422-0077 x 105

V-10

EXHIBIT "B"

FOR DEPARTMENTAL USE ONLY

The Easement to be abandoned is to one or more abutting property owners and is exempt from the requirement that fair market value be paid for the following reason(s):

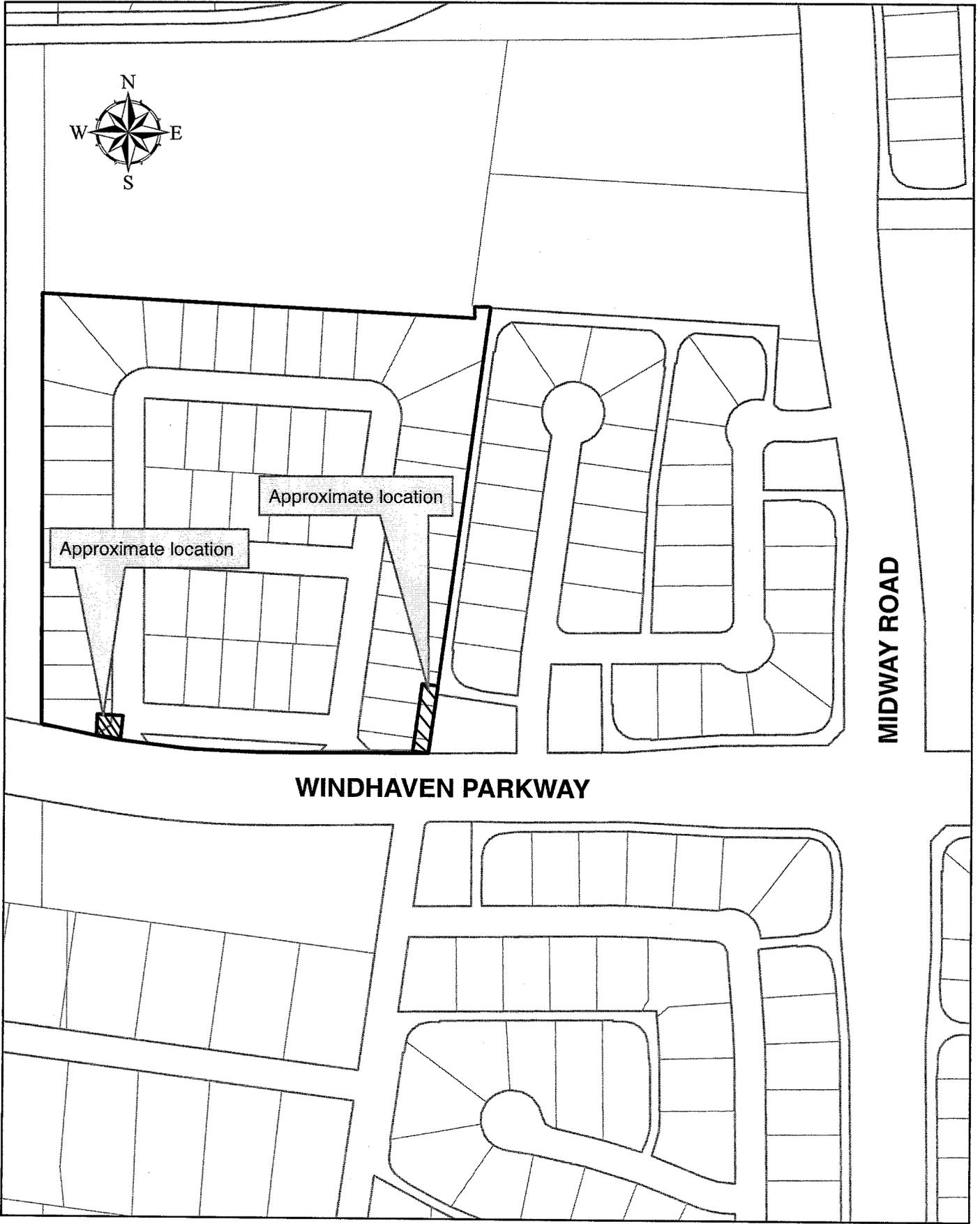
- The Easement consists of narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development code ordinances;
- The Easement consists of streets or alleys, owned in fee or used by easement;
- The Easement consists of land or a real property interest originally acquired for streets, rights-of-way, or easements that the City of Plano has decided to exchange with Owner for other land to be dedicated and used for streets, rights of way, easements, or other public purposes, including transactions partly for cash;
- The Easement contains land that the City wants to have developed by an independent foundation;
- The Easement is located within a reinvestment zone designated by law that the City desires to have developed under a project plan adopted by the municipality for the zone.



Engineering Department
City of Plano, Texas

V-16

POINTE WEST DRAINAGE EASEMENT ABANDONMENTS



V-12

LOCATION MAP

02/22/07



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:	03/20/07	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan Upchurch	Executive Director	<i>[Signature]</i>	3/14/07
Dept Signature:	<i>[Signature]</i>	City Manager		
Agenda Coordinator (include phone #): I. Pegues 7198				
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
An Ordinance of the City of Plano, Texas, repealing Ordinance No. 93-11-14, codified as Subsection "Central Expressway," a paragraph under Section 12-74 of Chapter 12 (Traffic Code) of the Code of Ordinances of the City of Plano; adopting a new subsection "Central Expressway" of Section 12-74 of Chapter 12 (Traffic Code) of the Code of Ordinances to establish prima facie maximum speed limits for motor vehicles operating upon certain sections of Central Expressway within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a penalty clause, a severability clause, a savings clause, and 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				
TxDOT recently completed speed studies along the currently posted 40 MPH Central Expressway through Plano. The studies indicate and support a 45 MPH speed be established from south city limits to north city limits. The Transportation Engineering Division also supports the change.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Map				

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING ORDINANCE NO. 93-11-14, CODIFIED AS SUBSECTION "CENTRAL EXPRESSWAY," A PARAGRAPH UNDER SECTION 12-74 OF CHAPTER 12 (TRAFFIC CODE) OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; ADOPTING A NEW SUBSECTION "CENTRAL EXPRESSWAY" OF SECTION 12-74 OF CHAPTER 12 (TRAFFIC CODE) OF THE CODE OF ORDINANCES TO ESTABLISH PRIMA FACIE MAXIMUM SPEED LIMITS FOR MOTOR VEHICLES OPERATING UPON CERTAIN SECTIONS OF CENTRAL EXPRESSWAY WITHIN THE CORPORATE LIMITS OF THE CITY OF PLANO; PROVIDING A FINE FOR CRIMINAL PENALTIES NOT TO EXCEED \$200.00 FOR EACH OFFENSE; AND PROVIDING A REPEALER CLAUSE, A PENALTY CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, on November 8, 1993, by Ordinance No. 93-11-14, the City Council of the City of Plano established prima facie maximum speed limits on Central Expressway within the corporate city limits of the City of Plano, and such Ordinance was codified as Subsection "Central Expressway" of Section 12-74 of Chapter 12 (Traffic Code) of the Code of Ordinances of the City of Plano; and

WHEREAS, Section 545.356 of the Texas Transportation Code, as amended, grants to cities operating under a Home Rule Charter the authority to control the operation of motor vehicles using its streets and to prescribe reasonable and safe prima facie maximum speed limits for the same; and

WHEREAS, the City of Plano has received a request from the Texas Department of Transportation to increase the prima facie speed limit applicable to Central Expressway from the south city limits line to the north city limits line; and

WHEREAS, a recently completed Traffic Engineering Study indicates an increase in speeds through the incorporated area of Plano is warranted; and

WHEREAS, the City Council is of the opinion that the prima facie speed limit applicable to Central Expressway from the south city limits line to the north city limits line should be altered; and

WHEREAS, the City Council now hereby finds and determines that it is necessary and in the best interest of the city and its citizens to establish a new prima facie speed limit along Central Expressway from the south city limits line to the north city limits line.

W-2

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

Section I. Ordinance No. 93-11-14, duly passed and approved by the City Council of the City of Plano, Texas, on November 8, 1993, and codified as Subsection "Central Expressway" of Section 12-74 of Chapter 12 (Traffic Code) of the Code of Ordinances of the City of Plano, is hereby repealed.

Section II. The following prima facie maximum speed limits hereafter indicated for motor vehicles are hereby determined and declared to be reasonable and safe, and such maximum speed limits are hereby fixed at the rate of speed indicated for motor vehicles traveling upon the named streets or highways or parts thereof. No motor vehicle shall be operated along or upon said portions of said named streets or highways within the corporate limits of the City of Plano in excess of the speeds now set forth.

Section III. A new Subsection "Central Expressway" of Section 12-74 of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances is hereby adopted to read as follows:

"Central Expressway:

- (a) Forty-five (45) miles per hour along and upon the service roads on both the east and west side of U.S. Highway 75 from the south city limits line to the north city limits line."

Section IV. The Traffic Engineer of Plano is hereby authorized to cause to be erected appropriate signs indicating such speed zones.

Section V. All provisions of the Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, except that an ordinance of the city establishing a school zone and speed limit thereof within the zones changed herein, shall not be repealed but shall prevail over this Ordinance. All other provisions of the Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and full effect.

Section VI. It is the intention of the City Council that this ordinance, and every provision hereof, shall be considered severable, and the invalidity of any section, clause or provision or part or portion of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

Section VII. 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 VIII. The repeal of any ordinance or part of any ordinance affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this Ordinance.

Section IX. This Ordinance shall become effective immediately from and after its passage and publication as required by law.

DULY PASSED AND APPROVED this ____ day of _____, 2007.

Pat Evans, MAYOR

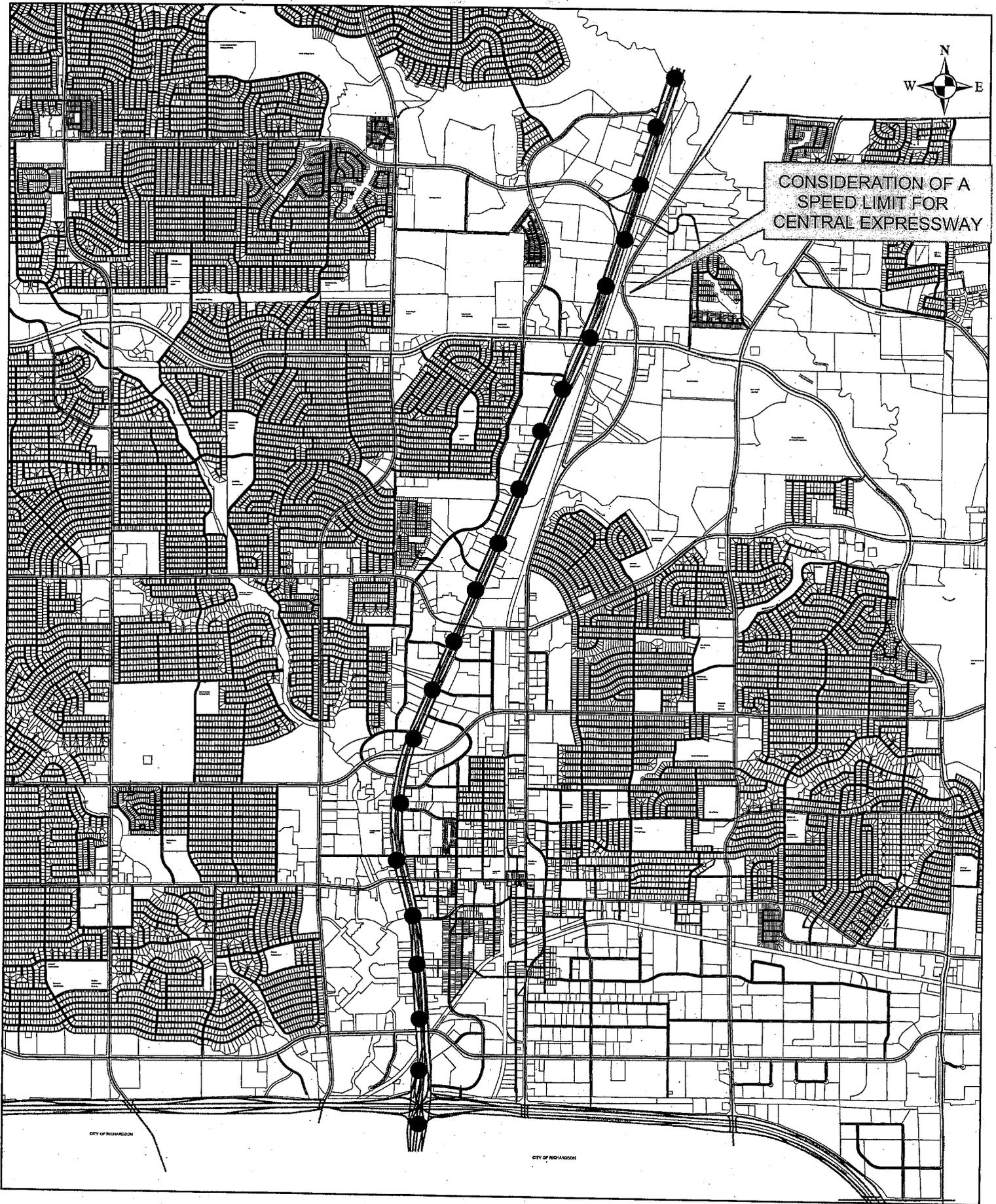
ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

W-4



CONSIDERATION OF A
SPEED LIMIT FOR
CENTRAL EXPRESSWAY





**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:	3/20/07	Reviewed by Legal <i>OWH</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Legal	Initials	Date	
Department Head	Diane Wetherbee	Executive Director		
Dept Signature:	<i>D. Wetherbee</i>	City Manager	<i>[Signature]</i>	<i>3/16/07</i>
Agenda Coordinator (include phone #): Lynne Jones - 7109				
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING ARTICLE I. IN GENERAL, OF CHAPTER 17. POLICE, OF THE CITY OF PLANO CODE OF ORDINANCES BY ADDING SECTION 17-2 TO CODIFY THE AUTHORITY OF POLICE OFFICERS TO ENFORCE STATE LAWS AND CITY ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
This ordinance codifies the existing authority for the Police Officers to enforce the City of Plano ordinances and regulations within the corporate limits of the City along with other authorized personnel as determined by the City Manager.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
n/a		n/a		

X-1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING ARTICLE I. IN GENERAL, OF CHAPTER 17. POLICE, OF THE CITY OF PLANO CODE OF ORDINANCES BY ADDING SECTION 17-2 TO CODIFY THE AUTHORITY OF POLICE OFFICERS TO ENFORCE STATE LAWS AND CITY ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 2.01 of the City Charter grants to the City of Plano the power to make and enforce all police, health, sanitary and other regulations; and

WHEREAS, pursuant to Section 4.01 of the City Charter and Section 2-21 of the City of Plano Code of Ordinances, the City Manager, as chief administrative and executive officer of the City is responsible to the City Council for the administration of all the affairs of the City including enforcement of all ordinances and regulations; and

WHEREAS, the City Manager has previously delegated such authority to the Police Department and other departments as appropriate; and

WHEREAS, the City Council now desires to make explicit that which has been an implicit power derived from the authorities cited above.

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

Section I. Article I. In General, of Chapter 17. Police, of the City of Plano Code of Ordinances is hereby amended by adding the following Sec. 17-2 to read in its entirety as follows:

“Sec. 17-2. Authority of Police Officers.

All peace officers who are members of the City of Plano Police Department are invested with all the power and authority given to them as peace officers under the laws of the State of Texas and they have the power and authority to enforce all City of Plano ordinances and regulations within the corporate limits of the City. This section does not exclude enforcement of City ordinances or regulations by other City departments as directed by the City Manager or by ordinance.”

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

DULY PASSED AND APPROVED this the ____ day of _____,
2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

X-3



**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:	3/20/07		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	City Secretary		Initials	Date	
Department Head	Elaine Bealke		Executive Director		
Dept Signature:	<i>Elaine Bealke</i>		City Manager	<i>SM</i>	<i>3/20/07</i>
Agenda Coordinator (include phone #):		Sharon Kotwitz - x7120			

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

CAPTION

To adopt and enact Supplement Number 77 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

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: 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

4-1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS ADOPTING AND ENACTING SUPPLEMENT NUMBER 77 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 77;

WHEREAS, The City Council wishes to adopt the ordinance codification version appearing in Supplement 77 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 77 as prepared by the codifier.

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

DULY PASSED AND APPROVED this the 20th day of March, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

y-2

M:ord-supplement77



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:	3/20/07	Reviewed by Legal <i>JW</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Legal		Initials	Date
Department Head	Diane Wetherbee	Executive Director		
Dept Signature:	<i>D. Wetherbee</i>	City Manager		
Agenda Coordinator (include phone #): Lynne Jones - 7109				

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

CAPTION

AN ORDINANCE OF THE CITY OF PLANO, TEXAS REVISING SEC. 2-301 OF ARTICLE XVI SELF-SUFFICIENCY COMMITTEE OF CHAPTER 2 ADMINISTRATION OF THE CODE OF ORDINANCES OF THE CITY OF PLANO TO ADD ONE MEMBER TO BE APPOINTED BY PLANO HOUSING AUTHORITY; PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(s):

COMMENTS:

SUMMARY OF ITEM

This Ordinance revises the membership of the Self-Sufficiency Committee to add one member to be appointed by the Plano Housing Authority. This change is recommended so it is consistent with the HUD guidelines for one member to be a participant in the self-sufficiency program and the Plano Housing Authority possesses the information to make that appointment.

List of Supporting Documents:
n/a

Other Departments, Boards, Commissions or Agencies
n/a

Z 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS REVISING SEC. 2-301 OF ARTICLE XVI SELF-SUFFICIENCY COMMITTEE OF CHAPTER 2 ADMINISTRATION OF THE CODE OF ORDINANCES OF THE CITY OF PLANO TO ADD ONE MEMBER TO BE APPOINTED BY PLANO HOUSING AUTHORITY; PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, on June 22, 1992, by Ordinance No. 92-6-17, the City Council of the City of Plano created a Self-Sufficiency Committee and provided for appointment, number of members, removal and terms of office of members as well as for meetings and duties of the Committee; and

WHEREAS, Ordinance No. 92-6-17 was codified as Article XVI, Self-Sufficiency Committee, of Chapter 2, Administration of the Code of Ordinances of the City of Plano; and

WHEREAS, on November 6, 2000, by Ordinance No. 2000-11-7, the City Council of the City of Plano revised Section 2-301, Created, of Article XVI, Self-Sufficiency Committee of Chapter 2 of the Code of Ordinances to decrease the number of members to 8; and

WHEREAS, the City Council of the City of Plano now hereby finds and determines that it is necessary to revise Section 2-301 to increase the number of members of the Self-Sufficiency Committee to nine (9) with one member being appointed by the Plano Housing Authority in order to be consistent with HUD Guidelines for the self-sufficiency program.

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

Section I. Section 2-301, Created, of Article XVI, Self-Sufficiency Committee of Chapter 2 of the Code of Ordinances of the City of Plano, Texas, is hereby revised to read in its entirety as follows:

"Sec. 2-301. Created.

There is hereby created a self-sufficiency committee which shall consist of nine (9) members, eight members to be appointed by the city council and one member to be appointed by the Plano Housing Authority. Membership shall include a cross-section of the community interested in the self-sufficiency program. The

chairperson of the committee shall be appointed by the city council from the membership for a one-year term."

Section II. All provisions of the Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section III. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

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

DULY PASSED AND APPROVED this the ____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

DATE: February 20, 2007
TO: Honorable Mayor & City Council
FROM: Carolyn Kalchthaler, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of February 19, 2007

**AGENDA ITEM NO. 8A - PUBLIC HEARING
ZONING CASE 2007-01
APPLICANT: OLD SHEPARD PLACE II, LTD.**

DESCRIPTION:

Request to rezone 5.7± acres located at the northeast corner of Preston Road and Old Shepard Place **from** Planned Development-189-Retail/General Office **to** Planned Development-Retail/General Office. Zoned Planned Development-189-Retail/General Office with Specific Use Permits #268, 269, 313, 314, & 339 for two restaurants, two private clubs, and an arcade.

APPROVED: 5-3 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 2 **OPPOSE:** 0

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 0

PETITION(s) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

Recommended for approval as Planned Development-Retail/General Office (PD-R/O-2) zoning with the following stipulations:

- 1) R uses, as defined by section 2.818 of the Zoning Ordinance, and O-2 uses as defined by section 2.817 of the Zoning Ordinance shall be allowed
- 2) Area, Yard and Bulk Requirements
 - a. Maximum Lot Coverage - 30% (excluding parking structures).
 - b. Maximum Floor Area Ratio - 0.8:1 (excluding parking structures).
 - c. Maximum Building Height - Parking structures shall be not more than four levels at or above grade.

1-1

Honorable Mayor & City Council
Zoning Case 2007-01
February 20, 2007
Page 2 of 2

- 3) **Building materials:** The sides of all buildings, except parking garages, shall have a consistent facade design and roof line configuration. All mechanical equipment serving the structures and trash receptacles shall be screened from all public streets.

The commissioners voting against the motion felt this was not an appropriate location for retail development.

FOR CITY COUNCIL MEETING OF: March 20, 2007 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

EH/pp

xc: Joseph F. Bruegger, Old Shepard Place II, Ltd.
Travis Bousquet, P.E., The Bousquet Group, Inc.
Kirk Williams and Tommy Mann, Winstead

1-2

Z:PAC/03-20-CC

**Recommendation of the
Planning & Zoning Commission
February 19, 2007 Meeting
2nd Vice Chair Report**

Agenda No. 8A Public Hearing & 8B Concept Plan

Public Hearing: Zoning Case 2007-01

Applicant: Old Shepard Place II, Ltd.

Description: Request to rezone 5.7± acres located at the northeast corner of Preston Road and Old Shepard Place **from** Planned Development-189-Retail/General Office **to** Planned Development-Retail/General Office. Zoned Planned Development-189-Retail/General Office with Specific Use Permits #268, 269, 313, 314, & 339 for two restaurants, two private clubs, and an arcade.

Staff Recommendation: Denial

Commission Action: Approved 8A by a vote of 5-3
Approved 8B by a vote of 5-3

REMARKS:

The applicant was requesting to rezone the property to create a planned development district to allow the development of a pharmacy with drive-through. The requested zoning was Planned Development-Retail/General Office (PD-R/O-2).

Staff was first approached by the applicant when a pre-development meeting was requested. At that time the PD stipulations were not thoroughly reviewed, and staff mistakenly allowed the applicant to submit a revised site plan for a pharmacy where the PD did not allow it. The error was discovered upon further review, and discussed with the applicant before the plan reached the Planning & Zoning Commission.

This request proposes to remove these lots from the current PD and create a new retail, and office PD. In addition to the proposed uses, the request includes amendments to lot coverage, floor area ratio, building height, and building materials.

Current Zoning

The current zoning is Planned Development-189-Retail/General Office (PD-189-R/O-2). The existing PD has similar stipulations to the proposed PD. The major exception is that it limits development in this area to uses allowed by right or by Specific Use Permit (SUP) in the O-2 zoning district.

1-3

Proposed Planned Development Zoning Stipulations

The requested zoning is PD-R/O-2. There are two primary parts of this request: land use and design standards.

Land Use - The request proposes to allow R and O-2 uses by right.

Design Standards - The request proposes design standards that mirror the existing zoning and will complement the development as a whole.

Conformance to the Comprehensive Plan

Future Land Use Plan - The Future Land Use Plan designates this property as Major Corridor Development (MCD). Development in these corridors is expected to define the unique character of the Preston Road corridor. This corridor includes major retail development including Collin Creek Mall, along with general commercial, entertainment, lodging and office uses. **The request is generally consistent with the MCD land use designation.**

ISSUES:

Rezoning Land for Retail Use

In 2003, City Council adopted the *Retail Study of Underperforming and Vacant Retail Areas* initiated by the cities of Carrollton, Richardson, and Plano. This study examined the retail market conditions in the three cities and offered alternatives to **address underperforming and vacant retail properties**. The study identified Plano as having an overabundance of retail zoning.

Staff felt the additional retail use proposed with this zoning request would further increase the overabundance of retail zoning in Plano.

Proposed Planned Development District

Section 4.101 of the Zoning Ordinance details five purposes for a planned development district. These are:

1. "To protect and provide for the public health, safety, and general welfare of the city."
The current zoning and the proposed PD-R/O-2 zoning accomplish this purpose.
2. "To guide the future development of the city in accordance with the Comprehensive Plan." As noted above, **the proposed development does conform to the Comprehensive plan,** but not the Retail Study.

1-4

3. "To accommodate innovation by modifying regulations to better accomplish the city's development goals." The Zoning Ordinance is the primary tool for implementing the city's development goals as expressed in the Comprehensive Plan. **There is sufficient, developable retail land in other areas of the city.**
4. "To mitigate development impacts, especially those related to the environment, traffic, public services and facilities and adjacent and area land uses." **The change in zoning would have little development impact on the environment and traffic.**
5. "To protect and enhance the aesthetic and visual quality of development." **The proposed building materials, building articulation, and design standards would be compliant with this purpose.**

SUMMARY:

The applicant is requesting to create a PD district to allow R and O-2 uses by right. The Retail Study advises against rezoning additional land for retail use. Staff feels that the R uses are allowed in many areas of the city, and that there are many locations where they would be more appropriate and that additional retail zoning in such close proximity to an existing overdeveloped retail intersection such as Preston Road and Park Boulevard is not recommended. Therefore, staff recommended denial of the request.

1-5

COMMISSION DISCUSSION

There was much discussion among the commissioners.

Those who spoke in favor gave the following reasons:

- The proposed Zoning doesn't change the existing zoning but merely removes some restrictions imposed by the PD.
- All of the surrounding property owners supported the use.
- There were no letters in opposition.
- Most felt the use would be a good fit in the neighborhood.
- The use complies with the Comprehensive Plan and met all 5 purposes of a Planned Development.
- The use would replace a bar/restaurant which had been closed several times.
- The adjacent retail had very little vacancy and the small additional use would not have a material impact on the area.
- The report which staff made its decision on focused on underperforming and vacant retail sites which did not apply in this case.
- The proposed use would not sell alcohol or adult magazines

Those in opposition state the following reasons:

- The rezoning would add more retail in an area that had enough retail.

PLANNING AND ZONING SUMMARY

The majority of the commission felt the change was not really a change in zoning but merely the removal of some restrictions in the existing PD. In addition the use seemed to be a good fit with the neighborhood and almost all adjacent property owners supported the request. Those in opposition cited too much existing retail as the main reason for denial. The re-zoning request was approved 5-3 and the concept plan was approved 5-3.

Respectfully submitted,

James F. Duggan
Second Vice Chairman

CITY OF PLANO
PLANNING & ZONING COMMISSION

February 19, 2007

Agenda Item No. 8A

Public Hearing: Zoning Case 2007-01

Applicant: Old Shepard Place II, Ltd.

DESCRIPTION:

Request to rezone 5.7± acres located at the northeast corner of Preston Road and Old Shepard Place **from** Planned Development-189-Retail/General Office **to** Planned Development-Retail/General Office. Zoned Planned Development-189-Retail/General Office with Specific Use Permits #268, 269, 313, 314, & 339 for two restaurants, two private clubs, and an arcade.

REMARKS:

The applicant is requesting to rezone the property to create a planned development district to allow the development of a pharmacy with drive-through. The requested zoning is Planned Development-Retail/General Office (PD-R/O-2). The R district is primarily intended to provide areas for neighborhood, local, and regional shopping facilities for the retail sales of goods and services including convenience stores, shopping centers, and regional malls but not including wholesaling or warehousing. The O-2 district is intended to allow for a variety of low-, mid-, and high-rise office developments providing for professional, financial, medical, and similar services to local residents; corporate offices for regional and national operations; and major centers of employment for Plano and surrounding communities. A PD district provides the ability to amend use, height, setback, and other development standards at the time of zoning to promote innovative design and better development controls appropriate to both off and onsite conditions.

Staff was first approached by the applicant when a pre-development meeting was requested. At that time the PD stipulations were not thoroughly reviewed, and staff mistakenly allowed the applicant to submit a revised site plan for a pharmacy where the PD did not allow it. The error was discovered upon further review, and discussed with the applicant before the plan reached the Planning & Zoning Commission.

1-7

This request proposes to remove these lots from the current PD and create a new retail, and office PD. In addition to the proposed uses, the request includes amendments to lot coverage, floor area ratio, building height, and building materials. A concept plan, Preston Park South, Phase 2, Block A, Lots 1R & 2, accompanies this request.

Current Zoning

The current zoning is Planned Development-189-Retail/General Office (PD-189-R/O-2). The existing PD has similar stipulations to the proposed PD. The major exception is that it limits development in this area to uses allowed by right or by Specific Use Permit (SUP) in the O-2 zoning district.

Surrounding Land Use and Zoning

The area of the request is currently developed as a restaurant and commercial amusement (indoor) with restaurant, which are allowed by SUP. The property to the north is an office development and is zoned PD-189-R/O-2. To the east is a hotel and is also zoned PD-189-R/O-2. The property to the south is an apartment complex and is zoned Multifamily Residence-2. Across Preston Road to the west is a retail development zoned R.

Proposed Planned Development Zoning Stipulations

The requested zoning is PD-R/O-2. There are two primary parts of this request: land use and design standards.

Land Use - The request proposes to allow R and O-2 uses by right.

Design Standards - The request proposes design standards that mirror the existing zoning and will complement the development as a whole.

This request is for PD-R/O-2 zoning with the following stipulations:

- 1) R uses, as defined by section 2.818 of the Zoning Ordinance, and O-2 uses as defined by section 2.817 of the Zoning Ordinance shall be allowed
- 2) Area, Yard and Bulk Requirements
 - a. Maximum Lot Coverage - 30% (excluding parking structures).
 - b. Maximum Floor Area Ratio - 0.8:1 (excluding parking structures).
 - c. Maximum Building Height - Parking structures shall be not more than four levels at or above grade.
- 3) Building materials: The sides of all buildings, except parking garages, shall have a consistent facade design and roof line configuration. All mechanical equipment serving the structures and trash receptacles shall be screened from all public streets.

Conformance to the Comprehensive Plan

Future Land Use Plan - The Future Land Use Plan designates this property as Major Corridor Development (MCD). Development in these corridors is expected to define the unique character of the Preston Road corridor. This corridor includes major retail development along with general commercial, entertainment, lodging and office uses. The request is generally consistent with the MCD land use designation.

Adequacy of Public Facilities - Adequate water and sanitary sewer services are available on site.

Traffic Impact Analysis (TIA) - A TIA is not required since the trip generation potential of the proposed zoning is less than current zoning.

ISSUES:

Rezoning Land for Retail Use

In 2003, City Council adopted the *Retail Study of Underperforming and Vacant Retail Areas* initiated by the cities of Carrollton, Richardson, and Plano. This study examined the retail market conditions in the three cities and offered alternatives to address underperforming and vacant retail properties. The study identified Plano as having an overabundance of retail zoning.

While the area of the rezoning is fairly small, the requested change would add additional retail development to the Preston Road corridor. To the north of this development is the intersection of Preston Road and Park Boulevard which has a significant amount of retail on each corner. The additional retail use proposed with this zoning request would further increase the overabundance of retail zoning in Plano.

Proposed Planned Development District

Section 4.101 of the Zoning Ordinance details five purposes for a planned development district. These are:

1. "To protect and provide for the public health, safety, and general welfare of the city." The current zoning and the proposed PD-R/O-2 zoning accomplish this purpose.
2. "To guide the future development of the city in accordance with the Comprehensive Plan." As noted above, the proposed development does conform to the Comprehensive plan, but not the Retail Study.
3. "To accommodate innovation by modifying regulations to better accomplish the city's development goals." The Zoning Ordinance is the primary tool for implementing the city's development goals as expressed in the Comprehensive Plan. There is sufficient, developable retail land in other areas of the city.

4. "To mitigate development impacts, especially those related to the environment, traffic, public services and facilities and adjacent and area land uses." The change in zoning would have little development impact on the environment and traffic.
5. "To protect and enhance the aesthetic and visual quality of development." The proposed building materials, building articulation, and design standards would be compliant with this purpose.

SUMMARY:

The applicant is requesting to create a PD district to allow R and O-2 uses by right. The Retail Study advises against rezoning additional land for retail use. R uses are allowed in many areas of the city, and there are many locations where they would be more appropriate. Additional retail zoning in such close proximity to an existing overdeveloped retail intersection such as Preston Road and Park Boulevard is not recommended. Therefore, staff recommends denial of the request.

RECOMMENDATIONS:

Recommended for denial.

1-10

ORDINANCE NO. _____
(Zoning Case 2007-01)

AN ORDINANCE OF THE CITY OF PLANO AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, SO AS TO AMEND 5.7± ACRES OUT OF THE DENTON DARBY SURVEY, ABSTRACT NO. 260, LOCATED AT THE NORTHEAST CORNER OF PRESTON ROAD AND OLD SHEPARD PLACE IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, FROM PLANNED DEVELOPMENT-189-RETAIL/GENERAL OFFICE TO PLANNED DEVELOPMENT-186-RETAIL/GENERAL OFFICE; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 20th day of March, 2007, for the purpose of considering amending 5.7± acres out of the Denton Darby Survey, Abstract No. 260, located at the northeast corner of Preston Road and Old Shepard Place in the City of Plano, Collin County, Texas, from Planned Development-189-Retail/General Office to Planned Development-186-Retail/General Office; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 20th day of March, 2007; and

WHEREAS, the City Council is of the opinion and finds that such amendment would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

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

Section I. The Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended so as to amend 5.7± acres out of the Denton Darby Survey, Abstract No. 260, located at the northeast corner of Preston Road and Old Shepard Place in the City of Plano, Collin County, Texas, from Planned Development-189-Retail/General Office to Planned Development-186-Retail/General Office, said property being described in the legal description on Exhibit "A" attached hereto.

Section II. The change granted in Section I is granted subject to:

- 1) Area, Yard and Bulk Requirements
 - a. Maximum Lot Coverage - 30% (excluding parking structures).
 - b. Maximum Floor Area Ratio - 0.8:1 (excluding parking structures).
 - c. Maximum Building Height - Parking structures shall be not more than four levels at or above grade.
- 2) Building materials: The sides of all buildings, except parking garages, shall have a consistent facade design and roof line configuration. All mechanical equipment serving the structures and trash receptacles shall be screened from all public streets.

Section III. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

Section IV. All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section V. The repeal of any ordinance or part of ordinances affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section VI. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VII. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

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

PASSED AND APPROVED THIS THE 20TH DAY OF MARCH, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION

BEING all that certain lot, tract, or parcel of land situated in the Denton Darby Survey, Abstract No. 260, located in the City of Plano, Collin County, Texas, and being all of Block A, Lot 1R, Preston Park South, Phase 2, an addition to the City of Denton, according to the plat recorded in Cabinet K, Page 405, of the Plat Records of Collin County, Texas, Block A, Lot 2, Preston Park South, Phase 2, an addition to the City of Denton, according to the plat recorded in Cabinet J, Page 892, of the Plat Records of Collin County, Texas, and being portions of the north right-of-way of Old Shepard Place, the east right-of-way of Preston Road (State Highway No. 289), the south right-of-way of Preston Park Boulevard and being more particularly described by metes and bounds as follows:

BEGINNING at a point in or near the centerline of Old Shepard Place, same being in or near the centerline of Preston Road (State Highway No. 289);

THENCE North, $00^{\circ} 32' 40''$ East, along in or near the centerline of Preston Road (State Highway No. 289), a distance of 522.17 feet to a point in or near the centerline of Preston Park Boulevard;

THENCE South, $89^{\circ} 27' 20''$ East, along in or near the centerline of Preston Park Boulevard a distance of 371.86 feet to a point for corner and the beginning of tangent curve to the left having a radius of 1,270.00 feet, a central angle of $05^{\circ} 07' 02''$, and whose chord bears North, $87^{\circ} 59' 09''$ East, with a chord distance of 113.39 feet;

THENCE northeasterly along said curve, an arc length of 113.42 feet to a point for corner;

THENCE South, $00^{\circ} 16' 40''$ West, over and across said Preston Park Boulevard, along the east line of said Block A, Lot 1R, and Block A, Lot 2, and over across said Old Shepard Place, a distance of 514.40 feet to a point for corner in or near the centerline of said Old Shepard Place;

THENCE along in or near the centerline of Old Shepard Place, the following courses and distances;

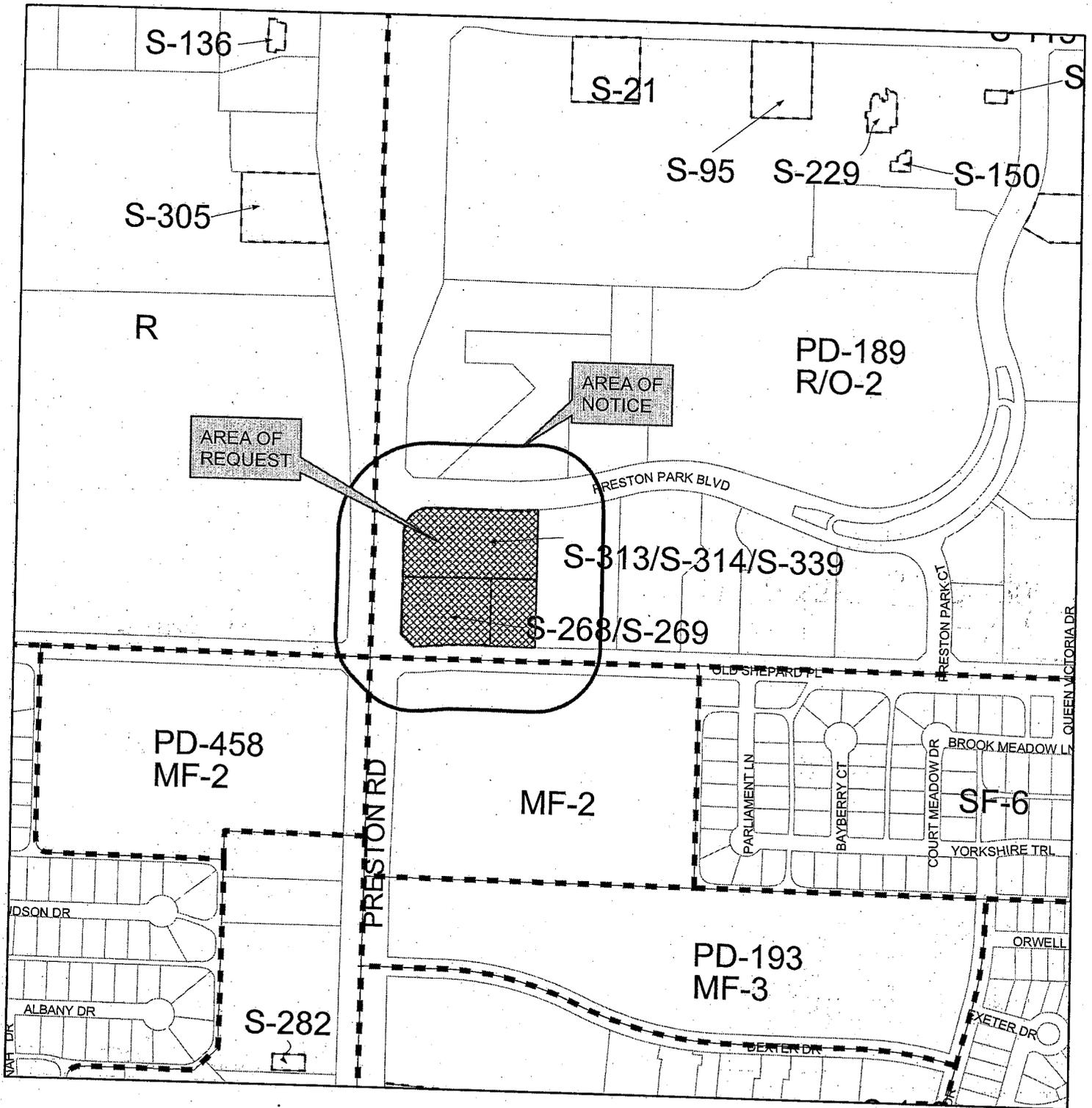
NORTH, $89^{\circ} 43' 20''$ West, a distance of 234.93 feet to a point for corner and the beginning of a tangent curve to the left having a radius 598.75 feet, a central angle of $07^{\circ} 32' 56''$, and whose chord bears South, $86^{\circ} 30' 12''$ West, with a chord distance of 78.83 feet;

SOUTHWESTERLY along said curve, an arc length of 78.89 feet to a point for corner and the beginning of a reverse curve to the right having a radius 601.25 feet, a central angle of $05^{\circ} 28' 22''$, and whose chord bears South $85^{\circ} 27' 55''$ West, with a chord distance of 57.41 feet;

SOUTHWESTERLY along said curve, an arc length of 57.43 feet to a point for corner;

NORTH, $90^{\circ} 00' 00''$ West, a distance of 116.79 feet to the POINT OF BEGINNING and CONTAINING 5.745 acres of land, more or less.

1-14

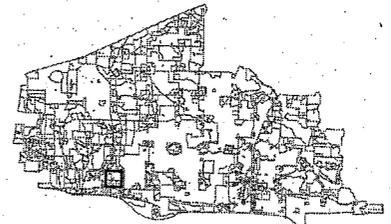


Zoning Case #: 2007-01

Existing Zoning: PLANNED DEVELOPMENT-189-
RETAIL/GENERAL OFFICE

w/SPECIFIC USE PERMITS #268, 269, 313, 314, & 339

1-15



○ 200' Notification Buffer



**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:	March 20, 2007		Reviewed by Legal <i>wj</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Public Works/Mike Rapplean <i>MR</i>		Initials	Date	
Department Head	Jimmy Foster		Executive Director	<i>RF</i>	3-12-07
Dept Signature:	<i>J.B. Foster</i>		City Manager	<i>DS</i>	3-12-07
Agenda Coordinator (include phone #): Margie Stephens (4104)					

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

CAPTION

AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING CHAPTER 21, ARTICLE II, DIVISION 4, DROUGHT CONTINGENCY PLAN, SECTION 21.60.1(J) AND 21.60.1(N) OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; REVISING THE EXISTING WATER ZONE MAP TO INCLUDE A MORNING WATERING SCHEDULE AND EVENING WATERING SCHEDULE FOR THE PURPOSE OF IMPROVING THE OPERATIONS OF THE CITY'S WATER SYSTEM; PROVIDING A REPEALER CLAUSE, A SAVINGS CLAUSE; A SEVERABILITY CLAUSE; 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

Public Works recommends amending sections of the Drought Contingency Plan to better maintain public health and safety.

During the summer of 2006, all water customers were subject to the restrictions of the City's Drought Contingency Plan, Stage 3. During this time, the City's water infrastructure was tested and changes are needed to improve system performance.

One proposed amendment to Stage 3 is to provide a window of time allowing the water system to recharge its elevated water towers before the next days watering begins. Beginning at 10:00 PM until 2:00 AM outdoor irrigation will not be allowed. During this four hour time frame, the water system will be able to completely fill all elevated water towers before the next days watering begins. This should provide an increase in water pressure throughout the system, and allow more water to remain in the elevated storage tanks for fire fighting if needed.

Continued on Next Page



CITY OF PLANO COUNCIL AGENDA ITEM

Summary of Item (Con't)

Another amendment includes adding a sixth (6) watering zone. Watering is going to be allowed Monday through Saturday with "No Watering on Sundays".

Under these proposed changes, Zone 1 was divided at Jupiter Road from north city limits to south city limits creating the six (6) zones.

All water customers will have two days to water each week. Each of the six zones will have a morning watering on one day and an evening watering on a different day during the same week. All water customers will have 12 hours to irrigate combining the morning and evening watering times each week. This is two (2) hours less than what was available during the Stage 3 restrictions during the summer of 2006.

With the changes above, staff feels the City's water infrastructure will better perform and will reduce the stress being placed on the water system caused by the drought conditions.

In November of 2006, when the City established the Administrative Remedies for Violations the daytime restrictions were changed to the current 10:00 am to 6:00 pm.

List of Supporting Documents:

Other Departments, Boards, Commissions or Agencies

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING CHAPTER 21, ARTICLE II, DIVISION 4, DROUGHT CONTINGENCY PLAN, SECTION 21.60.1(J) AND 21.60.1(N) OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; REVISING THE EXISTING WATER ZONE MAP TO INCLUDE A MORNING WATERING SCHEDULE AND EVENING WATERING SCHEDULE FOR THE PURPOSE OF IMPROVING THE OPERATIONS OF THE CITY'S WATER SYSTEM; PROVIDING A REPEALER CLAUSE, A SAVINGS CLAUSE; A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council finds it is necessary and in the best interest of the City, its citizens, and the general public to amend the Watering Zone Map to include a morning and evening watering schedule for the purpose of improving the operations of the City's water system.

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

Section I. Article II, Division 4, Drought Contingency Plan, Section 21-60.1(j) and 21.60.1(n); Code of Ordinances of the City of Plano is hereby amended to read in its entirety as follows:

“(j) Water Use Restrictions Under Stage 3 – Upon implementation of Stage 3 and notification of the public as provided herein, the following water use restrictions shall apply to all customers, users and other persons connected to the City of Plano Water System:

- (1) All of the water use restrictions implemented during Stages 1 and 2 shall continue in force except as amended or replaced by the restrictions set out herein;
- (2) Swimming pools may be filled to maintain operational levels;
- (3) The use of potable water to refill ponds and lakes is prohibited;
- (4) Landscape watering is limited to two days per week at each service address located within the City of Plano. Landscape watering is prohibited between the hours of 10:00 am to 6:00 pm and 10:00 pm to 2:00 am. Landscape watering shall comply with the following mandatory watering schedule. Watering shall take place on the days indicated based upon the location of the service address as indicated on the Watering Zone Map attached hereto as “Exhibit A”:

Zone	Morning Watering Time 2:00 AM to 9:59 AM	Evening Watering Time 6:01 PM to 10:00 PM
1	Monday	Thursday
2	Friday	Tuesday
3	Saturday	Wednesday
4	Thursday	Monday
5	Tuesday	Friday
6	Wednesday	Saturday

Note: Landscape watering will be enforced as follows:

2:00 am to 9:59 a.m. on assigned day watering is allowed;
10:00 am to 5:59 p.m. – watering is not allowed;
6:00 pm to 9:59 p.m. on assigned day watering is allowed;
10:00 pm to 1:59 am – watering is not allowed.

- (5) Except as otherwise provided herein, landscape watering is prohibited on Sunday;
- (6) Landscape beds may be watered by using a hand-operated hose equipped with a positive shut off nozzle on any day including Sunday except between the hours of 10:00 am to 6:00 pm;
- (7) A drip irrigation system, soaker hoses, or irrigation zones specifically for foundation maintenance may be used as often as deemed necessary by the property owner to maintain foundation moisture. Irrigation for foundation maintenance will not be subject to the watering restriction schedule set forth in section 21-60.1(j)(3);
- (8) In all instances, excessive run-off is prohibited. Water run-off is excessive when it extends for a distance greater than ten (10) feet from the property's boundary lines; onto an adjacent property; or, ten (10) feet past the targeted irrigation area for commercial sites;
- (9) Trees may be watered by drip irrigation system or soaker hoses as often as deemed necessary by the property owner except between the hours of 10:00 am to 6:00 pm;
- (10) Municipal water use necessary to maintain the public health or safety, including, but not limited to: fire-fighting, fire prevention and water system maintenance is allowed;

2-4

- (11) The watering of golf course putting greens and tee boxes is permitted as needed;

All other golf course watering must follow the watering scheduled as outlined under Section 21-60.1(j)(3);

Excessive run-off is prohibited for all water users. (Restrictions do not apply to golf courses using non-potable water for landscape irrigation);

- (12) Irrigation of City parks, athletic complexes and facilities will be allowed Monday through Saturday from 10:00 pm to 6:00 am. Watering is not allowed on Sunday.

(n) **Water Use Restrictions Under Stage 4** - Upon implementation of Stage 4 and notification to the public as provided herein, the following water use restrictions shall apply to all customers, users and other persons connected to the City of Plano Water System:

- (1) All of the water use restrictions implemented during Stages 1, 2, and 3 shall continue in force except as amended or replaced by the restrictions set out herein;
- (2) Watering of any and all landscape and landscape bedding is prohibited except as amended or replaced by the restrictions set out herein;
- (3) A drip irrigation system, soaker hoses, or irrigation zones specifically designed for foundation maintenance may be used as often as deemed necessary by the property owner. Irrigation for foundation maintenance will not be subject to the watering restriction schedule set forth in section 21-60.1(j)(3);
- (4) In all instances, excessive run-off is prohibited. Water run-off is excessive when it extends for a distance greater than ten (10) feet from the property's boundary lines; onto an adjacent property; or, ten (10) feet past the targeted irrigation area for commercial sites;
- (5) Irrigation of City athletic fields will be allowed Monday through Saturday from 10:00 pm to 6:00 am. Watering is not allowed on Sunday. The Director of Public Works will determine a percent reduction in water consumption for the City Parks and Recreation Department;

2-5

- (6) The watering of golf course putting greens and tee boxes is permitted as needed;

All other golf course watering is prohibited;

Excessive run-off prohibited for all water users. (Restrictions do not apply to golf courses using non-potable water for landscape irrigation);

- (7) Construction of new water lines or rehabilitation of existing water lines is prohibited except where necessary for public health or safety as determined by the Director of Public Works or as determined through the variance process set forth in section 21-60.2;
- (8) The use of potable water for construction purposes is prohibited except where necessary to protect the public health or safety as determined by the Director of Public Works or as determined through the variance process set forth in section 21-60.2;
- (9) Municipal water use necessary to maintain the public health or safety, including, but not limited to: fire-fighting, fire prevention and water system maintenance is allowed;
- (10) Notify wholesale customers of actions being taken and require them to implement similar procedures.”

Section II. All provisions of the Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section III. The amending 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 provision of any Ordinances at the time of passage of this Ordinance.

Section IV. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or unconstitutionality of any other portion of this Ordinance.

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

DULY PASSED AND APPROVED this the ____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:



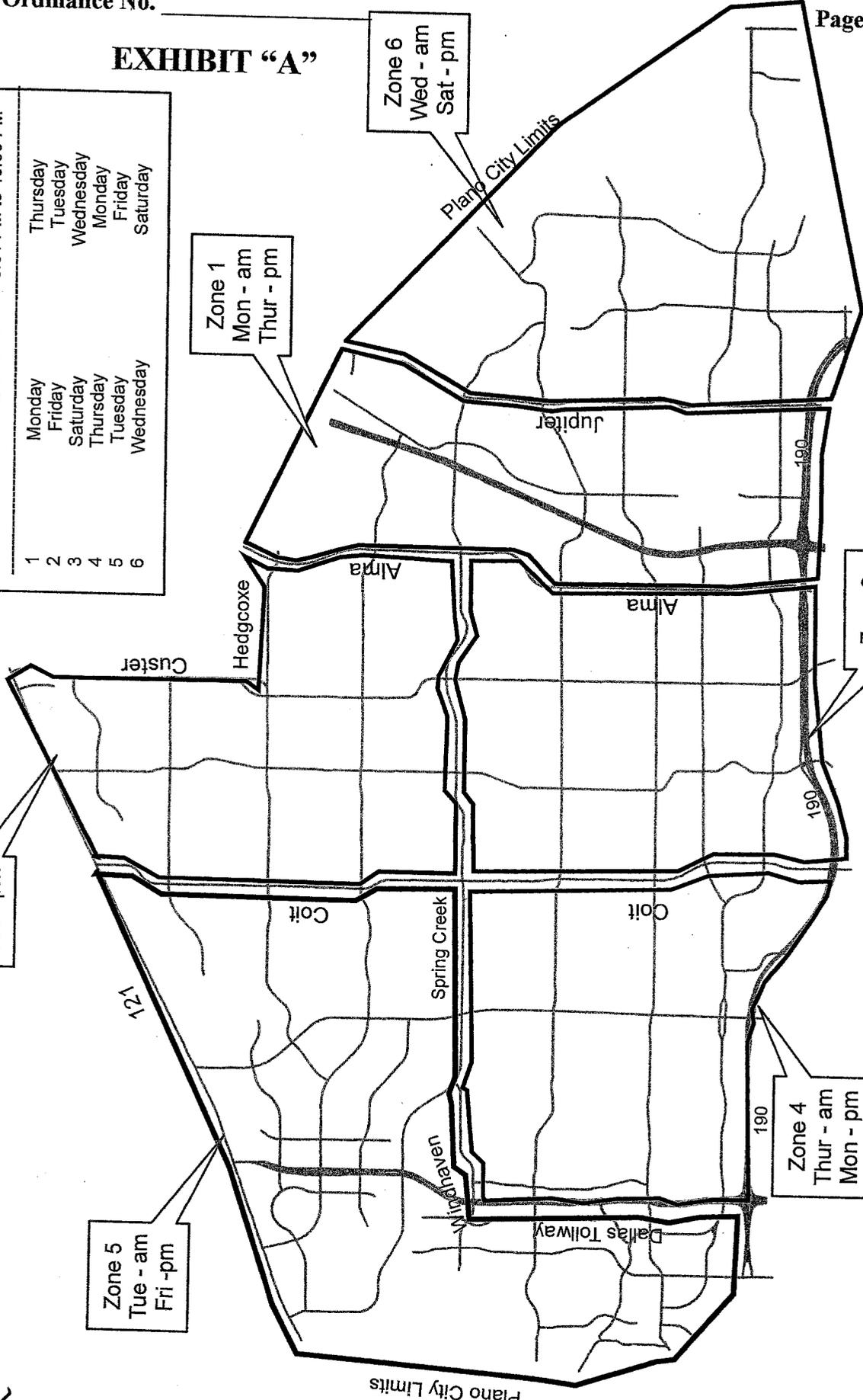
Diane C. Wetherbee, CITY ATTORNEY

2-7

EXHIBIT "A"

Watering Zone Schedule		
Zone	Morning Watering Time 2:00 AM to 9:59 AM	Evening Watering Time 6:01 PM to 10:00 PM
1	Monday	Thursday
2	Friday	Tuesday
3	Saturday	Wednesday
4	Thursday	Monday
5	Tuesday	Friday
6	Wednesday	Saturday

8-2



WATERING ZONE MAP



**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:	03/20/2007	Reviewed by Legal <i>W</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Police Department		Initials	Date
Department Head	Gregory W. Rushin	Executive Director	<i>GR</i>	3-12-07
Dept Signature:	<i>Gregory W. Rushin</i>	City Manager	<i>GR</i>	3-12-07
Agenda Coordinator (include phone #):		Pam Haines, ext 2538		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER PUBLIC HEARING				
CAPTION				
Conduct a public hearing and receive staff report on the City's Juvenile Curfew Ordinance #94-11-11; action continue, repeal or modify the current ordinance.				
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				
Upon closure of the public hearing, Council's options will be to continue with the current ordinance, to seek modification, or repeal the ordinance.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
See attached memo, Exhibit A & B				

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P.O. Box 860358
Plano, Texas 75086-0358
972-424-5678
Fax 972-424-0099
<http://www.planopolice.org>

MEMORANDUM

DATE: March 12, 2007
TO: The Honorable Mayor and Council Members
FROM: *GRW* Gregory W. Rushin, Chief of Police
SUBJECT: Juvenile Curfew Ordinance

Texas Local Government Code Section 370.002, as added by the 74th Legislature, reads:

(a) Before the third anniversary of the date of adoption of a juvenile curfew ordinance by a general-law municipality or a home-rule municipality or an order of a county commissioners court, and every third year thereafter, the governing body of the general-law municipality or home-rule municipality or the commissioners court of the county shall:

- (1) Review the ordinance or order's effects on the community and on problems the ordinance or order was intended to remedy;
- (2) Conduct public hearings on the need to continue the ordinance or order; and
- (3) Abolish, continue, or modify the ordinance or order.

(b) Failure to act in accordance with Subsections (a)(1)-(3) shall cause the ordinance or order to expire.

The ordinance was last continued on April 12, 2004 after a public hearing was conducted.

SUMMARY

It is the position of the Police Department and the Municipal Court that the curfew ordinance is an effective tool for controlling crime committed by minors and recommends Council continue it in its current form. The reasons for this conclusion are explained below.

TERMINOLOGY

The following terms are used in this report; these definitions should be helpful:

1. Minor – used in the City of Plano curfew ordinance; means a person younger than 17.
2. Juvenile – used by the city Planning Department; means a person younger than 18.
3. Juvenile offense – determined by state law; means any conduct that violates a penal law of this state or a political subdivision; includes status offenses such as runaway and truancy; state law defines a juvenile as a person aged 10, but younger than 17.

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OVERVIEW OF PLANO'S ORDINANCE:

Our curfew ordinance restricts minors from being in a public place, or on a business premise, during curfew hours. Curfew hours are from 11:00 pm until 6:00am, Sunday through Thursday and 12:01 am through 6:00 am on Friday and Saturday. There are also penalties for parents and business owners who permit minors to engage in the prohibited conduct. The ordinance includes exemptions for minors who are out during curfew hours for certain, specific purposes. Persons younger than age 10 would not be cited – enforcement action in such a case would be directed at a parent or business owner, if appropriate. A copy of the ordinance is attached for your convenience (Exhibit "A").

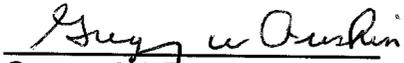
DATA USED IN ORDINANCE REVIEW:

The Police Department with the assistance of the city Planning Department, the Municipal Court Clerk's office, and PISD reviewed data pertaining to the ordinance and its effects. A short summary of that information follows and is offered to the Council to facilitate this review.

1. PISD records indicate the student population of students in elementary school increased by approximately 500 from March 2004 through February 2007; student population for middle school students increased by approximately 284 for the same period. These student populations represent the vast majority of students who are affected by the curfew ordinance, i.e. students younger than 17.
2. Records obtained from the City of Plano Planning Department indicate the number of juveniles in Plano increased approximately 1.4% from 66,495* in March 2004 to 67,416 in February 2007.
**The reason for the change in the 2004 number is data released for Plano from the U.S. Census Bureau's 2005 American Community Survey (ACS). The trends for the juvenile population include increasing diversity and smaller percentages of the total population. Many of the newer homes being built in Plano are more geared towards people with no children. Our neighborhoods are aging and the people who have raised their families are staying put after their children have left home. For the first time in many years, there was a numeric decrease in the number of people living in Plano under the age of 10 and between the ages of 25 to 44. This fact was derived from comparison with 2000 Census and 2005 ACS data.*
3. From 1991 to 1994, with no curfew ordinance in effect, there was a rise in crimes involving juvenile offenders. In fact, from 1991 through 1993, the number of juveniles involved in violent offenses increased approximately 75%. Since the ordinance was adopted in 1994, although the juvenile population has steadily increased, the number of offenses committed by juveniles during curfew hours has declined, and the trend line continues downward. See attached graph (Exhibit "B").
4. Court records indicate that approximately 690 notices were issued to juveniles in Plano for violation of the Juvenile Curfew ordinance from March 1, 2004 through February 28, 2007 (an average of 230 each year).
5. The municipal judges see the curfew violations as an opportunity to refer first time offenders into various programs that require parental cooperation to resolve the charges. The violations normally do not result in fines, but instead involve counseling and the performance of a specified number of hours of community service, e.g. the First Offender program. According to municipal court records from March 2004 through February 2007, a vast majority of the Juvenile Curfew Ordinance violators (more than 79%) were referred to either Teen Court or the First Offender program.
6. Police officers use the ordinance as a tool for early intervention for potential illegal activity by minors.

CONCLUSION:

The ordinance has proven to be an effective tool in curbing crimes committed by persons younger than 17. I recommend that the City of Plano continue the current Juvenile Curfew Ordinance with no changes.



Gregory W. Rushin
Chief of Police

GWR/KJB/gc

Attachment

EXHIBIT "A"

CITY OF PLANO CODE OF ORDINANCES ARTICLE III. JUVENILE CURFEW*

***Editor's note:** Ord. No. 94-11-11, § I, adopted Nov. 14, 1994, repealed Ord. No. 94-10-36, adopted October 24, 1994, in effect repealing Ch. 14, Art. III, §§ 14-46--14-50, which pertained to juvenile curfew and derived from Ordinance No. 94-10-36. Section II of Ord. No. 94-11-11 adopted new provisions as Art. III of this chapter to read as herein set out.

Cross references: Youth advisory commission, § 2-231 et seq.

Sec. 14-46. Definitions.

In this article:

Civic organization means a nonprofit organization that sponsors or conducts social or recreational activities for youths.

Curfew hours means 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday, until 6:00 a.m. of the following day; and 12:01a.m. until 6:00 a.m. on any Saturday or Sunday.

Emergency means an unforeseen circumstance or the resulting state that calls for immediate action. "Emergency" includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment means any privately-owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

Guardian means a person who, under court order, is the guardian of the person of a minor, or a public or private agency with whom a minor has been placed by a court.

Minor means any person under seventeen (17) years of age.

Operator means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

Parent means a person who is a natural parent, adoptive parent, or stepparent of another person; or at least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a minor.

Public place means any place to which the public or substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

Remain means to linger or stay; or fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

Serious bodily injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(Ord. No. 94-11-11. § II, 11-14-94)

EXHIBIT "A"

Sec. 14-47. Offenses.

- (a) A minor commits an offense if he or she remains in any public place or on the premises of any establishment within the city during curfew hours.
- (b) A parent or guardian of a minor commits an offense if he or she knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.
- (c) The owner, operator, or any employee of an establishment commits an offense if he or she knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(Ord. No. 94-11-11. § II, 11-14-94)

Sec. 14-48. Defenses.

- (a) It is a defense to prosecution under section 14-47 that the minor was:
 - (1) Accompanied by the minor's parent or guardian;
 - (2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;
 - (3) In a motor vehicle involved in interstate travel;
 - (4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - (5) Involved in an emergency
 - (6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
 - (7) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor.
 - (8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly;
 - (9) Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code, as amended.
- (b) It is a defense to prosecution under section 14-47(c) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(Ord. No. 94-11-11. § II, 11-14-94)

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EXHIBIT "A"

Sec. 14-49 Enforcement.

Before taking any enforcement action under this article, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in section 14-48 is present.

(Ord. No. 94-11-11. § II, 11-14-94)

Sec. 14-50. Penalty.

- (a) Any person violating this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 1-4.
- (b) When required by section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates section 14-47(a) and shall refer the minor to juvenile court.

(Ord. No. 94-11-11. § II, 11-14-94)

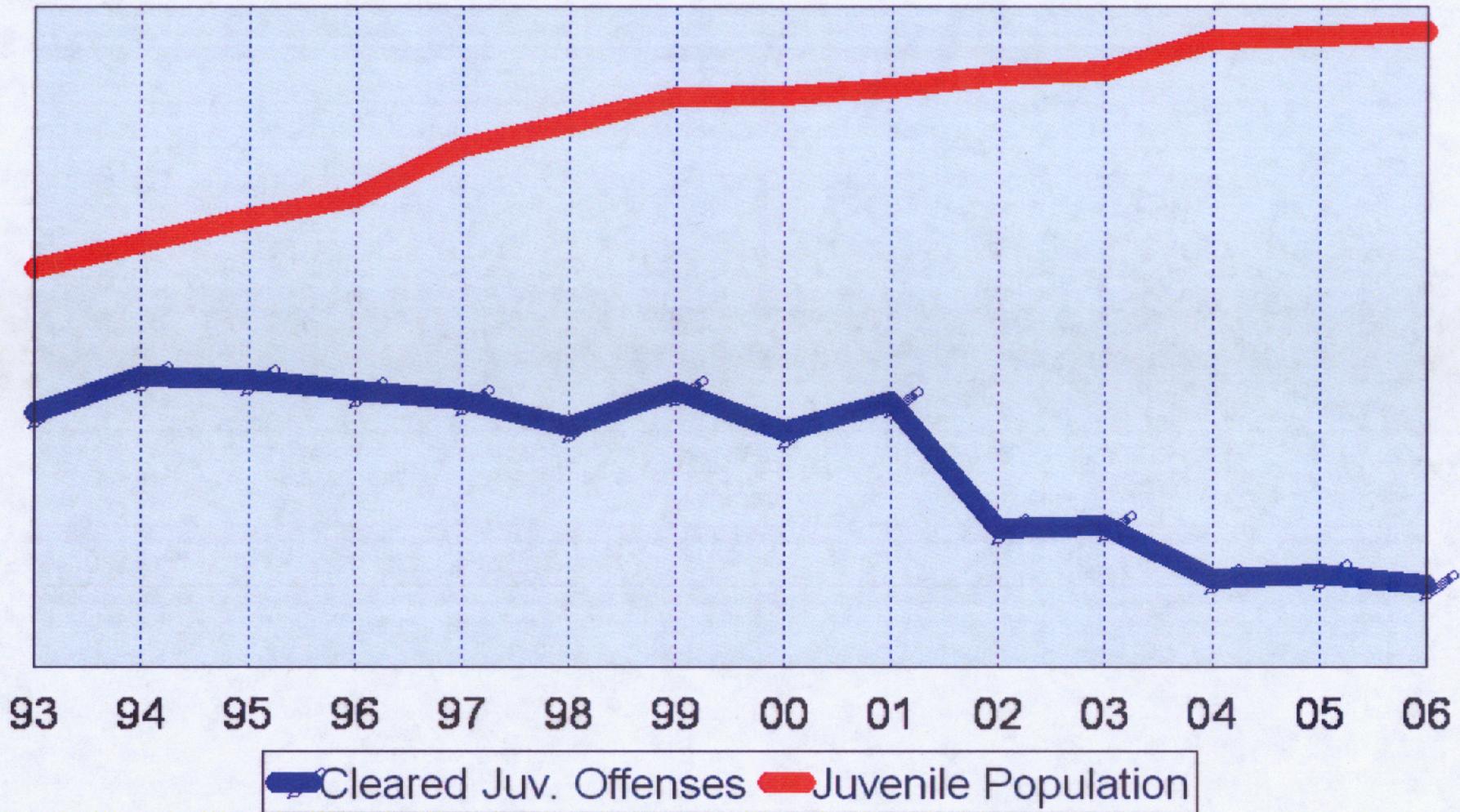
Secs. 14-51-14-65. Reserved.

Curfew Impact Study 2007

Cleared Juvenile Offenses VS Juvenile Population

PAGE 1

EXHIBIT "B"



Offenses occurring between 11 pm and 7am



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:	3/20/2007	Reviewed by Legal <i>PLU</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Customer and Utility Services		Initials	Date
Department Head	Mark Israelson	Executive Director		
Dept Signature:	<i>Mark Israelson</i>	City Manager	<i>RA</i>	<i>3-12-07</i>
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER				
CAPTION				
A PUBLIC HEARING BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE PERTAINING TO THE USE OR TAKING OF A PORTION OF A CITY OF PLANO PARK AND KNOWN AS THE WELLINGTON SITE FOR AN AMENDMENT TO A COMMUNICATIONS FACILITIES LICENSE AGREEMENT FOR CELLULAR EQUIPMENT ATTACHED TO AND AT THE BASE OF THE EXISTING TXU ELECTRIC TRANSMISSION TOWER.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
<p>Dallas MTA, L.P. d/b/a Verizon Wireless has requested that the City allow it to expand the current facilities in use on a portion of the Wellington Site for cellular attached to and at the base of TXU Electric transmission towers, as depicted in drawing included with this agenda item. Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing for any use or taking of park land. To permit the use or taking of park land, the governing body with jurisdiction over the park, the City Council for instance, must find the following:</p> <ol style="list-style-type: none"> 1. There is no feasible and prudent alternative to the use and taking of the park land as proposed by the project exists; and 2. The Project includes all reasonable planning to minimize harm to the Park Land resulting from the use or the taking. <p>Witnesses will present at the public hearing on these issues.</p>				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

NOTICE OF PUBLIC HEARING

The City Council of the City of Plano, Texas will hold a public hearing on the 20th day of March, 2007 at 7:00 o'clock p.m. in the City Council Chambers, City of Plano Municipal Building, located at 1520 Avenue K, Plano, Texas. The purpose of the public hearing is to determine whether or not a portion of the City of Plano public park land within the City of Plano, Texas, should be utilized for the following described project:

Amendment to Communications Facilities License Agreement with Dallas MTA,
L.P. d/b/a Verizon Wireless at the Wellington Site.

A drawing of the park location and proposed communications facility can be viewed in the office of Mark Israelson, Customer and Utility Services office at 1520 Avenue K, Plano, Texas 75074.

All interested persons are invited to attend and testify at the public hearing.

4-2

GENERAL NOTES:

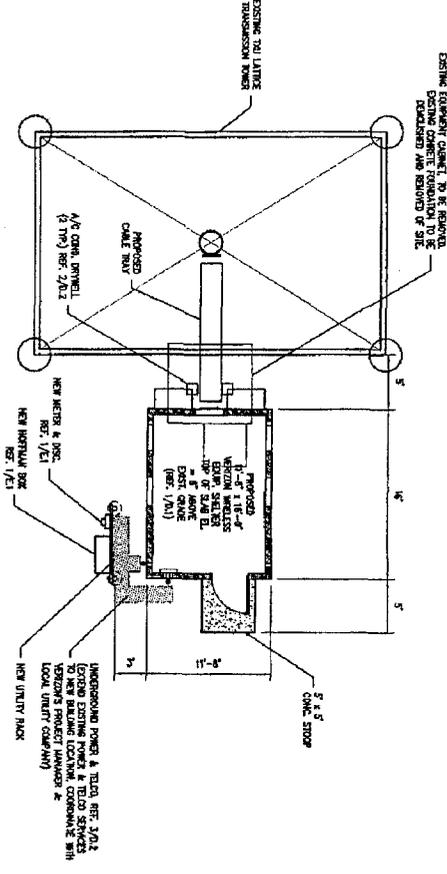
THE FOLLOWING GENERAL NOTES CONSTITUTE A MAJOR PART OF THESE CONTRACT DOCUMENTS. THESE NOTES SHOULD BE READ CAREFULLY AND UNDERSTOOD BEFORE THE COMMENCEMENT OF WORK AT SITE.

1. CARE SHALL BE TAKEN TO LOCATE ALL EXISTING UNDERGROUND UTILITIES, CONDUITS AND/OR EXISTING STRUCTURES BEFORE BEGINNING OR DRILLING ON THE SITE.
2. CARE SHALL BE TAKEN TO PROTECT THE SITE AND THE SURROUNDING AREA FROM THE HAZARD OF COLLAPSE, OVERLOADING, EXCESSIVE SETTLEMENT, EXCESSIVE AND UNDESIRABLE VIBRATION, AND EXCESSIVE NOISE DURING THE CONSTRUCTION OF THE STRUCTURE.
3. ALL EXISTING UTILITIES SHALL BE PROTECTED FROM EXCESSIVE VIBRATION.
4. VERIFY REQUIREMENTS OF OTHER AGENCIES PRIOR TO PROCEEDING WITH ANY WORK.
5. COMPLETE SHOP DRAWINGS SHALL BE PROVIDED FOR ALL FABRICATED ITEMS FOR REVIEW PRIOR TO FABRICATION. STRUCTURAL DRAWINGS SHALL NOT BE APPROVED FOR SHOP DRAWINGS.
6. ALL WORK SHALL BE ACCOMPANIED WITH ALL APPLICABLE STATE, LOCAL, AND FEDERAL CODES AND REGULATIONS. THE FOLLOWING LISTED CODES SHALL BE USED UNLESS OTHERWISE SPECIFIED: THE AMERICAN INSTITUTE OF STEEL CONSTRUCTION - SPECIFICATION FOR STRUCTURAL STEEL CONSTRUCTION, AND SECTION OF STRUCTURAL STEEL FOR THE AMERICAN CONCRETE INSTITUTE - BUILDING CODE REQUIREMENTS FOR AMERICAN BUILT STRUCTURES. THE AMERICAN CONCRETE INSTITUTE - BUILDING CODE REQUIREMENTS FOR STRUCTURAL CONCRETE. THE AMERICAN INSTITUTE OF STEEL CONSTRUCTION - SPECIFICATION FOR STRUCTURAL STEEL CONSTRUCTION. THE AMERICAN INSTITUTE OF STEEL CONSTRUCTION - SPECIFICATION FOR STRUCTURAL STEEL CONSTRUCTION. THE AMERICAN INSTITUTE OF STEEL CONSTRUCTION - SPECIFICATION FOR STRUCTURAL STEEL CONSTRUCTION.
7. VERIFY ALL EXISTING SITE CONDITIONS, QUANTITIES AND DIMENSIONS BEFORE BEGINNING WORK. VERIFY THE CONSTRUCTION METHODS OF ANY DISCREPANCIES OR INCONSISTENCIES BEFORE PROCEEDING WITH THE WORK.
8. ALL WORK SHALL NOT BE SITE BEFORE BEING TO FULFILL THE REQUIREMENTS WITH EXISTING CONDITIONS.
9. THE QUALITY CONTROL/INSPECTOR SHALL BE RESPONSIBLE WITH AN APPROVED COSTS TO THE OWNER/ASSIGNOR/PRODUCTION MANAGEMENT TEAM FOR ALL TESTS, PERMITS, INSPECTION FEES RELATIVE TO THIS PROJECT OR SITE THAT ARE NOT COVERED BY THE CONTRACT AND BY THE RESPECTIVE SUBCONTRACTORS ASSOCIATED WITH THE PROJECT.
10. THE OWNER/ASSIGNOR/INSPECTOR SHALL BE RESPONSIBLE FOR THE REVIEW OF ANY CONSTRUCTION METHODS AND MATERIALS TO BE USED FOR THE PROJECT OR SITE. THE OWNER/ASSIGNOR/INSPECTOR SHALL BE RESPONSIBLE FOR THE REVIEW OF ANY CONSTRUCTION METHODS AND MATERIALS TO BE USED FOR THE PROJECT OR SITE.
11. THE OWNER/ASSIGNOR/INSPECTOR SHALL BE RESPONSIBLE FOR THE REVIEW OF ANY CONSTRUCTION METHODS AND MATERIALS TO BE USED FOR THE PROJECT OR SITE.
12. THE OWNER/ASSIGNOR/INSPECTOR SHALL BE RESPONSIBLE FOR THE REVIEW OF ANY CONSTRUCTION METHODS AND MATERIALS TO BE USED FOR THE PROJECT OR SITE.
13. THE OWNER/ASSIGNOR/INSPECTOR SHALL BE RESPONSIBLE FOR THE REVIEW OF ANY CONSTRUCTION METHODS AND MATERIALS TO BE USED FOR THE PROJECT OR SITE.
14. IDENTIFICATION AND CONSTRUCTION METHODS SHALL BE ACCOMPLISHED IN SUCH A MANNER THAT NO DISRUPTION OF EXISTING FACILITY OPERATIONS WILL OCCUR.
15. THE WORK SHALL BE COMPLETED AT ALL TIMES DURING HOURS OF OPERATION AND WHEN THE SITE IS UNOCCUPIED. WORK WITH THE OWNERS REPRESENTATIVE FOR THE SAFETY AND SECURITY AT ALL TIMES.

PAVING NOTES:

1. SITE PREPARATION SHALL CONSIST OF STRIPPING THE EXISTING PAVING AND ALL UNDERLYING MATERIALS TO THE SUBGRADE. THE EXISTING PAVING SHALL BE REMOVED AND REPAIRED TO THE ORIGINAL FINISH. THE EXISTING PAVING SHALL BE REPAIRED TO THE ORIGINAL FINISH. THE EXISTING PAVING SHALL BE REPAIRED TO THE ORIGINAL FINISH.
2. LOCATION OF UTILITIES IS BASED UPON BEST AVAILABLE INFORMATION AND FROM TO CONSTRUCTION. THE CONTRACTOR SHALL VERIFY THE ACTUAL LOCATION IN THE FIELD. THE CONTRACTOR SHALL VERIFY THE ACTUAL LOCATION IN THE FIELD. THE CONTRACTOR SHALL VERIFY THE ACTUAL LOCATION IN THE FIELD.

NOTE:
THIS PLAN IS SHOWN TO CLARIFY THE RELATIONSHIP OF THE PROPOSED WIRELESS TOWER. THIS PLAN IS SHOWN TO CLARIFY THE RELATIONSHIP OF THE PROPOSED WIRELESS TOWER. THIS PLAN IS SHOWN TO CLARIFY THE RELATIONSHIP OF THE PROPOSED WIRELESS TOWER.



SITE PLAN
SCALE 1" = 10'-0"

INNOVATIVE ENGINEERS DESIGN
 1850 S. Dairy Airford, Suite 425
 Houston, TX 77057
 Tel: (832) 327-0706
 Fax: (832) 327-0706



STATE OF TEXAS
 PROFESSIONAL ENGINEER
 JOSEPH S. ARBOUD
 69894

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY JOSEPH S. ARBOUD, P.E. 69894 ON _____

PRINTED DATE:	07/23/06
DRAWN BY:	VA
CHECKED BY:	JSA
SITE PLAN	
PROJECT NO.	162207
ADDRESS:	6435 PINESTRAWLBOURNE DALLAS, TX 75261
	A

VERIZON WIRELESS

4-4

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, APPROVING A PROJECT REQUIRING THE USE OR TAKING OF A PORTION OF CITY OF PLANO PUBLIC PARK LAND, KNOWN AS THE WELLINGTON SITE; PROVIDING FOR A DETERMINATION THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO THE PROPOSED USE OR TAKING OF THE PARK LAND; AND THAT THE PROPOSED PROJECT INCLUDES ALL REASONABLE PLANNING TO MINIMIZE HARM TO THE LAND AND THE PARK AND RECREATION AREA RESULTING FROM THE USE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has requested approval of a project to allow an expansion of cellular equipment previously approved in Ordinance No. 2006-5-13 to be attached to and at the base of an existing TXU Electric transmission tower for Dallas MTA, L.P. d/b/a Verizon Wireless as depicted on the drawing attached hereto as Exhibit "A" (called "Project") which requires the use or taking of a portion of City of Plano public park land known as the Wellington Site, (called "Park Land"); and

WHEREAS, Chapter 26 of the TEXAS PARKS AND WILDLIFE CODE (called "Code") requires a public hearing to determine whether or not the Project's proposed use of a portion of the Park Land should be approved in accordance with certain criteria contained within the Code; and

WHEREAS, Notices of the Public Hearing were duly served and published in conformity with the Code; and

WHEREAS, a public hearing was held by the City Council on February 26, 2007, during which all interested persons were given the opportunity to testify and present other relevant evidence before the City Council;

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

Section I. After hearing and reviewing all of the testimony and evidence at the Public Hearing as well as other matters and information

5-2

relevant and pertinent to a determination, the City Council hereby finds and determines that:

- (a) There is no feasible and prudent alternative to the use or taking of the Park Land as proposed by the Project; and
- (b) The Project includes all reasonable planning to minimize harm to the Park Land, resulting from the use or the taking.

Section II. The City Council further finds that the determination made in Section I is in the public interest generally, and in the best interest of the citizens of the City of Plano, Texas.

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

DULY PASSED AND APPROVED by the City Council of the City of Plano, Texas, this the _____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, City Secretary

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

53



**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:	3/20/07	Reviewed by Legal <i>RL</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Customer and Utility Services		Initials	Date	
Department Head	Mark Israelson	Executive Director			
Dept Signature:	<i>[Signature]</i>	City Manager	<i>RA</i>	3-12-07	
Agenda Coordinator (include phone #):		Nancy Rodriguez X7510			
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AMENDMENT TO A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND DALLAS MTA, L.P., A TEXAS LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE, TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF CITY OF PLANO PUBLIC PARK LAND, KNOWN AS THE WELLINGTON SITE, 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 checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	06/07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	2,625	2,000	4,625
BALANCE		0	2,625	2,000	4,625
FUND(S): GENERAL FUND					
COMMENTS: Approval of this item will result in a rent increase of \$1,500, totaling \$2,000 annually for the expansion of communications facilities. Also, an additional payment for the pro-rated rent adjustment for FY 06/07 shall be due in the amount of \$1,125.					
STRATEGIC PLAN GOAL: Amending a Communications License Agreement relates to the City's Goal of "Service Excellence."					
SUMMARY OF ITEM					
This Resolution approves an Amendment to a Communications Facilities License Agreement with Dallas MTA, L.P., a Texas Limited Partnership, d/b/a Verizon Wireless for expansion of communications facilities in City of Plano public park land known as the Wellington Site.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AMENDMENT TO A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND DALLAS MTA, L.P., A TEXAS LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE, TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF CITY OF PLANO PUBLIC PARK LAND, KNOWN AS THE WELLINGTON SITE, 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 a Communications Facilities License Agreement approved on November 28, 2005, by Resolution No. 2005-11-30(R) by and between the City of Plano, Texas and Dallas MTA, L.P. d/b/a Verizon Wireless., (hereinafter called "Amendment"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; 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 should be authorized to execute the Amendment on behalf of the City of Plano.

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

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

Section II. The City Manager or, in his absence, 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.

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

DULY PASSED AND APPROVED on this the ____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

6-3

AMENDMENT NO. 1 TO COMMUNICATIONS FACILITIES LICENSE

WHEREAS, pursuant to a Communications Facilities License ("License") dated November 29, 2005, between Dallas MTA, L.P. d/b/a Verizon Wireless ("Licensee") and the City of Plano, Texas, a home rule municipal corporation ("Licensor") covering lease property ("Property") located at 6435 Preston Meadow Drive, City of Plano, County of Collin, State of Texas 75024.

WHEREAS, Licensor and Licensee now desire to amend the License as herein set forth;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to the following:

1. To replace in its entirety Appendix "A" (Site Plan) dated December 10, 1997 with Appendix "A" (Site Plan) dated February 23, 2006, attached hereto and made a part hereof.
2. Rent. Effective April 1, 2007, Rent Payment shall increase by One Thousand Five Hundred and No/100 Dollars (\$1,500.00) annually, for a total of Two Thousand and No/100 Dollars (\$2,000) annually. On April 1, 2007, an additional payment for the pro rata rent adjustment shall be due in the amount of One Thousand One Hundred Twenty-Five and No/100 Dollars (\$1,125.00). Thereafter, on January 1 of each succeeding year, the rent increase shall be paid in accordance with Paragraph 4, Payment Terms and Conditions, of the Communications Facilities License.

Except as hereby amended, all other provisions of said License will remain in full force and effect as originally written and is hereby confirmed as to all provisions contained therein. In the event of any conflict between the terms of this Amendment No. 1 and the terms of the License, this Amendment No. 1 shall control.

[SIGNATURE PAGE TO FOLLOW]

6-4

Licensee: Wellington 162207C

Location Code: 105494

City Site ID: _____

IN WITNESS WHEREOF, the parties hereto executed this Amendment No. 1 to the License as of the ____ day of _____, 200____.

WITNESS

LICENSOR

Dallas MTA, L.P. d/b/a Verizon Wireless,
by Verizon Wireless Texas, LLC, its general
partner

BY: _____

Hans F. Leutenegger
Area Vice-President - Network, South Area

Date: _____

LICENSEE

City of Plano, Texas, a home rule municipal
corporation

BY: _____

City Manager

Name: _____

Date: _____

6-5



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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date: 3/20/2007		Reviewed by Legal <i>du</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Customer Utility Services	Initials	Date	
Department Head	Mark Israelson	Executive Director		
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	3-12-07
Agenda Coordinator (include phone #):		Nancy Rodriguez X7510		
ACTION REQUESTED:		<input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER		

CAPTION

A PUBLIC HEARING BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE PERTAINING TO THE USE OR TAKING OF A PORTION OF A CITY OF PLANO PARK AND KNOWN AS THE BRONZE LEAF SITE FOR A COMMUNICATIONS FACILITIES LICENSE AGREEMENT FOR CELLULAR EQUIPMENT ATTACHED TO AND AT THE BASE OF THE EXISTING TXU ELECTRIC TRANSMISSION TOWER.

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

T-Mobile Texas, L.P., by T-Mobile West Corporation, a Delaware Corporation, has requested that the City approve their facilities for cellular attached to and at the base of TXU Electric transmission towers, as depicted in drawing included with this agenda item. Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing for any use or taking of park land. To permit the use or taking of park land, the governing body with jurisdiction over the park, the City Council for instance, must find the following:

1. There is no feasible and prudent alternative to the use and taking of the park land as proposed by the project exists, and
2. The Project includes all reasonable planning to minimize harm to the Park Land resulting from the use or the taking.

Witnesses will present at the public hearing on these issues.

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

NOTICE OF PUBLIC HEARING

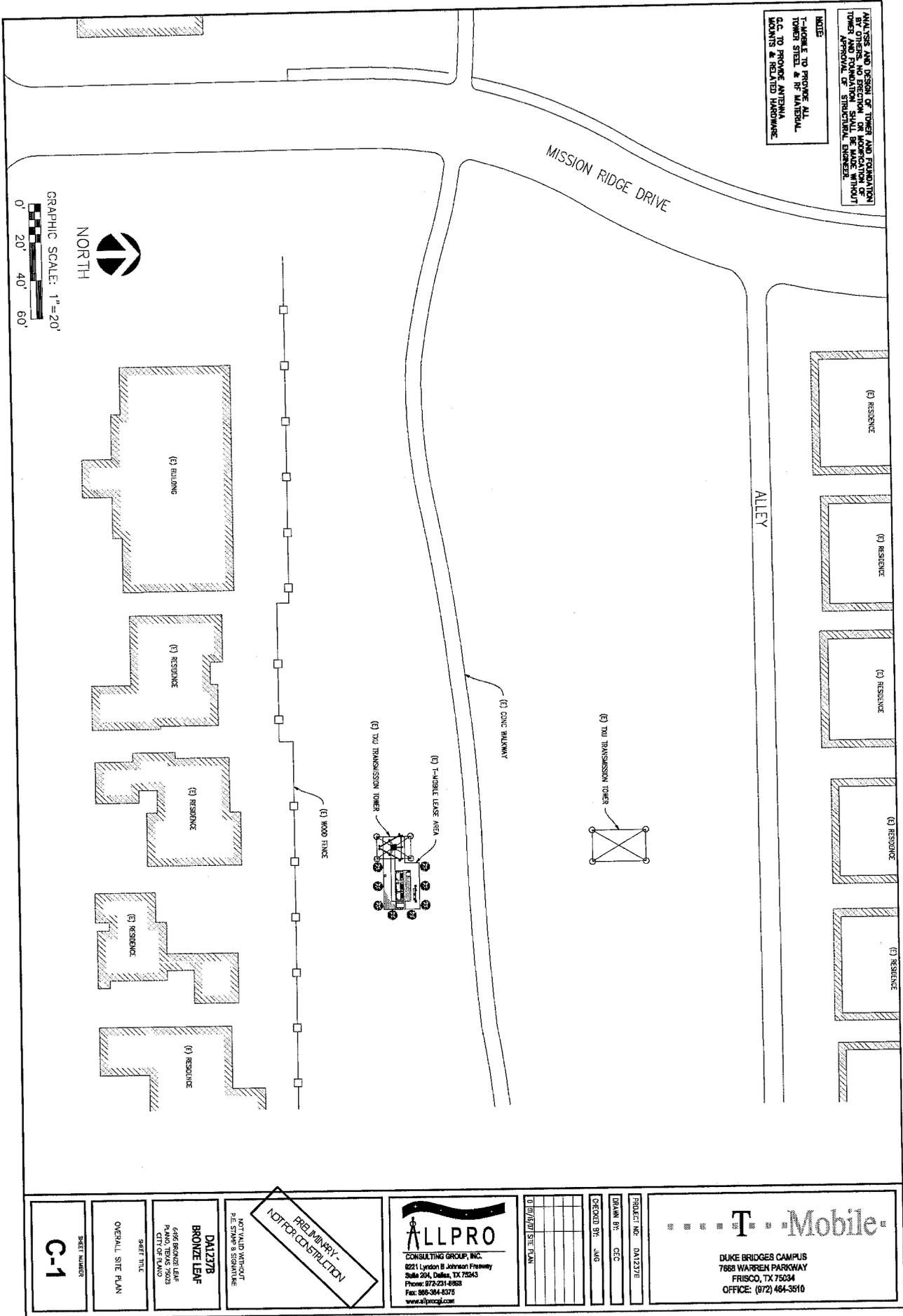
The City Council of the City of Plano, Texas will hold a public hearing on the 20th day of March, 2007 at 7:00 o'clock p.m. in the City Council Chambers, City of Plano Municipal Building, located at 1520 Avenue K, Plano, Texas. The purpose of the public hearing is to determine whether or not a portion of the City of Plano public park land within the City of Plano, Texas, should be utilized for the following described project:

Communications Facilities License Agreement with T-Mobile for the Bronze Leaf Site.

A drawing of the park location and proposed communications facility can be viewed in the office of Mark Israelson, Customer and Utility Services office at 1520 Avenue K, Plano, Texas 75074.

All interested persons are invited to attend and testify at the public hearing.

7-2



SHEET NUMBER
C-1

OVERALL SITE PLAN

DAZZTB
 BRONZE LEAF
 6/26/06
 PLANO, TEXAS 75023
 CITY OF DALLAS

NOT VALID WITHOUT
 P.E. STAMP & SIGNATURE
**PRELIMINARY -
 NOT FOR CONSTRUCTION**

ALLPRO
 CONSULTING GROUP, INC.
 8221 Lyndon B. Johnson Freeway
 Suite 204, Dallas, TX 75243
 Phone: 972-231-8988
 Fax: 972-231-8375
 www.allprocg.com

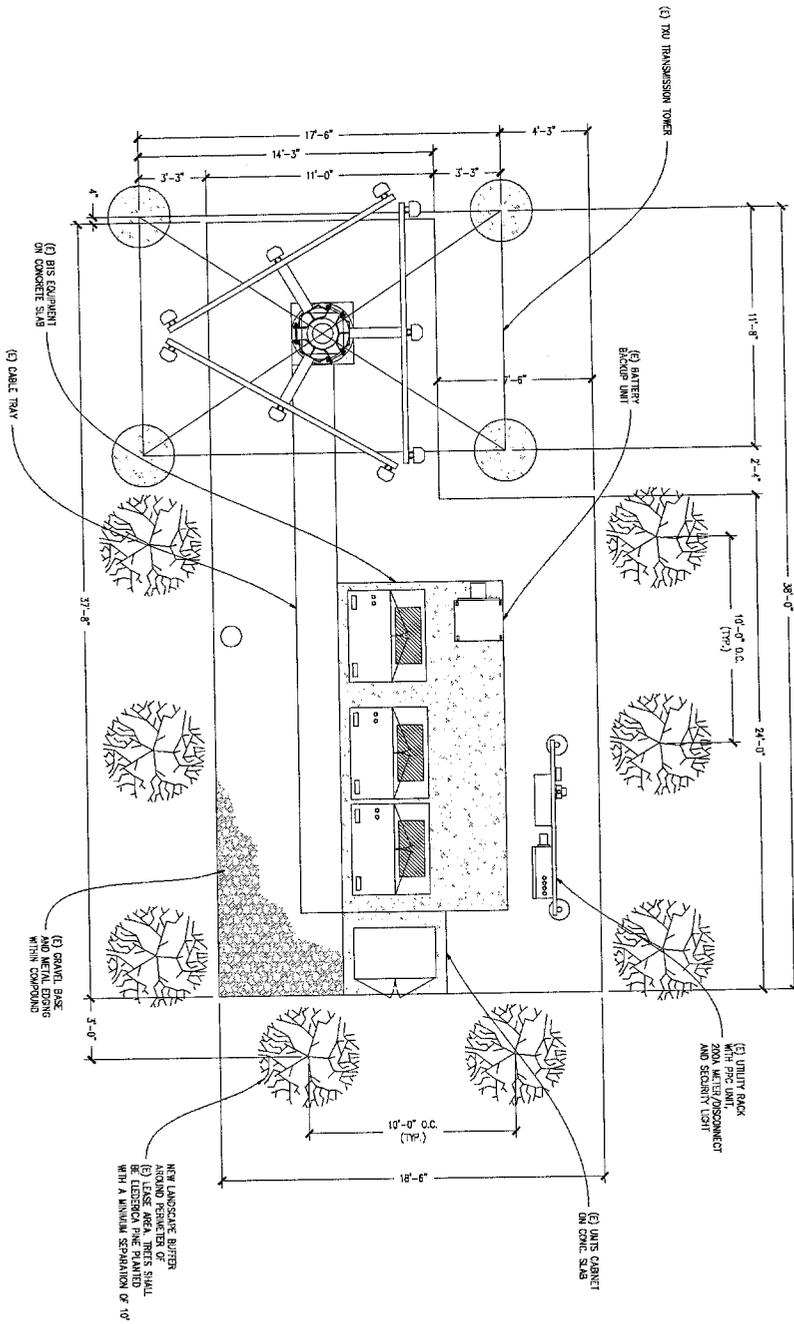
DATE	BY

PROJECT NO: DA1237E
 DRAWN BY: GEC
 CHECKED BY: JMG

T-Mobile

DUKE BRIDGES CAMPUS
 7808 WARREN PARKWAY
 FRISCO, TX 75034
 OFFICE: (972) 484-3510

7-3



NOTE
 1- WORKER TO PROVIDE ALL TOWER STEEL & RF MATERIAL MOUNTS & RELATED HARDWARE.
 ANALYSIS AND DESIGN OF TOWER AND FOUNDATION BY OTHERS. NO EJECTION OR MODIFICATION OF TOWER AND FOUNDATION SHALL BE PERMITTED WITHOUT APPROVAL OF STRUCTURAL ENGINEER.



C-2
 SHEET NUMBER
 LEASE EXHIBIT ENHANCED SITE PLAN

DA1237B
BRONZE LEAF
 6485 BRONZE LEAF PLANS, TEXAS 75023 (17) OF 24 PAGES

PRELIMINARY - NOT FOR CONSTRUCTION
 NOT VALID WITHOUT P.E. STAMP & SIGNATURE

ALLPRO
 CONSULTING GROUP, INC.
 8021 Lyndon B. Johnson Freeway
 Suite 201, Dallas, TX 75243
 Phone: 972-231-8682
 Fax: 972-231-8375
 www.allproci.com

PROJECT NO.	DA1237B
DRAWN BY	CEC
CHECKED BY	JMG
DATE	07/20/07
SHEET	17 OF 24

T-Mobile
 DUKE BRIDGES CAMPUS
 7688 WARREN PARKWAY
 FRISCO, TX 75034
 OFFICE: (972) 464-3510

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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:	03/20/2007	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Customer Utility Services	Initials	Date	
Department Head	Mark Israelson	Executive Director		
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	3-12-07
Agenda Coordinator (include phone #):		Nancy Rodriguez X7510		
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
AN ORDINANCE OF THE CITY OF PLANO, TEXAS, APPROVING A PROJECT, REQUIRING THE USE OR TAKING OF A PORTION OF CITY OF PLANO PUBLIC PARK LAND, KNOWN AS THE BRONZE LEAF PARK SITE; PROVIDING FOR A DETERMINATION THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO THE PROPOSED USE OR TAKING OF THE PARK LAND; AND THAT THE PROPOSED PROJECT INCLUDES ALL REASONABLE PLANNING TO MINIMIZE HARM TO THE LAND AND THE PARK AND RECREATION AREA RESULTING FROM THE USE; 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				
This item is related to the previous public hearing item authorizing T-Mobile Texas, L.P., by T-Mobile West Corporation, a Delaware Corporation, to locate, place, attach, install, and operate telecommunications ground equipment in certain specific portions of the public rights of way near Mission Ridge Drive identified as the Bronze Leaf Park Site.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Memo from Mark Israelson				

8-1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, APPROVING A PROJECT, REQUIRING THE USE OR TAKING OF A PORTION OF CITY OF PLANO PUBLIC PARK LAND, KNOWN AS THE BRONZE LEAF SITE; PROVIDING FOR A DETERMINATION THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO THE PROPOSED USE OR TAKING OF THE PARK LAND; AND THAT THE PROPOSED PROJECT INCLUDES ALL REASONABLE PLANNING TO MINIMIZE HARM TO THE LAND AND THE PARK AND RECREATION AREA RESULTING FROM THE USE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has requested approval of a project to allow cellular equipment to be attached to and at the base of an existing TXU Electric transmission tower for T-Mobile Texas, LP, by T-Mobile West Corporation, a Delaware corporation, as depicted on the drawing attached hereto as Exhibit "A" (called "Project") which requires the use or taking of a portion of City of Plano public park land known as the Bronze Leaf Site, (called "Park Land"); and

WHEREAS, Chapter 26 of the TEXAS PARKS AND WILDLIFE CODE (called "Code") requires a public hearing to determine whether or not the Project's proposed use of a portion of the Park Land should be approved in accordance with certain criteria contained within the Code; and

WHEREAS, Notices of the Public Hearing were duly served and published in conformity with the Code; and

WHEREAS, a public hearing was held by the City Council on March 20, 2007, during which all interested persons were given the opportunity to testify and present other relevant evidence before the City Council;

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

Section I. After hearing and reviewing all of the testimony and evidence at the Public Hearing as well as other matters and information

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relevant and pertinent to a determination, the City Council hereby finds and determines that:

- (a) There is no feasible and prudent alternative to the use or taking of the Park Land as proposed by the Project; and
- (b) The Project includes all reasonable planning to minimize harm to the Park Land, resulting from the use or the taking.

Section II. The City Council further finds that the determination made in Section I is in the public interest generally, and in the best interest of the citizens of the City of Plano, Texas.

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

DULY PASSED AND APPROVED by the City Council of the City of Plano, Texas, this the _____ day of _____, 2007.

Pat Evans, MAYOR

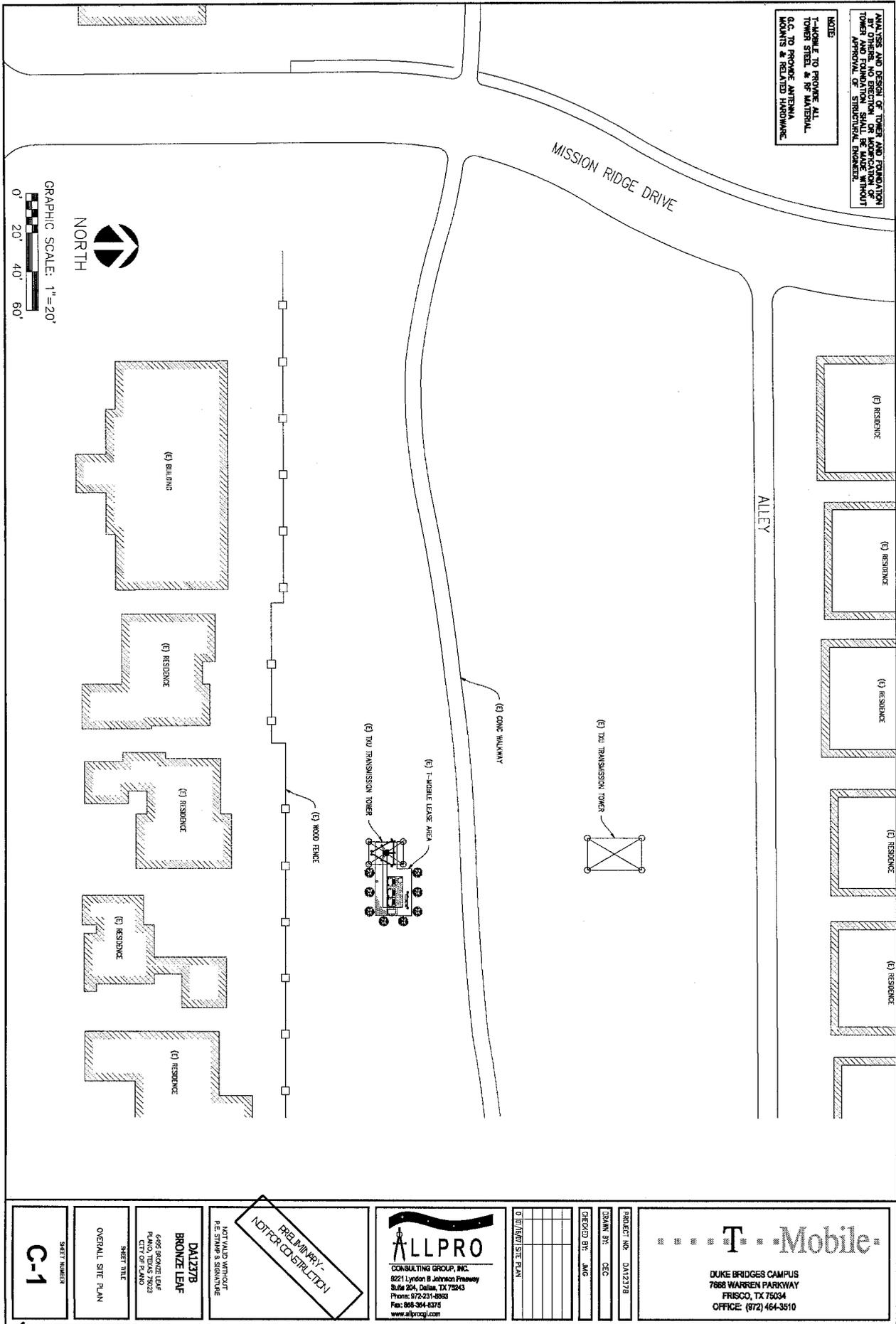
ATTEST:

Elaine Bealke, City Secretary

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

8-3

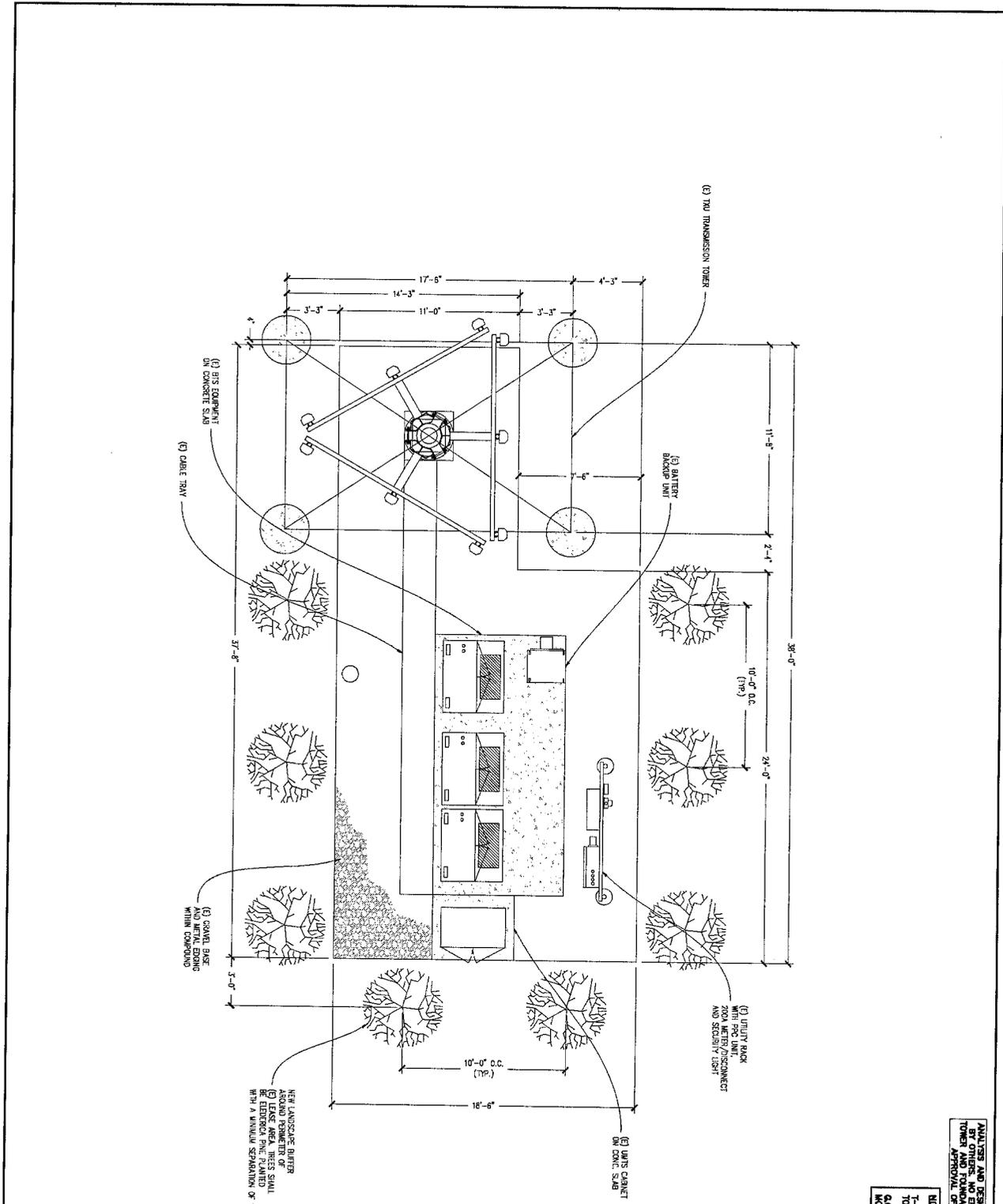


NOTE:
 T-MOBILE TO PROVIDE ALL
 TOWER STEEL & RF MATERIAL.
 ALL TO PROVIDE ANTENNA
 MOUNTS & RELATED HARDWARE.
 ANALYSIS AND DESIGN OF TOWER AND FOUNDATION
 BY OTHERS. NO ERECTION OR MODIFICATION OF
 TOWER AND FOUNDATION SHALL BE MADE WITHOUT
 APPROVAL OF STRUCTURAL ENGINEER.

NORTH
 GRAPHIC SCALE: 1"=20'
 0' 20' 40' 60'

<p>PRELIMINARY - NOT FOR CONSTRUCTION</p>	<p>ALLPRO CONSULTING GROUP, INC. 8221 Lyndon B Johnson Freeway Suite 204, Dallas, TX 75243 Phone: 972-231-8993 Fax: 972-364-4375 www.allproci.com</p>	<p>PROJECT NO: DA12378</p>	<p>T-Mobile DUKE BRIDGES CAMPUS 7688 WARREN PARKWAY FRISCO, TX 75034 OFFICE: (972) 464-3510</p>
		<p>DATE: 08/01/08</p>	
<p>NOT VALID WITHOUT P.E. STAMP & SIGNATURE</p>	<p>DATE: 08/01/08</p>	<p>CHECKED BY: AJC</p>	<p>DATE: 08/01/08</p>
<p>DA12378 BRONZE LEAF</p>	<p>6485 BRONZE LEAF PLANO, TEXAS 75075 SITE PLAN</p>	<p>DATE: 08/01/08</p>	<p>DATE: 08/01/08</p>
<p>SHEET TITLE OVERALL SITE PLAN</p>	<p>SHEET NUMBER C-1</p>	<p>DATE: 08/01/08</p>	<p>DATE: 08/01/08</p>

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ANALYSE AND DESIGN OF TOWER AND FOUNDATION TOWER AND FOUNDATION SHALL BE MADE WITHOUT APPROVAL OF STRUCTURAL ENGINEER.

NOTES:
 1. MOBILE TO PROVIDE ALL TOWER STEEL & RF MATERIAL MOUNTS & RELATED HARDWARE.



<p>PRELIMINARY - NOT FOR CONSTRUCTION</p>	<p>ALLPRO CONSULTING GROUP, INC. 8221 Lyndon B. Johnson Freeway Suite 204, Dallas, TX 75243 Phone: 972-231-8865 Fax: 972-231-8375 www.allprocl.com</p>	<p>T-Mobile</p> <p>DUKE BRIDGES CAMPUS 7688 WARREN PARKWAY FRISCO, TX 75034 OFFICE: (972) 464-3510</p>
	<p>PROJECT NO. DA1237B DRAWN BY: GGC CHECKED BY: JMG</p>	

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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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	3/20/07		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Customer Utility Services		Initials	Date	
Department Head	Mark Israelson		Executive Director		
Dept Signature:			City Manager		
Agenda Coordinator (include phone #):			Nancy Rodriguez X7510		

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND T-MOBILE TEXAS, L.P. BY T-MOBILE WEST CORPORATION, A DELAWARE CORPORATION, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE, TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF CITY OF PLANO PUBLIC PARK LAND, KNOWN AS THE BRONZE LEAF SITE, 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: 06/07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	16,500	6,180	22,680
BALANCE	0	16,500	6,180	22,680

FUND(S): GENERAL FUND

COMMENTS: Approval of this item will result in annual rent payments of \$6,000 per site. The rent payment shall be increased by 3% at the beginning of each lease year. As compensation to the City for use of the premises, the licensee agrees to pay a one-time lump-sum total of \$10,500. Also, the licensee agrees to pay the City 40% of any compensation received by the licensee from wireless communications carriers. The licensee is granted the option to renew this license for 5 additional 5 year terms, after the initial term expires.

STRATEGIC PLAN GOAL: Communications Facility License Agreements relate to the City's Goal of "Diverse Business Center."

SUMMARY OF ITEM

This Resolution approves a Communications Facilities License Agreement with T-Mobile Texas, L.P., by T-Mobile West Corporation, a Delaware Corporation, for communications facilities in City of Plano public park land known as the Bronze Leaf site.

List of Supporting Documents:

Other Departments, Boards, Commissions or Agencies

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND T-MOBILE TEXAS, L.P. BY T-MOBILE WEST CORPORATION, A DELAWARE CORPORATION, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE, TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF CITY OF PLANO PUBLIC PARK LAND, KNOWN AS THE BRONZE LEAF SITE, 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 Communications Facilities License Agreement by and between the City of Plano, Texas and T-Mobile Texas, L.P., by T-Mobile West Corporation, a Delaware Corporation (hereinafter called "Agreement"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

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

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

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

Section II. The City Manager or, in his absence, 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 on this the ____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

STATE OF TEXAS §
 § **COMMUNICATIONS FACILITIES**
COUNTY OF COLLIN § **LICENSE**

KNOW ALL BY THESE PRESENTS:

This non-exclusive License for Communications Facilities ("Agreement") is made by and between the **CITY OF PLANO, TEXAS**, a home rule municipal corporation (hereinafter referred to as the "CITY") and **T-MOBILE TEXAS, LP.**, a Delaware Limited Partnership, (hereinafter referred to as "LICENSEE"), for the use of certain premises and/or facilities according to the following terms and conditions:

WITNESSETH:

WHEREAS, CITY desires to provide LICENSEE with facilities for housing and operating certain communications equipment, including the installation of antennas or antenna systems and the space required to run cable between the equipment and the antenna or antenna systems; and

WHEREAS, LICENSEE is a communications services company duly authorized to provide certain telecommunications services and desires to lease certain property owned by CITY for installation and operation of IMPROVEMENTS, as defined herein, to operate a communications facility and all related purposes; and

WHEREAS, CITY owns the premises and facilities described below and desires to allow LICENSEE to enter and utilize designated areas of the facilities and premises.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. Location

1.1 The premises and facilities (hereinafter referred to as the "PREMISES") provided by CITY are described in the SITE PLAN attached hereto and incorporated herein as **Appendix "A"**. Included upon the PREMISES shall be an existing transmission tower (the "Tower"), LICENSEE's Equipment Compound, the Antenna Facilities, as defined herein, and the cabling run between the Antenna Facilities and the Equipment Compound (hereinafter

9-4

referred to as "IMPROVEMENTS"). As a part of the SITE PLAN, LICENSEE shall provide to CITY a map that identifies all of LICENSEE's cell sites within the City of Plano and within a one-mile radius of the boundaries of the City of Plano. As used herein, the term "Equipment Compound" means all equipment, shelters and similar structures located on the PREMISES and identified on **Appendix "A"**. The license authorized under the terms of this Agreement shall be a license for the use of that portion of the PREMISES designated for use by LICENSEE on the SITE PLAN.

1.2 Site Plan. The SITE PLAN must be approved by CITY prior to the execution of this Agreement, with approval or disapproval not to be unreasonably withheld, conditioned or delayed. The SITE PLAN shall describe and illustrate the location of the IMPROVEMENTS under this Agreement. The SITE PLAN shall include a scale drawing and inventory analysis of the proposed installations, as well as an elevation of the PREMISES with the proposed installations. Performance under this Agreement shall be in strict compliance with the SITE PLAN. If LICENSEE's installation, maintenance and operation of the IMPROVEMENTS fail to comply with the approved SITE PLAN, at any time, as reasonably determined by CITY, then CITY shall have the right to terminate this Agreement upon notice to LICENSEE, who has an opportunity to cure as provided under Section 5 herein. Any proposed material modifications to LICENSEE's SITE PLAN must be approved in writing by CITY before LICENSEE may make any changes to its SITE PLAN as originally approved by CITY.

1.3 LICENSEE has inspected, examined and investigated the status of the title and condition of the PREMISES to the extent that LICENSEE has deemed necessary, and LICENSEE understands, acknowledges and agrees that it is entering into this Agreement to acquire a leasehold interest in the PREMISES "AS IS" in reliance solely upon the results of any inspection, examination and investigation of the status of title and condition of the PREMISES that LICENSEE has conducted and not as a result of any representation, warranty, assurance, guaranty or promise of CITY or any person purporting to act on behalf of CITY, other than those which may be expressly set forth in this Agreement.

1.4 LICENSEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF THE CITY, HAS MADE ANY, AND THE CITY EXPRESSLY DISCLAIMS EVERY, REPRESENTATION, WARRANTY (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND HABITABILITY), ASSURANCE, GUARANTY OR PROMISE, EXPRESS OR IMPLIED, CONCERNING THE STATUS OF THE TITLE OR CONDITION OF THE PREMISES WHICH ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AND THAT NO AGENT OR EMPLOYEE OF THE CITY OR OTHER PERSON HAS ANY AUTHORITY TO MAKE OR DELIVER ANY

REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY OR PROMISE WHICH IS NOT SET FORTH IN THIS AGREEMENT.**2. Use of Premises**

2.1 Permitted Use. CITY agrees to allow installment of LICENSEE's IMPROVEMENTS, in accordance with the terms of this Agreement. LICENSEE's use shall be non-exclusive and shall be for the purpose of the installation, operation, and maintenance of its IMPROVEMENTS, for the transmission, reception, and operation of a communications facility and all related purposes thereto. LICENSEE shall obtain the written approval of the City prior to installation of any IMPROVEMENTS on the PREMISES, which approval shall not be unreasonably withheld, conditioned or delayed. LICENSEE understands, acknowledges and agrees that the use of the PREMISES by LICENSEE in conjunction with the terms of this Agreement is to be for the installation, operation and maintenance of communications equipment, in strict compliance with the Agreement and the attached SITE PLAN. LICENSEE shall not use the PREMISES for any other purpose whatsoever, including the storage or placement of debris, storage of replacement IMPROVEMENTS, or any other item, without first obtaining the prior written consent of CITY, which may be given or withheld for any reason or for no reason, in the CITY'S sole, absolute and unrestricted discretion.

2.2 Prohibited Use. LICENSEE shall not use the PREMISES in any manner that constitutes waste or nuisance, or that violates any applicable law, ordinance or governmental regulation in any respect. LICENSEE shall neither do nor permit to be done anything that would violate any certificate of occupancy applicable to the PREMISES or would render void or uncollectible any insurance then in force with respect to the PREMISES, or that would in any way increase the premiums payable by CITY for fire, liability or any other insurance coverage on the PREMISES or the contents of any improvements thereon.

2.3 Subletting of Use Premises or Improvements. LICENSEE may not sublet to or license others to use the PREMISES or LICENSEE's IMPROVEMENTS without the prior written consent of CITY. Any such attempt by LICENSEE shall be without effect and may at CITY's option result in the termination of this Agreement.

2.4 Maintenance, Repair or Replacement of Improvements. LICENSEE may update, maintain, repair, or replace the IMPROVEMENTS located upon the PREMISES from time to time without CITY's approval, provided that the total of all IMPROVEMENTS do not require more space than the existing IMPROVEMENTS. Any change in the location of improvements on the PREMISES must be satisfactory to CITY, such approval not to be unreasonably withheld, conditioned or delayed. LICENSEE shall submit to CITY for approval,

a detailed proposal for any substantial replacement of IMPROVEMENTS and any supplemental materials for CITY's evaluation and written approval, such approval not to be unreasonably withheld, conditioned or delayed. As used herein, substantial replacement shall mean any replacement that (i) involves the parking of a "semi" truck on the premises, or (ii) involves a material change-out or alteration of Licensee's equipment. Notwithstanding the foregoing and any other provision herein to the contrary and further notwithstanding the frequencies set forth elsewhere herein, Licensee shall have the right, at any time during the term of this Agreement as the same might be extended, to change or add additional frequencies without the consent of CITY; provided, however that Licensee shall provide CITY with advance written notice of any such change or addition and provided further that Licensee agrees to comply with the terms and provisions of Section 9 herein with respect to interference in connection with such change or addition of frequencies. A current and accurate SITE PLAN must be submitted to CITY by LICENSEE and maintained on file with CITY for the entire term of this Agreement and all renewals thereof.

3. Term

3.1 This Agreement shall be for an initial term of five (5) years, commencing on the Effective Date. The Effective Date shall be the date LICENSEE executes this Agreement.

3.2 LICENSEE is granted the option to renew this license for five (5) additional five (5) year terms, after the initial term expires. Unless LICENSEE gives written notice of its decision not to exercise the renewal option within 90 days prior to the expiration of the current term or period, this Agreement will automatically renew for each said renewal term as long as LICENSEE remains in full compliance with all other provisions of this Agreement. All the terms and covenants of this Agreement apply to all extension periods, subject to amendment by the mutual agreement of the Parties, in writing and signed by both Parties. If LICENSEE continues to possess the PREMISES following the expiration of all of the extension periods provided herein, and this Agreement has not been renewed or superseded, this Agreement (1) shall be deemed to be a holdover tenancy at will but shall not itself constitute a renewal or extension of any term, (2) shall continue from month to month under the terms and conditions set forth herein and (3) may be terminated by either party upon at least thirty (30) days written notice to the other party. All the terms and covenants of this Agreement apply to all holdover tenancy periods.

4. Payment Terms and Conditions

4.1 **Rent Payment.** In consideration for providing the PREMISES for use by LICENSEE, the LICENSEE shall pay rent to CITY annually, with the first payment being due within thirty (30) days following the Effective Date of this

Agreement. Thereafter payment shall be due annually on the anniversary of the Effective Date throughout the initial term and all renewal terms hereof and prorated for any partial term. LICENSEE shall pay rent to CITY annually in advance, without prior notice or demand, without any abatement, setoff, reduction, deduction, counterclaim or recoupment whatsoever, in the amount of Six Thousand and No/100 Dollars (\$6,000.00) per annum per site for the term of this Agreement ("**Rent Payment**"). Interest on late payments shall accrue at the then prime interest rate. If this Agreement is terminated at a time other than the last day of the calendar year of the term for any reason other than a default by LICENSEE, all Rent Payments shall be prorated as of the date of termination and all prepaid Rent Payments shall be refunded to LICENSEE.

4.2 Rent Adjustment. The Rent Payment shall be increased by three percent (3%) at the beginning of each Lease Year (as herein defined) following the first Lease Year of the Lease Term or the first Lease Year. For purposes of this Lease Agreement, the term "**Lease Year**" shall mean the twelve-month period which commences on the first day of the calendar month in which the Effective Date occurs (if the Effective Date occurs on the first day of a calendar month) or on the first day of the calendar month following the calendar month in which the Effective Date occurs (if the Effective Date occurs on a day other than the first day of a calendar month). The dollar increase in the Rent Payment shall be determined by multiplying the Rent Payment (as previously adjusted) payable during the preceding Lease Year by three percent (3%). The sum of the dollar increase required by this multiplication plus the Rent Payment (as previously adjusted) payable for and on account of the preceding Lease Year (i.e., one hundred three percent (103%) of the prior Lease Year's Rent shall be the Rent Payment for the Lease Year of the adjustment.

4.3 Holdover Rent. The Rent Payment, as defined in Subsection (a) above, due during any holdover period shall be equal to one hundred fifty percent (150%) of the Rent Payment due during the immediately preceding Initial term or any renewal term.

4.4 Additional Fees. CITY may assess, in addition to the Rent Payment, additional payments by LICENSEE to cover CITY's additional costs ("**Additional Fees**"), which include but are not limited to: (i) costs of utilities associated with the day-to-day operation and maintenance of the Premises; (ii) costs incurred by CITY for providing access to the Premises outside of normal business hours; and (iii) applicable taxes, including property taxes, or business taxes levied on the PREMISES. CITY shall notify LICENSEE of amounts due in Additional Fees in writing, and LICENSEE shall pay Additional Fees simultaneously with the next monthly Rent Payment due on the Premises, or, if notice of Additional Fees occurs within ten (10) days of the due date of the next monthly Rent Payment, simultaneous with the Rent Payment due for the next month. The foregoing shall be subject to the provisions of Section 16 herein.

4.5 Payment Address. Rent Payments and Additional Fees shall be made payable to City of Plano, C/O Mark Israelson, Customer & Utility Services Department, PO Box 860277, Plano, Texas 75086.

4.6 Lawful Currency. Rent Payments and Additional Fees shall be made according to paragraph 4.1 above in lawful money of the United States of America without any abatement, setoff, reduction, deduction, counterclaim or other recoupment whatsoever. Rent Payments shall be free and clear of any business license tax or fee which is measured upon the size of the PREMISES. In no event will LICENSEE be obligated to pay any general income taxes measured upon the income of the City. In the event any federal, state, county, municipal or other governmental authority hereafter imposes or levies any such business license tax or fee, LICENSEE shall pay to CITY an amount equal to any and all amounts so imposed or levied as a component of Additional Fees. This Section does not preclude the assessment of lawful fees pursuant to a franchise or other agreement that the City may have with Licensee or its parent or any subsidiary or affiliate.

4.7 Dishonored Checks. Any dishonored check shall incur a service charge of ten percent (10%) of its face amount. Subsequent to the first dishonored check received by CITY for any payment, all subsequent payments, including Rent Payments and Additional Fees, shall be made by cashier's check.

4.8 Consideration for Rent in Prior Periods. As compensation to City for LICENSEE'S use of the Premises prior to execution of this Agreement, LICENSEE agrees to pay to City a lump sump total of TEN THOUSAND FIVE HUNDRED AND NO/100 (\$10,500.00).

5. Termination

5.1 Termination for Cause. Upon the occurrence of any one or more of the events listed below (hereinafter referred to as "Event of Default"), or as provided elsewhere in this Agreement, CITY may, without penalty, at its option and without prejudice to any other remedy to which it may be entitled at law or equity, or otherwise under this Agreement, terminate use or occupancy under this Agreement at any time, either in whole or in part, by giving at least sixty (60) days prior written notice thereof to LICENSEE with the understanding that all use of the PREMISES being terminated shall cease upon the date specified on such notice. LICENSEE shall equitably compensate CITY in accordance with the terms of this Agreement for the use of the PREMISES prior to the date specified in such notice, following inspection and acceptance of same by CITY. LICENSEE shall not, however, be entitled to any damages, including but not limited to, lost or anticipated profits should CITY choose to exercise its option to terminate.

5.2 Event of Default. Any of the following occurrences, conditions, or acts shall be deemed an "Event of Default" under this Agreement:

(a) if LICENSEE fails to pay amounts due under this Agreement within fifteen (15) days of receipt of written notice that such payments are overdue;

(b) if either party fails to observe or perform its obligations under this Agreement other than as provided in Section 5.2(a) above and does not cure such failure within thirty (30) days from the party's receipt of written notice of breach or such longer period as may be mutually reasonably agreed upon by the Parties to complete a cure commenced within the 30 day period.

5.3 Termination by LICENSEE. This Agreement may be terminated by LICENSEE, without penalty or further liability, as follows:

(a) upon written notice, if LICENSEE is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by LICENSEE; or if LICENSEE determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(b) on sixty (60) days written notice for any reason, other than 5.2(a) or (b) above, so long as LICENSEE pays CITY a termination fee equal to six (6) months rent at the current rate or rent at the current rate prorated to the end of CITY's fiscal year in which the termination occurs, whichever is greater.

5.4 Notice and Opportunity to Cure. Upon the occurrence of an Event of Default, CITY shall deliver to LICENSEE a Notice of Intent to Terminate that identifies in detail the Event of Default. If the Event of Default remains uncured for thirty (30) calendar days after delivery of such notice, CITY may terminate this Agreement and the license granted herein by delivering to the LICENSEE a Notice of Termination that identifies the effective date of the termination, which date shall not be less than sixty (60) days after the date of delivery of the Notice of Intent to Terminate; provided, however, that the time periods for notice of termination specified in this Section shall not apply to a default pursuant to Section 5.2(b).

5.5 Primary Function of PREMISES. The parties understand and agree that the primary function of the PREMISES is to serve as a public park

for the City of Plano and that the interests of LICENSEE are superseded by the public health, safety, and welfare of the citizens of Plano served by the public park. In the event that the Plano City Council or the Plano City Manager declares a public emergency or if there exists a threat to the public park facilities that would detrimentally impact public health, safety and welfare such that immediate action is necessary, LICENSEE shall, within thirty (30) days following receipt of written notice of such emergency and need to relocate and/or remove its IMPROVEMENTS from the PREMISES. In the event that LICENSEE is not able to timely respond, CITY may remove LICENSEE's IMPROVEMENTS without incurring any liability for damages of any type. Costs of removal and reattachment of IMPROVEMENTS shall be borne by LICENSEE.

5.6 Removal of Improvements. If LICENSEE's IMPROVEMENTS must be removed, whether or not such removal is done pursuant to Section 5.5 above, LICENSEE shall have the right to set up a portable mounted antenna, a cell on wheels (COW), and/or some other similar temporary structure approved by CITY, such approval not to be unreasonably withheld, conditioned or delayed, on CITY premises to allow LICENSEE to continue to provide communications services and all related purposes. LICENSEE may maintain its COW for a period of thirty (30) days past the date of removal of IMPROVEMENTS. To maintain the temporary antenna, COW, or other temporary structure for a period in excess of thirty (30) days, LICENSEE must obtain written approval from CITY, such approval not to be unreasonably withheld, conditioned or delayed. If the PREMISES are not in such condition as to be utilized by LICENSEE at the end of the initial thirty (30) day period, CITY shall provide as many additional thirty (30) day extensions for such temporary structures as are necessary to allow LICENSEE to continue its operations as authorized by this Agreement.

6. City's Right of Entry Onto Premises

6.1 CITY and CITY's agents, employees or contractors may enter upon the PREMISES, except LICENSEE's secured areas, for the purpose of performing repairs and maintenance work to the PREMISES. If maintenance work is required, CITY agrees to provide LICENSEE with reasonable notice prior to commencing such work to allow LICENSEE to remove the affected IMPROVEMENTS. Decisions as to the extent to which LICENSEE will be required to remove such IMPROVEMENTS shall be within the reasonable discretion of CITY. If, however, in the reasonable discretion of CITY, repair or maintenance requires immediate action on the part of CITY, CITY will take reasonable efforts to notify LICENSEE, but may enter the PREMISES, except LICENSEE's secured areas, and take such action as is required, except any action to remove any or all IMPROVEMENTS made by LICENSEE. In no event shall CITY be liable for any expenses associated with LICENSEE's removal of IMPROVEMENTS or for lost or anticipated profits. LICENSEE, at its expense and exclusive use, may use any and all reasonable and appropriate means of

restricting access to the LICENSEE's equipment shelter, as identified in the SITE PLAN.

7. Access

7.1 LICENSEE shall have the non-exclusive right to access the aforementioned PREMISES at any time, by contacting and providing notice to CITY. LICENSEE must be accompanied by CITY personnel at all times when accessing the PREMISES. If CITY is contacted by LICENSEE after the normal business hours of CITY for the purpose of accessing the aforementioned location, LICENSEE agrees to reimburse CITY for the actual cost of any CITY staff involvement necessary for this access.

7.2 LICENSEE's right of access is a contractual right for the benefit of LICENSEE only and nothing contained in this Agreement shall be construed to constitute a dedication or an easement. However, in the event this Agreement is assigned in accordance and in compliance with Section 22.9 herein, such right of access shall inure to the benefit of LICENSEE's assignee.

8. Damages to Property

8.1 **Damage and Restoration of Property.** LICENSEE shall immediately notify CITY of any and all damages resulting from, arising out of, or caused to, the PREMISES and CITY property surrounding the PREMISES, including but not limited to structural damages, electrical damages, damages to fencing, irrigation systems or landscaping by LICENSEE's operations, by LICENSEE, its officers, agents, employees and invitees. LICENSEE shall be solely responsible for the costs and the repair of all such damages and such repairs and/or replacements shall be completed within thirty (30) calendar days and shall be completed in a manner reasonably acceptable to CITY.

8.2 **Failure to Restore Property.** If LICENSEE does not make or perform any required maintenance or repairs to the PREMISES within the time period provided in Section 8.1, CITY shall have the right, but not the obligation, to make such repairs and to perform such maintenance, in which event LICENSEE shall pay CITY the cost thereof, plus an administrative fee of ten percent (10%) of the cost of the repairs, within thirty (30) calendar days of demand. Within thirty (30) days following the expiration or earlier termination of this Agreement, LICENSEE shall restore the PREMISES to the condition in which the PREMISES existed on the Effective Date of this Agreement, ordinary wear and tear and loss due to other casualty beyond LICENSEE's control excepted.

9. Electrical, Radio and Intermodulation Interference

9.1 LICENSEE shall operate its IMPROVEMENTS in a manner that will not cause radio frequency interference to the CITY or other licensees of the SITE in their use of any equipment or their conduct of any activity on the SITE pursuant to agreements which pre-date the installation and operation of LICENSEE's IMPROVEMENTS. LICENSEE's installation and operation of the IMPROVEMENTS shall be in compliance with all FCC requirements.

9.2 Prior to installation of any IMPROVEMENTS on the PREMISES, LICENSEE shall conduct bandwidth testing of its IMPROVEMENTS and CITY equipment to check bandwidth conflict between CITY's monitoring control system and LICENSEE's system. If such conflict occurs, LICENSEE shall take all steps necessary to resolve the conflict to the reasonable satisfaction of CITY. If the conflict cannot be remedied to the reasonable satisfaction of CITY, CITY may terminate this Agreement upon thirty (30) days written notice to LICENSEE.

9.3 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY or to any other licensee who is using the PREMISES prior to or at the time of LICENSEE's installation of its IMPROVEMENTS. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while such interference problems are studied and a means to eliminate the problem is determined. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.4 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY at anytime during or after installation or operation of LICENSEE's IMPROVEMENTS. Moreover, LICENSEE's use will not in any material way adversely affect or interfere with CITY's signal operation or its communication system. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while the interference problems are studied and a means to eliminate the problem is found. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.5 CITY will not grant a license to any other party for the use of CITY's PREMISES without including in that license a provision stating that the party's use will not in any way adversely affect or interfere with LICENSEE's signal operation or its communication system. Such provision shall be similar to the provisions required of LICENSEE herein. Furthermore, license agreements with third parties will state that prior to installation of improvements, such third parties shall be required to conduct bandwidth testing of its equipment and the equipment of LICENSEE to check bandwidth conflict between third-party equipment and LICENSEE's equipment. If such conflict occurs, CITY shall take all steps necessary to resolve the conflict caused by such third-party to the reasonable satisfaction of LICENSEE. If the conflict cannot be remedied to the reasonable satisfaction of LICENSEE, CITY shall terminate such third-party's license upon thirty (30) days written notice to such third-party. LICENSEE shall have the right to terminate this Agreement upon ten (10) days written notice to CITY if another user of the PREMISES causes interference with LICENSEE's operations, and such interference is not corrected within thirty (30) days following the notice to such third party user causing the interference. In the event that LICENSEE experiences interference caused by a third-party licensee, LICENSEE agrees that it shall seek recourse solely from such third party. No compensation shall be due from CITY for damages, including, but not limited to, lost or anticipated profits.

9.6 LICENSEE shall have the sole burden of, and be responsible for all costs associated with, alleging and proving that another user of the PREMISES is causing significant interference. CITY shall not be responsible for the costs associated with the resolution of any dispute between users of the PREMISES, but shall be responsible for the enforcement of any of LICENSEE's rights provided by Section 9.5 of this Agreement.

9.7 Upon report to LICENSEE, and all other third parties with communications equipment on that CITY-owned property, of interference with any CITY-owned/operated radio emergency system, LICENSEE shall, within six (6) hours after such notification, perform an assessment of the source of the interference. In the event such interference results from LICENSEE's operations, LICENSEE agrees, within twelve (12) hours of first notification, to propose a plan of action to eliminate such interference. CITY and LICENSEE agree to provide a technician or other qualified representative to assist in testing, formulating and coordination of a plan for resolution.

9.8 If such interference results from LICENSEE's operations, LICENSEE must correct such interference within twenty-four (24) hours of CITY's original notification to LICENSEE or shall discontinue all use of LICENSEE's IMPROVEMENTS upon the PREMISES. LICENSEE's

IMPROVEMENTS cannot be reactivated until LICENSEE can demonstrate that the cause of such interference has been eliminated.

9.9 Each party agrees to provide the other with a telephone number through which that party can contact a representative of the other on a 24-hour per day, 7 days a week basis for the purpose of implementing the requirements of this paragraph.

10. Condition of Premises

10.1 CITY shall maintain the PREMISES in compliance with all applicable statutes, ordinances, regulations and rules required for CITY uses of the PREMISES and surrounding property, and in a manner which will not interfere with LICENSEE's reasonable use of the PREMISES. Upon expiration, cancellation, or termination of this Agreement, LICENSEE will have the right to remove its IMPROVEMENTS from the PREMISES at LICENSEE's cost and expense. Title to all remaining improvements shall belong to CITY. However, upon vacation of the PREMISES, LICENSEE shall surrender the PREMISES in substantially the same condition as received, except for ordinary wear and tear and loss due to other casualty beyond LICENSEE's control, as determined by CITY. If, as determined by CITY, the PREMISES are not surrendered in satisfactory condition, the LICENSEE shall pay CITY within thirty (30) business days of demand an amount equal to the actual cost to restore the PREMISES to substantially the same condition as received plus an administrative fee of ten percent (10%) of the restoration costs..

10.2 LICENSEE shall have sole responsibility for the maintenance, repair, and security of its IMPROVEMENTS, and shall keep same in good repair and condition during the term and all renewals and holdover tenancies of this Agreement.

10.3 Landscaping. LICENSEE will be required to provide a "landscape buffer" around the perimeter of the of the ground lease area. The planting material to be use will be Elderica Pine with a minimum separation of ten feet. It is understood that the LICENSEE will be required to maintain the "landscape buffer," including affected turf, throughout the term of the Agreement. LICENSEE will not be responsible for installing and maintaining an automatic underground irrigation system in order to maintain the ground lease area. LICENSEE agrees to replace any landscaping that dies during the term of the Agreement.

10.4 LICENSEE shall keep the PREMISES free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or interference.

10.5 In the event CITY or any other licensee undertakes painting, construction, or other alterations on the PREMISES, LICENSEE shall take reasonable measures at LICENSEE's cost to cover all of LICENSEE's IMPROVEMENTS and protect such from paint and debris fallout which may occur during the painting, construction, or alteration process. CITY shall not be responsible for any damages or costs incurred by LICENSEE due to the actions or omissions of any third-party licensees upon the PREMISES. CITY shall provide thirty (30) business days written notice to all licensees upon the PREMISES prior to CITY undertaking such painting, construction, or other alterations.

10.6 By taking possession of the PREMISES, LICENSEE accepts the PREMISES in the condition existing as of the Effective Date. CITY makes no representation or warranty with respect to the condition of the PREMISES and CITY shall not be liable for any latent or patent defect in the PREMISES. CITY agrees to notify LICENSEE of the existence of any latent defects of which the CITY has knowledge.

11. Construction, Installation and Operation

11.1 **Construction, Installation and Operation.** LICENSEE may, at its sole cost and expense, construct, install, operate, maintain, monitor, reconfigure and repair its IMPROVEMENTS. Not less than thirty (30) days prior to the date on which LICENSEE intends to commence construction of its IMPROVEMENTS, LICENSEE shall provide to the CITY for its approval, such approval not to be unreasonably withheld, conditioned or delayed, a proposal containing: (i) a written notice and plan describing in reasonable detail, the steps necessary to complete LICENSEE's construction and installation; (ii) a list and description of all IMPROVEMENTS to be installed on the PREMISES; (iii) a list of all contractors, subcontractors and other entities that will perform LICENSEE's construction and installation work; and (iv) copies, certificates or other proof that LICENSEE or LICENSEE's contractors and subcontractors have obtained all necessary permits and licenses for the performance of LICENSEE's work. CITY's failure to respond in writing to LICENSEE's proposal within twenty (20) days of CITY's receipt of the proposal shall constitute CITY's rejection of the proposal, and LICENSEE shall not commence LICENSEE's work. CITY's grant of approval under this Section shall not be construed as an assumption of liability or indemnification; nor shall such approval replace or constitute any approval that LICENSEE is required to obtain from any duly authorized local authorities for any construction, installation or other element of LICENSEE's work.

11.2 **Marking and Lighting Requirements.** LICENSEE acknowledges that it shall be responsible for compliance with all tower or building marker and lighting requirements which may be required by the Federal Aviation Administration or the Federal Communication Commission in conjunction with LICENSEE's installation and maintenance of IMPROVEMENTS under this

Agreement, as well as any expenses, fees or fines associated with the compliance or the non-compliance of LICENSEE's installation or maintenance of IMPROVEMENTS under this Agreement. If the LICENSEE does not cure a condition of noncompliance within the time-frame allowed by the citing agency, CITY may thereafter terminate this Agreement upon thirty (30) days written notice to LICENSEE.

11.3 Inspection and Tests. Upon the Effective Date and for the term of this Agreement, LICENSEE shall have reasonable access as provided in Section 7 above to the SITE and PREMISES as are necessary and approved by CITY for the purpose of inspection and planning. LICENSEE shall retain, or shall cause to be retained, at its sole cost and expense, certified and insured structural engineers to perform such an inspection and provide a structural report as to the structural integrity of the PREMISES, its maximum load capacity, and other aspects of the PREMISES, as appropriate. LICENSEE shall provide to CITY a copy of the report. LICENSEE shall not conduct construction, installation, operation, maintenance or repair of IMPROVEMENTS in a manner inconsistent with the structural report.

11.4 Payment, No Mechanics Liens. LICENSEE shall make full and prompt payment of all sums necessary to pay the costs of all installation, repairs and alterations, improvements, changes and other work done by LICENSEE in or to the PREMISES. Title to the IMPROVEMENTS shall be held by LICENSEE. CITY shall not be responsible for or with respect to the performance of LICENSEE's Work. LICENSEE shall pay or cause to be paid all costs associated with LICENSEE's work. LICENSEE shall not suffer or permit to be enforced against any portion of the SITE or PREMISES any (i) mechanic's, materialman's, contractor, subcontractor or other lien or claim arising from or in any way related to LICENSEE's work, or (ii) any other claim, mortgage, security interest, encumbrance, lien or other charge. Within thirty (30) days after recordation of any lien, encumbrance, judgment or similar item which affects the SITE or PREMISES in any way, LICENSEE shall obtain the complete discharge and release thereof at LICENSEE's sole expense or expenditure (without any cost being imposed upon CITY.) However, LICENSEE shall have the right to contest, in good faith, any mechanic's or materialman's lien upon the condition that LICENSEE provides a bond or other form of security reasonably acceptable to CITY in an amount sufficient to hold CITY fully and completely harmless from any and all liability therefor or on account thereof.

11.5 Improvements to Premises; Removal. All IMPROVEMENTS constructed, installed and operated by or on behalf of LICENSEE shall remain LICENSEE's personal property and are not fixtures. LICENSEE shall remove all IMPROVEMENTS at its sole expense within thirty (30) days following the expiration or earlier termination of this Agreement, and LICENSEE shall repair any damage to the PREMISES or SITE caused by such removal and fully restore

the PREMISES or SITE to the same condition as existed prior to such damage at its sole cost and expense. LICENSEE shall provide to CITY in writing, by not later than the end of the prescribed thirty (30)-day period, notice that all IMPROVEMENTS have been removed in accordance with this Section. Failure of LICENSEE to remove any or all IMPROVEMENTS from the PREMISES and SITE within the prescribed thirty (30) days shall be construed as holdover pursuant to this Section, and all obligations and requirements, including payment of Rent Payments, shall continue to apply unless and until LICENSEE removes all IMPROVEMENTS and so notifies CITY.

11.6 Liability for Damage/Outages. LICENSEE shall be solely responsible for any damage caused by LICENSEE, its agents and/or contractors on or to the PREMISES or SITE that causes an interruption or outage in the services, operations or utilities of another licensee, and shall indemnify and hold harmless CITY, Signal Sites, Inc., and all of their respective partners, employees, agents, successors and assigns from all claims or actions for damages, including actual, incidental and consequential damages, brought by another licensee as a result of LICENSEE's, or its employees', contractors', agents', assigns' or licensees', willful, reckless or gross negligence or other conduct.

12. Communication Tower

12.1 This provision shall be implemented only in the instances where LICENSEE will be leasing ground space from the CITY and constructing a suitable support structure ("Communication Tower") upon which LICENSEE will install, operate, maintain, and repair LICENSEE's IMPROVEMENTS.

12.2 The LICENSEE shall have the right to construct a suitable support structure to be structurally capable of supporting up to three (3) wireless communications carriers. Structural design shall be provided to CITY for review and shall be in compliance with approved Site Plan reference para. 1.2. Possession of the Communication Tower remains that of LICENSEE. LICENSEE agrees to receive and reasonably negotiate requests of other wireless communications carriers ("COLLOCATEES"), according to then current Master Lease Agreement ("MLA") between LICENSEE and the COLLOCATEE, if applicable, to collocate their communications equipment at the PREMISES, but LICENSEE retains the sole right of approval for said COLLOCATEES, including but not limited to, type and placement of antennas and ancillary coax cable runs. and will not unreasonably withhold, condition or delay approval of COLLOCATEES. LICENSEE agrees to pay the CITY forty percent (40%) of any compensation received by LICENSEE from all such COLLOCATEES. LICENSEE shall not allow any carrier to use space designated by LICENSEE for LICENSEE's own use. In the event CITY leases ground space to any

COLLOCATEE, CITY shall retain one hundred percent (100%) of the rental compensation derived therefrom.

12.3 LICENSEE shall have the right to perform necessary tests including, but not limited to, Radio Frequency tests, and a structural analysis on such Communication Tower. Such costs shall be paid by the COLLOCATEE. A copy of any such structural analysis shall be provided to CITY.

12.4 CITY will provide notice to LICENSEE at least thirty (30) days prior to the commencement of co-location construction. LICENSEE shall not unreasonably withhold or obstruct access to such Communication Tower for the purposes of co-location.

13. Compliance with Laws

13.1 **By LICENSEE** LICENSEE, its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees, shall comply in all respects and at all times with all applicable local, state and federal laws, statutes, ordinances, regulations, rulings, requirements, conditions, orders, licenses, permits, covenants, restrictions, approvals and consents pertaining to LICENSEE's services, LICENSEE's construction, installation and operation work, IMPROVEMENTS and LICENSEE's use of the PREMISES. Without limiting the generality of the preceding sentence, LICENSEE shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety, including standard industry equipment safety regulations (e.g., NEBs, IEEE, Federal Communications Commission ("FCC") and BellCore standards) and shall not use the PREMISES or operate the IMPROVEMENTS in any manner which is inconsistent therewith. LICENSEE shall, at LICENSEE's sole cost and expense, promptly apply for and use its best efforts to obtain and maintain all necessary licenses, permits, approvals and consents required or necessary for the construction and operation of the IMPROVEMENTS. In the event LICENSEE fails to obtain any required license, permit, approval or consent to construct and operate the IMPROVEMENTS, through no fault of LICENSEE, LICENSEE shall have the right to terminate this Agreement in accordance with Section 5 of this Agreement.

13.2 **By CITY.** CITY shall comply in all material respects, and shall exercise commercially reasonable efforts to cause its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees to comply in all material respects with all laws, ordinances, orders, rules and regulations of all governmental or judicial authorities having jurisdiction thereof, whether state, federal or local, relating to CITY's leasehold interest in the SITE.

14. Complaint Resolution

If either LICENSEE or CITY receives a written complaint regarding LICENSEE's operations and such complaint, if reasonably determined by the City to be valid and if the cause of such complaint would cause LICENSEE to be in default of this Agreement, LICENSEE shall respond within twenty-four (24) hours of receipt of such written complaint. LICENSEE shall respond with a written explanation to each such complaint with detail of its investigation into the incident upon which the complaint was based (the "Incident") and the actions that LICENSEE has taken to resolve the Incident including, when necessary, all future actions LICENSEE will take to fully resolve the Incident or prevent a recurrence of the Incident. If the Incident cannot be resolved to the reasonable satisfaction of the complainant within fifteen (15) days, LICENSEE shall provide a schedule for completion of its plan to resolve or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If future action is necessary, LICENSEE shall include a schedule for completion of its plan to correct or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If CITY must step in and resolve a complaint regarding LICENSEE's operations, LICENSEE shall reimburse CITY for all reasonable expenses incurred. If CITY imposes upon LICENSEE a resolution to an Incident that does not involve a breach of the Agreement by LICENSEE, the breach by LICENSEE of any federal, state, or local law or ordinance or the commission by LICENSEE of any negligent or intentional act or omission to a person that causes bodily injury or property damage and LICENSEE does not wish to resolve the Incident in the manner directed by CITY, LICENSEE may terminate this Agreement upon thirty (30) days notice without penalty.

15. Utility Easements and Utility Cost

15.1 LICENSEE shall pay directly to all public utility service companies, before delinquency, all charges for the electricity, water and other utility services that LICENSEE consumes in connection with the installation and operation of LICENSEE's IMPROVEMENTS and which are separately metered and charged to LICENSEE by any public utility service company, without any expense therefor being imposed upon CITY.

15.2 If LICENSEE first obtains CITY's written consent, which may be given or withheld for any reason or no reason in the CITY's sole discretion, LICENSEE shall have the right to obtain electricity and other public utility services from the existing outlets available at the PREMISES. Absent such consent, LICENSEE shall obtain separate public utility services from any company that will provide such services to the PREMISES (which services may include an approved battery-powered or diesel standby power generator located on the PREMISES for LICENSEE's exclusive use).

15.3 LICENSEE shall not permit any charges for public utility services to accumulate or become a lien on the SITE. If LICENSEE fails to pay any such charge required to be paid by LICENSEE pursuant to this Section, CITY may, but shall not be required to, pay such charge on LICENSEE's behalf. If CITY pays any such charge on behalf of LICENSEE or incurs any cost with respect to any grant of any public utility service easement for the benefit of LICENSEE pursuant to this Section, LICENSEE shall reimburse and pay to CITY an amount equal to all such charges so paid and all such easement costs so incurred, within thirty (30) days after receipt of CITY's demand, as Additional Fees.

15.4 **Additional Utility/Power Equipment.** In the event that LICENSEE is required to or otherwise decides to install, operate and use additional equipment to provide electricity or other utility services required for the operations of LICENSEE's IMPROVEMENTS, such installation, operation and use shall comply in all respects with the terms and conditions set forth in this Agreement.

16. Taxes

16.1 LICENSEE agrees to timely reimburse CITY for all taxes that are assessed against CITY, if any, due to the real property taxes attributable to LICENSEE's IMPROVEMENTS or use of the PREMISES and IMPROVEMENTS constructed or maintained by LICENSEE on or about the PREMISES; provided, however, CITY shall use its best efforts to provide prior notification of any taxes for which LICENSEE is to be charged, so LICENSEE will have the opportunity to appear before the taxing authority and contest any assessment.

16.2 If LICENSEE fails to pay any such taxes after such contest of any assessment and for which LICENSEE is obligated, CITY may, but shall not be required to, pay such taxes on LICENSEE's behalf. If CITY pays any such taxes on behalf of LICENSEE pursuant to the preceding sentence, LICENSEE shall reimburse and pay to CITY an amount equal to any such taxes so paid, plus an administrative fee of ten percent (10%) of the taxes, within thirty (30) days after demand as Additional Rent.

17. Liability and Indemnification

17.1 LICENSEE shall at all times comply with all laws and ordinances and all applicable rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location, use, operation, and removal of the IMPROVEMENTS, authorized herein, and, **except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees**, shall fully release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants or employees against any and all claims, damages, lawsuits, losses, costs, or expenses which

may be sustained or incurred by CITY, its officers, officials, agents, servants or employees as a result of LICENSEE's installation, operation, or removal of such IMPROVEMENTS.

17.2 LICENSEE undertakes and assumes for its officers, agents, employees, servants, affiliates, contractors and subcontractors, all risk of dangerous conditions, if any on or about the PREMISES, and, **except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees**, LICENSEE hereby agrees to release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants and employees against and from any claim asserted or liability imposed upon CITY, its officers, officials, agents, servants, and employees for personal injury or property damage to any person arising out of LICENSEE's installation, operation, maintenance, condition or use of the PREMISES or LICENSEE's IMPROVEMENTS or LICENSEE's failure to comply with any applicable federal, state, or local statute, ordinance or regulation.

17.3 LICENSEE represents and warrants that its use of the PREMISES herein will not generate any hazardous substance, and it will not store or dispose on the PREMISES nor transport to or over the PREMISES any hazardous substance. The storage of acid storage batteries on the Premises as necessary for use in the event of a power outage, and the installation on the premises of a diesel or propane generator for emergency use to provide electricity in the event of a power outage shall not be a violation of this Section 17. LICENSEE further agrees to release, defend, indemnify, and hold CITY, its officers, officials, agents, servants and employees, harmless from and against any damage, loss, or expense or liability resulting from the generating, transporting, storage or disposal of such hazardous substances including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any applicable federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease, including diesel and propane fuel.

18. Insurance

18.1 LICENSEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at LICENSEE's sole expense, liability insurance and workers' compensation insurance, and a certificate of insurance shall be submitted to and approved by CITY prior to the Effective Date of this Agreement. LICENSEE must provide

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insurance in compliance with **Appendix "B"**, attached hereto and incorporated herein for all purposes. At the time of an extension or renewal of this license agreement, LICENSEE shall provide a certificate of insurance for the added term that shows LICENSEE meets all insurance requirements under Appendix "B".

18.2 In the event that LICENSEE uses third-party contractors or subcontractors to provide services or to perform work upon the PREMISES, LICENSEE shall include in all contracts, subcontracts, and bid documents with such third parties, the requirement that: (a) each such third party shall provide CITY with separate certificates of insurance or such other documentation as is reasonably required by CITY to evidence that each such third party obtains and maintains insurance coverage consistent with the insurance requirements of this Agreement throughout the term of its contract with LICENSEE; and (b) such third party shall execute the Contractor Agreement, a copy of which is attached hereto and incorporated herein as **Appendix "B-1"**,. All such insurance certificates and other documents evidencing coverage shall contain an affirmative statement of the contractor, subcontractor, or other third party that such third party shall notify the City of Plano in the event that the policy lapses or is canceled for any reason.

19 Notice

19.1. Any notice or demand required or desired to be given to any Party pursuant to this Agreement shall be in writing, shall be delivered to the address set forth below and shall be deemed validly served, given, delivered or made only if (i) personally delivered (including delivery by a commercially-recognized courier which provides service between the point-of-origin and the point-of-destination); or (ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. Service by United States mail shall be deemed made on the date actually received.

CITY	LICENSEE
City of Plano, Texas c/o Mark Israelson Customer & Utility Services Department PO Box 860277 Plano, Texas 75086	T-Mobile Texas, LP 7668 Warren Pkwy Frisco, TX 75034 Attention: Lease Administrator With a Copy to: Legal Department

CITY or LICENSEE may from time to time designate any other address for this purpose by written notice to the other party.

20. Remedies

20.1 LICENSEE's failure to timely remit payments due hereunder three times within a 12-month period shall be a breach of this Agreement for which LICENSEE shall be given fifteen (15) days from receipt of written notice from CITY (that such payment is overdue for the third time within such 12-month period) to cure. If LICENSEE fails to make payment as required; if LICENSEE abandons or vacates the PREMISES; or if LICENSEE becomes insolvent; and has not filed for bankruptcy, CITY shall have the right, at its option, in addition to and not exclusive of any other remedy CITY may have hereunder or by operation of law, with fifteen (15) days notice, require LICENSEE to re-enter the PREMISES and remove the IMPROVEMENTS therefrom. Under no circumstances shall CITY or anyone acting on CITY's behalf attempt to remove LICENSEE's communications equipment, except as provide for in Section 5.5 herein. Upon such occurrence, CITY may either (a) declare this Agreement and license granted herein at an end, in which event LICENSEE shall immediately pay CITY a sum of money equal to the total of (i) the amount of Rental Fees accrued through the date of termination; (ii) the amount by which the Rental Fees reserved for the balance of the term exceeds the amount of such rental loss that the LICENSEE proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other reasonable amounts necessary to compensate CITY for all detriment proximately caused by LICENSEE's failure to perform its obligations under this Agreement, or (b) without terminating this Agreement, relet the PREMISES, or any part thereof, for the account of LICENSEE upon such terms and conditions as CITY may deem advisable, and any moneys received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid; and, thereafter, toward payment of all sums due or to become due to CITY hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, LICENSEE shall pay CITY any deficiency monthly, notwithstanding that CITY may have received Rental Fees in excess of the Rental Fees stipulated in this Agreement in previous or subsequent months, and CITY may bring an action therefor as such monthly deficiency shall arise.

20.2 No re-entry and taking of possession of the PREMISES by CITY shall be construed as an election on CITY's part to terminate this Agreement, regardless of the extent of renovations and alterations by CITY, unless a written notice of such intention is given to LICENSEE by CITY.

21. Force Majeure

21.1 Notwithstanding any other provision in this Agreement to the contrary, neither Party will have any liability to the other with respect to its failure to perform its obligations under this Agreement, except for the payment of amounts due, if such failure is due to any of the following events (each a "Force

Majeure" event): (i) the failure of any equipment or software under the control of a person, firm or entity not affiliated with such Party; (ii) fire, flood, earthquake, law or government regulation; or (iii) any other cause beyond the reasonable control of such Party. In any such case, the Parties' time for performance under this Agreement and the term hereof, to the extent affected by any of the foregoing, shall be correspondingly extended; provided, however, that if such condition shall continue in effect for more than 180 days, either Party shall have the right to terminate this Agreement upon thirty (30) days notice.

22. Miscellaneous Provisions

22.1 Modifications. LICENSEE's operations and all CITY approved modifications to the PREMISES must at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.

22.2 Entire Agreement. This Agreement, together with all Appendices attached hereto and incorporated herein constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

22.3 Capacity. Both LICENSEE and CITY represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

22.4 Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be **in a court with jurisdiction over Collin County, Texas.**

22.5 Amendment. This Agreement may only be amended by the mutual written agreement signed by the parties hereto.

22.6 Legal Construction; Severability. In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

22.7 Nonwaiver. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given

hereunder. No covenant or conditions of this Agreement may be waived without consent of the Parties. It is further agreed that one (1) or more instances of forbearance by a Party in the exercise of its rights herein shall in no way constitute a waiver thereof.

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

22.9 Successors and Assigns.

- (a) CITY and LICENSEE each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither CITY nor LICENSEE will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of CITY. LICENSEE shall not assign, sublet, subcontract, transfer or allow the use of any interest in the PREMISES or any use of LICENSEE's IMPROVEMENTS, including but not limited to equipment, lines, channels or frequencies, on the PREMISES without the prior written consent of CITY. CITY's consent may be conditioned upon LICENSEE successfully obtaining contracts from such third parties wherein those parties agree to directly compensate CITY for all benefits incurred by the use of the PREMISES.
- (b) Notwithstanding anything in Section 22.9(a) to the contrary, LICENSEE may assign this Agreement to any parent, subsidiary or affiliate, or any entity that acquires all or substantially all of LICENSEE's assets in the market where the Premises are located without CITY'S consent. Notwithstanding any assignment permitted under this Section or otherwise under this Agreement, LICENSEE shall remain absolutely and unconditionally primarily liable to pay and perform each and all of the obligations set forth in this Agreement prior to said assignment and shall be relieved of all future performance, liability and obligations after said assignment.

- (c) If CITY shall, at any time, relinquish its ownership or otherwise dispose of the PREMISES, CITY shall be automatically released from all obligations under and pursuant to this Agreement that accrue after such disposition; provided, however, that such relinquishment of ownership or disposition of the PREMISES shall be subject to LICENSEE's rights under this Agreement. If the PREMISES are so disposed of, LICENSEE shall not disavow any of LICENSEE's obligations pursuant to this Agreement but shall attach to the purchaser or transferee thereof for the performance of CITY's obligations under this Agreement.

22.10 Applicable Laws. This Agreement is entered into subject to the charter and ordinances of CITY as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws.

22.11 Subordination to Mortgage. As to any mortgage now or subsequently placed upon any property of which the PREMISES are a part, of which CITY shall notify LICENSEE in writing, shall be deemed to be prior in time and senior to the rights of the LICENSEE under this Agreement. LICENSEE subordinates all of its interest in the Premises created by this Agreement to the lien of any such mortgage. CITY and LICENSEE shall, at the other Party's request, execute any additional documents necessary to indicate this subordination, provided that such mortgage shall not disturb possession of LICENSEE hereunder.

22.12 Contract Interpretation. Both parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

EXECUTED on the _____ day of _____, 200_____.

**T-MOBILE TEXAS, LP a Delaware
Limited Partnership
By: T-Mobile West Corporation, its
General Partner**

By: _____
Name: Jeff Hooper
Title: Area Director - Engineering

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

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

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

CITY'S TAX ID#: 75-6000640

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ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me this _____ day of _____, 2007, by Jeff Hooper, Area Director-Engineering of **T-MOBILE WEST CORPORATION**, a Delaware corporation, General Partner of **T-MOBILE TEXAS, LP**, a Delaware Limited Partnership, on behalf of said corporation and limited partnership.

Notary Public, State of Texas

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200____, by _____, _____, of Chapman Construction Management Co. Inc., a Texas Corporation, General partner of Chapman Construction Company, L.P., a Texas limited partnership, _____, a _____, on behalf of said corporation and limited partnership.

Notary Public, State of Texas

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**APPENDIX "B"
INSURANCE**

Licensee shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Licensee, Licensee's agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. ISO Form Number GL 0002 (Ed 1/72) or equivalent forms covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability; or ISO Commercial General Liability coverage ("occurrence" Form CG 0001). "Claims made" form is unacceptable except for professional liability.
2. Automobile liability shall include all owned, hired and non-owned vehicles.
3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.

B. Minimum Limits of Insurance

Licensee shall maintain limits not less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. \$10,000,000 Aggregate Policy will include coverage for (a) Premises-Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage, Fire Damage, Medical Expense.
2. Automobile liability: \$1,000,000 combined single limit per accident, for bodily injury and property damage.

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3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.

C. Deductibles and Self-Insured Retentions

N/A

D. Other Insurance Provisions

The policies are to contain, or be generic endorsements with standard certificates for general and automobile liability coverage to contain the following provisions:

1. General Liability and Automobile Liability Coverage
 - (a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is Insured" automatically provides liability coverage in favor of the City as an additional insured.
 - (b) The Licensee's insurance coverage shall be primary insurance as respects Licensee's operations. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it in this respect.
 - (c) [INTENTIONALLY DELETED]
 - (d) The Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Licensee for the City.

3. All Coverages

Each insurance program required by this clause shall be directed to state that coverage shall not be suspended, voided, canceled or non-renewed, reduced in coverage or in limits, except after ten (10) days prior written notice by mail has been given to the City.

E. Acceptability of Insurers

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on standard insurance certificate forms and are to be received and approved by the City before work commences.

APPENDIX "B-1"

**CONTRACT BY, BETWEEN AND AMONG
T-MOBILE TEXAS, LP,
CHAPMAN CONSTRUCTION COMPANY, LP,
AND
CITY OF PLANO, TEXAS**

THIS CONTRACT is made and entered by, between and among T-Mobile Texas, LP, hereinafter referred to as "Licensee," and Chapman Construction Company, LP, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, hereinafter referred to as "City," to be effective subsequent to execution by the Plano City Manager or his designee.

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

**I.
SCOPE OF WORK**

Contractor shall provide all supervision, labor, materials and equipment necessary for the performance of all obligations required under the terms of the contract between Licensee and Chapman Construction Company, LP dated January 1, 2007.

**II.
THIRD PARTY INTEREST**

It is agreed by and between the parties that the City has an interest in the proper performance of this Contract, and that the City may bring suit for failure to comply with the specifications.

Contractor acknowledges that Licensee has no property interest in the premises provided by the City, and agrees that Contractor will not file any Lien against the City's premises should a dispute arise between Licensee and Contractor.

Contractor agrees that it shall not provide any work or services of any nature unless Contractor has obtained the insurance coverage as specified herein.

III. VENUE

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

IV. INDEPENDENT CONTRACTOR

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

V. INSURANCE AND CERTIFICATES OF INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance as set forth below.

Licensee shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Licensee, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability; or ISO Commercial General Liability coverage ("occurrence" Form CG 0001). "Claims made" form is unacceptable except for professional liability.
2. Automobile liability shall include all owned, hired and non-owned vehicles.

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3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
 4. Professional Liability (when applicable).
- B. Minimum Limits of Insurance
Licensee shall maintain limits not less than:
1. Commercial General Liability: \$500,000 per occurrence for bodily injury, personal injury and property damage. \$1,000,000 Aggregate Policy will include coverage for (a) Premises - Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage (when applicable), Fire Damage, Medical Expense. NOTE: The aggregate loss limit applies to each project.
 2. Automobile liability: \$500,000 combined single limit per accident, for bodily injury and property damage.
 3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.
 4. Professional Liability.
- C. Deductibles and Self-Insured Retentions
Any deductible or self-insured retentions must be declared to and approved by the City.
- D. Other Insurance Provisions
The policies are to contain, or be endorsed to contain the following provisions:
1. General Liability and Automobile Liability Coverages
 - (a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy

under "Who is an Insured" automatically provides liability coverage in favor of the City.

- (b) The Licensee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.
- (d) The Licensee's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage
The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Licensee for the City.

3. All Coverages
Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after ten (10) days prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers
The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage
Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the City and are to

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be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**VI.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**VII.
SEVERABILITY**

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

**VIII.
ENTIRE AGREEMENT**

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

**IX.
CONTRACT INTERPRETATION**

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

**X.
SUCCESSORS AND ASSIGNS**

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

**XI.
HEADINGS**

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

**XII.
THIRD PARTY BENEFIT**

The parties to this Contract agree that Contractor will obtain and maintain insurance coverage as specified herein until completion of all work and services by Contractor for Licensee. Contractor shall release, defend, indemnify and hold harmless City from all damages, attorneys' fees and costs of any kind incurred by City due to Contractor's breach of its obligations hereunder. The parties further agree that this Contract is intended to benefit the City of Plano, its officials, officers, employees, agents, successors and assigns, each of which may enforce its terms in a court of competent jurisdiction either individually or collectively.

IN WITNESS WHEREOF, the parties have executed this Contract by signing below. The effective date of this Contract shall be the date of City Council approval.

**LICENSEE: T-MOBILE TEXAS, LP
By: T-MOBILE WEST CORPORATION, its
General Partner**

BY: _____

Name: _____

Title: _____

**CONTRACTOR: CHAPMAN
CONSTRUCTION COMPANY, LP
By: CHAPMAN CONSTRUCTION
MANAGEMENT COMPANY, INC., General
Partner**

BY: _____

Name: _____

Title: _____

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CITY OF PLANO, TEXAS

Date: _____

BY: _____

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me this _____ day of _____, 2007, by Jeff Hooper, Area Director-Engineering of **T-MOBILE WEST CORPORATION**, a Delaware corporation, General Partner of **T-MOBILE TEXAS, LP**, a Delaware Limited Partnership, on behalf of said corporation and limited partnership.

Notary Public, State of Texas

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200____, by _____, _____, of Chapman Construction Management Co. Inc., a Texas Corporation, General partner of Chapman Construction Company, L.P., a Texas limited partnership, on behalf of said corporation and limited partnership.

Notary Public, State of Texas

9-42

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 200__ by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

9-43



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:	3/20/2007	Reviewed by Legal <i>JS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Customer Utility Services		Initials	Date
Department Head	Mark Israelson	Executive Director		
Dept Signature:	<i>Mark Israelson</i>	City Manager	<i>RA</i>	3-12-07
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				

ACTION REQUESTED:

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

CAPTION

A PUBLIC HEARING BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE PERTAINING TO THE USE OR TAKING OF A PORTION OF A CITY OF PLANO PARK AND KNOWN AS THE BLUE RIDGE SITE FOR A COMMUNICATIONS FACILITIES LICENSE AGREEMENT FOR CELLULAR EQUIPMENT ATTACHED TO AND AT THE BASE OF THE EXISTING TXU ELECTRIC TRANSMISSION TOWER.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S):

COMMENTS:

SUMMARY OF ITEM

T-Mobile Texas, L.P., by T-Mobile West Corporation, a Delaware Corporation, has requested that the City approve their facilities for cellular attached to and at the base of TXU Electric transmission towers, as depicted in drawing included with this agenda item. Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing for any use or taking of park land. To permit the use or taking of park land, the governing body with jurisdiction over the park, the City Council for instance, must find the following:

1. There is no feasible and prudent alternative to the use and taking of the park land as proposed by the project exists, and
2. The Project includes all reasonable planning to minimize harm to the Park Land resulting from the use or the taking.

Witnesses will present at the public hearing on these issues.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
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NOTICE OF PUBLIC HEARING

The City Council of the City of Plano, Texas will hold a public hearing on the 20th day of March, 2007 at 7:00 o'clock p.m. in the City Council Chambers, City of Plano Municipal Building, located at 1520 Avenue K, Plano, Texas. The purpose of the public hearing is to determine whether or not a portion of the City of Plano public park land within the City of Plano, Texas, should be utilized for the following described project:

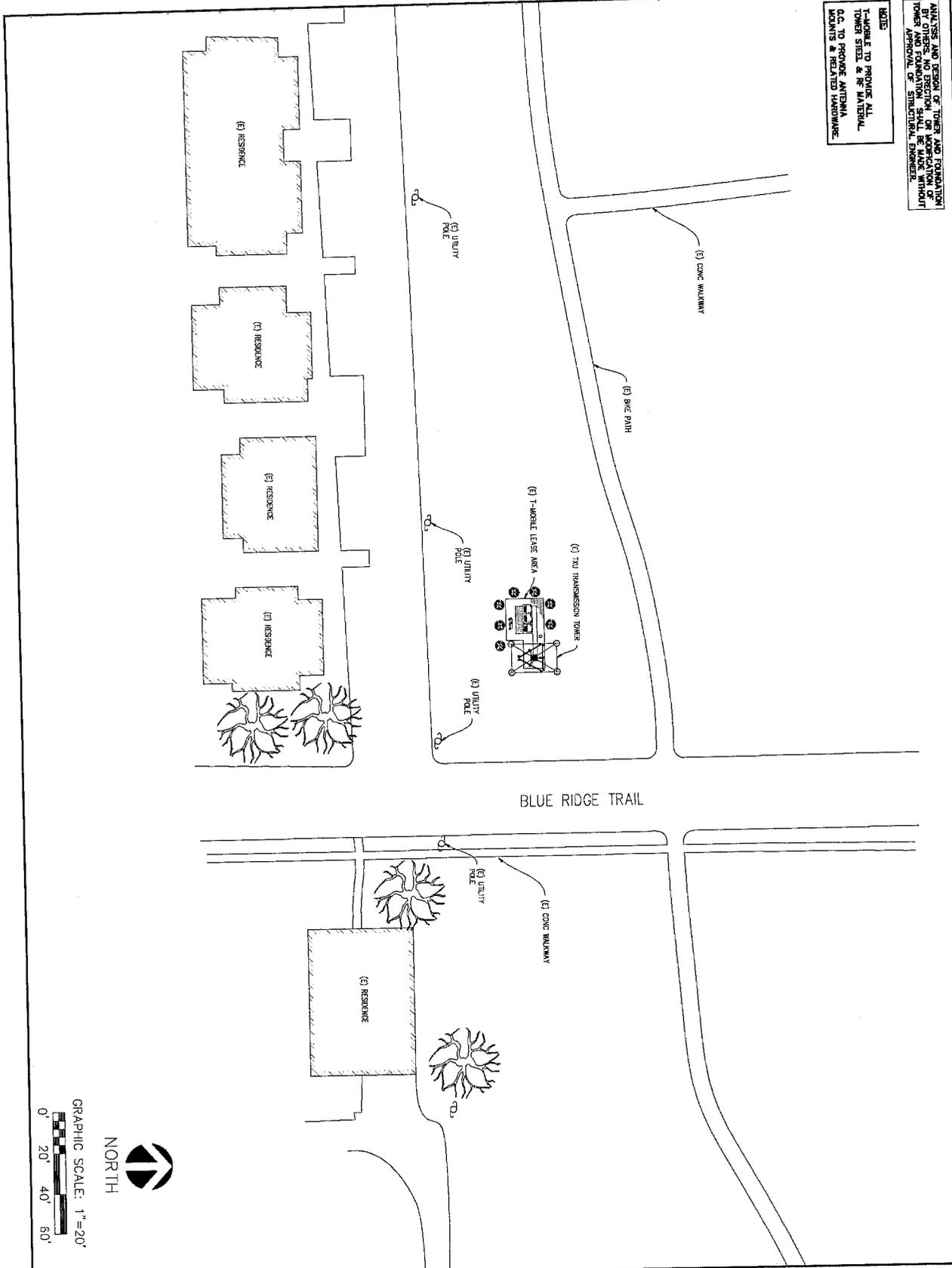
Communications Facilities License Agreement with T-Mobile for the Blue Ridge Park Site.

A drawing of the park location and proposed communications facility can be viewed in the office of Mark Israelson, Customer and Utility Services office at 1520 Avenue K, Plano, Texas 75074.

All interested persons are invited to attend and testify at the public hearing.

10-2

NOTES:
 1-MOBILE TO PROVIDE ALL TOWER STEEL & RF MATERIAL. C.C. TO PROVIDE ANTENNA MOUNTS & RELATED HARDWARE.
 ANALYSIS AND DESIGN OF TOWER AND FOUNDATION BY OTHERS. NO ERECTION OR MODIFICATION OF TOWER AND FOUNDATION SHALL BE MADE WITHOUT APPROVAL OF STRUCTURAL ENGINEER.



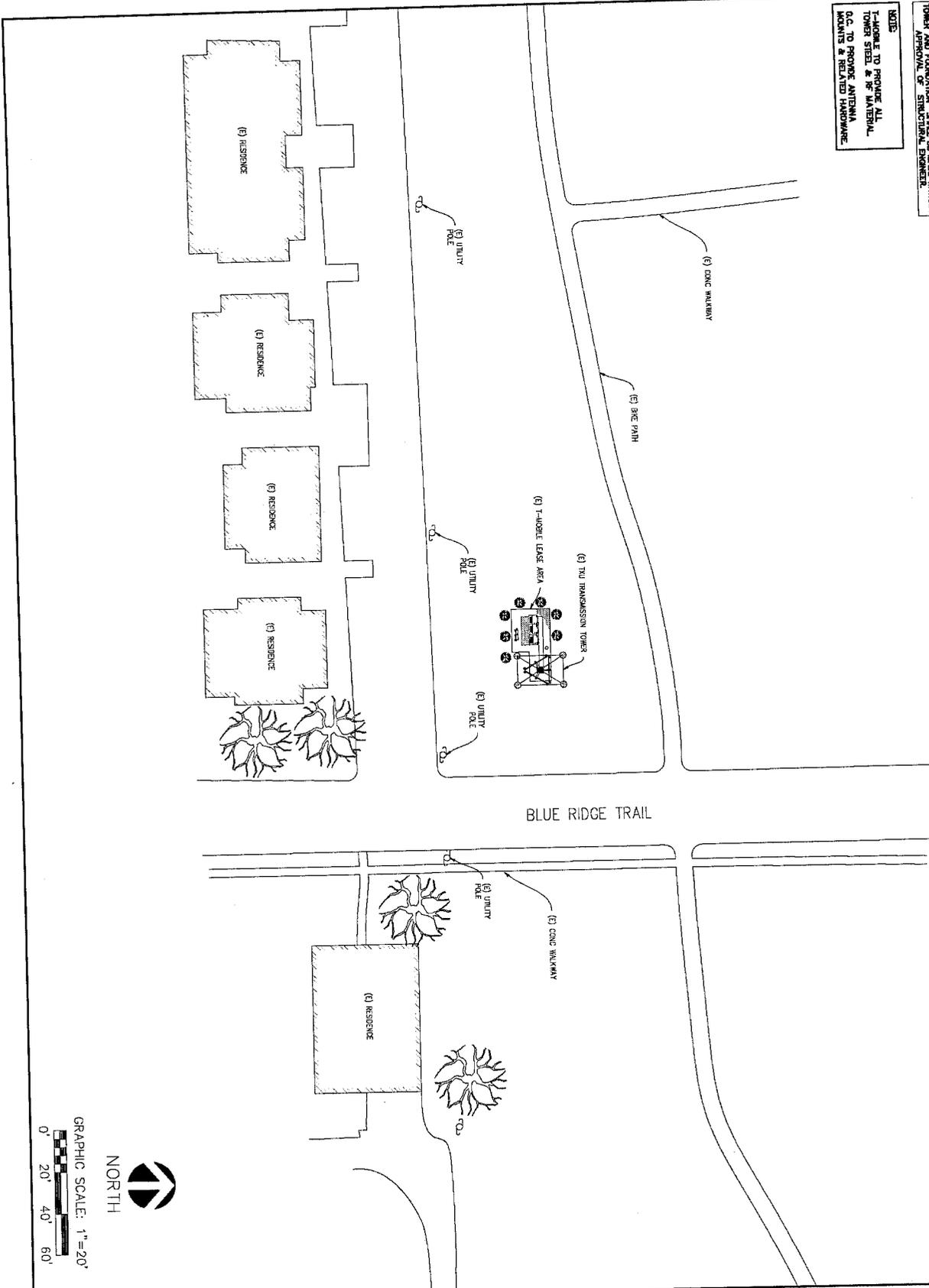
GRAPHIC SCALE: 1"=20'
 0' 20' 40' 60'
 NORTH

SHEET NUMBER C-1	OVERALL SITE PLAN	DAIJAZA 6415 BLUE RIDGE TRAIL FORT WORTH, TEXAS 76116 CITY OF PLANS	NOT VALID WITHOUT P.E. STAMP & SIGNATURE 01/09/09	 CONSULTING GROUP, INC. 8221 Lyndon B Johnson Freeway Suite 204, Dallas, TX 75243 Phone: 872-251-8885 Fax: 866-364-8376 www.allproeng.com	PROJECT NO: DA123212	DESIGN BY: CEC	 DUKE BRIDGES CAMPUS 7668 WARREN PARKWAY FRISCO, TX 75084 OFFICE: (972) 484-3510
					1 (C) 01/09/09 FINAL 1 (U) 01/09/09 SITE LAYOUT	CHECKED BY: JMG	

10-3

ANALYSIS AND DESIGN OF TOWER AND FOUNDATION BY OTHERS NO SECTION OR MODIFICATION OF TOWER AND FOUNDATION SHALL BE MADE WITHOUT APPROVAL OF STRUCTURAL ENGINEER.

NOTES
 1-MOBILE TO PROVIDE ALL TOWER STEEL & RF MATERIAL. C.C. TO PROVIDE ANTENNA MOUNTS & RELATED HARDWARE.



GRAPHIC SCALE: 1" = 20'
 0' 20' 40' 60'
 NORTH

SHEET NUMBER C-1	OVERALL SITE PLAN	DAIJAZA BLUE RIDGE TRAIL GAS BLUE RIDGE TRAIL PLANO, TEXAS 75023 CITY OF PLANO	NOTYALD SIGNATURE P.E. SIGNATURE		01/18/10	CONSULTING GROUP, INC. 8221 Lyndon B. Johnson Freeway Suite 204, Dallas, TX 75243 Phone: 972-291-8885 Fax: 972-294-6378 www.allproci.com	PROJECT NO: DA12378	DUKE BRIDGES CAMPUS 7688 WARREN PARKWAY FRISCO, TX 75034 OFFICE: (972) 464-3510
							DRAWN BY: CJC	

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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: 03/20/2007		Reviewed by Legal <i>pu</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Customer Utility Services		Initials	Date
Department Head	Mark Israelson	Executive Director		
Dept Signature:	<i>Mark Israelson</i>	City Manager	<i>RA</i>	<i>3-12-07</i>
Agenda Coordinator (include phone #):		Nancy Rodriguez X7510		
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
AN ORDINANCE OF THE CITY OF PLANO, TEXAS, APPROVING A PROJECT, REQUIRING THE USE OR TAKING OF A PORTION OF CITY OF PLANO PUBLIC PARK LAND, KNOWN AS THE BLUE RIDGE PARK SITE; PROVIDING FOR A DETERMINATION THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO THE PROPOSED USE OR TAKING OF THE PARK LAND; AND THAT THE PROPOSED PROJECT INCLUDES ALL REASONABLE PLANNING TO MINIMIZE HARM TO THE LAND AND THE PARK AND RECREATION AREA RESULTING FROM THE USE; 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				
This item is related to the previous public hearing item authorizing T-Mobile Texas, L.P., by T-Mobile West Corporation, a Delaware Corporation, to locate, place, attach, install, and operate telecommunications ground equipment in certain specific portions of the public rights of way near Blue Ridge Trail identified as the Blue Ridge Park Site.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Memo from Mark Israelson				

11-1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, APPROVING A PROJECT, REQUIRING THE USE OR TAKING OF A PORTION OF CITY OF PLANO PUBLIC PARK LAND, KNOWN AS THE BLUE RIDGE PARK SITE; PROVIDING FOR A DETERMINATION THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO THE PROPOSED USE OR TAKING OF THE PARK LAND; AND THAT THE PROPOSED PROJECT INCLUDES ALL REASONABLE PLANNING TO MINIMIZE HARM TO THE LAND AND THE PARK AND RECREATION AREA RESULTING FROM THE USE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has requested approval of a project to allow cellular equipment to be attached to and at the base of an existing TXU Electric transmission tower for T-Mobile Texas, LP, by T-Mobile West Corporation, a Delaware corporation, as depicted on the drawing attached hereto as Exhibit "A" (called "Project") which requires the use or taking of a portion of City of Plano public park land known as the Blue Ridge Park Site, (called "Park Land"); and

WHEREAS, Chapter 26 of the TEXAS PARKS AND WILDLIFE CODE (called "Code") requires a public hearing to determine whether or not the Project's proposed use of a portion of the Park Land should be approved in accordance with certain criteria contained within the Code; and

WHEREAS, Notices of the Public Hearing were duly served and published in conformity with the Code; and

WHEREAS, a public hearing was held by the City Council on March 20, 2007, during which all interested persons were given the opportunity to testify and present other relevant evidence before the City Council;

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

Section I. After hearing and reviewing all of the testimony and evidence at the Public Hearing as well as other matters and information

relevant and pertinent to a determination, the City Council hereby finds and determines that:

- (a) There is no feasible and prudent alternative to the use or taking of the Park Land as proposed by the Project; and
- (b) The Project includes all reasonable planning to minimize harm to the Park Land, resulting from the use or the taking.

Section II. The City Council further finds that the determination made in Section I is in the public interest generally, and in the best interest of the citizens of the City of Plano, Texas.

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

DULY PASSED AND APPROVED by the City Council of the City of Plano, Texas, this the _____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

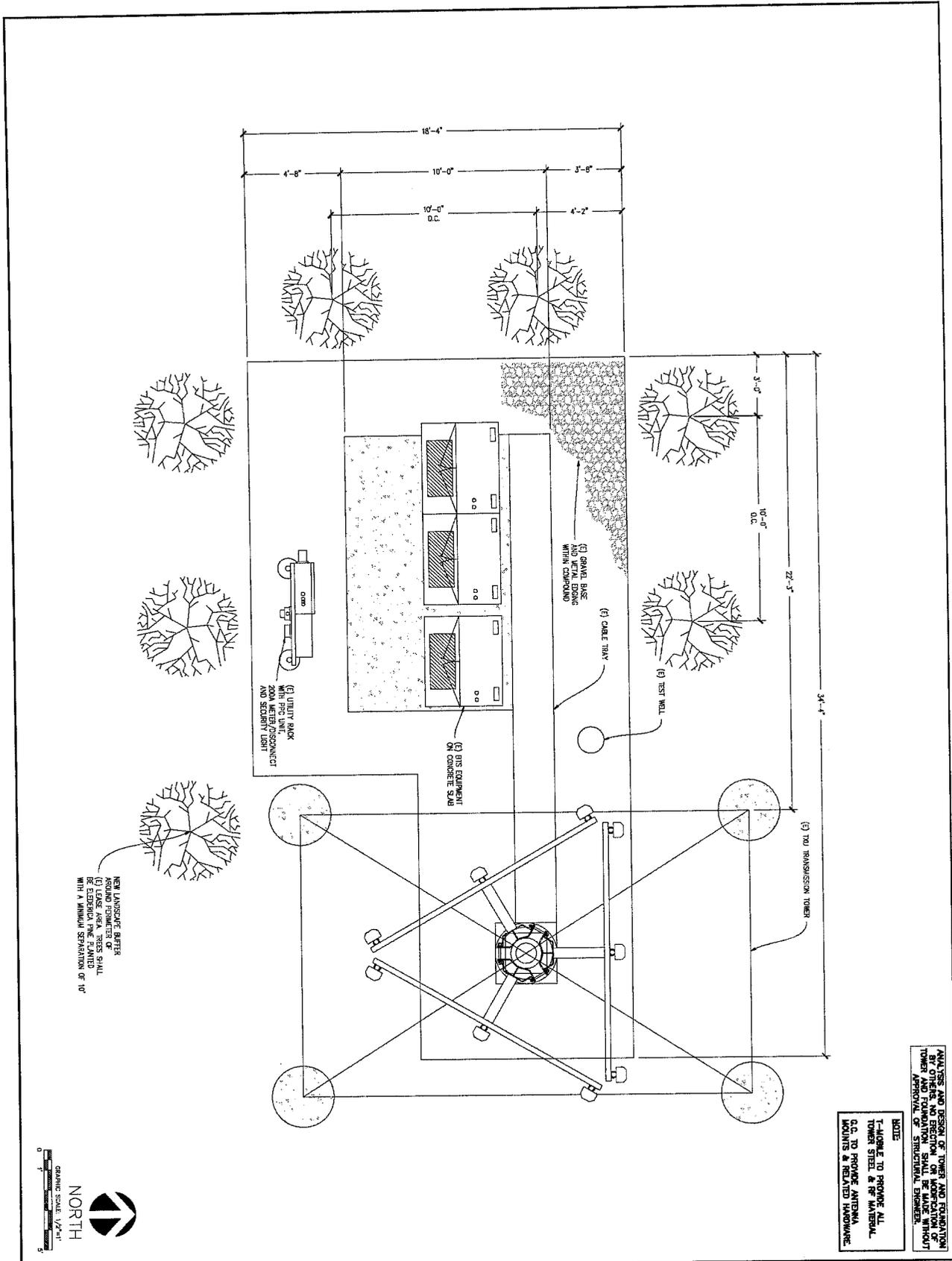
Elaine Bealke, City Secretary

APPROVED AS TO FORM:



Diane C. Wetherbee, City Attorney

11-3



ANALYSIS AND DESIGN OF TOWER AND FOUNDATION BY OTHERS. NO SECTION OR MODIFICATION OF TOWER AND FOUNDATION SHALL BE MADE WITHOUT APPROVAL OF STRUCTURAL ENGINEER.

NOTE:
 1- LAYOUT TO PROVIDE ALL TOWER STEEL & RF MATERIAL ACC. TO PROVIDER ANTENNA MOUNTS & RELATED HARDWARE.



	DUKES BRIDGES CAMPUS 7608 WARREN PARKWAY FRISCO, TX 75034 OFFICE: (972) 464-3510
PROJECT NO: DA1237B DRAWN BY: CEC CHECKED BY: MGC	 8221 Lyndon B. Johnson Freeway Suite 204, Dallas, TX 75243 Phone: 972-231-8660 Fax: 972-264-6376 www.allprocg.com
SHEET NO: C-2	DA1247A BLUE RIDGE TRAIL SALSBUKE RIDGE TRAIL PLANO, TEXAS 75075 CITY OF PLANO
SITE LAYOUT ENLARGED SITE PLAN	01/19/07 NOT VALID WITHOUT P.E. STAMP & SIGNATURE

11-5



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: 3/20/07		Reviewed by Legal <i>de</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Customer Utility Services		Initials	Date	
Department Head	Mark Israelson	Executive Director			
Dept Signature:	<i>[Signature]</i>	City Manager	<i>RA</i>	3-12-07	
Agenda Coordinator (include phone #): Nancy Rodriguez X7510					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND T-MOBILE TEXAS, L.P. BY T-MOBILE WEST CORPORATION, A DELAWARE CORPORATION, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE, TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF CITY OF PLANO PUBLIC PARK LAND, KNOWN AS THE BLUE RIDGE SITE, 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 checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	06/07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	16,500	6,180	22,680
BALANCE		0	16,500	6,180	22,680
FUND(S): GENERAL FUND					
COMMENTS: Approval of this item will result in annual rent payments of \$6,000 per site. The rent payment shall be increased by 3% at the beginning of each lease year. As compensation to the City for use of the premises, the licensee agrees to pay a one-time lump-sum total of \$10,500. Also, the licensee agrees to pay the City 40% of any compensation received by the licensee from wireless communications carriers. The licensee is granted the option to renew this license for 5 additional 5-year terms, after the initial term expires.					
STRATEGIC PLAN GOAL: Communications Facility License Agreements relate to the City's Goal of "Diverse Business Center."					
SUMMARY OF ITEM					
This Resolution approves a Communications Facilities License Agreement with T-Mobile Texas, L.P., by T-Mobile West Corporation, a Delaware Corporation, for communications facilities in City of Plano public park land known as the Blue Ridge site.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND T-MOBILE TEXAS, L.P. BY T-MOBILE WEST CORPORATION, A DELAWARE CORPORATION, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE, TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF CITY OF PLANO PUBLIC PARK LAND, KNOWN AS THE BLUE RIDGE SITE, 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 Communications Facilities License Agreement by and between the City of Plano, Texas and T-Mobile Texas, L.P., by T-Mobile West Corporation, a Delaware Corporation (hereinafter called "Agreement"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

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

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

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

Section II. The City Manager or, in his absence, 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 on this the ____ day of _____, 2007.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

12-3

STATE OF TEXAS §
 § **COMMUNICATIONS FACILITIES**
COUNTY OF COLLIN § **LICENSE**

KNOW ALL BY THESE PRESENTS:

This non-exclusive License for Communications Facilities ("Agreement") is made by and between the **CITY OF PLANO, TEXAS**, a home rule municipal corporation (hereinafter referred to as the "CITY") and **T-MOBILE TEXAS, LP.**, a Delaware Limited Partnership, (hereinafter referred to as "LICENSEE"), for the use of certain premises and/or facilities according to the following terms and conditions:

WITNESSETH:

WHEREAS, CITY desires to provide LICENSEE with facilities for housing and operating certain communications equipment, including the installation of antennas or antenna systems and the space required to run cable between the equipment and the antenna or antenna systems; and

WHEREAS, LICENSEE is a communications services company duly authorized to provide certain telecommunications services and desires to lease certain property owned by CITY for installation and operation of IMPROVEMENTS, as defined herein, to operate a communications facility and all related purposes; and

WHEREAS, CITY owns the premises and facilities described below and desires to allow LICENSEE to enter and utilize designated areas of the facilities and premises.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. Location

1.1 The premises and facilities (hereinafter referred to as the "PREMISES") provided by CITY are described in the SITE PLAN attached hereto and incorporated herein as **Appendix "A"**. Included upon the PREMISES shall be an existing transmission tower (the "Tower"), LICENSEE's Equipment Compound, the Antenna Facilities, as defined herein, and the cabling run between the Antenna Facilities and the Equipment Compound (hereinafter

12.4

referred to as "IMPROVEMENTS"). As a part of the SITE PLAN, LICENSEE shall provide to CITY a map that identifies all of LICENSEE's cell sites within the City of Plano and within a one-mile radius of the boundaries of the City of Plano. As used herein, the term "Equipment Compound" means all equipment, shelters and similar structures located on the PREMISES and identified on **Appendix "A"**. The license authorized under the terms of this Agreement shall be a license for the use of that portion of the PREMISES designated for use by LICENSEE on the SITE PLAN.

1.2 Site Plan. The SITE PLAN must be approved by CITY prior to the execution of this Agreement, with approval or disapproval not to be unreasonably withheld, conditioned or delayed. The SITE PLAN shall describe and illustrate the location of the IMPROVEMENTS under this Agreement. The SITE PLAN shall include a scale drawing and inventory analysis of the proposed installations, as well as an elevation of the PREMISES with the proposed installations. Performance under this Agreement shall be in strict compliance with the SITE PLAN. If LICENSEE's installation, maintenance and operation of the IMPROVEMENTS fail to comply with the approved SITE PLAN, at any time, as reasonably determined by CITY, then CITY shall have the right to terminate this Agreement upon notice to LICENSEE, who has an opportunity to cure as provided under Section 5 herein. Any proposed material modifications to LICENSEE's SITE PLAN must be approved in writing by CITY before LICENSEE may make any changes to its SITE PLAN as originally approved by CITY.

1.3 LICENSEE has inspected, examined and investigated the status of the title and condition of the PREMISES to the extent that LICENSEE has deemed necessary, and LICENSEE understands, acknowledges and agrees that it is entering into this Agreement to acquire a leasehold interest in the PREMISES "AS IS" in reliance solely upon the results of any inspection, examination and investigation of the status of title and condition of the PREMISES that LICENSEE has conducted and not as a result of any representation, warranty, assurance, guaranty or promise of CITY or any person purporting to act on behalf of CITY, other than those which may be expressly set forth in this Agreement.

1.4 LICENSEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF THE CITY, HAS MADE ANY, AND THE CITY EXPRESSLY DISCLAIMS EVERY, REPRESENTATION, WARRANTY (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND HABITABILITY), ASSURANCE, GUARANTY OR PROMISE, EXPRESS OR IMPLIED, CONCERNING THE STATUS OF THE TITLE OR CONDITION OF THE PREMISES WHICH ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AND THAT NO AGENT OR EMPLOYEE OF THE CITY OR OTHER PERSON HAS ANY AUTHORITY TO MAKE OR DELIVER ANY

REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY OR PROMISE WHICH IS NOT SET FORTH IN THIS AGREEMENT.**2. Use of Premises**

2.1 Permitted Use. CITY agrees to allow installment of LICENSEE's IMPROVEMENTS, in accordance with the terms of this Agreement. LICENSEE's use shall be non-exclusive and shall be for the purpose of the installation, operation, and maintenance of its IMPROVEMENTS, for the transmission, reception, and operation of a communications facility and all related purposes thereto. LICENSEE shall obtain the written approval of the City prior to installation of any IMPROVEMENTS on the PREMISES, which approval shall not be unreasonably withheld, conditioned or delayed. LICENSEE understands, acknowledges and agrees that the use of the PREMISES by LICENSEE in conjunction with the terms of this Agreement is to be for the installation, operation and maintenance of communications equipment, in strict compliance with the Agreement and the attached SITE PLAN. LICENSEE shall not use the PREMISES for any other purpose whatsoever, including the storage or placement of debris, storage of replacement IMPROVEMENTS, or any other item, without first obtaining the prior written consent of CITY, which may be given or withheld for any reason or for no reason, in the CITY'S sole, absolute and unrestricted discretion.

2.2 Prohibited Use. LICENSEE shall not use the PREMISES in any manner that constitutes waste or nuisance, or that violates any applicable law, ordinance or governmental regulation in any respect. LICENSEE shall neither do nor permit to be done anything that would violate any certificate of occupancy applicable to the PREMISES or would render void or uncollectible any insurance then in force with respect to the PREMISES, or that would in any way increase the premiums payable by CITY for fire, liability or any other insurance coverage on the PREMISES or the contents of any improvements thereon.

2.3 Subletting of Use Premises or Improvements. LICENSEE may not sublet to or license others to use the PREMISES or LICENSEE's IMPROVEMENTS without the prior written consent of CITY. Any such attempt by LICENSEE shall be without effect and may at CITY's option result in the termination of this Agreement.

2.4 Maintenance, Repair or Replacement of Improvements. LICENSEE may update, maintain, repair, or replace the IMPROVEMENTS located upon the PREMISES from time to time without CITY's approval, provided that the total of all IMPROVEMENTS do not require more space than the existing IMPROVEMENTS. Any change in the location of improvements on the PREMISES must be satisfactory to CITY, such approval not to be unreasonably withheld, conditioned or delayed. LICENSEE shall submit to CITY for approval,

a detailed proposal for any substantial replacement of IMPROVEMENTS and any supplemental materials for CITY's evaluation and written approval, such approval not to be unreasonably withheld, conditioned or delayed. As used herein, substantial replacement shall mean any replacement that (i) involves the parking of a "semi" truck on the premises, or (ii) involves a material change-out or alteration of Licensee's equipment. Notwithstanding the foregoing and any other provision herein to the contrary and further notwithstanding the frequencies set forth elsewhere herein, Licensee shall have the right, at any time during the term of this Agreement as the same might be extended, to change or add additional frequencies without the consent of CITY; provided, however that Licensee shall provide CITY with advance written notice of any such change or addition and provided further that Licensee agrees to comply with the terms and provisions of Section 9 herein with respect to interference in connection with such change or addition of frequencies. A current and accurate SITE PLAN must be submitted to CITY by LICENSEE and maintained on file with CITY for the entire term of this Agreement and all renewals thereof.

3. Term

3.1 This Agreement shall be for an initial term of five (5) years, commencing on the Effective Date. The Effective Date shall be the date LICENSEE executes this Agreement.

3.2 LICENSEE is granted the option to renew this license for five (5) additional five (5) year terms, after the initial term expires. Unless LICENSEE gives written notice of its decision not to exercise the renewal option within 90 days prior to the expiration of the current term or period, this Agreement will automatically renew for each said renewal term as long as LICENSEE remains in full compliance with all other provisions of this Agreement. All the terms and covenants of this Agreement apply to all extension periods, subject to amendment by the mutual agreement of the Parties, in writing and signed by both Parties. If LICENSEE continues to possess the PREMISES following the expiration of all of the extension periods provided herein, and this Agreement has not been renewed or superseded, this Agreement (1) shall be deemed to be a holdover tenancy at will but shall not itself constitute a renewal or extension of any term, (2) shall continue from month to month under the terms and conditions set forth herein and (3) may be terminated by either party upon at least thirty (30) days written notice to the other party. All the terms and covenants of this Agreement apply to all holdover tenancy periods.

4. Payment Terms and Conditions

4.1 **Rent Payment.** In consideration for providing the PREMISES for use by LICENSEE, the LICENSEE shall pay rent to CITY annually, with the first payment being due within thirty (30) days following the Effective Date of this

Agreement. Thereafter payment shall be due annually on the anniversary of the Effective Date throughout the initial term and all renewal terms hereof and prorated for any partial term. LICENSEE shall pay rent to CITY annually in advance, without prior notice or demand, without any abatement, setoff, reduction, deduction, counterclaim or recoupment whatsoever, in the amount of Six Thousand and No/100 Dollars (\$6,000.00) per annum per site for the term of this Agreement ("**Rent Payment**"). Interest on late payments shall accrue at the then prime interest rate. If this Agreement is terminated at a time other than the last day of the calendar year of the term for any reason other than a default by LICENSEE, all Rent Payments shall be prorated as of the date of termination and all prepaid Rent Payments shall be refunded to LICENSEE.

4.2 **Rent Adjustment.** The Rent Payment shall be increased by three percent (3%) at the beginning of each Lease Year (as herein defined) following the first Lease Year of the Lease Term or the first Lease Year. For purposes of this Lease Agreement, the term "**Lease Year**" shall mean the twelve-month period which commences on the first day of the calendar month in which the Effective Date occurs (if the Effective Date occurs on the first day of a calendar month) or on the first day of the calendar month following the calendar month in which the Effective Date occurs (if the Effective Date occurs on a day other than the first day of a calendar month). The dollar increase in the Rent Payment shall be determined by multiplying the Rent Payment (as previously adjusted) payable during the preceding Lease Year by three percent (3%). The sum of the dollar increase required by this multiplication plus the Rent Payment (as previously adjusted) payable for and on account of the preceding Lease Year (i.e., one hundred three percent (103%) of the prior Lease Year's Rent shall be the Rent Payment for the Lease Year of the adjustment.

4.3 **Holdover Rent.** The Rent Payment, as defined in Subsection (a) above, due during any holdover period shall be equal to one hundred fifty percent (150%) of the Rent Payment due during the immediately preceding Initial term or any renewal term.

4.4 **Additional Fees.** CITY may assess, in addition to the Rent Payment, additional payments by LICENSEE to cover CITY's additional costs ("**Additional Fees**"), which include but are not limited to: (i) costs of utilities associated with the day-to-day operation and maintenance of the Premises; (ii) costs incurred by CITY for providing access to the Premises outside of normal business hours; and (iii) applicable taxes, including property taxes, or business taxes levied on the PREMISES. CITY shall notify LICENSEE of amounts due in Additional Fees in writing, and LICENSEE shall pay Additional Fees simultaneously with the next monthly Rent Payment due on the Premises, or, if notice of Additional Fees occurs within ten (10) days of the due date of the next monthly Rent Payment, simultaneous with the Rent Payment due for the next month. The foregoing shall be subject to the provisions of Section 16 herein.

4.5 **Payment Address.** Rent Payments and Additional Fees shall be made payable to City of Plano, C/O Mark Israelson, Customer & Utility Services Department, PO Box 860277, Plano, Texas 75086.

4.6 **Lawful Currency.** Rent Payments and Additional Fees shall be made according to paragraph 4.1 above in lawful money of the United States of America without any abatement, setoff, reduction, deduction, counterclaim or other recoupment whatsoever. Rent Payments shall be free and clear of any business license tax or fee which is measured upon the size of the PREMISES. In no event will LICENSEE be obligated to pay any general income taxes measured upon the income of the City. In the event any federal, state, county, municipal or other governmental authority hereafter imposes or levies any such business license tax or fee, LICENSEE shall pay to CITY an amount equal to any and all amounts so imposed or levied as a component of Additional Fees. This Section does not preclude the assessment of lawful fees pursuant to a franchise or other agreement that the City may have with Licensee or its parent or any subsidiary or affiliate.

4.7 **Dishonored Checks.** Any dishonored check shall incur a service charge of ten percent (10%) of its face amount. Subsequent to the first dishonored check received by CITY for any payment, all subsequent payments, including Rent Payments and Additional Fees, shall be made by cashier's check.

4.8 **Consideration for Rent in Prior Periods.** As compensation to City for LICENSEE'S use of the Premises prior to execution of this Agreement, LICENSEE agrees to pay to City a lump sump total of TEN THOUSAND FIVE HUNDRED AND NO/100 (\$10,500.00).

5. Termination

5.1 **Termination for Cause.** Upon the occurrence of any one or more of the events listed below (hereinafter referred to as "Event of Default"), or as provided elsewhere in this Agreement, CITY may, without penalty, at its option and without prejudice to any other remedy to which it may be entitled at law or equity, or otherwise under this Agreement, terminate use or occupancy under this Agreement at any time, either in whole or in part, by giving at least sixty (60) days prior written notice thereof to LICENSEE with the understanding that all use of the PREMISES being terminated shall cease upon the date specified on such notice. LICENSEE shall equitably compensate CITY in accordance with the terms of this Agreement for the use of the PREMISES prior to the date specified in such notice, following inspection and acceptance of same by CITY. LICENSEE shall not, however, be entitled to any damages, including but not limited to, lost or anticipated profits should CITY choose to exercise its option to terminate.

5.2 Event of Default. Any of the following occurrences, conditions, or acts shall be deemed an "Event of Default" under this Agreement:

(a) if LICENSEE fails to pay amounts due under this Agreement within fifteen (15) days of receipt of written notice that such payments are overdue;

(b) if either party fails to observe or perform its obligations under this Agreement other than as provided in Section 5.2(a) above and does not cure such failure within thirty (30) days from the party's receipt of written notice of breach or such longer period as may be mutually reasonably agreed upon by the Parties to complete a cure commenced within the 30 day period.

5.3 Termination by LICENSEE. This Agreement may be terminated by LICENSEE, without penalty or further liability, as follows:

(a) upon written notice, if LICENSEE is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by LICENSEE; or if LICENSEE determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(b) on sixty (60) days written notice for any reason, other than 5.2(a) or (b) above, so long as LICENSEE pays CITY a termination fee equal to six (6) months rent at the current rate or rent at the current rate prorated to the end of CITY's fiscal year in which the termination occurs, whichever is greater.

5.4 Notice and Opportunity to Cure. Upon the occurrence of an Event of Default, CITY shall deliver to LICENSEE a Notice of Intent to Terminate that identifies in detail the Event of Default. If the Event of Default remains uncured for thirty (30) calendar days after delivery of such notice, CITY may terminate this Agreement and the license granted herein by delivering to the LICENSEE a Notice of Termination that identifies the effective date of the termination, which date shall not be less than sixty (60) days after the date of delivery of the Notice of Intent to Terminate; provided, however, that the time periods for notice of termination specified in this Section shall not apply to a default pursuant to Section 5.2(b).

5.5 Primary Function of PREMISES. The parties understand and agree that the primary function of the PREMISES is to serve as a public park

for the City of Plano and that the interests of LICENSEE are superseded by the public health, safety, and welfare of the citizens of Plano served by the public park. In the event that the Plano City Council or the Plano City Manager declares a public emergency or if there exists a threat to the public park facilities that would detrimentally impact public health, safety and welfare such that immediate action is necessary, LICENSEE shall, within thirty (30) days following receipt of written notice of such emergency and need to relocate and/or remove its IMPROVEMENTS from the PREMISES. In the event that LICENSEE is not able to timely respond, CITY may remove LICENSEE's IMPROVEMENTS without incurring any liability for damages of any type. Costs of removal and reattachment of IMPROVEMENTS shall be borne by LICENSEE.

5.6 Removal of Improvements. If LICENSEE's IMPROVEMENTS must be removed, whether or not such removal is done pursuant to Section 5.5 above, LICENSEE shall have the right to set up a portable mounted antenna, a cell on wheels (COW), and/or some other similar temporary structure approved by CITY, such approval not to be unreasonably withheld, conditioned or delayed, on CITY premises to allow LICENSEE to continue to provide communications services and all related purposes. LICENSEE may maintain its COW for a period of thirty (30) days past the date of removal of IMPROVEMENTS. To maintain the temporary antenna, COW, or other temporary structure for a period in excess of thirty (30) days, LICENSEE must obtain written approval from CITY, such approval not to be unreasonably withheld, conditioned or delayed. If the PREMISES are not in such condition as to be utilized by LICENSEE at the end of the initial thirty (30) day period, CITY shall provide as many additional thirty (30) day extensions for such temporary structures as are necessary to allow LICENSEE to continue its operations as authorized by this Agreement.

6. City's Right of Entry Onto Premises

6.1 CITY and CITY's agents, employees or contractors may enter upon the PREMISES, except LICENSEE's secured areas, for the purpose of performing repairs and maintenance work to the PREMISES. If maintenance work is required, CITY agrees to provide LICENSEE with reasonable notice prior to commencing such work to allow LICENSEE to remove the affected IMPROVEMENTS. Decisions as to the extent to which LICENSEE will be required to remove such IMPROVEMENTS shall be within the reasonable discretion of CITY. If, however, in the reasonable discretion of CITY, repair or maintenance requires immediate action on the part of CITY, CITY will take reasonable efforts to notify LICENSEE, but may enter the PREMISES, except LICENSEE's secured areas, and take such action as is required, except any action to remove any or all IMPROVEMENTS made by LICENSEE. In no event shall CITY be liable for any expenses associated with LICENSEE's removal of IMPROVEMENTS or for lost or anticipated profits. LICENSEE, at its expense and exclusive use, may use any and all reasonable and appropriate means of

restricting access to the LICENSEE's equipment shelter, as identified in the SITE PLAN.

7. Access

7.1 LICENSEE shall have the non-exclusive right to access the aforementioned PREMISES at any time, by contacting and providing notice to CITY. LICENSEE must be accompanied by CITY personnel at all times when accessing the PREMISES. If CITY is contacted by LICENSEE after the normal business hours of CITY for the purpose of accessing the aforementioned location, LICENSEE agrees to reimburse CITY for the actual cost of any CITY staff involvement necessary for this access.

7.2 LICENSEE's right of access is a contractual right for the benefit of LICENSEE only and nothing contained in this Agreement shall be construed to constitute a dedication or an easement. However, in the event this Agreement is assigned in accordance and in compliance with Section 22.9 herein, such right of access shall inure to the benefit of LICENSEE's assignee.

8. Damages to Property

8.1 **Damage and Restoration of Property.** LICENSEE shall immediately notify CITY of any and all damages resulting from, arising out of, or caused to, the PREMISES and CITY property surrounding the PREMISES, including but not limited to structural damages, electrical damages, damages to fencing, irrigation systems or landscaping by LICENSEE's operations, by LICENSEE, its officers, agents, employees and invitees. LICENSEE shall be solely responsible for the costs and the repair of all such damages and such repairs and/or replacements shall be completed within thirty (30) calendar days and shall be completed in a manner reasonably acceptable to CITY.

8.2 **Failure to Restore Property.** If LICENSEE does not make or perform any required maintenance or repairs to the PREMISES within the time period provided in Section 8.1, CITY shall have the right, but not the obligation, to make such repairs and to perform such maintenance, in which event LICENSEE shall pay CITY the cost thereof, plus an administrative fee of ten percent (10%) of the cost of the repairs, within thirty (30) calendar days of demand. Within thirty (30) days following the expiration or earlier termination of this Agreement, LICENSEE shall restore the PREMISES to the condition in which the PREMISES existed on the Effective Date of this Agreement, ordinary wear and tear and loss due to other casualty beyond LICENSEE's control excepted.

9. Electrical, Radio and Intermodulation Interference

9.1 LICENSEE shall operate its IMPROVEMENTS in a manner that will not cause radio frequency interference to the CITY or other licensees of the SITE in their use of any equipment or their conduct of any activity on the SITE pursuant to agreements which pre-date the installation and operation of LICENSEE's IMPROVEMENTS. LICENSEE's installation and operation of the IMPROVEMENTS shall be in compliance with all FCC requirements.

9.2 Prior to installation of any IMPROVEMENTS on the PREMISES, LICENSEE shall conduct bandwidth testing of its IMPROVEMENTS and CITY equipment to check bandwidth conflict between CITY's monitoring control system and LICENSEE's system. If such conflict occurs, LICENSEE shall take all steps necessary to resolve the conflict to the reasonable satisfaction of CITY. If the conflict cannot be remedied to the reasonable satisfaction of CITY, CITY may terminate this Agreement upon thirty (30) days written notice to LICENSEE.

9.3 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY or to any other licensee who is using the PREMISES prior to or at the time of LICENSEE's installation of its IMPROVEMENTS. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while such interference problems are studied and a means to eliminate the problem is determined. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.4 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY at anytime during or after installation or operation of LICENSEE's IMPROVEMENTS. Moreover, LICENSEE's use will not in any material way adversely affect or interfere with CITY's signal operation or its communication system. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while the interference problems are studied and a means to eliminate the problem is found. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.5 CITY will not grant a license to any other party for the use of CITY's PREMISES without including in that license a provision stating that the party's use will not in any way adversely affect or interfere with LICENSEE's signal operation or its communication system. Such provision shall be similar to the provisions required of LICENSEE herein. Furthermore, license agreements with third parties will state that prior to installation of improvements, such third parties shall be required to conduct bandwidth testing of its equipment and the equipment of LICENSEE to check bandwidth conflict between third-party equipment and LICENSEE's equipment. If such conflict occurs, CITY shall take all steps necessary to resolve the conflict caused by such third-party to the reasonable satisfaction of LICENSEE. If the conflict cannot be remedied to the reasonable satisfaction of LICENSEE, CITY shall terminate such third-party's license upon thirty (30) days written notice to such third-party. LICENSEE shall have the right to terminate this Agreement upon ten (10) days written notice to CITY if another user of the PREMISES causes interference with LICENSEE's operations, and such interference is not corrected within thirty (30) days following the notice to such third party user causing the interference. In the event that LICENSEE experiences interference caused by a third-party licensee, LICENSEE agrees that it shall seek recourse solely from such third party. No compensation shall be due from CITY for damages, including, but not limited to, lost or anticipated profits.

9.6 LICENSEE shall have the sole burden of, and be responsible for all costs associated with, alleging and proving that another user of the PREMISES is causing significant interference. CITY shall not be responsible for the costs associated with the resolution of any dispute between users of the PREMISES, but shall be responsible for the enforcement of any of LICENSEE's rights provided by Section 9.5 of this Agreement.

9.7 Upon report to LICENSEE, and all other third parties with communications equipment on that CITY-owned property, of interference with any CITY-owned/operated radio emergency system, LICENSEE shall, within six (6) hours after such notification, perform an assessment of the source of the interference. In the event such interference results from LICENSEE's operations, LICENSEE agrees, within twelve (12) hours of first notification, to propose a plan of action to eliminate such interference. CITY and LICENSEE agree to provide a technician or other qualified representative to assist in testing, formulating and coordination of a plan for resolution.

9.8 If such interference results from LICENSEE's operations, LICENSEE must correct such interference within twenty-four (24) hours of CITY's original notification to LICENSEE or shall discontinue all use of LICENSEE's IMPROVEMENTS upon the PREMISES. LICENSEE's

IMPROVEMENTS cannot be reactivated until LICENSEE can demonstrate that the cause of such interference has been eliminated.

9.9 Each party agrees to provide the other with a telephone number through which that party can contact a representative of the other on a 24-hour per day, 7 days a week basis for the purpose of implementing the requirements of this paragraph.

10. Condition of Premises

10.1 CITY shall maintain the PREMISES in compliance with all applicable statutes, ordinances, regulations and rules required for CITY uses of the PREMISES and surrounding property, and in a manner which will not interfere with LICENSEE's reasonable use of the PREMISES. Upon expiration, cancellation, or termination of this Agreement, LICENSEE will have the right to remove its IMPROVEMENTS from the PREMISES at LICENSEE's cost and expense. Title to all remaining improvements shall belong to CITY. However, upon vacation of the PREMISES, LICENSEE shall surrender the PREMISES in substantially the same condition as received, except for ordinary wear and tear and loss due to other casualty beyond LICENSEE's control, as determined by CITY. If, as determined by CITY, the PREMISES are not surrendered in satisfactory condition, the LICENSEE shall pay CITY within thirty (30) business days of demand an amount equal to the actual cost to restore the PREMISES to substantially the same condition as received plus an administrative fee of ten percent (10%) of the restoration costs..

10.2 LICENSEE shall have sole responsibility for the maintenance, repair, and security of its IMPROVEMENTS, and shall keep same in good repair and condition during the term and all renewals and holdover tenancies of this Agreement.

10.3 Landscaping. LICENSEE will be required to provide a "landscape buffer" around the perimeter of the of the ground lease area. The planting material to be use will be Elderica Pine with a minimum separation of ten feet. It is understood that the LICENSEE will be required to maintain the "landscape buffer," including affected turf, throughout the term of the Agreement. LICENSEE will not be responsible for installing and maintaining an automatic underground irrigation system in order to maintain the ground lease area. LICENSEE agrees to replace any landscaping that dies during the term of the Agreement.

10.4 LICENSEE shall keep the PREMISES free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or interference.

10.5 In the event CITY or any other licensee undertakes painting, construction, or other alterations on the PREMISES, LICENSEE shall take reasonable measures at LICENSEE's cost to cover all of LICENSEE's IMPROVEMENTS and protect such from paint and debris fallout which may occur during the painting, construction, or alteration process. CITY shall not be responsible for any damages or costs incurred by LICENSEE due to the actions or omissions of any third-party licensees upon the PREMISES. CITY shall provide thirty (30) business days written notice to all licensees upon the PREMISES prior to CITY undertaking such painting, construction, or other alterations.

10.6 By taking possession of the PREMISES, LICENSEE accepts the PREMISES in the condition existing as of the Effective Date. CITY makes no representation or warranty with respect to the condition of the PREMISES and CITY shall not be liable for any latent or patent defect in the PREMISES. CITY agrees to notify LICENSEE of the existence of any latent defects of which the CITY has knowledge.

11. Construction, Installation and Operation

11.1 **Construction, Installation and Operation.** LICENSEE may, at its sole cost and expense, construct, install, operate, maintain, monitor, reconfigure and repair its IMPROVEMENTS. Not less than thirty (30) days prior to the date on which LICENSEE intends to commence construction of its IMPROVEMENTS, LICENSEE shall provide to the CITY for its approval, such approval not to be unreasonably withheld, conditioned or delayed, a proposal containing: (i) a written notice and plan describing in reasonable detail, the steps necessary to complete LICENSEE's construction and installation; (ii) a list and description of all IMPROVEMENTS to be installed on the PREMISES; (iii) a list of all contractors, subcontractors and other entities that will perform LICENSEE's construction and installation work; and (iv) copies, certificates or other proof that LICENSEE or LICENSEE's contractors and subcontractors have obtained all necessary permits and licenses for the performance of LICENSEE's work. CITY's failure to respond in writing to LICENSEE's proposal within twenty (20) days of CITY's receipt of the proposal shall constitute CITY's rejection of the proposal, and LICENSEE shall not commence LICENSEE's work. CITY's grant of approval under this Section shall not be construed as an assumption of liability or indemnification; nor shall such approval replace or constitute any approval that LICENSEE is required to obtain from any duly authorized local authorities for any construction, installation or other element of LICENSEE's work.

11.2 **Marking and Lighting Requirements.** LICENSEE acknowledges that it shall be responsible for compliance with all tower or building marker and lighting requirements which may be required by the Federal Aviation Administration or the Federal Communication Commission in conjunction with LICENSEE's installation and maintenance of IMPROVEMENTS under this

Agreement, as well as any expenses, fees or fines associated with the compliance or the non-compliance of LICENSEE's installation or maintenance of IMPROVEMENTS under this Agreement. If the LICENSEE does not cure a condition of noncompliance within the time-frame allowed by the citing agency, CITY may thereafter terminate this Agreement upon thirty (30) days written notice to LICENSEE.

11.3 Inspection and Tests. Upon the Effective Date and for the term of this Agreement, LICENSEE shall have reasonable access as provided in Section 7 above to the SITE and PREMISES as are necessary and approved by CITY for the purpose of inspection and planning. LICENSEE shall retain, or shall cause to be retained, at its sole cost and expense, certified and insured structural engineers to perform such an inspection and provide a structural report as to the structural integrity of the PREMISES, its maximum load capacity, and other aspects of the PREMISES, as appropriate. LICENSEE shall provide to CITY a copy of the report. LICENSEE shall not conduct construction, installation, operation, maintenance or repair of IMPROVEMENTS in a manner inconsistent with the structural report.

11.4 Payment, No Mechanics Liens. LICENSEE shall make full and prompt payment of all sums necessary to pay the costs of all installation, repairs and alterations, improvements, changes and other work done by LICENSEE in or to the PREMISES. Title to the IMPROVEMENTS shall be held by LICENSEE. CITY shall not be responsible for or with respect to the performance of LICENSEE's Work. LICENSEE shall pay or cause to be paid all costs associated with LICENSEE's work. LICENSEE shall not suffer or permit to be enforced against any portion of the SITE or PREMISES any (i) mechanic's, materialman's, contractor, subcontractor or other lien or claim arising from or in any way related to LICENSEE's work, or (ii) any other claim, mortgage, security interest, encumbrance, lien or other charge. Within thirty (30) days after recordation of any lien, encumbrance, judgment or similar item which affects the SITE or PREMISES in any way, LICENSEE shall obtain the complete discharge and release thereof at LICENSEE's sole expense or expenditure (without any cost being imposed upon CITY.) However, LICENSEE shall have the right to contest, in good faith, any mechanic's or materialman's lien upon the condition that LICENSEE provides a bond or other form of security reasonably acceptable to CITY in an amount sufficient to hold CITY fully and completely harmless from any and all liability therefor or on account thereof.

11.5 Improvements to Premises; Removal. All IMPROVEMENTS constructed, installed and operated by or on behalf of LICENSEE shall remain LICENSEE's personal property and are not fixtures. LICENSEE shall remove all IMPROVEMENTS at its sole expense within thirty (30) days following the expiration or earlier termination of this Agreement, and LICENSEE shall repair any damage to the PREMISES or SITE caused by such removal and fully restore

the PREMISES or SITE to the same condition as existed prior to such damage at its sole cost and expense. LICENSEE shall provide to CITY in writing, by not later than the end of the prescribed thirty (30)-day period, notice that all IMPROVEMENTS have been removed in accordance with this Section. Failure of LICENSEE to remove any or all IMPROVEMENTS from the PREMISES and SITE within the prescribed thirty (30) days shall be construed as holdover pursuant to this Section, and all obligations and requirements, including payment of Rent Payments, shall continue to apply unless and until LICENSEE removes all IMPROVEMENTS and so notifies CITY.

11.6 Liability for Damage/Outages. LICENSEE shall be solely responsible for any damage caused by LICENSEE, its agents and/or contractors on or to the PREMISES or SITE that causes an interruption or outage in the services, operations or utilities of another licensee, and shall indemnify and hold harmless CITY, Signal Sites, Inc., and all of their respective partners, employees, agents, successors and assigns from all claims or actions for damages, including actual, incidental and consequential damages, brought by another licensee as a result of LICENSEE's, or its employees', contractors', agents', assigns' or licensees', willful, reckless or gross negligence or other conduct.

12. Communication Tower

12.1 This provision shall be implemented only in the instances where LICENSEE will be leasing ground space from the CITY and constructing a suitable support structure ("Communication Tower") upon which LICENSEE will install, operate, maintain, and repair LICENSEE's IMPROVEMENTS.

12.2 The LICENSEE shall have the right to construct a suitable support structure to be structurally capable of supporting up to three (3) wireless communications carriers. Structural design shall be provided to CITY for review and shall be in compliance with approved Site Plan reference para. 1.2. Possession of the Communication Tower remains that of LICENSEE. LICENSEE agrees to receive and reasonably negotiate requests of other wireless communications carriers ("COLLOCATEES"), according to then current Master Lease Agreement ("MLA") between LICENSEE and the COLLOCATEE, if applicable, to collocate their communications equipment at the PREMISES, but LICENSEE retains the sole right of approval for said COLLOCATEES, including but not limited to, type and placement of antennas and ancillary coax cable runs. and will not unreasonably withhold, condition or delay approval of COLLOCATEES. LICENSEE agrees to pay the CITY forty percent (40%) of any compensation received by LICENSEE from all such COLLOCATEES. LICENSEE shall not allow any carrier to use space designated by LICENSEE for LICENSEE's own use. In the event CITY leases ground space to any

COLLOCATEE, CITY shall retain one hundred percent (100%) of the rental compensation derived therefrom.

12.3 LICENSEE shall have the right to perform necessary tests including, but not limited to, Radio Frequency tests, and a structural analysis on such Communication Tower. Such costs shall be paid by the COLLOCATEE. A copy of any such structural analysis shall be provided to CITY.

12.4 CITY will provide notice to LICENSEE at least thirty (30) days prior to the commencement of co-location construction. LICENSEE shall not unreasonably withhold or obstruct access to such Communication Tower for the purposes of co-location.

13. Compliance with Laws

13.1 **By LICENSEE** LICENSEE, its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees, shall comply in all respects and at all times with all applicable local, state and federal laws, statutes, ordinances, regulations, rulings, requirements, conditions, orders, licenses, permits, covenants, restrictions, approvals and consents pertaining to LICENSEE's services, LICENSEE's construction, installation and operation work, IMPROVEMENTS and LICENSEE's use of the PREMISES. Without limiting the generality of the preceding sentence, LICENSEE shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety, including standard industry equipment safety regulations (e.g., NEBs, IEEE, Federal Communications Commission ("FCC") and BellCore standards) and shall not use the PREMISES or operate the IMPROVEMENTS in any manner which is inconsistent therewith. LICENSEE shall, at LICENSEE's sole cost and expense, promptly apply for and use its best efforts to obtain and maintain all necessary licenses, permits, approvals and consents required or necessary for the construction and operation of the IMPROVEMENTS. In the event LICENSEE fails to obtain any required license, permit, approval or consent to construct and operate the IMPROVEMENTS, through no fault of LICENSEE, LICENSEE shall have the right to terminate this Agreement in accordance with Section 5 of this Agreement.

13.2 **By CITY.** CITY shall comply in all material respects, and shall exercise commercially reasonable efforts to cause its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees to comply in all material respects with all laws, ordinances, orders, rules and regulations of all governmental or judicial authorities having jurisdiction thereof, whether state, federal or local, relating to CITY's leasehold interest in the SITE.

14. Complaint Resolution

If either LICENSEE or CITY receives a written complaint regarding LICENSEE's operations and such complaint, if reasonably determined by the City to be valid and if the cause of such complaint would cause LICENSEE to be in default of this Agreement, LICENSEE shall respond within twenty-four (24) hours of receipt of such written complaint. LICENSEE shall respond with a written explanation to each such complaint with detail of its investigation into the incident upon which the complaint was based (the "Incident") and the actions that LICENSEE has taken to resolve the Incident including, when necessary, all future actions LICENSEE will take to fully resolve the Incident or prevent a recurrence of the Incident. If the Incident cannot be resolved to the reasonable satisfaction of the complainant within fifteen (15) days, LICENSEE shall provide a schedule for completion of its plan to resolve or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If future action is necessary, LICENSEE shall include a schedule for completion of its plan to correct or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If CITY must step in and resolve a complaint regarding LICENSEE's operations, LICENSEE shall reimburse CITY for all reasonable expenses incurred. If CITY imposes upon LICENSEE a resolution to an Incident that does not involve a breach of the Agreement by LICENSEE, the breach by LICENSEE of any federal, state, or local law or ordinance or the commission by LICENSEE of any negligent or intentional act or omission to a person that causes bodily injury or property damage and LICENSEE does not wish to resolve the Incident in the manner directed by CITY, LICENSEE may terminate this Agreement upon thirty (30) days notice without penalty.

15. Utility Easements and Utility Cost

15.1 LICENSEE shall pay directly to all public utility service companies, before delinquency, all charges for the electricity, water and other utility services that LICENSEE consumes in connection with the installation and operation of LICENSEE's IMPROVEMENTS and which are separately metered and charged to LICENSEE by any public utility service company, without any expense therefor being imposed upon CITY.

15.2 If LICENSEE first obtains CITY's written consent, which may be given or withheld for any reason or no reason in the CITY's sole discretion, LICENSEE shall have the right to obtain electricity and other public utility services from the existing outlets available at the PREMISES. Absent such consent, LICENSEE shall obtain separate public utility services from any company that will provide such services to the PREMISES (which services may include an approved battery-powered or diesel standby power generator located on the PREMISES for LICENSEE's exclusive use).

15.3 LICENSEE shall not permit any charges for public utility services to accumulate or become a lien on the SITE. If LICENSEE fails to pay any such charge required to be paid by LICENSEE pursuant to this Section, CITY may, but shall not be required to, pay such charge on LICENSEE's behalf. If CITY pays any such charge on behalf of LICENSEE or incurs any cost with respect to any grant of any public utility service easement for the benefit of LICENSEE pursuant to this Section, LICENSEE shall reimburse and pay to CITY an amount equal to all such charges so paid and all such easement costs so incurred, within thirty (30) days after receipt of CITY's demand, as Additional Fees.

15.4 **Additional Utility/Power Equipment.** In the event that LICENSEE is required to or otherwise decides to install, operate and use additional equipment to provide electricity or other utility services required for the operations of LICENSEE's IMPROVEMENTS, such installation, operation and use shall comply in all respects with the terms and conditions set forth in this Agreement.

16. Taxes

16.1 LICENSEE agrees to timely reimburse CITY for all taxes that are assessed against CITY, if any, due to the real property taxes attributable to LICENSEE's IMPROVEMENTS or use of the PREMISES and IMPROVEMENTS constructed or maintained by LICENSEE on or about the PREMISES; provided, however, CITY shall use its best efforts to provide prior notification of any taxes for which LICENSEE is to be charged, so LICENSEE will have the opportunity to appear before the taxing authority and contest any assessment.

16.2 If LICENSEE fails to pay any such taxes after such contest of any assessment and for which LICENSEE is obligated, CITY may, but shall not be required to, pay such taxes on LICENSEE's behalf. If CITY pays any such taxes on behalf of LICENSEE pursuant to the preceding sentence, LICENSEE shall reimburse and pay to CITY an amount equal to any such taxes so paid, plus an administrative fee of ten percent (10%) of the taxes, within thirty (30) days after demand as Additional Rent.

17. Liability and Indemnification

17.1 LICENSEE shall at all times comply with all laws and ordinances and all applicable rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location, use, operation, and removal of the IMPROVEMENTS, authorized herein, and, **except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees**, shall fully release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants or employees against any and all claims, damages, lawsuits, losses, costs, or expenses which

may be sustained or incurred by CITY, its officers, officials, agents, servants or employees as a result of LICENSEE's installation, operation, or removal of such IMPROVEMENTS.

17.2 LICENSEE undertakes and assumes for its officers, agents, employees, servants, affiliates, contractors and subcontractors, all risk of dangerous conditions, if any on or about the PREMISES, and, **except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees**, LICENSEE hereby agrees to release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants and employees against and from any claim asserted or liability imposed upon CITY, its officers, officials, agents, servants, and employees for personal injury or property damage to any person arising out of LICENSEE's installation, operation, maintenance, condition or use of the PREMISES or LICENSEE's IMPROVEMENTS or LICENSEE's failure to comply with any applicable federal, state, or local statute, ordinance or regulation.

17.3 LICENSEE represents and warrants that its use of the PREMISES herein will not generate any hazardous substance, and it will not store or dispose on the PREMISES nor transport to or over the PREMISES any hazardous substance. The storage of acid storage batteries on the Premises as necessary for use in the event of a power outage, and the installation on the premises of a diesel or propane generator for emergency use to provide electricity in the event of a power outage shall not be a violation of this Section 17. LICENSEE further agrees to release, defend, indemnify, and hold CITY, its officers, officials, agents, servants and employees, harmless from and against any damage, loss, or expense or liability resulting from the generating, transporting, storage or disposal of such hazardous substances including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any applicable federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease, including diesel and propane fuel.

18. Insurance

18.1 LICENSEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at LICENSEE's sole expense, liability insurance and workers' compensation insurance, and a certificate of insurance shall be submitted to and approved by CITY prior to the Effective Date of this Agreement. LICENSEE must provide

insurance in compliance with **Appendix "B"**, attached hereto and incorporated herein for all purposes. At the time of an extension or renewal of this license agreement, LICENSEE shall provide a certificate of insurance for the added term that shows LICENSEE meets all insurance requirements under Appendix "B".

18.2 In the event that LICENSEE uses third-party contractors or subcontractors to provide services or to perform work upon the PREMISES, LICENSEE shall include in all contracts, subcontracts, and bid documents with such third parties, the requirement that: (a) each such third party shall provide CITY with separate certificates of insurance or such other documentation as is reasonably required by CITY to evidence that each such third party obtains and maintains insurance coverage consistent with the insurance requirements of this Agreement throughout the term of its contract with LICENSEE; and (b) such third party shall execute the Contractor Agreement, a copy of which is attached hereto and incorporated herein as **Appendix "B-1"**,. All such insurance certificates and other documents evidencing coverage shall contain an affirmative statement of the contractor, subcontractor, or other third party that such third party shall notify the City of Plano in the event that the policy lapses or is canceled for any reason.

19 Notice

19.1. Any notice or demand required or desired to be given to any Party pursuant to this Agreement shall be in writing, shall be delivered to the address set forth below and shall be deemed validly served, given, delivered or made only if (i) personally delivered (including delivery by a commercially-recognized courier which provides service between the point-of-origin and the point-of-destination); or (ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. Service by United States mail shall be deemed made on the date actually received.

CITY
City of Plano, Texas
c/o Mark Israelson
Customer & Utility Services
Department
PO Box 860277
Plano, Texas 75086

LICENSEE
T-Mobile Texas, LP
7668 Warren Pkwy
Frisco, TX 75034
Attn: Lease Administrator

With a copy to: Legal Dept.

CITY or LICENSEE may from time to time designate any other address for this purpose by written notice to the other party.

20. Remedies

20.1 LICENSEE's failure to timely remit payments due hereunder three times within a 12-month period shall be a breach of this Agreement for which LICENSEE shall be given fifteen (15) days from receipt of written notice from CITY (that such payment is overdue for the third time within such 12-month period) to cure. If LICENSEE fails to make payment as required; if LICENSEE abandons or vacates the PREMISES; or if LICENSEE becomes insolvent; and has not filed for bankruptcy, CITY shall have the right, at its option, in addition to and not exclusive of any other remedy CITY may have hereunder or by operation of law, with fifteen (15) days notice, require LICENSEE to re-enter the PREMISES and remove the IMPROVEMENTS therefrom. Under no circumstances shall CITY or anyone acting on CITY's behalf attempt to remove LICENSEE's communications equipment, except as provide for in Section 5.5 herein. Upon such occurrence, CITY may either (a) declare this Agreement and license granted herein at an end, in which event LICENSEE shall immediately pay CITY a sum of money equal to the total of (i) the amount of Rental Fees accrued through the date of termination; (ii) the amount by which the Rental Fees reserved for the balance of the term exceeds the amount of such rental loss that the LICENSEE proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other reasonable amounts necessary to compensate CITY for all detriment proximately caused by LICENSEE's failure to perform its obligations under this Agreement, or (b) without terminating this Agreement, relet the PREMISES, or any part thereof, for the account of LICENSEE upon such terms and conditions as CITY may deem advisable, and any moneys received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid; and, thereafter, toward payment of all sums due or to become due to CITY hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, LICENSEE shall pay CITY any deficiency monthly, notwithstanding that CITY may have received Rental Fees in excess of the Rental Fees stipulated in this Agreement in previous or subsequent months, and CITY may bring an action therefor as such monthly deficiency shall arise.

20.2 No re-entry and taking of possession of the PREMISES by CITY shall be construed as an election on CITY's part to terminate this Agreement, regardless of the extent of renovations and alterations by CITY, unless a written notice of such intention is given to LICENSEE by CITY.

21. Force Majeure

21.1 Notwithstanding any other provision in this Agreement to the contrary, neither Party will have any liability to the other with respect to its failure to perform its obligations under this Agreement, except for the payment of amounts due, if such failure is due to any of the following events (each a "Force

Majeure" event): (i) the failure of any equipment or software under the control of a person, firm or entity not affiliated with such Party; (ii) fire, flood, earthquake, law or government regulation; or (iii) any other cause beyond the reasonable control of such Party. In any such case, the Parties' time for performance under this Agreement and the term hereof, to the extent affected by any of the foregoing, shall be correspondingly extended; provided, however, that if such condition shall continue in effect for more than 180 days, either Party shall have the right to terminate this Agreement upon thirty (30) days notice.

22. Miscellaneous Provisions

22.1 Modifications. LICENSEE's operations and all CITY approved modifications to the PREMISES must at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.

22.2 Entire Agreement. This Agreement, together with all Appendices attached hereto and incorporated herein constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

22.3 Capacity. Both LICENSEE and CITY represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

22.4 Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be **in a court with jurisdiction over Collin County, Texas.**

22.5 Amendment. This Agreement may only be amended by the mutual written agreement signed by the parties hereto.

22.6 Legal Construction; Severability. In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

22.7 Nonwaiver. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given

hereunder. No covenant or conditions of this Agreement may be waived without consent of the Parties. It is further agreed that one (1) or more instances of forbearance by a Party in the exercise of its rights herein shall in no way constitute a waiver thereof.

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

22.9 Successors and Assigns.

- (a) CITY and LICENSEE each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither CITY nor LICENSEE will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of CITY. LICENSEE shall not assign, sublet, subcontract, transfer or allow the use of any interest in the PREMISES or any use of LICENSEE's IMPROVEMENTS, including but not limited to equipment, lines, channels or frequencies, on the PREMISES without the prior written consent of CITY. CITY's consent may be conditioned upon LICENSEE successfully obtaining contracts from such third parties wherein those parties agree to directly compensate CITY for all benefits incurred by the use of the PREMISES.
- (b) Notwithstanding anything in Section 22.9(a) to the contrary, LICENSEE may assign this Agreement to any parent, subsidiary or affiliate, or any entity that acquires all or substantially all of LICENSEE's assets in the market where the Premises are located without CITY'S consent. Notwithstanding any assignment permitted under this Section or otherwise under this Agreement, LICENSEE shall remain absolutely and unconditionally primarily liable to pay and perform each and all of the obligations set forth in this Agreement prior to said assignment and shall be relieved of all future performance, liability and obligations after said assignment.

- (c) If CITY shall, at any time, relinquish its ownership or otherwise dispose of the PREMISES, CITY shall be automatically released from all obligations under and pursuant to this Agreement that accrue after such disposition; provided, however, that such relinquishment of ownership or disposition of the PREMISES shall be subject to LICENSEE's rights under this Agreement. If the PREMISES are so disposed of, LICENSEE shall not disavow any of LICENSEE's obligations pursuant to this Agreement but shall attorn to the purchaser or transferee thereof for the performance of CITY's obligations under this Agreement.

22.10 Applicable Laws. This Agreement is entered into subject to the charter and ordinances of CITY as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws.

22.11 Subordination to Mortgage. As to any mortgage now or subsequently placed upon any property of which the PREMISES are a part, of which CITY shall notify LICENSEE in writing, shall be deemed to be prior in time and senior to the rights of the LICENSEE under this Agreement. LICENSEE subordinates all of its interest in the Premises created by this Agreement to the lien of any such mortgage. CITY and LICENSEE shall, at the other Party's request, execute any additional documents necessary to indicate this subordination, provided that such mortgage shall not disturb possession of LICENSEE hereunder.

22.12 Contract Interpretation. Both parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

EXECUTED on the _____ day of _____, 200____.

**T-MOBILE TEXAS, LP a Delaware
Limited Partnership
By: T-Mobile West Corporation, its
General Partner**

By: _____
Name: Jeff Hooper
Title: Area Director - Engineering

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

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

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

CITY'S TAX ID#: 75-6000640

12-28

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me this _____ day of _____, 2007, by Jeff Hooper, Area Director-Engineering of **T-MOBILE WEST CORPORATION**, a Delaware corporation, General Partner of **T-MOBILE TEXAS, LP**, a Delaware Limited Partnership, on behalf of said corporation and limited partnership.

Notary Public, State of Texas

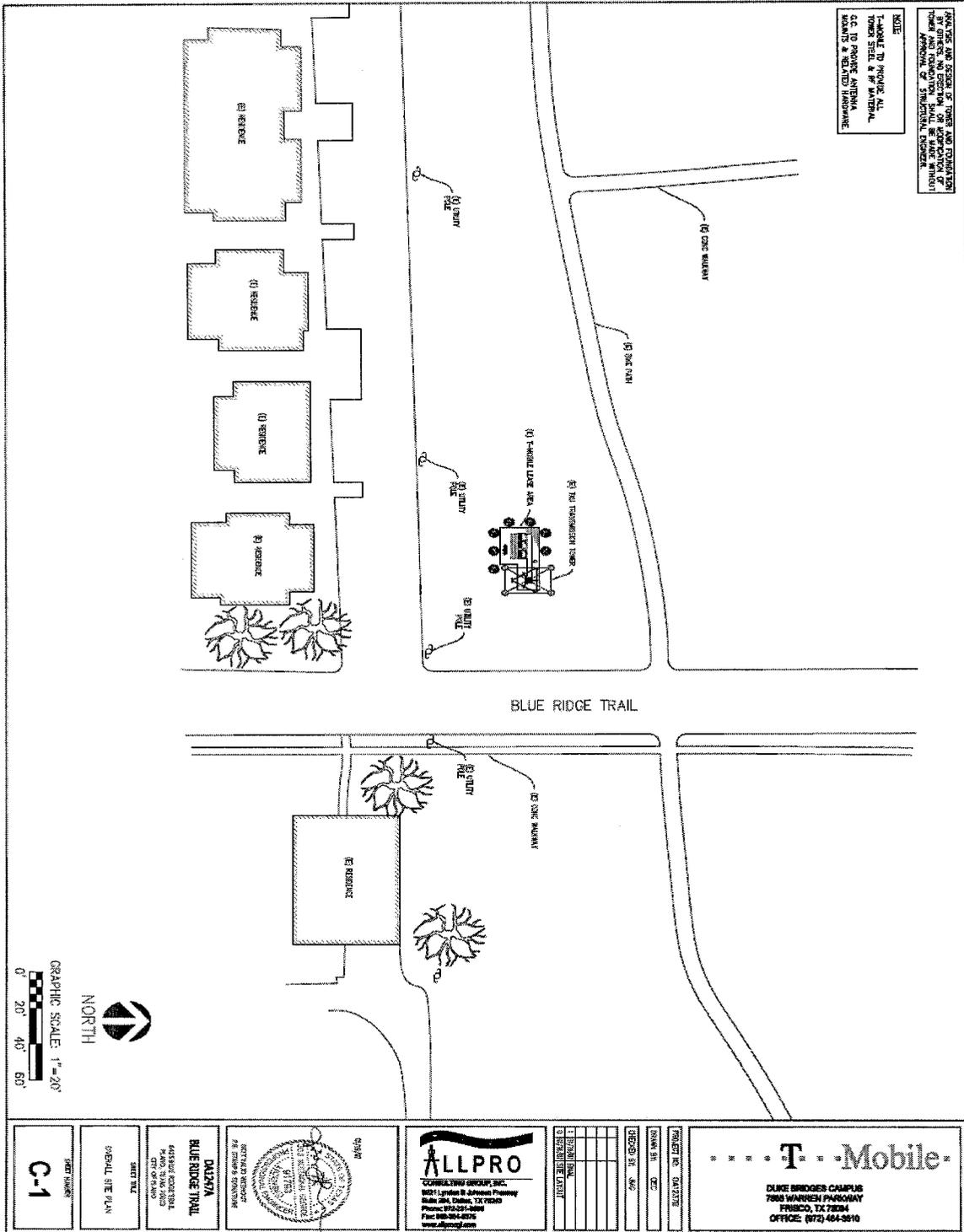
STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 200____, by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

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APPENDIX "A"
SITE PLAN (PAGE 1 of 2)



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**APPENDIX "B"
INSURANCE**

Licensee shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Licensee, Licensee's agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. ISO Form Number GL 0002 (Ed 1/72) or equivalent forms covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability; or ISO Commercial General Liability coverage ("occurrence" Form CG 0001). "Claims made" form is unacceptable except for professional liability.
2. Automobile liability shall include all owned, hired and non-owned vehicles.
3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.

B. Minimum Limits of Insurance

Licensee shall maintain limits not less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. \$10,000,000 Aggregate Policy will include coverage for (a) Premises-Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage, Fire Damage, Medical Expense.
2. Automobile liability: \$1,000,000 combined single limit per accident, for bodily injury and property damage.

3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.

C. Deductibles and Self-Insured Retentions

N/A

D. Other Insurance Provisions

The policies are to contain, or be generic endorsements with standard certificates for general and automobile liability coverage to contain the following provisions:

1. General Liability and Automobile Liability Coverage
 - (a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is Insured" automatically provides liability coverage in favor of the City as an additional insured.
 - (b) The Licensee's insurance coverage shall be primary insurance as respects Licensee's operations. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it in this respect.
 - (c) [INTENTIONALLY DELETED]
 - (d) The Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Licensee for the City.

3. All Coverages

Each insurance program required by this clause shall be directed to state that coverage shall not be suspended, voided, canceled or non-renewed, reduced in coverage or in limits, except after ten (10) days prior written notice by mail has been given to the City.

E. Acceptability of Insurers

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on standard insurance certificate forms and are to be received and approved by the City before work commences.

12-34

APPENDIX "B-1"

**CONTRACT BY, BETWEEN AND AMONG
T-MOBILE TEXAS, LP,
CHAPMAN CONSTRUCTION COMPANY, LP,
AND
CITY OF PLANO, TEXAS**

THIS CONTRACT is made and entered by, between and among T-Mobile Texas, LP, hereinafter referred to as "Licensee," and Chapman Construction Company, LP, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, hereinafter referred to as "City," to be effective subsequent to execution by the Plano City Manager or his designee.

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

**I.
SCOPE OF WORK**

Contractor shall provide all supervision, labor, materials and equipment necessary for the performance of all obligations required under the terms of the contract between Licensee and Chapman Construction Company, LP dated January 1, 2007.

**II.
THIRD PARTY INTEREST**

It is agreed by and between the parties that the City has an interest in the proper performance of this Contract, and that the City may bring suit for failure to comply with the specifications.

Contractor acknowledges that Licensee has no property interest in the premises provided by the City, and agrees that Contractor will not file any Lien against the City's premises should a dispute arise between Licensee and Contractor.

Contractor agrees that it shall not provide any work or services of any nature unless Contractor has obtained the insurance coverage as specified herein.

12-35

III. VENUE

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

IV. INDEPENDENT CONTRACTOR

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

V. INSURANCE AND CERTIFICATES OF INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance as set forth below.

Licensee shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Licensee, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability; or ISO Commercial General Liability coverage ("occurrence" Form CG 0001). "Claims made" form is unacceptable except for professional liability.
2. Automobile liability shall include all owned, hired and non-owned vehicles.

3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
 4. Professional Liability (when applicable).
- B. Minimum Limits of Insurance
Licensee shall maintain limits not less than:
1. Commercial General Liability: \$500,000 per occurrence for bodily injury, personal injury and property damage. \$1,000,000 Aggregate Policy will include coverage for (a) Premises - Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage (when applicable), Fire Damage, Medical Expense. NOTE: The aggregate loss limit applies to each project.
 2. Automobile liability: \$500,000 combined single limit per accident, for bodily injury and property damage.
 3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.
 4. Professional Liability.
- C. Deductibles and Self-Insured Retentions
Any deductible or self-insured retentions must be declared to and approved by the City.
- D. Other Insurance Provisions
The policies are to contain, or be endorsed to contain the following provisions:
1. General Liability and Automobile Liability Coverages
 - (a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy

under "Who is an Insured" automatically provides liability coverage in favor of the City.

- (b) The Licensee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.
- (d) The Licensee's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage
The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Licensee for the City.

3. All Coverages
Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after ten (10) days prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the City and are to

be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**VI.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**VII.
SEVERABILITY**

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

**VIII.
ENTIRE AGREEMENT**

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

**IX.
CONTRACT INTERPRETATION**

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

**X.
SUCCESSORS AND ASSIGNS**

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

**XI.
HEADINGS**

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

**XII.
THIRD PARTY BENEFIT**

The parties to this Contract agree that Contractor will obtain and maintain insurance coverage as specified herein until completion of all work and services by Contractor for Licensee. Contractor shall release, defend, indemnify and hold harmless City from all damages, attorneys' fees and costs of any kind incurred by City due to Contractor's breach of its obligations hereunder. The parties further agree that this Contract is intended to benefit the City of Plano, its officials, officers, employees, agents, successors and assigns, each of which may enforce its terms in a court of competent jurisdiction either individually or collectively.

IN WITNESS WHEREOF, the parties have executed this Contract by signing below. The effective date of this Contract shall be the date of City Council approval.

**LICENSEE: T-MOBILE TEXAS, LP
By: T-MOBILE WEST CORPORATION, its
General Partner**

BY: _____

Name: _____

Title: _____

**CONTRACTOR: CHAPMAN
CONSTRUCTION COMPANY, LP
By: CHAPMAN CONSTRUCTION
MANAGEMENT COMPANY, INC., General
Partner**

BY: _____

Name: _____

Title: _____

12-40

CITY OF PLANO, TEXAS

Date: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

12-41

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me this _____ day of _____, 2007, by Jeff Hooper, Area Director-Engineering of **T-MOBILE WEST CORPORATION**, a Delaware corporation, General Partner of **T-MOBILE TEXAS, LP**, a Delaware Limited Partnership, on behalf of said corporation and limited partnership.

Notary Public, State of Texas

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200____, by _____, _____, of Chapman Construction Management Co. Inc., a Texas Corporation, General partner of Chapman Construction Company, L.P., a Texas limited partnership, on behalf of said corporation and limited partnership.

Notary Public, State of Texas

12-42

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 200__ by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

EXHIBIT "A"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

Name of Contractor

By: _____
Signature

Print Name

Title

Date

STATE OF _____ §

COUNTY OF _____ §

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

Notary Public, State of _____

12-44
COMMUNICATIONS FACILITIES LICENSE