

CITY COUNCIL

1520 AVENUE K



DATE: 4/12/2010
CALL TO ORDER: 7:00 p.m.
INVOCATION: Reverend Alice Coder
First United Methodist Church
PLEDGE OF ALLEGIANCE: Pack 220, Jr. Webelos
Harrington Elementary

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>PROCLAMATIONS & SPECIAL RECOGNITION</u></p> <p>Special Recognition: Dr. Mark Gamber, Chief Medical Officer Accreditation</p> <p>Proclamation: National Volunteer Week</p> <p>Presentation: City of Plano Building Inspections Department - 2010 Award for Excellence</p> <p><u>OATHS OF OFFICE</u></p> <p><u>Photographic Traffic Signal Advisory Committee</u></p> <p>Joseph Celso Phil Head Greg Price Michael Shea</p> <p><u>COMMENTS OF PUBLIC INTEREST</u></p> <p><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>CONSENT AGENDA</u> <u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p><u>Approval of Minutes</u></p> <p>(a) March 22, 2010 April 6, 2010</p> <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p> <p>(b) Bid No. 2010-70-B for Tennis Facility Lighting Renovation, Plano Senior High School to NEMA3 Electrical Contractors, Inc. in the amount of \$148,270.</p> <p>(c) Bid No. 2010-58-C for a one (1) year contract with three (3) City optional renewals for mowing and landscaping service for Public Works to TruGreen LandCare, LLC in the amount of \$51,485 and authorizing the City Manager to execute all necessary documents.</p> <p>(d) Bid No. 2010-90-B for the purchase of three (3) Ballfield Groomers for Fleet Services to be utilized by Athletic Field Maintenance to Kromer Co. LLC in the amount of \$63,159.</p> <p>(e) Bid No. 2010-71-C for a one (1) year contract with three (3) optional one year renewals for Plano Police Department Pistol Lights and Holsters to GT Distributors, Inc. in the amount of \$65,470 and authorizing the City Manager to execute all necessary documents.</p> <p>(f) Bid No. 2010-75-C for a one (1) year contract with three (3) optional one year renewals for the purchase of Athletic Field Bulk Fertilizer for the Parks and Recreation department to Lonestar Ranch and Outdoors in the amount of \$73,127 and authorizing the City Manager to execute all necessary documents.</p> <p>(g) Bid No. 2010-48-C for a one (1) year contract with three (3) City optional renewals for the purchase of large and small plastic meter box lids to Bass and Hays Foundry, Inc. in an estimated amount of \$114,120 and authorizing the City Manager to execute all necessary documents.</p> <p>(h) Bid No. 2010-78-B for Alley Reconstruction – 16th Street & US 75 to Jim Bowman Construction Co., L.P. in the amount of \$210,458.</p> <p>(i) Bid No. 2010-81-B for 14th Street and George Bush Turnpike Waterlines to Jim Bowman Construction Co., L.P. in the amount of \$764,931.</p> <p>(j) Bid No. 2010-83-B for Russell Creek Sewer Main Rehab – Phase I to Insituform Technologies, Inc., in the amount of \$1,118,400.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>Purchase from an Existing Contract</p>	
(k)	<p>To approve the purchase of mobile computer workstations for the Fire Department in the amount of \$206,395 from Motorola Inc. through an existing contract/agreement with Texas Department of Information Resources (DIR), and authorizing the City Manager to execute all necessary documents. (DIR-SDD-1304)</p>	
(l)	<p>To approve the purchase of a maintenance agreement, for Wireless Mesh Network Devices, in the amount of \$209,950 from Motorola through an existing contract with the Houston-Galveston Area Council, and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. RA-01-08)</p>	
(m)	<p>To approve the purchase of material testing services for 14th Street Reconstruction, K Avenue to Ridgewood Drive, in the amount of \$89,991 from GME Consulting Services, Inc. through an existing City of Plano contract and authorizing the City Manager to execute all necessary documents. (2009-186-D)</p>	
	<p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p>	
(n)	<p>To approve the purchase of Justice Center Equipment Replacement in the amount of \$60,346 from Trane U.S., Inc. dba Trane, through an existing contract/agreement with The Cooperative Purchasing Network (TCPN) and authorizing the City Manager to execute all necessary documents. (TCPN Contract Number R4669)</p>	
	<p><u>Adoption of Resolutions</u></p>	
(o)	<p>To repeal Resolutions No. 99-9-35(R) and 2008-9-13(R) and thereby dissolving the Plano Public Art Committee; and providing an effective date.</p>	
(p)	<p>To approve the terms and conditions of an Amended Contract between Helmick Sculpture LLC and the City of Plano for artwork in the Visitor Center of Oak Point Park and Nature Preserve; authorizing its execution by the City Manager; and providing an effective date.</p>	
(q)	<p>To approve the terms and conditions for the purchase of Lifepak defibrillators and related accessories from Physio-Control, Inc. in an amount not to exceed \$329,840 and technical support service agreement for a five (5) year bundled term in an amount of \$50,900 for use in the City's emergency services vehicles; authorizing the execution of any and all documents by the City Manager; and providing an effective date.</p>	
(r)	<p>To approve the renewal of an Agreement with Oracle USA, Inc., a sole source vendor, for an amount not to exceed \$179,942 for maintenance and support of Peoplesoft Enterprise Software; authorizing the City Manager to execute any and all documents in connection therewith; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Adoption of Ordinances</u></p> <p>(s) To repeal Ordinance No. 2005-4-18 concerning the Plano Public Art Program and various matters related thereto; providing for the termination of the Public Art Program; providing for the completion of existing public art projects and the maintenance of completed public art; and providing 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)	Public Hearing and consideration of an Ordinance to designate a certain area within the City of Plano, Texas, as Reinvestment Zone No. 122 for tax abatement consisting of a 16.5852 acre tract of land located at the northeast corner of the intersection of Technology Drive and Klein Road in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.	
(2)	Consideration of a Resolution to approve the terms and conditions of an Agreement by and between the City of Plano, Texas, Kracker Enterprises LLC, a Texas limited liability company, and various Tenants in Common Owners acting by and through their authorized agent Rainier Asset Management LLC, a Texas limited liability company; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager; and providing an effective date.	
(3)	Public Hearing and consideration of an Ordinance to designate a certain area within the City of Plano, Texas, as Reinvestment Zone No. 121 for tax abatement consisting of a 10.087 acre tract of land located north of the intersection of Mapleshade Lane and Silverglen Drive in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.	
(4)	Consideration of a Resolution to approve the terms and conditions of an Agreement by and between the City of Plano, Texas, and Atmos Energy Corporation, a Texas and Virginia corporation; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(5)	<p>Consideration of a Resolution to approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Atmos Energy Corporation, a Texas and Virginia corporation; authorizing its execution by the City Manager; and providing an effective date.</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/2010		
Department:		City Manager's Office		
Department Head		Thomas Muehlenbeck		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Special Recognition: Dr. Mark Gamber, Chief Medical Officer Accreditation				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	



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COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
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Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Proclamation: National Volunteer Week				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/2010		
Department:		City Manager's Office		
Department Head		Thomas Muehlenbeck		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Presentation: Plano Building Inspections Department - 2010 Award for Excellence				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
March 22, 2010**

COUNCIL MEMBERS

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

STAFF

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

Mayor Dyer called the meeting to order at 5:08 p.m., Monday, March 22, 2010, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Council Member Callison. Mayor Pro Tem LaRosiliere arrived at 5:09 p.m. Mayor Dyer then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice/Litigation, Section 551.071, and to receive information regarding Economic Development, Section 551.087 for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Dyer reconvened the meeting back into the Preliminary Open Meeting at 6:06 p.m.

Consideration and action resulting from Executive Session discussion:

No items were brought forward.

Personnel Appointments

Photographic Traffic Signal Advisory Committee

The Council appointed the following members:

Mayor Dyer – Phil Head – two-year term
Deputy Mayor Pro Tem Dunlap – Michael L. Shea – two-year term
Council Member Miner – Greg Price – one-year term
Council Member Smith– Joe Celso – three- year term
Council Member Harris – Tase E. Bailey – two-year term

Mayor Dyer advised that remaining appointments would be brought back on a future agenda.

Discussion and direction concerning the funding and administration of grant programs supporting cultural and arts programs, heritage preservation activities, special events, social services and housing programs.

Director of Planning Jarrell advised that the recommendations include various reductions in the amount of funding, caps on the use of funds, options to determine amounts prior to the August Budget Worksession and further that grant deliberations begin in early May. She spoke to issues that may arise if there were changes to the use of grant funding by museums on City-owned property for salaries/administration as these are not covered by other funding. City Manager Muehlenbeck spoke to consideration of lowering the percentage of funding (from 15% to 10%) and to making a flat amount of money available. He further spoke to deficits for Plano Centre and consideration of establishing reserves for Centre improvements or a new facility.

Ms. Jarrell responded to Deputy Mayor Pro Tem Dunlap regarding volunteer hours and advised she would bring back information regarding the allocation of time between meetings and tasks. Mr. Muehlenbeck spoke to collecting residency information from visitors to demonstrate the link between programs and tourism. Ms. Jarrell spoke to funding in other cities and to setting the Buffington Community Services Grants at \$250,000 rather than \$2 per capita. She further advised regarding funding for new events which decreases over time, spoke to the recommendation to set a figure for funding of Urban-Town Center Grants prior to the Budget Worksession and to maximizing the use of Community Development Block and HOME grants funds for Staff time.

Jenifer Balch and Ron Eubanks, of Rover Dramawerks stated concern regarding the impact of decreased funding and the positive influence of the art on the community. City Manager Muehlenbeck advised that Staff would work to establish a set amount for funding and percentages for distribution and spoke to consideration of balancing the budget for Plano Centre and establishing a reserve fund. He spoke to reductions in allocations for 2009-10 based on lower hotel/motel tax figures.

Discussion and Direction Regarding Revenue Generating Municipal Marketing

Deputy City Manager Glasscock spoke to generating incremental revenue for the City through partnerships consistent with and appropriate for the City's mission advising that it would raise revenues through sponsorship/partner programs; recruit participation of leading brand marketers; and develop long-term community partners. He advised regarding considerations including the need to be sensitive to community values; develop policies and procedures; review existing contracts and relationships; and include public participation. Mr. Glasscock spoke to possible programs utilizing parks, kiosks, City facilities, vehicles, events, and vending machines.

Assistant City Manager Israelson spoke to use of the City name for marketing by outside vendors. Mr. Glasscock spoke to possible issues of perception, Mayor Dyer spoke to staying out of competition with private City businesses and Deputy Mayor Pro Tem Dunlap spoke to rental of City rights-of-way. The Council stated concurrence in directing Staff to move to the next level.

Council Items for discussion/action on future agendas

Mayor Dyer requested a presentation of the online checkbook.

Consent and Regular Agendas

Deputy Mayor Pro Tem Dunlap requested that Consent Agenda Item "E," Bid No. 2010-60-B, 2008-2009 Sidewalk Construction Project to HMC Asphalt and Concrete, Inc. in the amount of \$214,900 be removed for individual consideration due to a possible conflict of interest.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:55 p.m.

Phil Dyer, Mayor

ATTEST

Diane Zucco, City Secretary

CITY COUNCIL
March 22, 2010

COUNCIL MEMBERS

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

STAFF

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

Mayor Dyer convened the Council into the Regular Session on Monday, March 22, 2010, 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 Bryan Stamper of Grace Presbyterian Church and the Pledge of Allegiance was led by Daisy Girl Scout Troop 3037 of Shepard Elementary.

Mayor Dyer and City Manager Muehlenbeck presented Budget Director Karen Rhodes-Whitley with her 20-Year Anniversary Certificate and Mayor Dyer administered an oath of office to Shep Stahel, incoming member of the North Texas Municipal Water District Board.

Comments of Public Interest

Citizen of the City T.J. Johnson requested a future agenda item to discuss suspension of negotiations with the Boys and Girls Club for management of the Douglass Community Center, finding different ways to address the City budget and working with the community to determine the identity of the center and strategies for enhancing its success. She spoke to determining whether the center should be treated as a park (not requiring fees) or as a recreation center, its historic significance, and the public's right to view the contract. Citizen of the City Eleanor Evans requested the Council not approve the contract, spoke to the center's designation in 1987, its historic significance and to consideration of its viability. Citizen of the City Ralph Williams spoke to activities at the center and requested an agenda item directing Staff to find another solution.

Citizen of the City Thomas A. Ashmore spoke to the center as a reference for cultural education and to budget issues of the Boys and Girls Clubs. Pastor Joshua of Shiloh Baptist Church spoke to preserving the heritage, historical significance and dignity of the Center and giving community leaders an opportunity to find an alternative. He requested an agenda item suspending negotiations and spoke to Council approval of funds for improvement of the Pecan Hollow Golf Course. Citizen of the City Grady L. Dunbar spoke regarding his pride in the City and the history of the center. Citizen of the City Dollie Thomas spoke to dedication of the center, questions regarding its function and requested reconsideration of the contract. Citizen of the City David M. Smith spoke regarding the need for citizen input and requested a future agenda item to suspend negotiations and allow for a visioning process and request for proposals. Citizen of the City David L. Perry, Sr. spoke to the function of the center, its service to the whole community and requested considering alternatives.

Consent Agenda

Deputy Mayor Pro Tem Dunlap requested that Consent Agenda Item “E” be removed for individual consideration due to a possible conflict of interest.

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Miner, the Council voted 7-0 to approve all remaining items on the agenda as recommended and as follows.

Approval of Minutes

March 8, 2010 (Consent Agenda Item “A”)

Approval of Expenditures

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

Bid No. 2010-64-B for the purchase of Audio/Video Media Equipment for the Police Department in the amount of \$70,104 to The Whitlock Group, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “B”)

Bid No. 2010-68-B for Police Building Evidence Storage Ventilation Improvements, in the amount of \$146,463 to Gulf Energy Systems, Inc., and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “C”)

Bid No. 2010-69-B, 2009-10 Pavement Maintenance Phase I – F Avenue, Park Boulevard, Spring Creek Parkway and Wyeth Drive to Hencie International, Inc. in the amount of \$426,366. (Consent Agenda Item “F”)

Bid No. 2010-52-B for one (1) McCloskey model 733 REW, Trommel Screen for the Sustainability Department to McCourt and Son's Equipment, Inc. in the amount of \$513,980. (Consent Agenda Item “G”)

Purchase from an Existing Contract

To approve an expenditure for a maintenance agreement between Motorola and the City of Plano in the amount of \$209,950 for Wireless Mesh Network Devices through an existing contract with the Houston-Galveston Area Council, and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. RA-01-08). (Consent Agenda Item “H”) (Item pulled)

To approve an expenditure for an annual mesh hardware maintenance contract between Scientel Wireless, LLC and the City of Plano in the amount of \$440,000 through an existing contract with the Houston-Galveston Area Council, and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. CW10-09). (Consent Agenda Item “A”)

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

To approve a contract for the purchase of Structural and Roof Repairs at Harrington Library in the amount of \$67,987 from Weatherproofing Technologies, Inc. through an existing contract/agreement with The Cooperative Purchasing Network (TCPN) and authorizing the City Manager to execute all necessary documents. (TCPN Contract Number R4812) (Consent Agenda Item “A”)

To approve of an engineering contract by and between the City of Plano and Lina T. Ramey and Associates, Inc. in the amount of \$212,000 for the engineering design of the Intersection Improvements – Plano Parkway & Los Rios Boulevard Project, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “A”)

Approval of Change Order

To Hencie International, Inc., increasing the contract by \$82,983 for the 2008-2009 Residential Concrete Pavement Rehabilitation Project, Zone I4, Project No. 5969, Change Order No. 1, Bid No. 2009-79-B. (Consent Agenda Item “A”)

To Weir Bros. Inc., increasing the contract by \$85,622 for Rasor Road from Ohio Drive to SH 121, Project No. 5715, Change Order No. 3, Bid No. 2009-81-B. (Consent Agenda Item “A”)

To Motorola USA, Inc., increasing the contract by \$1,521,001 for CSP P25 Trunk Radio System simulcast site additions to Communications Tower and Schoolhouse, Change Order No. 2, Bid No. 2009-137-C. (Consent Agenda Item “A”)

Adoption of Resolutions

Resolution No. 2010-3-8(R): To endorse certain legislative changes relating to the Sunset Review of the Texas Public Utility Commission and the Special Purpose Review of the Electric Reliability Council of Texas, and providing an effective date. (Consent Agenda Item “A”)

Resolution No. 2010-3-9(R): To approve the terms and conditions of a grant awarded by the American Recovery and Reinvestment Act of 2009; Edward Byrne Memorial Justice Assistance (JAG) State Formula Program through the Criminal Justice Division of the Office of the Governor of Texas to the City of Plano, Texas for Audio/Visual Media equipment; authorizing the execution of any and all documents in connection therewith by the City Manager; and providing an effective date. (Consent Agenda Item “A”)

Resolution No. 2010-3-10(R): To authorize the filing of application for federal funds in an amount not to exceed \$59,500 under the Edward Byrne Memorial Justice Assistance (JAG) State Formula Program through the Office of the Governor of Texas, Criminal Justice Division; designating Gregory W. Rushin as authorized representative of the City of Plano for the purpose of giving required assurances and acting in connection with said application and providing required information; and declaring an effective date. (Consent Agenda Item “A”)

Resolution No. 2010-3-11(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, concerning intersection improvements at Custer Road and Park Boulevard, Spring Creek Parkway and Jupiter Road, Ohio Drive and SH 121, and Independence Parkway and Parkhaven Drive; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “A”)

Resolution No. 2010-3-12(R): To authorize outside employment with Southern Methodist University for the City Attorney, Diane Wetherbee; and providing an effective date. (Consent Agenda Item “A”)

Resolution No. 2010-3-13(R): To authorize the City to enter into a lawsuit against the Texas Commission on Environmental Quality with regard to the Voda Petroleum Site; authorizing the City Attorney to enter into any and all agreements in connection therewith; and providing an effective date. (Consent Agenda Item “A”)

Adoption of Ordinances

Ordinance No. 2010-3-14: To amend section 9-22(c) of Article II, Food Care and sections 9-31 and 9-32 of Article III, Personnel, of Chapter 9, Food Code, to incorporate new health and cleanliness standards for food establishment employees as allowed by State law and to correct a reference under the food care regulation; and providing a penalty clause; a severability clause; a repealer clause, a savings clause; a publication clause and an effective date. (Consent Agenda Item “A”)

Ordinance No. 2010-3-15: To amend Sections 14-114(a), 14-116, 14-117, and 14-120 of Article VIII, Additional Regulations for Tattoo and Certain Body Piercing Studios, to Chapter 14, Offenses-Miscellaneous, of the Code of Ordinances to clarify penalties, incorporate the name change of the Department of State Health Services; providing new language for Inspections and Permitting Regulations and providing a penalty clause, a savings clause, a severability clause, a repealer clause, a publication clause and an effective date. (Consent Agenda Item “A”)

Ordinance No. 2010-3-16: To approve the terms and conditions of a Boundary Adjustment Agreement between the City of Plano, Texas and the Town of Hebron, Texas; authorizing the City Manager to execute the agreement on behalf of the City of Plano; and providing an effective date. (Consent Agenda Item “A”)

Ordinance No. 2010-3-17: To transfer the sum of \$8,616 from the General Fund unappropriated fund balance to the General Fund operating appropriation for fiscal year 2009-10 for the purpose of providing additional funds for the difference in preliminary estimated costs and actual costs associated with conducting a Special Election on January 30, 2010 to fill the vacant Place 3 City Council position; amending the budget of the City and Ordinance 2009-9-13, 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 “A”)

Ordinance No. 2010-3-18: To amend Section 12-104.5 of Article V Stopping, Standing and Parking, of Chapter 12 Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano by deleting the provision regarding parking at the Municipal Center; providing a repealer clause, a severability clause, a savings clause, a penalty clause, a publication clause and an effective date. (Consent Agenda Item “A”)

Ordinance No. 2010-3-19: To amend Sec. 10-16 Membership of Article II Advisory Board of Chapter 10 Library, of the Code of Ordinances of the City of Plano, to increase the number of members and increase the number required for a quorum; and providing a repealer clause, a severability clause, and an effective date. (Consent Agenda Item “A”)

END OF CONSENT

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

Bid No. 2010-60-B, 2008-2009 Sidewalk Construction Project to HMC Asphalt and Concrete, Inc. in the amount of \$214,900. (Consent Agenda Item “E”)

Upon a motion made by Council Member Callison and seconded by Council Member Smith, the Council voted 6-0 to approve Bid No. 2010-60-B, 2008-2009 Sidewalk Construction Project to HMC Asphalt and Concrete, Inc. in the amount of \$214,900.

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

Presentation of the 2009-10 Status Report and Three-Year Financial Forecast to City Council. (Regular Agenda Item “1”)

Budget Director Rhodes-Whitley advised that the forecast provides an opportunity to identify challenges and opportunities facing the City over the next three years; stated that the annual budget adopted must be balanced; fund deficits are assumed to be rectified in the year projected; and that the forecast does not include any reductions set to be discussed during the Core Business Matrix Session.

Ms. Rhodes-Whitley spoke to projected deficits in the General Fund (\$15.4 million in 2010-11, \$29.9 million in 2011-12 and \$28.1 million in 2012-13) and the transfer needed from operations to debt (1.66 cents in 2010-11). She spoke to the impact of events on the budget including a decline in sales tax, an estimated decrease in total property values of 5%, a decrease in gas franchise fees, and a large increase in the number of homeowners applying for the over-65 tax freeze. Mr. Muehlenbeck spoke to bonds approved by citizens and issues related to continuing to support debt through General Fund transfers.

Ms. Rhodes-Whitley advised that projections include no salary increases; attrition at the rate of 2.5% for the General Fund and .5% for others; health insurance and RSP increases; 1% increase to fund TMRS system changes; funding of the Economic Development Incentive Program; operations/maintenance expenditures increasing at the rate of inflation; and \$1 million for library books. She advised that Community Investment Projects will be absorbed in the existing tax rate including the opening of Fire Station#13 and debt for the Arts of Collin County to be sold within the forecast, but that program enhancements/discretionary items are not included. Ms. Rhodes-Whitley spoke to increases from the North Texas Municipal Water District proposed to be passed through October 1 of each year and declines in the hotel/motel tax revenues resulting in lower grant amounts. She spoke regarding proactive measures taken including Core Business Matrix Worksessions and a City Manager appointed Budget Reduction Committee. City Manager Muehlenbeck requested more information regarding rollback rates. Ms. Rhodes-Whitley spoke to the proactive measures taken by Staff resulting in a lower deficit than first anticipated and responded to the Council regarding payments for debt service.

Public Hearing on the need to continue the City of Plano's Juvenile Curfew Ordinance (Ordinance No. 94-11-11); to receive a city staff report on the effectiveness of the Juvenile Curfew Ordinance; and to determine whether the ordinance should be abolished, continued, or modified. (Regular Agenda Item "2")

Assistant Chief Drain spoke to the requirement to hold a Public Hearing to review the curfew ordinance, reviewed its history and spoke to defenses to prosecution and enforcement. He spoke to the small increase in population and the decrease in juvenile crime over the last ten years and cited the ordinance as an effective tool.

Mayor Dyer opening the Public Hearing. No one spoke for or against the item. The Public Hearing was closed.

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Miner, the Council voted 7-0 to continue the ordinance (Ordinance No. 94-11-11).

Ordinance No. 2010-3-20: To provide certain Heritage Resources located in the City of Plano, Texas, partial exemption from the current year Ad Valorem Taxation in the amount of \$31,142 providing a severability clause and an effective date and consideration of an appeal of the Heritage Commission's recommended denial of tax exemption for 1004 East 15th Street. (Regular Agenda Item "3")

Ordinance No. 2010-3-20 (cont'd)

Heritage Preservation Officer Hersch spoke to the ordinance in place providing relief and encouraging maintenance and preservation of resources and offering partial exemption based on improvements to the value of the property. She advised that all properties are surveyed each January, notices are provided to property owners with timelines for completion of projects, and that of the 73 properties surveyed in 2010, 66 are recommended for approval totaling \$31,141.70 in City tax receipts. Ms. Hersch advised that the property at 1004 East 15th Street has appealed their denial and applicant Gabe Watley advised that repairs have now been completed. City Muehlenbeck requested information regarding the cost of enforcement. Staff advised the Council regarding the timeframe for submittal to the Collin County Appraisal District.

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Miner, the Council voted 7-0 to provide certain Heritage Resources located in the City of Plano, Texas, partial exemption from the current year Ad Valorem Taxation with a floor amendment to approve an appeal of the Heritage Commission's recommended denial of tax exemption for 1004 East 15th Street adding its value to the exemption; and further to adopt Ordinance No. 2010-3-20.

Consideration of an Appeal of the Planning & Zoning Commission's Denial of the Preliminary Site Plan for Eastside 14th Street Addition, Block A, Lot 1 - Retail, restaurant, and general office on one lot on 0.3± acre located at the southeast corner of J Avenue and 14th Street. Applicant: Eastside 14th Street, LLC (Regular Agenda Item "4")

Director of Planning Jarrell spoke to the applicant's request for a credit to use public parking to satisfy parking requirements for a four-story building with a mix of office, retail and restaurant. She advised that the applicant proposes to provide 16 spaces of the 107 required and that the Business Government District does permit approval of credits. Ms. Jarrell advised that the Planning and Zoning Commission denied the request, finding that the credit is not a viable solution and would limit spaces available for existing/future businesses in the area. She advised that Staff has continued work with the applicant and proposes the following stipulations should Council approve the item:

1. City Council granting a credit to allow the site to use public parking in lieu of constructing required parking onsite.
2. City Council granting a variance to the Subdivision Ordinance pertaining to minimum lot frontage requirements along 14th Street and J Avenue.
3. City Council granting a variance to the Subdivision Ordinance for the requirement of two points of access.
4. The sight visibility issue be addressed by the applicant including the removal of the outdoor patio/dining area, subject to approval by the City Engineer.
5. A minimum 10-foot wide sidewalk be provided along J Avenue on the subject property by the applicant.
6. A minimum of 30 head-in general public parking spaces and sidewalk be provided at the applicant's expense (including design costs) within the J Avenue right-of-way along the east side, south of the subject property, by the applicant. The width of the sidewalk shall be a minimum five feet and maximum ten feet, subject to approval by the City Engineer.

Nathan Shae of East Side 14th Street LLC spoke to discussions held with City Staff indicating that the development could utilize available lots for parking, reviewed renderings of the building and plans to complete construction by December 2010. He spoke to the opportunity for more growth in downtown Plano, the number of spaces within one-quarter mile and to providing 30 additional spaces on J Avenue. Ms. Jarrell advised the Council that all uses in the BG district require one space for every 300 square feet and spoke to available public lots in the area. She advised that Staff would request the applicant contact property owners along J Avenue to advise regarding the addition of "head in" parking spaces. Council Member Miner stated concern regarding the lack of available parking in the downtown area and its potential to impact businesses. Ms. Jarrell spoke regarding other new developments that have provided parking. Mr. Shae spoke to establishing a walk-around area by utilizing parking lots. Ms. Jarrell advised the Council regarding the next steps including receipt of a site plan, replat, and construction plans and Development Manager Firgens spoke to issues related to structured parking on such a small tract. Council Member Miner thanked the applicants for their efforts to revitalize Downtown Plano and Mayor Dyer spoke to adding signage for downtown parking locations.

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Deputy Mayor Pro Tem Dunlap, the Council voted 7-0 to approve an of the Planning & Zoning Commission's Denial of the Preliminary Site Plan for Eastside 14th Street Addition with stipulations as recommended by Staff.

There being no further discussion, Mayor Dyer adjourned the meeting at 9:22 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary

**PLANO CITY COUNCIL
SPECIAL CALLED SESSION
APRIL 6, 2010**

COUNCIL MEMBERS

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

Council Members Elected

André Davidson

STAFF

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

Mayor Dyer called the meeting to order at 6:05 p.m., Tuesday, April 6, 2010, in the Council Chambers of the Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Council Member Harris. The following matters were discussed.

Resolution No. 2010-4-1(R)

City Secretary Zucco read the number of votes received by each candidate at each precinct along with the sum total of votes.

Upon completion of the canvass, Mayor Pro Tem LaRosiliere stated that the election returns of the Runoff Election have been canvassed and that all votes are accounted for as certified by the Elections Administrator of Collin County, with a total of 4,937 City ballots cast and further made a motion to approve the canvass of Runoff Election returns of March 27, 2010, and declaring that Andre Davidson was elected to Place Three to fill a vacancy until the May 2011 General Election; and further to adopt Resolution No. 2010-4-1(R). Deputy Mayor Pro Tem Dunlap seconded the motion and the Council voted 6-0. The motion carried.

Oath of Office for newly-elected Council Member

Mayor Dyer administered the oath of office to elected Council Member Davidson and presented her with a Certificate of Election after which time she assumed her seat at the dais.

Nothing further was discussed. Mayor Dyer adjourned the Special Called Session at 6:15 p.m.

Phil Dyer, Mayor

ATTEST

Diane Zucco, City Secretary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	4/12/10
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): Susan Berger (7255)	

CAPTION

Bid No. 2010-70-B for Tennis Facility Lighting Renovation, Plano Senior High School to NEMA3 Electrical Contractors, Inc. in the amount of \$148,270.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	550,000	0	550,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-148,270	0	-148,270
BALANCE	0	401,730	0	401,730

FUND(S): CAPITAL RESERVE

COMMENTS: Funds are included in the 2009-10 Capital Reserve. This item, in the amount of \$148,270, will leave a current year balance of \$401,730 for the Tennis Court Lighting Replacement project.

STRATEGIC PLAN GOAL: Tennis court lighting replacement and maintenance relate to the City's Goal of Great Neighborhoods - 1st Choice to Live.

SUMMARY OF ITEM

Staff recommends that the bid received from NEMA3 Electrical Contractors, Inc. in the amount of \$148,270 be accepted as the lowest responsible bid conditioned upon timely execution of any necessary contract documents.

The base bid is for the demolition of existing dilapidated and inefficient lighting and replacement with modern lighting and new poles. The lighting allows the general public to use the tennis court in the evenings outside of school hours. The City also hosts tennis tournaments at the PSHS tennis courts.

The new lighting will require less maintenance and use less electricity than the existing lighting. The existing lighting is in poor condition and can no longer be maintained in a functioning condition.

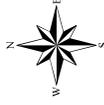
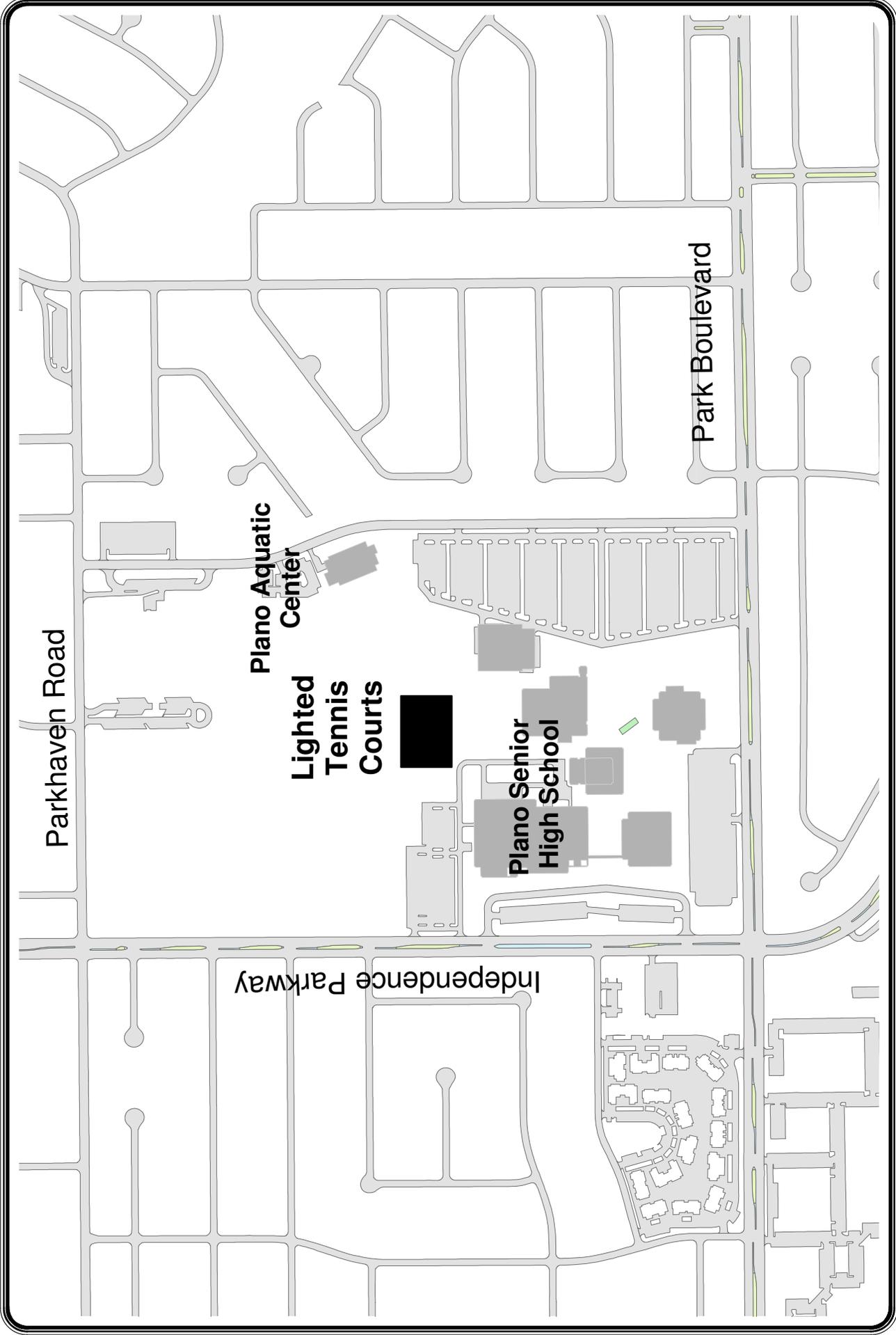
NEMA 3 Electrical Contractors, Inc. has successfully completed several large projects for the City. The bid of \$148,270 is below the consultant's estimate of \$155,000.

In the event the low bidder cannot execute contract documents, staff recommends that the project be awarded to the second lowest bidder, Groves Electric Services for \$158,800. Groves Electric Services has also successfully completed many projects for the City.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

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



Tennis Facility Lighting Renovations – Plano Senior High School

**CITY OF PLANO
 BID TABULATION
 2010-70-B
 Tennis Facility Lighting Renovations – Plano Senior High School- Proj. No. 5901
 February 25, 2010 @ 3:00PM
 BID TABULATION**

BIDDER:	Addendum	Bid Bond	Bid
C & G Electric	YES	YES	\$164,400
Concord Commercial Services	YES	YES	\$ 212,056
Facility Solutions Group, Inc.	YES	YES	\$ 179,250
Gifford Electric, Inc.	NO	YES	\$ 224,184
Groves Electrical Service, Inc.	YES	YES	\$ 158,800
Illuminations by Greenlee	YES	YES	\$ 175,000
Kennedy Electric, Inc.	YES	YES	\$ 167,857
Nema 3 Electric, Inc.	YES	YES	\$ 148,270
North American Information Systems, Inc.	YES	YES	\$ 225,000

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

Aimee Storm

March 12, 2010

Aimee Storm, Buyer II

Date

“BID TABULATION STATEMENT”

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

PURCHASING DIVISION
 CITY OF PLANO TEXAS



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		04-12-2010			
Department:		Purchasing			
Department Head		Mike Ryan			
Agenda Coordinator (include phone #): Nancy Corwin X7137					
CAPTION					
Bid No. 2010-58-C for a one (1) year contract with three (3) City optional renewals for mowing and landscaping service for Public Works to TruGreen LandCare, LLC in the amount of \$51,485.00 and authorizing the City Manager to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	09/10, 10/11, 11/12, 12/13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	79,570	238,710	318,280
Encumbered/Expended Amount		0	-9,297	0	-9,297
This Item		0	-49,785	-238,710	-288,495
BALANCE		0	20,488	0	20,488
FUND(s): WATER & SEWER FUND, MUNICIPAL DRAINAGE FUND					
<p>COMMENTS: This item approved price quotes. Expenditures will be made in the Municipal Drainage and Pumping Facilities cost centers within the approved budget appropriations for each year of the contract. The estimated annual amount is \$79,570 based on expected usage.</p> <p>STRATEGIC PLAN GOAL: Annual contract pricing for landscape and mowing services relates to the City's Goal of "Financially Strong City with Service Excellence" and "Great Neighborhoods - 1st Choice to Live".</p>					
SUMMARY OF ITEM					
Staff recommends the approval of a bid for mowing and landscaping services for Public Works with TruGreen LandCare, LLC in the estimated amount of \$51,485.00. This will establish a one (1) year contract with three (3) City optional renewals.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Recommendation memo, Bid Recap					



*P.O. Box 860358
Plano, Texas 75086-0358
972-769-4140
Fax No. 972-769-4172*



MEMORANDUM

DATE: March 22, 2010

TO: Nancy Corwin, Purchasing Buyer II

FROM: Robbie Carpenter, Pumping Facilities Superintendent
Billy Clay, Public Works Assistant Superintendent

**SUBJECT: Public Works Mowing and Landscaping Services Recommendation
(Bid No. 2010-58-C)**

The Public Works Mowing and Landscaping Service Evaluation Committee consisted of Robbie Carpenter, Billy Clay, and Josh Schultz. The process began in February 2010 with reviewing and revising specifications for the mowing and landscaping services. The bid went out in late February and was reviewed in March. The City received 17 electronic responses.

The evaluation committee reviewed the apparent lowest bidder (TruGreen) and second (2) lowest bidder (American Landscape System, Inc.) for responsiveness to the specifications. The apparent lowest bid in the amount of \$51,485 is TruGreen LandCare. The evaluation committee recommends the bid be awarded to TruGreen LandCare in the amount of \$51,485 conditioned upon timely execution of all contract documents. The contract will be awarded for a term of one (1) year with three (3) City optional renewals.

The funding for this bid is coming from the Water and Sewer Fund (41-764) and the Municipal Drainage Fund (47-471).

Please let me know if you have questions regarding our recommendation.

CITY OF PLANO

BID NO. 2010-58-C PUBLIC WORKS MOWING AND LANDSCAPING SERVICE

BID RECAP

Bid opening Date/Time: February 26, 2010 @ 3:30 pm

Number of Vendors Notified: 1047

Vendors Submitting "No Bids": 1

Number of Bids Submitted: 17

TruGreen LandCare, LLC
American Landscape Systems, Inc.
Somerset Landscape Maintenance
Good Earth Corporation
Superscapes Landscaping, Inc.
Weisz Selection, Inc.
SLM Landscaping & Maintenance, Inc.
Lawn and Landcare Services Company LLC
The Teter Group, Inc.
Accent Landscape Management
Greener Pastures Landscape, Inc.
Tandem Mowing Service
Texas Tree Turf Co.
Cardinal Home Lawn Care
Lawn & Landscape Management
Landscape Creations & Co.
Forest Hills Lawn Service Inc.

Recommended Vendor:

TruGreen LandCare, LLC. \$51,485.00

Nancy Corwin

Nancy Corwin
Buyer II

February 26, 2010

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Purchasing/Fleet		
Department Head		Mike Ryan/Reid Choate		
Agenda Coordinator (include phone #): Earl Whitaker x7407				
CAPTION				
Bid No. 2010-90-B for the purchase of three (3) Ballfield Groomers for Fleet Services to be utilized by Athletic Field Maintenance to Kromer Co. LLC in the amount of \$63,159.00.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		45,000	0	45,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-63,159	0	-63,159
BALANCE	0	-18,159	0	-18,159
FUND(S): EQUIPMENT REPLACEMENT FUND (ERF)				
<p>COMMENTS: Funds are included in the FY 2009-10 adopted budget to purchase three (3) Kromer Field Commander Ballfield Groomers per Bid Sync Bid #2010-90-B. The additional funds of (\$18,159) needed for this purchase will be funded through savings in the Equipment Replacement Fund.</p> <p>STRATEGIC PLAN GOAL: Providing equipment purchases relates to the City's goal of a "Financially Strong City with Service Excellence."</p>				
SUMMARY OF ITEM				
Staff recommends the purchase of three (3) Ballfield Groomers for Fleet Services to be utilized by Athletic Field Maintenance from Kromer Co. LLC in the amount of \$63,159.00.				
List of Supporting Documents: Award Memo, Bid ReCap			Other Departments, Boards, Commissions or Agencies NA	

Memorandum

To: Earl Whitaker
Buyer
Purchasing Division

From: David Garza
Fleet Superintendent

Date: 3/30/2010

Re: Award Recommendation Memo OR 908977

AWARD RECOMMENDATION

Based on the bid evaluation packet received for bid 2010-90-B – Ballfield Groomers, Fleet Services Division recommends the bid to be awarded to Kromer Co. LLC as the lowest responsive, responsible bidder in the amount of \$63,159.00.

ITEM DETAILS

This recommendation is for the purchase of three (3) Ballfield Groomers with single broom attachment (line item 1) model Field Commander in department 637 with the following options, attachments, and/or accessories:

72" single rear broom attachment with lift; 72" rear coco drag mat attachment; hydraulic rotating front ridge broom attachment; sunshade canopy; Honda engine with severe duty air filtration; Manufacture warranty with one year satisfaction warranty (as stated in bid).

David A Garza
Fleet Services Superintendent

CITY OF PLANO

**BID NO. 2010-90-B
(3) Ballfield Groomers**

BID RECAP

Bid opening Date/Time: March 19, 2010 @ 3:00 pm

Number of Vendors Notified: 658

Vendors Submitting "No Bids": 2

Number of Bids Submitted: 2

Kromer Co. LLC
Luber Brothers Inc.

Bids Evaluated Non-Responsive to Specification: (1) Luber Brothers Inc.

Recommended Vendor:

Kromer Co. LLC \$63,159.00

Earl S. Whitaker

Earl S. Whitaker
Buyer

April 2, 2010

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		4/12/10			
Department:		Purchasing			
Department Head		Mike Ryan			
Agenda Coordinator (include phone #): Aimee Storm Ext 7248					
CAPTION					
Bid No. 2010-71-C for a one year contract with three optional one year renewals for Plano Police Department Pistol Lights and Holsters to GT Distributors, Inc. in the amount of \$65,470.28 and authorizing the City Manager to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2009-10, 2010-11, 2011-12, 2012-13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	65,470	0	65,470
Encumbered/Expended Amount		0	0	0	0
This Item		0	-65,470	0	-65,470
BALANCE		0	0	0	0
FUND(S): GRANT FUND (2007, 2008, 2009 JAG GRANTS)					
<p>COMMENTS: The City will apply for federal reimbursement for the purchase of Pistol Lights and Holsters for the Police Department under the 2007, 2008 and 2009 Edward Byrne Justice Assistance Grants (JAG), using remaining funding available from each grant award. This initial purchase is estimated at \$65,470. Future estimated annual purchases for these items are unknown and will be subject to available funding.</p> <p>STRATEGIC PLAN GOAL: Using grant funds for Police department equipment purchases relates to the City's Goal of "Financially Sstroing City with Service Excellence" and "Safe Large City".</p>					
SUMMARY OF ITEM					
Staff recommends the Competitive Sealed Bid of GT Distributors, Inc., in the amount of \$65,470.28 be accepted as the lowest responsive responsible bidder, and conditioned upon timely execution of any necessary contract documents. This will establish a one year contract with three optional one year renewals.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Recommendation Memo					
Bid Recap					



P.O. Box 860358
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<http://www.plano.gov>

MEMORANDUM

Date: March 5, 2010
To: Gregory W. Rushin, Chief of Police
From: Ed Drain, Assistant Chief of Police
Subject: Award Recommendation for Bid 2010-71-C (Pistol Lights and Holsters)

It is the recommendation of the Plano Police Department to award bid #2010-71-C, titled "Plano Police Department Pistol Lights and Holsters," to GT Distributors, Inc. for all items of this bid in the amount of \$65,470.28.

This recommendation is for the initial purchase of:

<u>Item</u>	<u>Quantity</u>	<u>Description</u>
1	210	Safariland ALS Holster for Glock 22 – Right Handed
2	8	Sarfariland ALS Holster for Glock 22 – Left Handed
3	8	Sarfariland ALS Holster for 1911 – Right Handed
4	232	Surefire Model X300 Weapon Light
5	222	Surefire DG Grip Switch Model DG-11
6	9	Surefire DG Grip Switch Model DG-18A

For items #1-3 listed above, GT Distributors was lowest bidder. National Police Supply submitted the lowest bid for items #4-6. The difference in price for items #4-6 between National Police Supply's bid (\$49,323.20) and GT Distributor's bid (\$49,998.32) was \$675.12. Taking into consideration the City of Plano's terms and conditions (#6 – split bids), and the administrative costs for multiple award contracts, the Police Department suggests that all six of the above-listed items be purchased from GT Distributors.

Plano Police Department purchases of Pistol Lights and Holsters will be under a one-year contract with three optional renewals. The quantities are approximate, estimated annual quantities only, and not a commitment to buy any specific quantity. The quantities listed are the estimated first year volume. Subsequent years will be at a lower order volume.

Please feel free to call me at X2412 if you have any questions.

CITY OF PLANO

BID NO. 2010-71-C Plano Police Department Pistol Lights and Holsters BID RECAP

Bid opening Date/Time: February 22, 2010 @ 3:00PM

Number of Vendors Notified: 753

Vendors Submitting "No Bids": 0

Number of Bids Submitted: 6

<u>Bid Recap</u>	Item#1	Item#2	Item#3	Item#4	Item#5	Item#6
National Police Supply, LLC	n/a	n/a	n/a	\$36,354.40	\$12,409.80	\$559.00
GT Distributors, Inc.	\$14,376.60	\$547.68	\$547.68	\$36,832.32	\$12,598.50	\$567.50
Proforce Law Enforcement	n/a	n/a	n/a	\$38,089.76	\$13,026.96	\$586.80
Scottsdale Gun Club	\$19,807.20	\$754.56	\$754.56	\$39,340.24	\$13,455.42	\$606.10
SRT Supply, Inc.	\$31,180.80	\$1,187.84	\$1,187.84	\$48,580.80	\$16,294.80	\$734.00
Tactical Gear Now, Inc.	\$36,151.50	\$1,377.20	\$1,274.80	\$50,088.80	\$17,549.10	\$790.50

Vendors Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s):

GT Distributors, Inc.

Aimee Storm

March 30, 2010

Aimee Storm, Buyer

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		04/12/10		
Department:		Purchasing		
Department Head		Mike Ryan		
Agenda Coordinator (include phone #): Aimee Storm Ext. 7248				
CAPTION				
Bid No. 2010-75-C for a one (1) year contract with three (3) optional one year renewals for the purchase of Athletic Field Bulk Fertilizer for the Parks and Recreation department to Lonestar Ranch and Outdoors in the amount of \$73,127.50 and authorizing the City Manager to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	268,762	0	268,762
Encumbered/Expended Amount	0	-5,803	0	-5,803
This Item	0	-73,127	0	-73,127
BALANCE	0	189,832	0	189,832
FUND(S): GENERAL FUND				
COMMENTS: Funds are included in the FY 2009-10 adopted budget to provide materials to maintain athletic fields. The remaining balance of funds will be used for other items related to sports turf maintenance. STRATEGIC PLAN GOAL: Preparation and maintenance of athletic facilities relates to the City's Goal of "Great Neighborhoods - 1st Choice to Live"				
SUMMARY OF ITEM				
The staff recommends the Competitive Sealed Bid for the purchase of bulk fertilizer in the estimated annual amount of \$73,127.50 to Lonestar Ranch and Outdoors, to be accepted as the lowest responsive responsible bidder, and conditioned upon timely execution of any necessary contract documents. This will establish an annual fixed price contract with three optional one-year renewals.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memorandum			N/A	
Bid Recap				

MEMO

TO: PURCHASING DEPARTMENT, BEV ROGERS
FROM: KEVIN MURRAY, PARK SUPERINTENDANT
DATE: 4/2/2010
RE: AWARD RECOMMENDATION 2010-75-C ATHLETIC FIELD BULK FERTILIZER

It is the recommendation of Parks and Recreation Department to award bid 2010-75-C ATHLETIC FIELD BULK FERTILIZER to Lonestar Ranch and Outdoors. Lonestar Ranch and Outdoors is the low bidder and appears capable of meeting the requirements of the specifications. As stated in the bid documentation, this contract is to be awarded to the lowest responsive, responsible bidder.

As shown in the bid re-cap, Lonestar Ranch and Outdoors is the lowest responsive bidder. This contract is for the purchase and application of 125 tons of fertilizer on 400 acres at 16 athletic sites in five (5) applicatons.

Total annual amount awarded for this contract is \$73,127.50. This amount is \$26,872.50 under budget.

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

Attachments:
Vendor Bid Recap

CITY OF PLANO

BID NO. 2010-75-C ATHLETIC FIELD BULK FERTILIZER BID RECAP

Bid opening Date/Time: March 4, 2010 @ 3:00PM

Number of Vendors Notified: 458

Vendors Submitting "No Bids": 1

Number of Bids Submitted: 3

BIDDER:	TOTAL BID
LONESTAR RANCH AND OUTDOORS	\$73,127.50
HELENA CHEMICAL	\$90,000.00
TRUGREEN	\$94,421.25

Vendors Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s):

Lonestar Ranch and Outdoors

Aimee Storm

March 9, 2010

Aimee Storm, Buyer II

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory	
Council Meeting Date:	4/12/10
Department:	Purchasing/ICAD
Department Head	Mike Ryan/Bob Smeby
Agenda Coordinator (include phone #): Earl Whitaker x7074	

CAPTION

Bid No. 2010-48-C for a one (1) year contract with three (3) City optional renewals for the purchase of large and small plastic meter box lids to Bass and Hays Foundry, Inc. in an estimated amount of \$114,120.00 and authorizing the City Manager to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR: 2009-10, 2011-12, 2012-13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		1,000,000	360,000	1,360,000
Encumbered/Expended Amount	0	-590,726	0	-590,726
This Item	0	-114,120	-360,000	-474,120
BALANCE	0	295,154	0	295,154

FUND(S):

COMMENTS: This item approves price quotes. Expenditures will be made in the Inventory Stock department based on need within the approved budget appropriations for each year of the contract. The estimated annual amount to be spent in FY 2009-10 is \$114,120. The estimated future annual amount is \$360,000, which will be made within approved budget appropriations. Remaining balance will be used for other Inventory purchases.

STRATEGIC PLAN GOAL: The contracted purchase of plastic meter box lids relates to the City's goal of a "Financially Strong City with Service Excellence."

SUMMARY OF ITEM

Staff recommends the approval of a one (1) year contract with three (3) City optional renewals for the purchase of large and small plastic meter box lids to be utilized by Utility Operations to Bass and Hays Foundry, Inc. in an estimated amount of \$114,120.00 (Bid No. 2010-48-C).

List of Supporting Documents: Award Memo, Bid Recap	Other Departments, Boards, Commissions or Agencies N/A
--	---



P.O. Box 860358
Plano, Texas 75086-0358
972-769-4140
Fax No. 972-769-4172



MEMORANDUM

DATE: MARCH 4, 2010

TO: EARL WHITAKER

FROM: GENTRY STRICKLAND

SUBJECT: AWARD OF BID 2010 – 48 – C Plastic Meter Box Lids

I have completed the review and evaluation of proposals submitted in the above mentioned bid. I have also completed the evaluation of samples provided by the vendors.

The DFW Plastics sample did not meet specs in relation to dimensions for line item 2. Under the section *Estimated Quantities* as well as the section *Load Testing*, dimensions are provided as small lids having to be 12-1/2" x 15/32" x 10-17/32". The DFW Plastics sample measures 12-1/4" x 15/32" x 10-1/4". Due to this difference, the DFW sample does not fit well on the box. It is a sloppy fit and is easily pried off of the box. With this being said, I'm afraid we could face liability situations by using this lid in the field.

The Bass & Hays Foundry, Inc. sample small meter box lid meets the specs of our bid. The dimensions are correct and the lid fits well on the box.

There is a \$3.22 per lid difference between DFW Plastics and Bass & Hays Foundry, Inc. proposals for line item 2. When this difference is formulated into the estimated quantities provided in the specs, it equals roughly \$18,000 per year. But, one liability case can quickly add up to more than that.

It is my recommendation to award the entire bid to Bass & Hays Foundry, Inc. in the amount of \$114,120.

CITY OF PLANO

BID NO. 2010-48-C Plastic Meter Box Lids

BID RECAP

Bid opening Date/Time: February 1, 2010 @ 3:00 pm

Number of Vendors Notified: 708

Vendors Submitting "No Bids": 1

Number of Bids Submitted: 3

DFW Plastics Inc.

Large Plastic Meter Box Lid =	\$ 28,800.00
Small Plastic Meter Box Lid =	<u>\$ 72,000.00 *</u>
Total	\$100,800.00

Bass & Hays Foundry, Inc.

Large Plastic Meter Box Lid =	\$ 22,800.00
Small Plastic Meter Box Lid =	<u>\$ 91,320.00</u>
Total Bid:	\$114,120.00

Ferguson Waterworks

Large Plastic Meter Box Lid =	\$ 31,554.00
Small Plastic Meter Box Lid =	<u>\$ 116,940.00</u>
Total Bid:	\$148,494.00

***Bids Evaluated Non-Responsive to Specification:** One (1), DFW Plastics Inc.
(Upon receipt of Small Plastic Meter Box Lid sample, item was determined to be non-responsive to specifications.)

Recommended Vendor:

Bass & Hays Foundry, Inc. \$ 114,120.00

Earl S. Whitaker

February 11, 2010

Earl S. Whitaker
Buyer

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 5924
CAPTION				
Bid No. 2010-78-B for Alley Reconstruction – 16 th Street & US 75 to Jim Bowman Construction Co., L.P. in the amount of \$210,458.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	24,794	475,206	0	500,000
Encumbered/Expended Amount	-24,794	-16,528	0	-41,322
This Item	0	-210,458	0	-210,458
BALANCE	0	248,220	0	248,220
FUND(S): STREET IMPROVEMENT CIP				
<p>COMMENTS: Funds are included in the 2009-10 Street Improvement CIP. This item, in the amount of \$210,458, will leave a current year balance of \$248,220 for the Alley Reconstruction – 16th Street & US 75 project.</p> <p>STRATEGIC PLAN GOAL: Alley reconstruction relates to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>Staff recommends the bid of Jim Bowman Construction Co., L.P. in the amount of \$210,457.60 be accepted as the lowest responsible bid conditioned on timely execution of any contract documents.</p> <p>The second vendor being recommended is Estrada Concrete Company in the amount of \$211,516.20.</p> <p>The Engineer's estimate was \$319,225.00.</p> <p>The project consists of the reconstruction of two alleys: Alley No. 1 – 1,500 linear feet long and 10 feet wide located east of Drexel Drive. Alley No. 2 – 1,100 feet long and 15 feet wide located north of 16th Street and west of US 75.</p>				
List of Supporting Documents: Bid Summary; Location Map			Other Departments, Boards, Commissions or Agencies N/A	

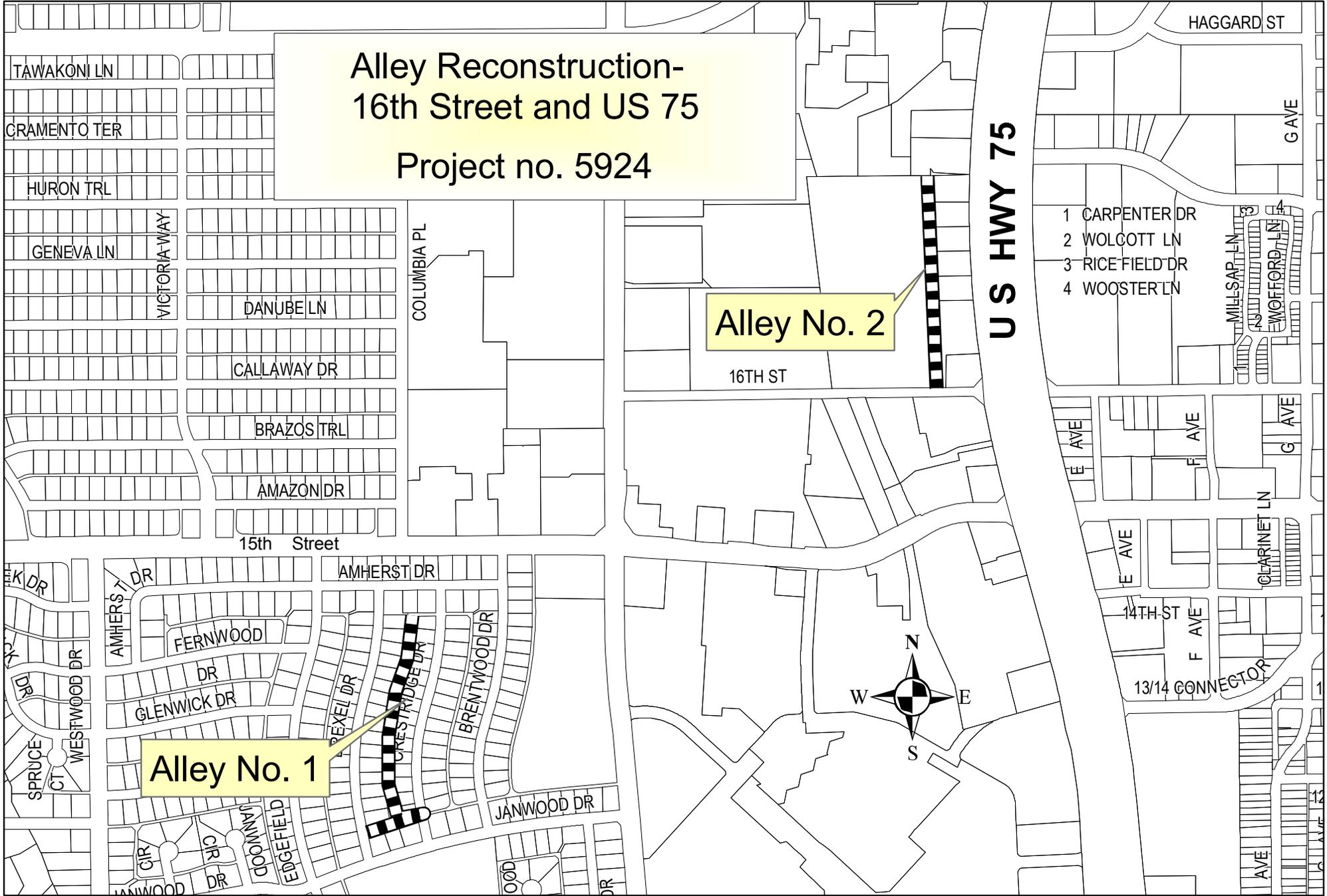
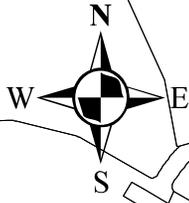
**Alley Reconstruction-
16th Street and US 75
Project no. 5924**

Alley No. 2

Alley No. 1

- 1 CARPENTER DR
- 2 WOLCOTT LN
- 3 RICE FIELD DR
- 4 WOOSTER LN

US HWY 75



**Bid Totals for Bid No. 2010-78-B
Alley Reconstruction – 16th & US 75
Project No. 5924**

Contractor	Bid Total
Jim Bowman Construction Company LP.....	\$210,457.60
Estrada Concrete Company LLC.....	\$211,516.20
Jerusalem Corp.....	\$218,911.50
MacVal Associates, LLC.....	\$235,666.80
Hencie Int'l Inc.....	\$239,848.00
Meztec Contractors, Inc.....	\$248,489.00
F & F Concrete LLC.....	\$253,649.10
PAEE Corporations.....	\$257,761.00
Jeske Construction Company.....	\$293,500.00
Alsai Construction, Inc.....	\$293,706.50
Smith Contracting Inc.....	\$ 347,145.65



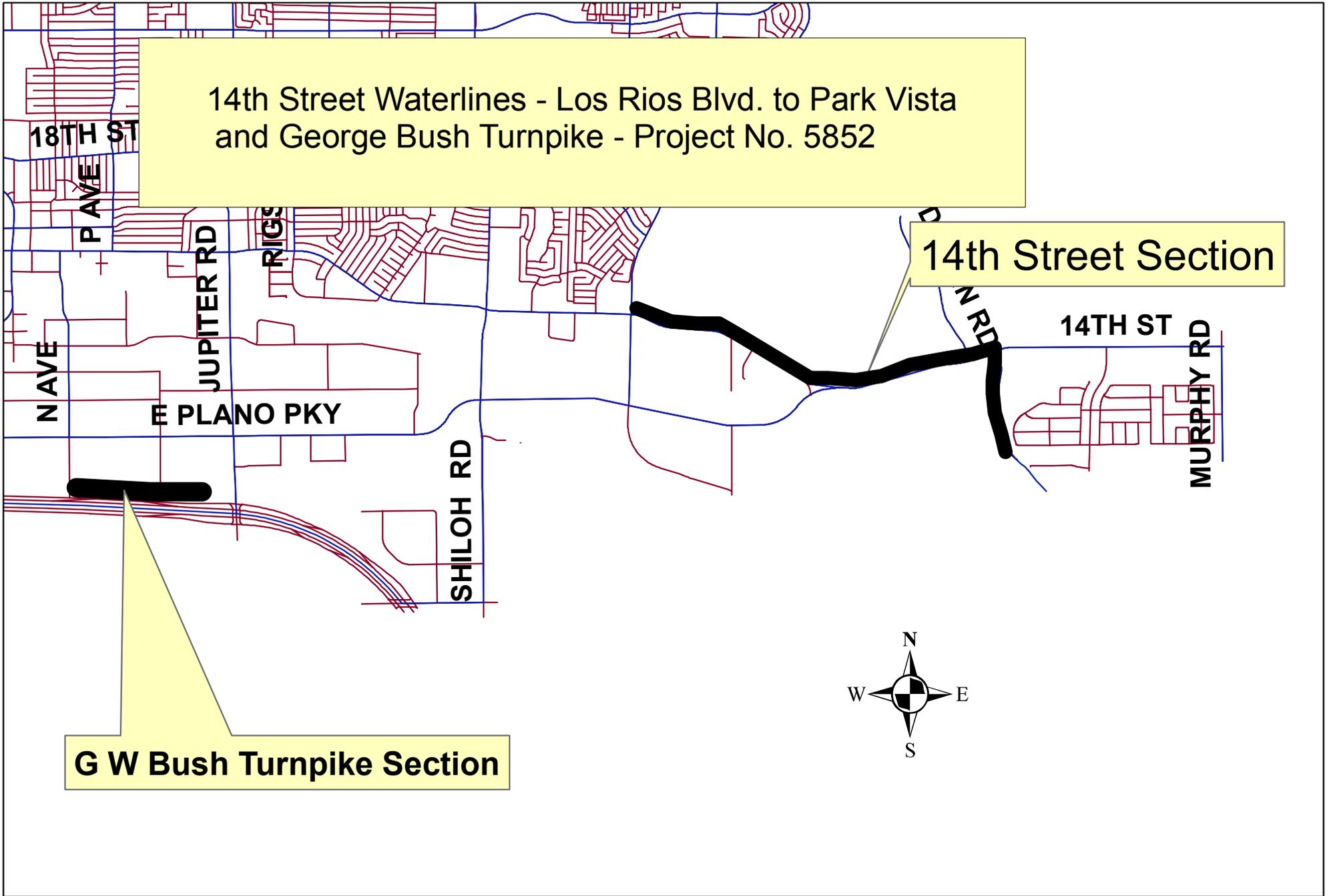
**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 5852
CAPTION				
Bid No. 2010-81-B for 14 th Street and George Bush Turnpike Waterlines to Jim Bowman Construction Co., L.P. in the amount of \$764,931.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	105,750	1,251,250	0	1,357,000
Encumbered/Expended Amount	-105,750	-184,269	0	-290,019
This Item	0	-764,931	0	-764,931
BALANCE	0	302,050	0	302,050
FUND(S): WATER CIP				
COMMENTS: Funds are included in the 2009-10 Water CIP. This item, in the amount of \$764,931, will leave a current year balance of \$302,050 for the 14 th Street – Los Rios to Park Vista project. STRATEGIC PLAN GOAL: Construction and installation of waterlines relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends the bid of Jim Bowman Construction Co., L.P. in the amount of \$764,931.10 be accepted as the lowest responsible bid conditioned on timely execution of any contract documents. The second vendor being recommended is Tri Dal Utilities in the amount of \$782,854.60. The Engineer's estimate was \$1,019,424.50. The project consists of the installation of new 12" waterlines in 14 th Street from Los Rios Boulevard east to Park Vista Road, and in George Bush Turnpike from N Avenue to 2,600 feet east, for a total of 12,300 feet.				
List of Supporting Documents: Bid Summary; Location Map			Other Departments, Boards, Commissions or Agencies N/A	

14th Street Waterlines - Los Rios Blvd. to Park Vista
and George Bush Turnpike - Project No. 5852

14th Street Section

G W Bush Turnpike Section



Bid Totals for Bid No. 2010-81-B
14th Street and George Bush Turnpike Waterlines
Project No. 5852

Jim Bowman Construction Co., LP	\$764,931.10
Tri Dal Utilities.....	\$782,854.60
RKM Utility Services, Inc.....	\$810,496.00
Hencie International, Inc.....	\$854,646.33
Gin-Spen.....	\$858,920.80
Barson Utilities.....	\$884,191.25
Dowager Utility Construction.....	\$903,486.00
John Burns Construction Company of Texas, Inc.....	\$947,276.00
WR Hodgson.....	\$947,676.30
Camino Construction, LP.....	\$1,016,840.80
Muniz Construction, Inc.....	\$1,019,424.50



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		04/12/10		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 6001
CAPTION				
Bid No. 2010-83-B for Russell Creek Sewer Main Rehab – Phase I to Insituform Technologies, Inc., in the amount of \$1,118,400.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	29,775	1,370,225	0	1,400,000
Encumbered/Expended Amount	-29,775	-158,225	0	-188,000
This Item	0	-1,118,400	0	-1,118,400
BALANCE	0	93,600	0	93,600
FUND(S): SEWER CIP				
<p>COMMENTS: Funds are included in the 2009-10 Sewer CIP. This item, in the amount of \$1,118,400, will leave a current year balance of \$93,600 for the Russell Creek Sewer Rehab project.</p> <p>STRATEGIC PLAN GOAL: Lining sewer lines and manholes relates to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>Staff recommends bid of Insituform Technologies, Inc., in the amount of \$1,118,400.00, be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents.</p> <p>The second vendor being recommended is Repipe-Texas, Inc., in the amount of \$1,196,350.00.</p> <p>Engineer's estimate was \$1,488,000.00.</p> <p>The project consists of lining by trenchless technology 4,500 feet of 33-inch concrete sanitary sewer line and 240 vertical feet of manholes in the Russell Creek basin from west of Independence Parkway to east of Custer Road.</p>				
List of Supporting Documents: Bid Summary; Location Map			Other Departments, Boards, Commissions or Agencies N/A	

**Project
Location**

**Project No. 6001
Russell Creek
Sewer Main Rehab**



Bid Summary

CITY OF PLANO, TEXAS Russell Creek Sewer Main Rehab - Phase I Project No. 6001

	<u>Bidder</u>		<u>Bid</u>
1	Insituform Technologies, Inc	\$	1,118,400.00
2	SAK Construction	\$	1,378,880.00
3	Repipe-Texas, Inc.	\$	1,196,350.00
4	Reynolds Inliner, LLC	\$	1,729,600.00
5	Miller Pipeline Corp.	\$	1,595,371.00



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Purchasing		
Department Head		Mike Ryan		
Agenda Coordinator (include phone #): Glenna Hayes x 7539				
CAPTION				
To approve a contract for the purchase of mobile computer workstations for the Fire Department in the amount of \$206,395 from Motorola Inc. through an existing contract/agreement with Texas Department of Information Resources (DIR), and authorizing the City Manager to execute all necessary documents. (DIR-SDD-1304)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	202,300	0	202,300
Encumbered/Expended Amount	0	0	0	0
This Item	0	-206,395	0	-206,395
BALANCE	0	-4,095	0	-4,095
FUND(s): FIRE ERF (71.903)				
<p>COMMENTS: Funds in the amount of \$202,300 are included in the 2009-10 Fire ERF Budget for the replacement of (35) ruggedized mobile computer workstations for the Fire Department. Funds are available to cover the \$4,095 cost overage from the unallocated Fire ERF Fund Balance and from other Fire ERF projects included in the 2009 -10 budget.</p> <p>STRATEGIC PLAN GOAL: Replacing Mobile computer equipment relates to the City's Goal of "Financially Strong City with Service Excellence".</p>				
SUMMARY OF ITEM				
Staff recommends the approval of a contract for the purchase and installation of MW810 mobile computer workstations from Motorola Inc. in the amount of \$206,395.00; conditioned upon timely execution of any necessary contract documents. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (DIR-SDD-1304)				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Department Memo, Quote Recap, Contract				



Memorandum

Date: March 9, 2010
To: Glenna Hayes, Buyer Supervisor
From: Michael Malone, Lieutenant – FD SupportSvcs
Subject: Motorola-MW810 Mobile Computer Workstations

Pursuant to FY 09/10 Budget Supplement #90355215, The Plano Fire Department intends to purchase (35) Motorola-MW810 mobile computer workstations; an ERF procurement based on available funding and contract pricing.

The MW810 units, to be installed on all front line and reserve fire apparatus, are scheduled to replace the existing NEI-Predator mobile computer workstations which NEI no longer manufactures or tech-supports.

After reviewing pricing from existing cooperative contracts with both HGAC and DIR, it is the Department's recommendation to proceed with the purchase by utilizing DIR Contract # DIR-SDD-1304 in the amount of \$206,395 resulting in a negotiated cost avoidance of \$17,878.00.

Respectfully submitted,

Michael Malone

Michael Malone
Lieutenant – FD SupportSvcs

cc: Hugo Esparza, Fire Chief
Dan Thompson, Assistant Chief – Resources Division

City of Plano MW810 Pricing

QUOTE RECAP

9-Mar-10

Equipment Model Number	Qty.	List Price	HGAC PRICE	DIR PRICE
	TOTAL	\$7,442.00	\$5,943.80	\$5,432.00
DIR Price Quoted above is negotiated price basd on purchase order of a quantity of 35 units with staggered shipment schedule				
Installation at customer location		\$465.00	\$465.00	\$465.00
		\$7,907.00	\$6,408.80	\$5,897.00

NOTES:

Unit ships with standard 3 year warranty
Service Repair option cannot be discounted

DIR Contract Number DIR-SDD-1304
2% purchasing Fee included in above price

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND MOTOROLA, INC.
FOR MW810 MOBILE COMPUTER WORKSTATIONS**

THIS CONTRACT is made and entered into by and between **MOTOROLA, INC.**, whose address is 1507 LBJ Freeway, Park West C-2, Farmers Branch, Texas 75234 hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide and install thirty five (35) MW810 Mobile Computer Workstations with the standard three (3) year warranty coverage and extended warranty for two (2) additional years. These services shall be provided in accordance with this Contract and with The Department of Information Resources Contract No. DIR-SDD-1304, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) The Department of Information Resources Contract No. DIR-SDD-1304 on file with the City of Plano Technology Services Department;
- (b) This Contract;
- (c) Motorola's Statement of Work and Warranty Coverage (Exhibit "A");
- (d) Certificate of Insurance (Exhibit "B"); and
- (e) Affidavit of No Prohibited Interest (Exhibit "C").

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

**II.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **TWO HUNDRED SIX THOUSAND THREE HUNDRED NINETY FIVE AND NO/100 DOLLARS (\$206,395.00).**

Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this

Contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

**III.
DESCRIPTION OF SERVICES**

Contractor will provide the services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under The Department of Information Resources Contract No. DIR-SDD-1304, or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

**IV.
CITY CONTACT**

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

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

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

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

Service will be provided at the location specified in the Contract Documents. When Contractor performs service at City's location, City will provide Contractor, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Contractor may perform its Services. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VII.
INDEMNIFICATION AND HOLD HARMLESS**

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT,

INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

VIII. COMPLIANCE WITH APPLICABLE LAWS

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

IX. VENUE

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

X. ASSIGNMENT AND SUBLETTING

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract shall not be assigned without the prior written consent of City, except for assignments to a Contractor entity. Contractor may subcontract any portion of its performance under this Agreement. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract. In the event any additional or different subcontractors are required or

requested by City, or in the event City rejects the use of a particular subcontractor, such rejection must be submitted in writing and be based on just and reasonable cause. Any resultant change in contract price and/or schedule shall be mutually agreed upon.

**XI.
INDEPENDENT CONTRACTOR**

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

**XII.
INSURANCE AND CERTIFICATES OF INSURANCE**

Contractor shall procure and maintain for the duration of the Contract insurance coverage as set forth in the Contract Documents including the City as a named insured attached hereto as Exhibit "B."

**XIII.
HINDRANCES AND DELAYS**

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

**XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**XV.
DEFAULT/TERMINATION**

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

rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

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

XVI. SEVERABILITY

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

XVII. TERMINATION

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

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

XVIII. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

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

XIX. ENTIRE AGREEMENT

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

City agrees to reference this Agreement and The Department of Information Resources Contract No. DIR-SDD-1304 on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XX.
SUCCESSORS AND ASSIGNS**

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

**XXI.
HEADINGS**

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

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

MOTOROLA, INC.

Date: _____

By: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

Date: _____

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____ by _____ of **MOTOROLA, INC.** a _____ corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 20____ by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

City of Plano MW810 Pricing

QUOTE RECAP

9-Mar-10

Equipment Model Number	Qty.	List Price	HGAC PRICE	DIR PRICE
	TOTAL	\$7,442.00	\$5,943.80	\$5,432.00
DIR Price Quoted above is negotiated price basd on purchase order of a quantity of 35 units with staggered shipment schedule				
Installation at customer location		\$465.00	\$465.00	\$465.00
		\$7,907.00	\$6,408.80	\$5,897.00

NOTES:

Unit ships with standard 3 year warranty
Service Repair option cannot be discounted

DIR Contract Number DIR-SDD-1304
2% purchasing Fee included in above price

**LIMITED WARRANTY
MOTOROLA COMMUNICATION PRODUCTS**

If the affected product is being purchased pursuant to a written Communications System Agreement signed by Motorola, the warranty contained in that written agreement will apply. Otherwise, the following warranty applies.

I. WHAT THIS WARRANTY COVERS AND FOR HOW LONG:

Motorola Inc. or, if applicable, Motorola Canada Limited ("Motorola") warrants the Motorola manufactured radio communications product, including original equipment crystal devices and channel elements ("Product"), against material defects in material and workmanship under normal use and service for a period of Three (3) Year from the date of shipment. Optional extended warranty has been purchased by The City of Plano for the MW810's identified in this purchase. This extends the warranty through years 4 and 5 from date of shipment.

Motorola, at its option, will at no charge either repair the Product (with new or reconditioned parts), replace it with the same or equivalent Product (using new or reconditioned Product), or refund the purchase price of the Product during the warranty period provided purchaser notifies Motorola according to the terms of this warranty. Repaired or replaced Product is warranted for the balance of the original applicable warranty period. All replaced parts of the Product shall become the property of Motorola.

This express limited warranty is extended by Motorola to the original end user purchaser purchasing the Product for purposes of leasing or for commercial, industrial, or governmental use only, and is not assignable or transferable to any other party. This is the complete warranty for the Product manufactured by Motorola. Motorola assumes no obligations or liability for additions or modifications to this warranty unless made in writing and signed by an officer of Motorola.

Motorola cannot be responsible in any way for any ancillary equipment not furnished by Motorola which is attached to or used in connection with the Product, or for operation of the Product with any ancillary equipment, and all such equipment is expressly excluded from this warranty. Because each system which may use the Product is unique, Motorola disclaims liability for range, coverage, or operation of the system as a whole under this warranty.

II. GENERAL PROVISIONS:

This warranty sets forth the full extent of Motorola's responsibilities regarding the Product. Repair, replacement or refund of the purchase price, at Motorola's option, is the exclusive remedy. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER EXPRESS WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL MOTOROLA BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCT, FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS OR OTHER INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE SUCH PRODUCT, TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.

III. HOW TO GET WARRANTY SERVICE:

Purchaser must notify Motorola's representative or call Motorola's Customer Response Center at 1-800-247-2346 within the applicable warranty period for information regarding warranty service.

IV. WHAT THIS WARRANTY DOES NOT COVER:

- A. Defects or damage resulting from use of the Product in other than its normal and customary manner.
- B. Defects or damage from misuse, accident, water, or neglect.
- C. Defects or damage from improper testing, operation, maintenance, installation, alteration, modification, or adjustment.
- D. Breakage or damage to antennas unless caused directly by defects in material workmanship.
- E. A Product subjected to unauthorized Product modifications, disassemblies or repairs (including, without limitation, the addition to the Product of non-Motorola supplied equipment) which adversely affect performance of the Product or interfere with Motorola's normal warranty inspection and testing of the Product to verify any warranty claim.
- F. Product which has had the serial number removed or made illegible.
- G. Batteries (they carry their own separate limited warranty).
- H. A Product which, due to illegal or unauthorized alteration of the software/firmware in the Product, does not function in accordance with Motorola's published specifications or with the FCC type acceptance labeling in effect for the Product at the time the Product was initially distributed from Motorola.
- I. Scratches or other cosmetic damage to Product surfaces that does not affect the operation of the Product.
- J. That the software in the Product will meet the purchaser's requirements or that the operation of the software will be uninterrupted or error-free.
- K. Normal and customary wear and tear.
- L. Non-Motorola manufactured equipment unless bearing a Motorola Part Number in the form of an alpha numeric number (i.e., TDE6030B).

V. GOVERNING LAW

In the case of a Product sold in the United States and Canada, this Warranty is governed by the laws of the State of Illinois and the Province of Ontario, respectively.

VI. PATENT AND SOFTWARE PROVISIONS:

Motorola will defend, at its own expense, any suit brought against the end user purchaser to the extent that it is based on a claim that the Product or its parts infringe a United States patent, and Motorola will pay those costs and damages finally awarded against the end user purchaser in any such suit which are attributable to any such claim, but such defense and payments are conditioned on the following:

- A. that Motorola will be notified promptly in writing by such purchaser of any notice of such claim;
- B. that Motorola will have sole control of the defense of such suit and all negotiations for its settlement or compromise; and
- C. should the Product or its parts become, or in Motorola's opinion be likely to become, the subject of a claim of infringement of a United States patent, that such purchaser will permit Motorola, at its option and expense, either to procure for such purchaser the right to continue using the Product or its parts or to replace or modify the same so that it becomes non-infringing or to grant such purchaser a credit for the Product or its parts as depreciated and accept its return. The depreciation will be an equal amount per year over the lifetime of the Product or its parts as established by Motorola.

Motorola will have no liability with respect to any claim of patent infringement which is based upon the combination of the Product or its parts furnished hereunder with software, apparatus or

devices not furnished by Motorola, nor will Motorola have any liability for the use of ancillary equipment or software not furnished by Motorola which is attached to or used in connection with the Product. The foregoing states the entire liability of Motorola with respect to infringement of patents by the Product or any its parts thereof.

Laws in the United States and other countries preserve for Motorola certain exclusive rights for copyrighted Motorola software such as the exclusive rights to reproduce in copies and distribute copies of such Motorola software. Motorola software may be used in only the Product in which the software was originally embodied and such software in such Product may not be replaced, copied, distributed, modified in any way, or used to produce any derivative thereof. No other use including, without limitation, alteration, modification, reproduction, distribution, or reverse engineering of such Motorola software or exercise of rights in such Motorola software is permitted. No license is granted by implication, estoppels or otherwise under Motorola patent rights or copyrights.



CERTIFICATE OF LIABILITY INSURANCE

OP ID RH
DFWCOMMDATE (MM/DD/YYYY)
03/19/10

PRODUCER Texas American Insurers, Inc. 2501 Parkview Drive, Suite 411 Fort Worth TX 76102 Phone: 817-877-3101 Fax: 817-332-6916	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED DFW Communications, Inc. Century VII, LLC 2120 Regency Drive Irving TX 75062	INSURER A: St. Paul Fire & Marine Co.	
	INSURER B: Service Lloyds Ins. Co.	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

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

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	TE09104706	06/01/09	06/01/10	EACH OCCURRENCE	\$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence)				\$ 300,000	
					MED EXP (Any one person)	\$ 10,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO	TE09104706	06/01/09	06/01/10	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per person)	\$
A	<input checked="" type="checkbox"/> HIRED AUTOS	TE09104706	06/01/09	06/01/10	BODILY INJURY (Per accident)	\$
A	<input checked="" type="checkbox"/> NON-OWNED AUTOS	TE09104706	06/01/09	06/01/10	PROPERTY DAMAGE (Per accident)	\$
A	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	TE09104706	06/01/09	06/01/10	AUTO ONLY - EA ACCIDENT	\$ 100,000
	<input checked="" type="checkbox"/> 500 DED COMP/COLL				OTHER THAN AUTO ONLY: EA ACC AGG	\$
A	EXCESS / UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE	TE09104706	06/01/09	06/01/10	EACH OCCURRENCE	\$ 3,000,000
	<input type="checkbox"/> DEDUCTIBLE				AGGREGATE	\$ 3,000,000
	<input checked="" type="checkbox"/> RETENTION \$10,000					\$
						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	SRZA17537-09	06/01/09	06/01/10	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
					E.L. EACH ACCIDENT	\$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
					E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
A	OTHER EMPLOYEE THEFT	TE09104706	06/01/09	06/01/10	CRIME	50,000
					DEDUCTIBL	1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

IF REQUIRED BY WRITTEN CONTRACT THE CITY OF PLANO IS LISTED AS AN ADDITIONAL INSURED IN REGARDS TO GENERAL LIABILITY. IF REQUIRED BY WRITTEN CONTRACT A WAIVER OF SUBROGATION IS IN FAVOR OF THE CITY OF PLANO
ALL POLICIES ARE ENDORSED WITH A 30 DAY NOTICE OF CANCELLATION IN FAVOR OF THE CITY OF PLANO

CERTIFICATE HOLDER

CANCELLATION

CITY OF PLANO ATTN: PURCHASING DEPARTMENT 1520 AVENUE K PLANO TX 75074	CITYPLA SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE John W. Silvey
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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		04/12/2010		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): Amy Powell X7342				
CAPTION				
To approve a contract for the purchase of a maintenance agreement, for Wireless Mesh Network Devices, in the amount of \$209,950 from Motorola through an existing contract with the Houston-Galveston Area Council, and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. RA-01-08)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	876,199	0	876,199
Encumbered/Expended Amount	0	-226,013	0	-226,013
This Item	0	-209,950	0	-209,950
BALANCE	0	440,236	0	440,236
FUND(S): TECHNOLOGY SERVICES FUND (066.394)				
<p>COMMENTS: .Funds for technical support services, maintenance, and monitoring of wireless mesh network devices are included in the 2009-10 Technology Services Budget. This item, in the amount of \$209,950, covers the period of January 1, 2010 through September 30, 2010. The remaining balance will be used throughout the year for other maintenance agreements.</p> <p>STRATEGIC PLAN GOAL: Maintenance and service contracts relate to the City's Goal of "Financially Strong City with Service Excellence".</p>				
SUMMARY OF ITEM				
<p>Technology Services recommends Council approve this expenditure, in the amount of \$209,950, for a maintenance agreement with Motorola. This maintenance agreement will allow for technical support services, maintenance and monitoring of Wireless Mesh Network Devices for the period of January 1, 2010 to September 30, 2010. As part of this maintenance contract, Motorola will monitor the network on a 24/7 basis and will maintain the integrity and continuity for this critical infrastructure. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so, satisfies any State Law requiring local government to seek competitive bids for items. (HGAC Contract No. RA-01-08)</p>				
List of Supporting Documents: Contract and Staff Memo			Other Departments, Boards, Commissions or Agencies	

Interoffice Memo

Date: 03/10/10

To: David Stephens, Director Technology Services

Cc:

From: Chester M. Helt, Infrastructure Manager

RE: Motorola Maintenance – January 1, 2010 – September 30, 2010

We are recommending that the attached maintenance contract for our annual mesh maintenance be approved. This amendment will cover the maintenance for the software required to operate the mesh devices from the month of January 2010 through September 30, 2010. Once this amendment is approved we will have depot repair, technical support, and software maintenance for the mission critical mesh wireless infrastructure. This network will be used by many of our departments (including public safety) to provide critical services for our citizens. As a part of the contract Motorola will monitor the network on 24/7 basis and will maintain the integrity and continuity for this critical infrastructure.

We recommend purchasing this maintenance for a total price of \$209,950.00 from Motorola through their HGAC contract RA-01-08.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND MOTOROLA, INC.
FOR SERVICES FOR WIRELESS MESH NETWORK DEVICES**

THIS CONTRACT is made and entered into by and between **MOTOROLA, INC.** whose address is 1301 E. Algonquin Road, Schaumburg, Illinois, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide technical support services, maintenance and monitoring of Wireless Mesh Network Devices. These services shall be provided in accordance with this Contract and with the Houston-Galveston Area Council Contract No. RA-01-08, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) This Contract;
- (b) The Houston-Galveston Area Council Contract No. RA-01-08 on file with the City of Plano Technology Services Department;
- (c) Motorola's Statement of Work (Exhibit "A");
- (d) Insurance Requirements and Certificate of Insurance (Exhibit "B");and
- (e) Affidavit of No Prohibited Interest (Exhibit "C").

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

**II.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **TWO HUNDRED NINE THOUSAND NINE HUNDRED FIFTY AND 00/100 DOLLARS (\$209,950.00)**.

**III.
TERM**

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

**IV.
DESCRIPTION OF SERVICES**

Contractor will provide the services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under The Houston-Galveston Area Council Contract No. RA-01-08, or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

**V.
CITY CONTACT**

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

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

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

**VII.
TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in the Contract Documents. When Contractor performs service at City's location, City will provide Contractor, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Contractor may perform its Services. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.
COMPLIANCE WITH APPLICABLE LAWS**

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

**IX.
INDEMNIFICATION AND HOLD HARMLESS**

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), REAL AND PERSONAL TANGIBLE PROPERTY DAMAGE THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S NEGLIGENT ACT GROSSLY NEGLIGENT ACT, OR WILLFUL MISCONDUCT OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, OR SUBCONTRACTORS WHILE PERFORMING DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, PROVIDED THAT CITY GIVES MOTOROLA PROMPT, WRITTEN NOTICE OF ANY SUCH CLAIM OR SUIT. CITY SHALL COOPERATE WITH CONTRACTOR IN ITS DEFENSE OR SETTLEMENT OF SUCH CLAIM OR SUIT. THIS SECTION SETS FORTH THE FULL EXTENT OF CITY'S GENERAL INDEMNIFICATION OF CONTRACTOR FROM LIABILITIES THAT ARE IN ANY WAY RELATED TO CITY'S

PERFORMANCE UNDER THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL UPON CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN A REASONABLE TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

X.
INDEMNITY FOR INTELLECTUAL PROPERTY INFRINGEMENT

CONTRACTOR WILL DEFEND AT ITS EXPENSE ANY SUIT BROUGHT AGAINST CITY TO THE EXTENT IT IS BASED ON A THIRD-PARTY CLAIM ALLEGING THAT THE EQUIPMENT MANUFACTURED BY CONTRACTOR OR THE CONTRACTOR SOFTWARE ("PRODUCT") DIRECTLY INFRINGES A UNITED STATES PATENT OR COPYRIGHT ("INFRINGEMENT CLAIM"). CONTRACTOR'S DUTIES TO DEFEND AND INDEMNIFY ARE CONDITIONED UPON: CITY PROMPTLY NOTIFYING CONTRACTOR IN WRITING OF THE INFRINGEMENT CLAIM; CONTRACTOR HAVING SOLE CONTROL OF THE DEFENSE OF THE SUIT AND ALL NEGOTIATIONS FOR ITS SETTLEMENT OR COMPROMISE; AND CITY PROVIDING TO CONTRACTOR COOPERATION AND, IF REQUESTED BY CONTRACTOR, REASONABLE ASSISTANCE IN THE DEFENSE OF THE INFRINGEMENT CLAIM. IN ADDITION TO CONTRACTOR'S OBLIGATION TO DEFEND, AND SUBJECT TO THE SAME CONDITIONS, CONTRACTOR WILL PAY ALL DAMAGES FINALLY AWARDED AGAINST CITY BY A COURT OF COMPETENT JURISDICTION FOR AN INFRINGEMENT CLAIM OR AGREED TO, IN WRITING, BY CONTRACTOR IN SETTLEMENT OF AN INFRINGEMENT CLAIM. IF AN INFRINGEMENT CLAIM OCCURS, OR IN CONTRACTOR'S OPINION IS LIKELY TO OCCUR, CONTRACTOR MAY AT ITS OPTION AND EXPENSE: (A) PROCURE FOR CITY THE RIGHT TO CONTINUE USING THE PRODUCT; (B) REPLACE OR MODIFY THE PRODUCT SO THAT IT BECOMES NON-INFRINGEMENT WHILE PROVIDING FUNCTIONALLY EQUIVALENT PERFORMANCE; OR (C) ACCEPT THE RETURN OF THE PRODUCT AND GRANT CITY A CREDIT FOR THE PRODUCT. CONTRACTOR WILL HAVE NO DUTY TO DEFEND OR INDEMNIFY FOR ANY INFRINGEMENT CLAIM THAT IS BASED UPON: (A) THE COMBINATION OF THE PRODUCT WITH ANY SOFTWARE, APPARATUS OR DEVICE NOT FURNISHED BY CONTRACTOR; (B) THE USE OF ANCILLARY EQUIPMENT OR SOFTWARE NOT FURNISHED BY MOTOROLA AND THAT IS ATTACHED TO OR USED IN CONNECTION WITH THE PRODUCT; (C) PRODUCT DESIGNED OR MANUFACTURED IN ACCORDANCE WITH CITY'S DESIGNS, SPECIFICATIONS, GUIDELINES OR INSTRUCTIONS, IF THE ALLEGED INFRINGEMENT WOULD NOT HAVE OCCURRED WITHOUT SUCH DESIGNS, SPECIFICATIONS, GUIDELINES OR INSTRUCTIONS; (D) A MODIFICATION OF THE PRODUCT BY A PARTY OTHER THAN CONTRACTOR; (E) USE OF THE PRODUCT IN A MANNER FOR WHICH THE PRODUCT WAS NOT DESIGNED OR THAT IS INCONSISTENT WITH THE TERMS OF THIS AGREEMENT; OR (F) THE FAILURE BY CITY TO INSTALL AN ENHANCEMENT RELEASE TO THE CONTRACTOR SOFTWARE THAT IS INTENDED TO CORRECT THE CLAIMED INFRINGEMENT. IN NO EVENT WILL CONTRACTOR'S LIABILITY RESULTING FROM ITS INDEMNITY OBLIGATION TO CITY EXTEND IN ANY WAY TO ROYALTIES PAYABLE ON A PER USE BASIS OR THE CITY'S REVENUES, OR ANY ROYALTY BASIS OTHER THAN A REASONABLE ROYALTY BASED UPON REVENUE DERIVED BY CONTRACTOR FROM CITY FROM SALES OR LICENSE OF THE INFRINGING PRODUCT. THIS SECTION PROVIDES CITY'S SOLE AND EXCLUSIVE REMEDIES AND CONTRACTOR'S ENTIRE LIABILITY IN THE EVENT OF AN INFRINGEMENT CLAIM.

**XI.
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.

**XII.
ASSIGNMENT AND SUBLETTING**

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

**XIII.
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.

XIV.
INSURANCE AND CERTIFICATES OF INSURANCE

Contractor shall procure and maintain for the duration of the Contract insurance coverage as set forth in Exhibit "B" including the City as a named insured.

XV.
FORCE MAJUERE

Neither party is liable for delays or lack of performance resulting from any causes beyond the reasonable control of a party including acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

XVI.
AFFIDAVIT OF NO PROHIBITED INTEREST

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

XVII.
TERMINATION FOR CAUSE

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

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

XVIII. 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.

XIX. TERMINATION FOR CONVENIENCE

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

If Contractor provides Services after the termination or expiration of this Contract, the terms and conditions in effect at the time of the termination or expiration will apply to those Services.

XX. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

To the extent permitted by law, any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to City under this Contract will remain Contractor's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Contractor's request. City may not disclose, without Contractor's written permission or as required by law, any such information, or data to any person, or use such

information or data itself for any purpose other than performing its obligations under this Contract. The obligations set forth in this Section will survive the expiration or termination of this Contract.

**XXI.
MAILING OF NOTICES**

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

City of Plano
Technology Services
P.O. Box 860358
Plano, Texas 75086-0358
Attn: David Stephens

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

Attn: _____

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.

**XXII.
ENTIRE AGREEMENT**

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

City agrees to reference this Contract and The Houston-Galveston Area Council Contract No. RA-01-08 on any purchase order issued in furtherance of this Contract, however, an omission of the reference to this Contract shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to

this Contract; (ii) clearly indicate the intention of both parties to override and modify this Contract; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XXIII.
SUCCESSORS AND ASSIGNS**

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

**XXIV.
HEADINGS**

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

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

MOTOROLA, INC.

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

CITY OF PLANO, TEXAS

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

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____ by _____, _____ of **MOTOROLA, INC.** a _____ corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 20____ by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas



SERVICE AGREEMENT

Attn: National Service Support/4th fl
 1301 East Algonquin Road
 Schaumburg, IL 60196
 (800) 247-2346

Contract Number: S00001012950
 Contract Modifier: RN07-JAN-10 13:21:41
 Supercedes Agreement(s):

Date: 02/09/2010

Company Name: Plano, City Of
Attn:
Billing Address: P O Box 860279
City, State, Zip: Plano, TX 75086-0279
Customer Contact: Chester Helt
Phone: (972)941-7626
Fax:

Required P.O.: Yes
 Customer #: 1011267912
 Bill to Tag #: 0006
 Contract Start Date: 01/01/2010
 Contract End Date: 10/31/2010
 Anniversary Day: Dec 31st
 Payment Cycle: MONTHLY
 Tax Exempt: Exempt From All Taxes
 PO #: TBD

Qty	Model/Option	Description	Monthly Ext	Extended
1269	SVC01SVC0084A	***** Recurring Services ***** RNS TECH/SW SUPPORT	\$ 20,995.00	\$ 209,950.00
176	SVC073AE	RNS MESH MWR		
1	SVC072AE	RNS MESH IAP		
	SVC077AE	RNS MESH MISC		
SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS			Subtotal - Recurring Services	\$ 20,995.00 \$ 209,950.00
			Subtotal - One-Time Event Services	\$.00 \$.00
			Total	\$20,995.00 \$209,950.00
			Taxes	- -
Plano MESH Service from Jan through Oct 2010. HGAC Contract RA-01-08			Grand Total	\$ 20,995.00 \$ 209,950.00
THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE. TO BE VERIFIED BY MOTOROLA.				

Subcontractor(s)	City	State
MOTOROLA SYSTEM SUPPORT-TECHNICAL SUPPORT DO068	SCHAUMBURG	IL

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

AUTHORIZED CUSTOMER SIGNATURE	TITLE	DATE
<i>John Martin</i>	Service Manager	2/10/2010
MOTOROLA REPRESENTATIVE (SIGNATURE)	TITLE	DATE
<i>John Martin</i>	972-277 4608	
MOTOROLA REPRESENTATIVE (PRINT NAME)	PHONE	FAX

Service Terms and Conditions

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

Section 1 APPLICABILITY

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

Section 2 DEFINITIONS AND INTERPRETATION

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

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

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

Section 3 ACCEPTANCE

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

Section 4 SCOPE OF SERVICES

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

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

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

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

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

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

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

Section 5 EXCLUDED SERVICES

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

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

obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by such transmission medium.

Section 6 TIME AND PLACE OF SERVICE

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

Section 7 CUSTOMER CONTACT

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

Section 8 PAYMENT

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

Section 9 WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 DEFAULT/TERMINATION

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

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

Section 11 LIMITATION OF LIABILITY

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

Section 12 EXCLUSIVE TERMS AND CONDITIONS

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of

this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

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

Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

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

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

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

Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS

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

Section 15 COVENANT NOT TO EMPLOY

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

*Deleted by Motorola 4/1/2010
JMM*

Section 16 MATERIALS, TOOLS AND EQUIPMENT

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

Section 17 GENERAL TERMS

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

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

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

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

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

17.6. THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS

THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

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

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
02/10/2010

PRODUCER

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

Serial # 0617

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

COMPANIES AFFORDING COVERAGE

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

INSURED

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

COVERAGES

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

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	TB2-641-005169-079	7/1/2009	7/1/2010	GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COM/OP AGG \$ INCLUDED PERSONAL & ADV INJURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 250,000 MED EXP (Any one person) \$ 10,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	AS2-641-005169-019	7/1/2009	7/1/2010	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EACH ACCIDENT \$ AGGREGATE \$
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
B	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY B THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE <input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL	WC7-641-005169-089 (ALL OTHER STATES) WC7-641-005169-099 (OR & WI)	7/1/2009	7/1/2010	<input checked="" type="checkbox"/> WE STATE/ TOP LIMITS EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
 RE: 05-13276/RES MESH 4.0 NETWORK. CITY OF PLANO, TX IS LISTED AS ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY AND WORK PERFORMED BY MOTOROLA UNDER CONTRACT. WAIVER OF SUBROGATION IS INCLUDED ON THE WORKERS' COMPENSATION POLICY.

CERTIFICATE HOLDER

CITY OF PLANO, TEXAS
ATTN: DAVID STEPHENS
TECHNOLOGY SERVICES
1117 EAST 15TH STREET
PLANO TX 75074 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Central, Inc.

ACORD 25-S (1/95)

RECEIVED
FEB 18 2010
BY: _____

© ACORD CORPORATION 1988

EXHIBIT B
PAGE 1 OF 1

AFFIDAVIT OF NO PROHIBITED INTEREST

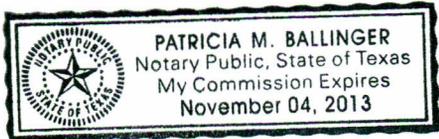
I, the undersigned declare and affirm that no person or officer of _____ (herein "Contractor") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest,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

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

By: Motorola
Name of Contractor
John Martin
Signature
John Martin
Print Name
Service Manager
Title
4/1/2010
Date

STATE OF Texas §
COUNTY OF Dallas §
§

SUBSCRIBED AND SWORN TO before me this 1st day of April, 2010.



Patricia M. Ballinger
Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 5838
CAPTION				
To approve the purchase of material testing services in the amount of \$89,991 from GME Consulting Services, Inc. through an existing City of Plano contract and authorizing the City Manager to execute all necessary documents. (2009-186-D)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	271,499	6,301,501	0	6,573,000
Encumbered/Expended Amount	-271,499	-4,286,290	0	-4,557,789
This Item	0	-89,991	0	-89,991
BALANCE	0	1,925,220	0	1,925,220
FUND(s): STREET IMPROVEMENT CIP				
COMMENTS: Funds are included in the 2009-10 Street Improvement CIP. This item, in the amount of \$89,991, will leave a current year balance of \$1,925,220 for the 14 th Street – K to Ridgewood project. STRATEGIC PLAN GOAL: Construction materials testing for street construction relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends approval of this expenditure for construction material testing on the 14 th Street - Avenue K to Ridgewood project in the amount of \$89,991.00 to GME Consulting Services, Inc.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Exhibit C		N/A		

Task 2. Light Pole Base Installation					
Given: 26 light pole bases; Install 6 per day					
Assumptions: 5 trips @ 6 hrs/trip; 4 cyls/pour					
1. Senior Engineering Technician		hr	\$ 39.00	30	\$ 1,170.00
2. Concrete Cylinder Tests		ea	\$ 14.00	20	\$ 280.00
3. Trip Charge		ea	\$ 50.00	10	\$ 500.00
Subtotal Task 2					\$ 1,950.00
Task 3. Concrete Testing					
Given: 13,600 cy 8" street pavement; avg 400 cy/day					
1,333 cy of 6" driveway concrete; avg 150 cy/day					
38 cy of 6" parking; 1 pour					
667 cy of sidewalk; avg 100 cy/day					
50 to 60 misc. pours (inlets, curbs, median noses, etc.)					
Assumptions: Street pours avg 300 cy/pour @ 7 hrs/pour					
Driveway pours avg 100 cy/pour @ 5 hrs/pour					
Sidewalk pours avg 75 cy/pour @ 6 hrs/pour					
Miscellaneous pours avg 35 cy/pour @ 4 hrs					
A. Mix Design Review					
Assumptions: 5 mix design reviews					
1. Senior Engineer		hr	\$ 150.00	10	\$ 1,500.00
B. Street Pours					
Given: 34 pours					
Assumptions: 40 pours @ 7 hrs/ea; 4 sets of 4 cyls/pour					
1. Senior Engineering Technician		hr	\$ 39.00	280	\$ 10,920.00
2. Concrete Cylinder Tests		ea	\$ 14.00	640	\$ 8,960.00
C. Driveway Pours					
Given: 1333 cy; 14 pours					
Assumptions: 5 hrs/pour; 1 set of 4 cyls/pour					
1. Senior Engineering Technician		hr	\$ 39.00	70	\$ 2,730.00
2. Concrete Cylinder Tests		ea	\$ 14.00	56	\$ 784.00
D. Sidewalk Pours					
Given: 667 cy sidewalk; 7 pours					
Assumptions: 6 hours/pour; 1 set of 4 cyls/pour					
1. Senior Engineering Technician		hr	\$ 39.00	42	\$ 1,638.00
2. Concrete Cylinder Tests		ea	\$ 14.00	28	\$ 392.00
E. Miscellaneous Pours					
Given: 50 to 60 miscellaneous pours; < 35cy/pour					
Assumptions: 60 pours; 3 hrs/pour					
1. Senior Engineering Technician		hr	\$ 39.00	180	\$ 7,020.00
2. Concrete Cylinder Tests		ea	\$ 14.00	240	\$ 3,360.00
F. Cylinder Pickup					
Given: 111 pours					
Assumptions: 80 trips for cylinder pickup (some will occur on the same day of a pour or other activity)					
2 hrs/trip					
1. Senior Engineering Technician		hr	\$ 39.00	160	\$ 6,240.00
G. Trip Charges for Concrete					
1. Trip Charge		ea	\$ 50.00	195	\$ 9,750.00
Subtotal Task 3					\$ 53,294.00

Task 4. Project Management						
Given: 2 hours per month for 6 months						
Assumptions: None						
1. Senior Engineer						
			hr	\$ 150.00	14	\$ 2,100.00
Subtotal Task 4						\$ 2,100.00
Total Tasks 1-4						
Total						\$ 81,810.00
Budget Contingency for Overtime Charges - 10% of Total						\$ 8,181.00
Grand Total with 10% OT Contingency						\$ 89,991.00



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		April 12, 2010		
Department:		Purchasing		
Department Head		Mike Ryan		
Agenda Coordinator (include phone #): Dianna Wike x5512				
CAPTION				
To approve a contract for the purchase of Justice Center Equipment Replacement in the amount of \$60,346.26 from Trane U.S., Inc. dba Trane, through an existing contract/agreement with The Cooperative Purchasing Network (TCPN) and authorizing the City Manager to execute all necessary documents. (TCPN Contract Number R4669)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	929,023	251,977	150,000	1,331,000
Encumbered/Expended Amount	-929,023	-81,430	0	-1,010,453
This Item	0	-60,346	0	-60,346
BALANCE	0	110,201	150,000	260,201
FUND(S): CAPITAL RESERVE				
<p>COMMENTS: Funds are included in the Capital Reserve Fund. This item, in the amount of \$60,346, will leave a current year balance of \$110,201 for the Robinson Justice Center project.</p> <p>STRATEGIC PLAN GOAL: Equipment replacement purchases relate to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
Staff recommends approval of a contract for the purchase of Justice Center Equipment Replacement from Trane U.S., Inc. dba Trane, in the amount of \$60,346.26, conditioned upon timely execution of any necessary contract documents. This is to replace 7 rooftop air-conditioning units with new energy efficient units. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring Local governments to seek competitive sealed bids for items. (TCPN Contract Number R4669)				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memorandum				
Contract				



March 16, 2010

Phil Dyer
Mayor

Harry LaRosiliere
Mayor Pro Tem

Lee Dunlap
Deputy Mayor Pro Tem

Pat Miner
Place 1

Ben Harris
Place 2

Vacant
Place 3

Lissa Smith
Place 4

Jean Callison
Place 7

Thomas H. Muehlenbeck
City Manager

Dianna Wike
Buyer Supervisor

RE: Justice Center Equipment Replacement

Dianna,

Please review the attached proposal to replace 7 rooftop air-conditioning units at the Robinson Justice Center. I am recommending award to Trane utilizing their TCPN Cooperative Purchasing Contract. The quote obtained from Trane, in the amount of \$60,346.26 is the lowest quote in utilizing a cooperative purchasing agreement.

A quote was also obtained from Johnson Controls, Inc utilizing their Choice Facility Partners Cooperative Purchasing Contract in the amount of \$70,997.67.

The funding for the project will be from Capital Reserve Account 54492.

Please let me know if you have any questions.

Thanks,

Richard Medlen
Facilities Maintenance Superintendent

cc: Jim Razinha
Melody Morgan
Bruce Shaulis

Attachment

CONSTRUCTION AGREEMENT/JOB ORDER
BY AND BETWEEN CITY OF PLANO AND
TRANE U.S., INC. DBA TRANE
FOR JUSTICE CENTER EQUIPMENT REPLACEMENT

THIS CONSTRUCTION AGREEMENT/JOB ORDER is made and entered into by and between **TRANE U.S., INC. DBA TRANE**, a Delaware Corporation (hereinafter referred to as "Contractor"), and the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation (hereinafter referred to as "City"), to be effective from and after the date hereinafter provided.

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

I. CONTRACT DOCUMENTS

The parties agree that the Contract Documents shall consist of the following:

1. This written Construction Agreement/Job Order;
2. Vendor Contract Between **TRANE U.S., INC. DBA TRANE** and The Cooperative Purchasing Network Contracting with TCPN Contract No. R4669, a copy of which is on file in the purchasing department
3. The Contractor's Delivery Order, Proposal and Work Plan attached as Exhibit "A";
4. The City of Plano's Standard Construction Details (which is on file in the City of Plano's Engineering Department);
5. The Standard Specifications for Public Works Construction (North Central Texas Third Edition 1998) as amended and supplemented by the 1997 Edition of the City of Plano Special Provisions to said Standard Specifications, as amended (hereinafter referred to as "Plano Standard Specifications") (which is on file in the City of Plano's Engineering Department);
6. The Notice to Contractor;
7. A Payment Bond in the sum of ONE HUNDRED PERCENT (100%) of the total contract price attached as Exhibit "B";
8. Insurance Requirements attached as Exhibit "C"; and

9. The Affidavit of No Prohibited Interest attached as Exhibit "D."

These Contract Documents form the Construction Agreement/Job Order and are a part of this Construction Agreement/Job Order as if fully set forth herein. The Contract Documents are complementary and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency in any of the provisions of the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed above.

II. THE WORK

Contractor shall provide all labor, supervision, materials, and equipment necessary to perform all work required by the Contract Documents in connection with the Justice Center equipment replacement.

III. TIME OF COMPLETION

Contractor agrees and covenants that all work hereunder shall be complete within ninety (90) calendar days following notice to proceed.

IV. INDEMNITY

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED

TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

V. CONTRACT SUM

The City shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Orders as provided in the Contract Documents. The contract sum shall be an amount not to exceed **SIXTY THOUSAND THREE HUNDRED FORTY SIX AND 26/100 DOLLARS (\$60,346.26)**.

VI. PROGRESS AND FINAL PAYMENTS

Progress and final payments shall be paid to the Contractor in accordance with the Plano Standard Specifications.

VII. MAILING OF NOTICES

Unless instructed otherwise in writing, Contractor 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
Facilities Maintenance
P.O. Box 860358
Plano, TX 75086-0358
Attn: Richard Medlen

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

Trane U.S., Inc. dba Trane
1400 Valwood Parkway
Suite 100
Carrollton, Texas 75006
Attn: Terry W. Dalton

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.

VIII. CHOICE OF LAW; VENUE; CONTRACT INTERPRETATION

The parties agree that the law of the State of Texas shall apply to this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas. Although this Agreement is drafted by the City, should any part be in dispute, the parties agree the Agreement shall not be construed more favorably for either Party.

IX. ENTIRE AGREEMENT; AMENDMENTS; SUCCESSORS AND ASSIGNS

This Construction Agreement/Job Order, including the Contract Documents listed in Paragraph I above, represents the entire and integrated agreement between City and the Contractor, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Construction Agreement/Job Order may be amended only by written instrument signed by both City and Contractor. This Construction Agreement/Job Order is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

X. INSURANCE AND CERTIFICATES OF INSURANCE

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

XI. PAYMENT BOND

In the event this Contract amount exceeds \$25,000, a Payment bond in the amount of not less than one hundred percent (100%) of the Contract amount, conditioned upon the payment of all persons supplying labor or furnishing materials pursuant to the contract is required upon a form provided by the City. The bond is attached hereto and incorporated herein as Exhibit "B"; and

XII. 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 "D."

XIII. EFFECTIVE DATE

The effective date of this Construction Agreement/Job Order will be the date of approval by the City Council of the City of Plano, Texas.

IN WITNESS WHEREOF, the parties have executed this Construction Agreement/Job Order upon the year and date indicated beside their signatures hereto.

TRANE U.S., INC. DBA TRANE
a Delaware Corporation

DATE: _____

BY: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY



TRANE

Proposal

Prepared For:
City of Plano
Job Name:
City of Plano Justice Center

Date: March 10, 2010
Proposal Number: L3-152022-1
TCPN #02-10097-10-001.

Delivery Terms:
Freight Allowed and Prepaid - F.O.B. Factory

Payment Terms:
Net 30 Days

Tag Data - 3-10 Ton R410A PKGD Unitary Gas/Electric Rooftop (Qty: 7)

Item	Tag(s)	Qty	Description	Model Number
A1	82 RTU 1	1	3-10 Ton R410A PKGD Unitary Gas/Electric	YHC036E4RMA--F0A1A1020100
A2	82 RTU 2	1	3-10 Ton R410A PKGD Unitary Gas/Electric	YHC048E4RLA--F0A1A1020100
A3	82 RTU 3, 82 RTU 4	2	3-10 Ton R410A PKGD Unitary Gas/Electric	YSC092E4RLA--F0A1A1020100
A4	82 RTU 5, 82 RTU 6	2	3-10 Ton R410A PKGD Unitary Gas/Electric	YSC102E4RMA--F0A1A1020100
A5	82 RTU 7	1	3-10 Ton R410A PKGD Unitary Gas/Electric	YSC120E4RLB--F0A1A1020100

Product Data - 3-10 Ton R410A PKGD Unitary Gas/Electric Rooftop

All Units

- DX cooling, gas heat
- Convertible configuration
- 460/60/3
- Microprocessor controls 3ph
- Economizer Reference Enthaply 0-100% with Barometric Relief
- Hinged panels/standard filters
- Standard condenser coil w/hail guard
- Through the base electrical 3ph
- Non-fused disconnect
- No control interface, terminal strip only
- Frostat 3ph
- 5 Year parts warranty with economizer
- Adaptercurb

Item: A1 Qty: 1 Tag(s): 82 RTU 1

- High efficiency
- 3 Ton

Item: A2 Qty: 1 Tag(s): 82 RTU 2

- High efficiency
- 4 Ton

Item: A3 Qty: 2 Tag(s): 82 RTU 3, 82 RTU 4

- Standard efficiency
- 7.5 Ton Dual compressor
- Low gas heat 3ph

Item: A4 Qty: 2 Tag(s): 82 RTU 5, 82 RTU 6

- Standard efficiency
- 8.5 Ton
- Medium gas heat 3ph

Item: A5 Qty: 1 Tag(s): 82 RTU 7

- Standard efficiency
- 10 Ton
- Low gas heat 3ph

Scope:

- Furnish and install seven Ton Roof Top Units
- Reinstall existing smoke detectors.
- Reconnect existing electrical disconnects
- Factory startup
- Existing thermostats to be re-used
- Disposal of old equipment
- Rigging and Crane services (One Lift)

Exclusions and Clarifications:

- Code Upgrades
- Controls Integration/Communication
- Communication Wiring

Total Net Price (Excluding Sales Tax)\$ 60,346.26

**Scott Meyerkord
Account Manager**

1400 Valwood Parkway, Suite 100
Carrollton, TX 75006-8336
Phone: (972) 406-6000
Fax: (972) 243-1398



EXHIBIT A
PAGE 2 OF 2

PAYMENT BOND

STATE OF TEXAS §
COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS:

That _____, hereinafter called "Principal", and _____, a corporation organized and existing under the laws of the State of _____, and fully licensed to transact business in the State of Texas, hereinafter "Surety", are held and firmly bound unto the CITY OF PLANO, TEXAS, a home-rule municipal corporation, hereinafter called "Beneficiary", and unto all persons, firms, and corporations who may furnish materials for, or perform labor upon the building or improvements described below, in the penal sum of _____ DOLLARS (\$_____) in lawful money of the United States, to be paid in Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain written Contract with the Beneficiary, dated the _____ day of _____, _____, A.D. which is made a part hereof by reference, for the construction of certain public improvements that are generally described as follows:

_____.

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

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

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to

Contract, or to the Work performed thereunder, or the Plans, Specifications, Drawings, etc., accompanying the same, shall in anyway affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder.

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

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Texas Insurance Code Article 3503.003.

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

PRINCIPAL: _____
Address _____
Tel. No. _____

ATTEST:

BY: _____
TITLE: _____

SURETY: _____
Address _____
Tel. No. _____

ATTEST:

BY: _____
TITLE: _____

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

NAME: _____
STREET ADDRESS: _____
CITY, STATE, ZIP: _____

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

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

City of Plano
Contractor Insurance Requirements and Agreement
Requirements

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

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

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

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

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

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

CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER
201030

PRODUCER
Marsh USA, Inc
1166 Avenue of the Americas
New York NY 10036
ATTN:
NEWYORK.CERTS@Marsh.com /
212-948-0500 (fax)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGE

COMPANY A: New Hampshire Insurance Company
COMPANY B: National Union Fire Insurance Company of Pittsburgh, PA
COMPANY C: The Travelers Indemnity Company of America
COMPANY D: Travelers Property Casualty Company of America

INSURED
ATTN: FINANCIAL MANAGER
Trane U.S. Inc. dba Trane
FACServices Inc, an American Standard Company
1400 Valwood Parkway; Suite 100
Carrollton, TX 75006
United States

COVERAGES

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

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION	LIMITS	
A	GENERAL LIABILITY	GL 0907331	4/17/2009	4/17/2010	GENERAL AGGREGATE	\$7,500,000.00
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL				PRODUCTS - COMP/OP AGG	\$7,500,000.00
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCU				PERSONAL & ADV INJURY	\$7,500,000.00
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S				EACH OCCURRENCE	\$5,000,000.00
					FIRE DAMAGE (Any one fire)	\$1,000,000.00
					MED EXP (Any one person)	\$10,000.00
B B B	AUTOMOBILE LIABILITY	CA 0919352 (AOS) CA 0919351 (VA) CA 0919350 (MA)	4/17/2009 4/17/2009 4/17/2009	4/17/2010 4/17/2010 4/17/2010	COMBINED SINGLE LIMIT	\$2,000,000.00
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	
	<input type="checkbox"/> ALLOWED AUTOS				BODILY INJURY (Per accident)	
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE	
	<input type="checkbox"/> HIRED AUTOS					
	<input type="checkbox"/> NON-OWNED AUTOS					
	<input checked="" type="checkbox"/> PHYSICAL DAMAGE/SELF INS.					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY	
					EACH ACCIDENT	
					AGGREGATE	
	EXCESS LIABILITY				EACH OCCURRENCE	
	<input type="checkbox"/> UMBRELLA FORM				AGGREGATE	
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM					
C C D D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	TC2H-UB-7434L10A-09 (AOS) TC2H-UB-7434L448-09 (MN) TRJ-UB-7434L424-09 (AZ,MA,OR,WI) TWXJ-UB-7434L45A-09 (OH Excess)	4/17/2009 4/17/2009 4/17/2009 4/17/2009	4/17/2010 4/17/2010 4/17/2010 4/17/2010	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHE R
	<input type="checkbox"/> INCL				EL EACH ACCIDENT	\$3,000,000.00
	<input type="checkbox"/> EXC				EL DISEASE-POLICY LIMIT	\$3,000,000.00
					EL DISEASE-EACH	\$3,000,000.00

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS (LIMITS MAY BE SUBJECT TO DEDUCTIBLES OR RETENTIONS)

Please see page 2 for additional information.

CERTIFICATE HOLDER

City of Plano
1520 Ave K
Plano, Tx 75086
United States

CANCELLATION

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES.

Marsh USA, Inc.
BY: David Kong

VALID AS OF: 3/17/2010

ADDITIONAL INFORMATION

CERTIFICATE NUMBER
201030

PRODUCER

Marsh USA, Inc
1166 Avenue of the Americas
New York NY 10036
ATTN:
NEWYORK.CERTS@Marsh.com /
212-948-0500 (fax)

COMPANIES AFFORDING COVERAGE

INSURED

ATTN: FINANCIAL MANAGER
Trane U.S. Inc. dba Trane
FACServices Inc, an American Standard Company
1400 Valwood Parkway; Suite 100
Carrollton, TX 75006
United States

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS (LIMITS MAY BE SUBJECT TO DEDUCTIBLES OR RETENTIONS)

City of Plano , City of Plano are included as additional insured, but only to the extent of the named insured's negligence, pursuant to the Automobile Policy evidenced above and the applicable Additional Insured endorsement of the General Liability policy evidenced above.

Waiver of subrogation in favor of additional insured to the extent of the named insured's negligence.

Job Description: City of Plano

CERTIFICATE HOLDER

City of Plano
1520 Ave K
Plano , Tx 75086
United States



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		April 12, 2010		
Department:		Public Information		
Department Head		Dana Conklin - 7321		
Agenda Coordinator (include phone #): Kimberly Simmons - 7307				
CAPTION				
A Resolution of the City of Plano, Texas repealing Resolutions No. 99-9-35(R) and 2008-9-13(R) and thereby dissolving the Plano Public Art Committee; 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 resolution dissolves the Plano Public Art Committee having accomplished its goals and objectives.				
List of Supporting Documents: Resolution		Other Departments, Boards, Commissions or Agencies		

A Resolution of the City of Plano, Texas repealing Resolutions No. 99-9-35(R) and 2008-9-13(R) and thereby dissolving the Plano Public Art Committee; and providing an effective date.

WHEREAS, the City Council established the Plano Public Art Committee by Resolution No. 99-9-35(R), passed on September 27, 1999 which was amended by Resolution No. 2008-9-13(R), passed on September 8, 2008; and

WHEREAS, the City Council finds that the Plano Public Art Committee has accomplished its goals and objectives and should be dissolved.

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

Section I. The City Council hereby repeals Resolutions No. 99-9-35(R) and 2008-9-13(R) and dissolves the Plano Public Art Committee.

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

DULY PASSED AND APPROVED this the 12th day of April, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Amended Contract between Helmick Sculpture LLC and the City of Plano for artwork in the Visitor Center of Oak Point Park and Nature Preserve; authorizing its execution by the City Manager or his authorized designee; 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 financial impact.				
STRATEGIC PLAN GOAL: This public art element relates to the City's Goal of "Premier City for Families."				
SUMMARY OF ITEM				
A Resolution to contract Helmick & Schechter Sculpture was adopted by City Council on 11/13/06 to design, fabricate, deliver, and install artwork in the Visitor/Education Center lobby of Oak Point Park and Nature Preserve. Due to budget constraints, this project has been delayed. This item amends the contract to retain the artist and extends the contract terms. The amendment also reflects the company's name change to Helmick Sculpture. The artwork is "Natural Selections," a suspended sculpture of shaped steel rods, depicting images of plant and animal species native to the region.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Resolution				
Contract				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Amended Contract between Helmick Sculpture LLC and the City of Plano for artwork in the Visitor Center of Oak Point Park and Nature Preserve; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City previously entered into an agreement with Helmick & Schechter for the design, fabrication and installation of a piece of artwork in the Visitor Center of Oak Point Park and Nature Preserve; and

WHEREAS, the City Council has been presented a proposed Amended Contract for said artwork between Helmick Sculpture LLC and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Amended Contract"); and,

WHEREAS, Ralph Helmick and Stuart Schechter entered into a Dissolution Agreement on May 1, 2008, to dissolve the corporation of Helmick & Schechter, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference (hereinafter called "Dissolution Agreement"); and

WHEREAS, the Dissolution Agreement assigned all of the Outstanding Contracts including all the rights and obligations of Helmick & Schechter to Ralph Helmick; and

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

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

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

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

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

DULY PASSED AND APPROVED this the 12th day of April, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**EXHIBIT A
CONTRACT
(AMENDED)**

THIS CONTRACT is made and entered into by and between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, (hereinafter referred to as "City") and **HELMICK SCULPTURE LLC**, a Massachusetts limited liability company having its principal place of business at 447 Lowell Avenue, Newton, Massachusetts 02460 (hereinafter referred to as "Company").

1. **PURPOSE**

The purpose of this Contract is to state the terms and conditions under which Company shall design, fabricate and install a piece of artwork in the Visitor Center of Oak Point Park and Nature Preserve entitled *Natural Selections* as set forth in attached Exhibit "A", (hereinafter referred to as "Artwork").

2. **DESCRIPTION OF SERVICES**

Company's services hereunder shall include, but shall not be limited to, the following:

A. Company shall perform all the services related to the artwork as set forth in the Scope of Work attached hereto as Exhibit "B" and made a part of this Contract for all purposes; provided, however, should there be any conflict between Exhibit "B" and the terms of this Contract, the terms of this Contract shall be final and binding.

B. Company shall work closely and cooperate with the staff of the Creative Arts Division and the Director of the Parks and Recreation Department, or their designees (hereinafter jointly referred to as "Director," unless otherwise noted), and appropriate City officials and perform any and all related tasks required by the Director in order to fulfill the purposes of this Contract. Company shall consult with the architect and engineering consultants in development of final designs for the Artwork. All disputes and other matters in question between Company and City relating to this Contract or any interpretation of this Contract shall be resolved by the Director of the Parks and Recreation Department.

C. Direct supervision of both the design and composition/installation phases of the Artwork shall be the responsibility of Company.

D. City shall be responsible for providing Company, without cost, copies of existing designs, drawings, reports and other relevant data in City's possession needed by Company in order to design and install the artwork.

E. Company shall regularly communicate with the Director to review progress of design and composition/installation and to ensure the continuing feasibility of the Artwork.

F. Company and City agree that Company shall retain artistic control of the services performed under this Contract, subject only to the limitations and conditions imposed by this Contract.

G. As an expressed condition of this Contract, Company shall design the Artwork so that it can be composed and installed without exceeding the public art budget for this project or increasing construction costs for the Visitor Center of the Oak Point Park and Nature Preserve and so that reasonable maintenance of the Artwork will not require procedures or materials substantially in excess of those described in the maintenance recommendations submitted by Company. Company shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Company's performance. This includes redesign to meet the established budget.

H. Company shall complete the design and installation of the Artwork in conformity with the attached Exhibit "B", Scope of Work. Company agrees to comply with all applicable City, State and Federal laws, regulations, and ordinances relating to performance of the work under this Contract.

I. Company shall be responsible for any damage to the Artwork that may occur due to fire, explosion, theft, vandalism, flood, power failure, transit or any other cause until Artwork has been installed and accepted by City.

3. PERFORMANCE OF SERVICES

Company and Company's employees, associates or assistants shall perform all the services under this Contract in a timely, cost effective manner. Company represents that any employees, associates or assistants who perform services under this Contract on behalf of Company shall be fully qualified and competent to perform those services described in Section 2.

4. TERM

The term of this Contract shall begin November 13, 2006, and end fifteen (15) months from date of Notice to Proceed under this Amended Contract or upon installation and acceptance of Artwork by City, whichever occurs first. Company understands and agrees that, should there be construction delay, Company will be available to install Artwork at an appropriate time that will not further delay opening of the facility. Company understands and agrees that time is of the essence. All services are to be completed and delivered to City by the termination date unless an extension of time, based upon good reasons presented by Company, is approved in writing by City.

5. PAYMENT FOR SERVICES

In consideration of the professional services to be performed by Company under the terms of this Contract, City shall pay Company for services actually performed a fee not to exceed **ONE HUNDRED EIGHTY-FIVE THOUSAND AND NO/100 DOLLARS (\$185,000.00)**, payable with a deposit of \$65,000.00 upon completion and approval by City of the final design for Artwork and the ordering of materials; \$40,000.00 upon site preparation/integration, and 50% of fabrication; \$25,000 upon 100% completion of metal fabrication and pre-finish assembly/testing of the Artwork; \$25,000.00 upon paint/finishing; and the balance of \$30,000.00 upon delivery, installation and documentation of Artwork, to be paid pending acceptance of the Artwork by CITY, as full compensation for the services performed under this Contract. All travel, lodging, food and other expenses related to such travel in the performance of this Contract are the responsibility of the Company and not to be paid by City. If

other conditions necessitate additional services, the additional services must be authorized in advance by resolution of the City Council or, where applicable, by duly authorized administrative action signed by the City Manager and approved as to form by the City Attorney. Payments to Company shall be in the amount shown by the invoices and other documentation submitted and shall be subject to the Director's approval. Invoices shall be supported by written documentation and progress photographs. All services shall be performed to the reasonable satisfaction of the Director, and City shall not be liable for any payment under this Contract for services which are unsatisfactory and which have not been approved by the Director. City may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise. Should it be necessary for City to exercise right of termination in accordance with the terms of this Contract, Company shall reimburse City any monies advanced by deposit not substantiated by reasonable invoices or documentation.

6. **CHANGE IN SERVICES**

City, through its Director, may request, from time to time, changes in the Scope of Work conducted or to be conducted by Company pursuant to this Contract. Any change which varies significantly from the Scope of Services set out in Section 2 and would entail a significant increase in cost or expense to Company shall be mutually agreed on by Company and the Director. Agreed to changes in the Scope of Work, which in the opinion of Company and the Director would require additional funding by City, must first be authorized in advance by resolution of the City Council or, where applicable, by duly authorized administrative action signed by the City Manager and approved as to form by the City Attorney.

7. **WARRANTIES**

Company warrants that: (a) the design and Artwork being commissioned is the original product of Company's own creative efforts and is not the subject of an existing patent or copyright owned by any other person or entity; and (b) unless otherwise stipulated, the Artwork is original, that it is an edition of one (1), and Company shall not sell or reproduce the Artwork or design or allow others to do so without the prior written consent of City. The warranties stated in this paragraph shall survive the termination of this Contract.

ARTIST warrants the structural integrity of the artwork for a period of one year from date of installation.

8. **MAINTENANCE/CONSERVATION**

Upon completion and installation of the Artwork, Company, shall prepare and submit to City a written recommendation for maintenance of the Artwork, describing materials, procedures, frequency, and estimated annual cost. Company shall be responsible for the first year's maintenance, and thereafter City shall be responsible to maintain the Artwork. Repairs, restoration and/or conservation shall be the responsibility of City. City reserves the right to perform maintenance or make repairs without consulting Company.

9. **CONFIDENTIAL WORK**

No reports, information, project designs, data or any other documentation developed by, given to, prepared by, or assembled by Company under this Contract shall be disclosed or made available to any individual or organization by Company without the express prior written approval of the Director.

10. **COPYRIGHT IN THE FINISHED ARTWORK**

Company's final design and all other work product (including the final Artwork itself) under this Contract shall become the property of the City, without restriction on future use, except as provided below. Company may retain copyright and other intellectual property rights in and to the final design and the final artwork itself. By execution of this Contract, Company grants to the City a perpetual, irrevocable license to graphically depict or display the final Artwork for any non-commercial purpose whatsoever; for purposes of this limitation, any graphic depiction or display of the final Artwork intended to promote or benefit the City, its public services or its public purposes, regardless of whether or not a fee is charged to the public, or whether revenue is otherwise received by the City, shall be deemed a non-commercial purpose. Notwithstanding the above limitation, Company agrees and understands that nothing in this paragraph shall affect or limit the City's absolute, unrestricted rights incidental to the City's full ownership of the final Artwork to alter, change, modify, destroy, remove, move, replace, operate, maintain, transport, sell or transfer, in whole or in part, the final Artwork when the City deems it necessary within its discretion, in order to otherwise exercise the City's powers and responsibility in regard to public works and improvements, in furtherance of the City's operations or for any other reason.

Company hereby acknowledges the rights of integrity and attribution conferred by Section 106A (a), paragraphs (2) and (3) of Title 17 of the U.S. Code, and any other rights of the same nature granted by federal, state or international laws, and of Company's own free will hereby waives such rights with respect to the City of Plano usage or use of the Artwork, including but not limited to the right to maintain, remove or destroy the Artwork.

11. **COMPANY'S LIABILITY**

Approval of City shall not constitute nor be deemed a release of the responsibility and liability of Company or Company's employees, associates or assistants for the accuracy and competency of Company's services, nor shall approval be deemed to be the assumption of such responsibility by City for any defect, error or omission in the services performed by Company or Company's employees, associates or assistants.

12. **INSURANCE REQUIREMENTS**

Company shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and acceptable to City, the minimum insurance coverage contained in Exhibit "C", attached to and made part of this Contract.

13. **INDEMNITY**

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL

CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR: (A) ANY INFRINGEMENT OF PATENT OR COPYRIGHT ARISING OUT OF THE SERVICES PERFORMED BY COMPANY UNDER THIS CONTRACT REGARDLESS OF WHETHER OR NOT COMPANY OR CITY HAD KNOWLEDGE OF ANY EXISTING PATENTS OR COPYRIGHTS DURING THE COURSE OF PERFORMANCE OF THIS CONTACT; AND (B) PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY COMPANY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT ACT OR OMISSION OF COMPANY, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES OR SUBCONSULTANTS, IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY FOR PERSONAL INJURY, PROPERTY DAMAGE OR OTHER HARM CAUSED BY COMPANY'S CONTRACTUAL BREACH OR NEGLIGENCE PROVIDED IN (B) SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH THE COMPANY AND CITY, RESPONSIBILITIES AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH 13 ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

14. RIGHT OF REVIEW AND AUDIT

City may review any and all of the services performed by Company under this Contract. City is hereby granted the right to audit, at City's election, all of Company's records and billings relating to the performance of this Contract. Company agrees to retain such records for a minimum of three (3) years following completion of this Contract.

15. AFFIDAVIT OF NO PROHIBITED INTEREST

Company acknowledges and represents Company 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. Company has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "D".

16. NONDISCRIMINATION

As a condition of this Contract, Company covenants that Company will take all necessary actions to insure that, in connection with any work under this Contract, Company, its associates, employees, agents, and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or handicap unrelated to job performance either directly, indirectly or through contractual or other arrangements. In this regard, Company shall keep, retain and safeguard all

records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

17. **CONTRACT PERSONAL**

This Contract provides for personal/professional services, involving the skill and creativity of Company. Therefore, the Company shall not assign this Contract, in whole or in part, without the prior written consent of City.

18. **TERMINATION**

City's Director may terminate this Contract, in whole or in part, for cause or the convenience of City, upon ten (10) days written notice to Company with the understanding that all services being performed under this Contract shall cease upon the date specified in such notice. Company shall invoice City for all services completed and shall be compensated or reimburse City accordingly for all services performed by Company prior to the date specified in such notice. Upon notice of termination, Company shall promptly discontinue all services affected (unless otherwise directed by the notice) and promptly deliver to City all data, drawings, specifications, calculations, reports, estimates, materials and completed or partially completed work produced by Company under this Contract.

19. **NOTICES**

All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for City, to:

City of Plano, Texas
Attn: Christine Eubanks
1409 K Avenue
Plano, TX 75074 or
P.O. Box 860358
Plano, TX 75086

If intended for Company, to:

Helmick Sculpture LLC.
Attn: Ralph Helmick
President
447 Lowell Avenue
Newton, MA 02460

20. **INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between City and Company is that of independent contractor, and City and Company by the execution of this Contract do not change the independent status of Company. Company shall exercise independent judgment in performing Company's duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Contract or act of Company in the performance of this Contract shall be construed as making Company the agent, servant or employee of City, or making Company or any of Company's employees eligible for the fringe benefits, such as retirement, insurance, and workers' compensation, which City provides its employees.

21. **APPLICABLE LAWS**

This Contract is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws.

22. **GOVERNING LAW**

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

23. **VENUE**

The obligations of the parties to this Contract are performable in Collin County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Collin County, Texas.

24. **LEGAL CONSTRUCTION**

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

25. **COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

26. **CAPTIONS**

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

27. **SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Contract, their assigns.

28. **ENTIRE AGREEMENT**

The Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Contract, and except and otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Contract.

EXECUTED the _____ day of _____, 2010, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. _____ and adopted by the City Council on _____, 2010 and by Company, signing by and through its authorized officer.

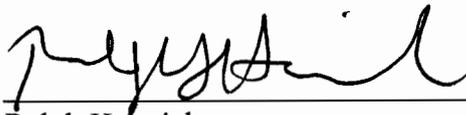
CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

HELMICK SCULPTURE LLC

BY: 

Ralph Helmick
PRESIDENT

EXHIBIT "A"

NATURAL SELECTIONS

PROPOSED ART ELEMENT FOR VISITOR CENTER LOBBY
OAK POINT PARK AND NATURE PRESERVE, PLANO, TEXAS
BY HELMICK SCULPTURE LLC.

Description of the Artwork

Visitors entering the lobby of the new Visitor Center of the Oak Point Park and Nature Preserve will encounter an epic visual meditation on the wonder of Nature and the beauty of discovery.

Suspended from the ceiling and extending the full length of the hall is a vast "drawing in space" made of shaped steel rod. Spanning 78 feet and descending to within 11 feet of the floor, it follows the canted contour of the roof, sloping gently to the south and toward the lake beyond.

At first glance this seemingly chaotic steel filigree seems an abstract design, lending an ornamental element to the stone and wood interior. But visitors soon discern that the varied lines and sinuous curves hold something more: a compendium of references to the rich ecosystem beyond the walls.

Initially a viewer coaxes out a single form from the thicket of marks, perhaps a boxwood leaf. Then she notices that it shares a line with an overlapping bird, connecting as well to an adjacent outline of a turtle, and so on.

Further observation reveals smaller three-dimensional forms, which are both integrated into the large graphic array and subtly sited throughout the space. For example, a few small 3D red-winged blackbirds are perched on the giant steel drawing of the bird. Suspended from the ceiling a few feet away is a sculpture of the same blackbird in flight. Elsewhere, a subtle 3D spider and its web is tucked into an upper corner of the Visitors Center, its graphic counterpart in the 2D array. A hanging opossum is represented in both 2 and 3 dimensions. And so on with various plants and animals.

While scientifically accurate renderings are the components of this giant array, its overall form is undeniably esthetic, incorporating a poetry and freedom bridging art and illustration. Scale is conflated as a diatom looms larger than a snake; the circular shape of a pillbug is echoed by a topographic diagram of the Visitor Center itself. Images emerge and recede and emerge once again as the array surrenders a bounty of recognizable shapes.

In its overlaid imagery and rich layering, the sculpture mirrors the multifaceted, interconnected systems of land, water, geology, history, flora and fauna just outside the doors.

Sculpture and Site 1: Education

A sense of engagement and curiosity are central to the mission of the Center, and the artwork reinforces this quality. Serving as a catalyst for investigation, it extends an artful invitation to engage our human capacities for observation and analysis.

Changing programmatic displays at the center are unhindered by the filigree forms suspended overhead. Wall-mounted and floor exhibits work sympathetically in this arrangement, with good sightlines for both art and educational materials.

If desired, a key to the sculpture can provide detailed information on the species illustrated, further knitting together the mission of the OPPNP and the sculpture.

Sculpture and Site 2: Architectural Integration

The array is suspended beneath the graceful spine of the ceiling support structure, which traces a true north/south axis through the Visitors Center.

Visual accents in the form of the satellite elements are subtly sited throughout the interior space, located so as to optimize an integrated appreciation of art and architecture.

Approximate Specifications

Materials: graphics--shaped and welded 3/8" to 1/2" steel rod
Satellite forms—cast and fabricated metal

Dimensions: 12' – 3' height; 78' long

Linear Feet of Component Images: 800'+

Color: TBD in consultation w/ the clients and architects

Weight: Less than 2000 LB distributed

Timeline

Contract approval November 2006

The following stages follow from a revised date to proceed to be provided by the City:

Reconfirmation of site integration	1 - 2 months after Notice to Proceed
Fabrication	3 – 12 months after Notice to Proceed
Site preparation / integration	8 – 11 months after Notice to Proceed
Pre-finish assembly / testing	11 months after Notice to Proceed
Paint/finishing	11 – 13 months after Notice to Proceed
Shipping	14 months after Notice to Proceed
Installation	14 months after Notice to Proceed
Documentation	15 months after Notice to Proceed
Contract Completion	15 months after Notice to Proceed

Maintenance

The care of this artwork is very straightforward. A soft broom or feather duster attached to the end of a telescoping pole will easily reach both sides of the sculpture. In the event that an especially striking spider web is created between two steel rods, a consortium of naturalists, artists and theologians will convene to determine the best philosophical course of action.

Budget

Models, drawings:	1,000.00
Materials and Supplies:	
mild steel rod	12,000.00
stainless cable	1,000.00
hardware (clips, anchors)	2,000.00
wax/clay/plaster for 3D forms	500.00
Production / Fabrication: steel outlines	
enlargement	5,000.00
studio fabrication / welding	60,000.00
off-site powder coating	9,000.00
Production / Fabrication: 3D satellite forms	
sculpting 3D nature forms	4,000.00
moldmaking/casting of forms in metal	8,000.00
finishing/patination	500.00
Tools and Equipment:	4,000.00
Studio Overhead, incl. utilities:	10,000.00
Insurance (studio/shipping/installation):	4,000.00
Crating / Shipping to site:	8,000.00
Installation:	10,000.00
Travel / Lodging:	6,000.00
Documentation:	3,000.00
Office/Administrative Expenses	2,000.00
Artist Design fee:	25,000.00
Contingency:	10,000.00
TOTAL:	\$185,000.00

EXHIBIT "B"

SCOPE OF WORK

1. Research and development for final design for Artwork, to include coordination with City staff, design consultants and construction contractors, via conference call, electronic mail and up to, but not to exceed, two on-site meetings. Designs must be in accordance with site specifications provided by City and Company will provide assistance to City staff and consultants in determining any required changes to design of facility to successfully install Artwork.
2. Completion and submittal of design of Artwork by Company for approval of artwork by City, such approval to come from Director. Design phase deliverables shall include, but not be limited to these documents:
 - a. Plan sheets illustrating plans, elevations, sections and details of construction and installation.
 - b. Technical specs, to include such information as load requirements for structures to which Artwork will be attached, specific materials to be used, lighting requirements, etc. Provide specs in Microsoft Word.doc format.
 - c. Provide drawings in .dwg format.
 - d. Provide graphic products in electronic file format (tiff).
 - e. All electronic file transmittals shall be in CD-Rom format.
3. Purchase of materials by Company and fabrication of Artwork.
4. Complete off site fabrication by Company.
5. Delivery and on site installation of Artwork by Company.
6. Provision of detailed maintenance plan for Artwork.

EXHIBIT "C"

INSURANCE REQUIREMENTS

Service work, supplies requiring installation, Janitorial Services, Architects, Engineers, Welding, Surveyors, Plumbing Contractors, Maintenance Agreements, Consultants, Concessionaires, Tire Repairs, Tow Service, Painting, Electrical, Movers, etc.

Vendor 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 vendor, 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

Vendor shall maintain limits not less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. \$2,000,000 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: \$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.
4. Professional Liability.

C. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention 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 Coverage
 - a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insured" as respects liability

arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, 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 vendor'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 vendor'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 vendor'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 vendor for the City.

3. All Coverage

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 & Poor's. This requirement will be waived for workers' compensation coverage only for those vendors 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.

EXHIBIT "D"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of **HELMICK & SCULPTURE LLC**, a Massachusetts limited liability company (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.

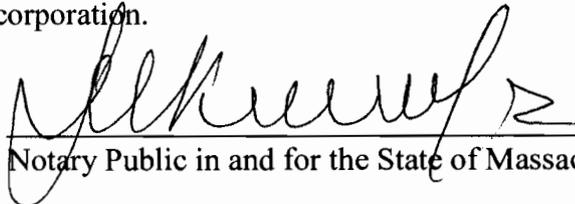
HELMICK SCULPTURE LLC

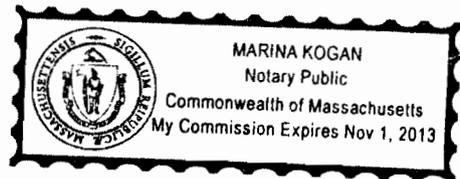
BY: 
Ralph Helmick
PRESIDENT

Date: 3/15/10

STATE OF MASSACHUSETTS §
COUNTY OF Middlesex §

SUBSCRIBED AND SWORN TO before me this 15 day of March, 2010 by **RALPH HELMICK**, President of **HELMICK SCULPTURE LLC**, a Massachusetts limited liability company, on behalf of said corporation.


Notary Public in and for the State of Massachusetts



DISSOLUTION AGREEMENT

Agreement made as of the 1st day of May, 2008 (the "Effective Date") by and between Ralph Helmick ("Helmick"), and Stuart Schechter ("Schechter") both of Newton, Massachusetts, and Helmick and Schechter, Inc, a Massachusetts corporation (the "Corporation").

WITNESSETH:

WHEREAS, Helmick and Schechter are the only shareholders of Helmick & Schechter, the Corporation;

WHEREAS, Helmick owns 70% of the outstanding shares of common stock of the Corporation, and Schechter owns 30% of such shares; and

WHEREAS, the parties have agreed to wind down the operations of the Corporation and to dissolve it as described in this Agreement.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the parties hereby agree as follows:

1. Assets and Liability. The assets of the Corporation are stated in Schedule A annexed hereto, and the liabilities of Corporation are stated in Schedule B annexed hereto.

2. Payment of Liabilities.
The Corporation shall pay its liabilities except for the reserve for legal, accounting, tax preparation and filing fees, and except as otherwise provided for hereinbelow, on or before the Effective Date.

3. Assignment of Contracts. The Corporation shall assign all of the Outstanding Contracts identified on Schedule A, including all its rights and obligations thereunder, to Helmick, or his nominee, and Helmick agrees that he or his nominee shall fulfill all of the Corporation's obligations under said Outstanding Contracts.

4. McCarran Airport Project. Prior to the Effective Date, the Corporation submitted



5. a. Charlotte-Mecklenburg Courthouse Project (the "CM Project). Through the





6. Tangible Personal Property. The Corporation shall distribute to Schechter on the Effective Date the following property:



The remaining tangible personal property will be distributed to Helmick. Schechter will have periodic access to the 3D laser scanner at mutually convenient times.

7. Copyrights. Helmick and Schechter together own a number of copyrights on works installed by the Corporation.

(a) Each of them shall have the right to license the use of any such copyright on commercially reasonable terms;

(b) Each party shall notify the other when a license has been executed, and shall share royalties and/or profits 50/50 with the other. Any license that does not share 50/50 is void. Each party shall receive an equal share of the profit from the license, regardless of the quantity or quality of each party's contribution to the work.

(c) Each party shall have the right to inspect the records of the other with respect to any such licenses and the income derived therefrom.

8. Assignment of Shares by Schechter to Helmick. Concurrent with the execution of this Agreement, Schechter shall assign and transfer all of his shares in the Corporation to Helmick.

9. Mutual Releases.

(a) Helmick hereby releases and discharges Schechter of and from any and all causes of action, debts, accounts, covenants, contracts, agreements, damages, judgments, claims, liabilities and demands whatsoever, of any kind or nature, in law or in equity, which Helmick has had, now has, or which he, hereafter can, shall, or may have, for or by reason of any matter, cause, or thing whatsoever, arising, directly or indirectly, from or in connection with any relationship he has or ever had with Schechter, except for the continuing matters and obligations described in this Agreement.

(b) Schechter hereby releases and discharges Helmick and the Corporation of and from any and all causes of action, debts, accounts, covenants, contracts, agreements, damages, judgments, claims, liabilities and demands whatsoever, of any kind or nature, in law or in equity, which Schechter has had, now has, or which he, hereafter can, shall, or may have, for or by reason of any matter, cause, or thing whatsoever, arising, directly or indirectly, from or in connection with any relationship he has or ever had with Helmick and/or the Corporation, except for the continuing matters and obligations described in this Agreement.

10. Dissolution. Upon satisfaction of the liabilities of the Corporation as described above, the parties agree that the Corporation shall be dissolved by filing Articles of Dissolution with the Secretary of State substantially in the form annexed hereto as Exhibit A. The parties shall further take or cause all actions necessary, including preparation of final tax returns, to wind-up and dissolve the Corporation.

11. Remaining Cash. Any cash remaining after paying the Corporation's liabilities shall be distributed to Helmick to complete the Outstanding Contract obligations.

12. Entire Agreement. This Agreement represents the entire Agreement of the parties with respect to the matters contemplated hereby, and it shall supersede any prior understanding or agreements, including, but not limited to, a Shareholders Agreement.

13. Modification. This Agreement cannot be modified or amended except by a written agreement signed by both parties.

WITNESS our hands and seals on the date first written above.



Ralph Helmick



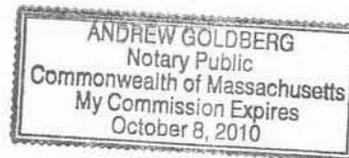
Stuart Schechter

Helmick and Schechter, Inc.

By: 

Andrew Goldberg

State of Massachusetts
County of Middlesex
September 02, 2008



Schedule A

Assets

Bank Account(s)	
(4/15/08)	
Less outstanding checks	
Balance	
Tangible Personal Property	
(Equipment, furniture, fixtures etc.)	
(Book Value)	

Outstanding Contracts

<u>Project</u>	<u>Fee</u>	<u>Amount Paid</u>	<u>Balance</u>	
Anchorage				
Fort Worth				
Lutheran Hosp.				
Plano	185,000	65,605	119,395	
Rutgers				

Pending Contracts

<u>Project</u>	<u>Fee</u>	<u>Amount Paid</u>	<u>Balance</u>	<u>% Completed</u>
McCarran Airport				



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	04/12/2010
Department:	Purchasing
Department Head	Mike Ryan
Agenda Coordinator (include phone #): Glenna Hayes x 7539	

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions for the purchase of Lifepak defibrillators and related accessories from Physio-Control, Inc. in an amount not to exceed Three Hundred Twenty Nine Thousand Eight Hundred Forty Dollars (\$329,840), and technical support service agreement for a five (5) year bundled term in an amount of Fifty Thousand Nine Hundred Dollars (\$50,900), for use in the City's emergency services vehicles; authorizing the execution of any and all documents by the City Manager or his designee; and providing an effective date..

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2009-10, 2010-11, 2011-12, 2012-13, 2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	340,020	40,720	380,740
Encumbered/Expended Amount	0	0	0	0
This Item	0	-340,020	-40,720	-380,740
BALANCE	0	0	0	0

FUND(S): FIRE EQUIPMENT REPLACEMENT FUND (903), GENERAL FUND (552)

COMMENTS: Funds are included in the 2009-10 Fire Operating and Fire ERF Budgets for the replacement purchase of (10) Lifepak 15 units, \$295,120; first year annual technical support and service, \$10,180; and the initial supply expenditure, \$34,720. Future expenditures for the Lifepak 15 service agreement are \$10,180 per year for a (4) year period, \$40,720.

STRATEGIC PLAN GOAL: Periodic replacements of equipment for City emergency services vehicles relate to the City's Goals of "Great Neighborhoods - 1st Choice to Live" and "Financially Strong City with Service Excellence".

SUMMARY OF ITEM

Staff recommends the approval of the terms and conditions with Physio-Control, Inc. for the one time purchase of Lifepak 15 defibrillators (\$295,120) and related accessories (\$34,720), and technical support service agreement for a five (5) year term in the bundled amount of \$50,900 payable in annual installments of \$10,180. This purchase is considered necessary to preserve or protect the public health or safety of the municipality's residents, falling under section 252.022(a)(2) of the Local Government Code general exemptions from the bid requirements



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Resolution, Department Memo, Quotes		Other Departments, Boards, Commissions or Agencies



MEMORANDUM

From the Office of the Fire Chief

Date: February 11, 2010 (Revised March 8, 2010)
To: Bruce Glasscock, Deputy City Manager
From: Hugo R. Esparza, Fire Chief
Subject: Recommendation for the Purchase of Lifepak 15 Monitor/Defibrillators

Introduction and Recommendation:

The Fire Department needs to upgrade the monitor/defibrillators on its ambulances and replace the monitor/defibrillators currently assigned to its fire trucks. The monitor/defibrillators are used to analyze and treat a patient's heart rhythm, as well as deliver life-saving electrical therapy in critical medical situations. The monitor/defibrillators on the fire trucks are over 15 years old and will no longer be supported by the manufacturer after this year.

The Fire Department anticipates the need to replace capital equipment such as monitor/defibrillators by securing funds in the City's Equipment replacement Fund (ERF). To help conserve funds, the Fire Department recommends replacing the monitor/defibrillators on the fire trucks with those that are currently assigned to ambulances, and, consequently, purchase new monitor/defibrillators for the ambulances. The Department requests to purchase ten new Physio Control Lifepak 15 monitor/defibrillators, one for each of the Fire Department's ten ambulances.

The Fire Department has used Physio Control monitor/defibrillators for over 25 years. The decision as to which monitor/defibrillator to purchase has been historically based on the Fire Department EMS Medical Director's treatment specifications. The EMS Medical Director, Dr. Mark Gamber, has recommended and prescribed the Lifepak 15 monitor/defibrillator device with the following unique combination of functional specifications:

1. Ability to provide energy setting from 2 Joules (a unit of electrical energy) to 360 Joules of biphasic energy
2. A pacemaker function
3. A pulse oximetry function
4. A carbon monoxide function
5. A methemoglobin detection function
6. An end tidal CO2 monitoring function

- 7. A non-invasive blood pressure monitoring function
- 8. A vital sign trending function
- 9. Ability to display-and record the heart rhythm
- 10. Ability to record diagnostic quality 12-lead ECG
- 11. Capability to transmit the diagnostic 12-lead ECG to a Lifenet STEMI (a particularly serious type of heart attack) Management Receiving Station

Cost and Benefits:

The Fire Department is working with the Purchasing Department to purchase these goods and services pursuant to the Texas Local Government Code 252.022, under the general exemptions allowing for procurement necessary to preserve or protect the public health or safety of the municipality's residents. The following costs are associated with this purchase:

Item	Cost		Budget Code
Lifepak 15 and Battery Chargers - 10/ea	\$295,120.00	1x buy	903-8416 *
Accessories/consumables	\$34,720.00	initial buy	552-6211 **
Wireless modems - 10/ea	\$4,870.00	1x buy	552-6252 ***
Lifepak 15 Technical Service Support Agreement	\$10,180.00	annually +	552-6313
Server Subscription (Physio Control) \$48.00 X 10	\$480.00	annually ‡	552-6312 ***
Carrier Service (AT&T) \$10.35 per/mo X 10 X 12 mo	\$1,242.00	annually ‡	552-6312 ***
TOTAL EXPENDITURE	\$346,612.00		

- + \$50,900.00 for a 5 year technical service support agreement; payable in five equally divided annual installments of \$10,180 funded each year in the FD operating budget.
- ‡ \$1,722.00/yr in ongoing carrier and server subscription
- * Fire Equipment Replacement Fund (ERF)
- ** Operating Budget - EMS Supply
- *** Funded Supplement 552012

1. The Lifepak 15 and Lifenet STEMI Management Solution will allow our Fire Department EMS crews to more quickly alert Plano hospitals of a suspected heart attack. Presently, the Lifepak 12 transmits the ECG (patient's heart rhythm) through a cell phone to The Medical Center of Plano (TMCP), where it can then be forwarded to the other receiving hospitals. The current process is time consuming and creates unnecessary delays. The future system will simultaneously send the patient's ECG via the internet directly from the field to the base station physician, receiving hospital, cath lab, and the interventional cardiologist's PDA or smart phone.

2. Plano hospitals will be able to more quickly mobilize the treatment facilities and teams necessary to treat a heart attack. The quicker the team can be mobilized, the sooner an oxygen-deprived heart can be reperfused – saving lives and preventing other secondary debilitating heart conditions.
3. Fire Department personnel are already familiar with the Lifepak 15 layout and design. Standardizing the monitor/defibrillator devices carried on Fire Department apparatus allows personnel to provide safer, more efficient and effective pre-hospital care.
4. The training and transitioning costs associated with purchasing a new monitor/defibrillator device will be minimal since Fire Department personnel are already accustomed to using the Lifepak 12, a product that is very similar to the Lifepak 15.

Note: TMCP has acquired and installed the Lifenet STEMI Management Solution. Baylor Heart Hospital and Texas Health Presbyterian Hospital Plano have verbally indicated that they also intend to purchase and install this Physio Control equipment at their respective facilities so they can receive timely information from Fire Department medics in the field.

Conclusion:

If the Fire Department is able to complete the Lifepak 15 purchase, Plano's PCI hospitals (hospitals with special capabilities for treating a heart attack) will be able to utilize the STEMI network, and, consequently, citizens suffering a heart attack will receive the most timely care for a STEMI. The time it takes to restore blood flow to the heart and prevent or minimize permanent damage to the heart muscle is measured in minutes and seconds. The Lifepak 15 and STEMI network are teamed up to help reduce this time to reperfusion – saving lives, minimizing the adverse effects of a heart attack, and returning citizens to their families and community sooner and with less costly, long-term disability.

The total amount of this agenda item will be \$340,020 (hardware, service and supplies).

Please let me know if you have any questions. Thank you.

ec: Jimmy Dickerson, Assistant Chief-EMS/Training Division
Martin Wade, Battalion Chief-EMS Section
Ken Klein, Captain-EMS Section

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions for the purchase of Lifepak defibrillators and related accessories from Physio-Control, Inc. in an amount not to exceed Three Hundred Twenty Nine Thousand Eight Hundred Forty Dollars (\$329,840), and technical support service agreement for a five (5) year bundled term in an amount of Fifty Thousand Nine Hundred Dollars (\$50,900), for use in the City's emergency services vehicles; authorizing the execution of any and all documents by the City Manager or his designee; and providing an effective date.

WHEREAS, the Fire Department has identified a need to purchase new Lifepak 15 defibrillators and related services to replace the existing defibrillators that will no longer be supported by the manufacturer; and

WHEREAS, procuring life-saving medical devices is critical to providing effective emergency medical services to the public; and

WHEREAS, the purchase of the Lifepak 15 defibrillators and related services and accessories is necessary to preserve and protect the public health and safety and is exempt from competitive bidding pursuant to Section 252.022(a)(2) of the Local Government Code; and

WHEREAS, the City Council has been presented terms and conditions from Physio Control Inc. for the purchase of Likepak defibrillators, technical service support and related accessories, substantial copies of which are attached hereto as Exhibit "A" and Exhibit "B", and incorporated herein by reference; and

WHEREAS, upon full review and consideration of the terms and conditions and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions should be approved, and the City Manager or his designee shall be authorized to execute any and all documents necessary to purchase Likepak defibrillators and related services and accessories on behalf of the City of Plano.

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

Section I. The City Council hereby approves the terms and conditions for the purchase of Lifepak defibrillators and related accessories from Physio-Control, Inc. in an amount not to exceed **Three Hundred Twenty Nine Thousand Eight Hundred Forty Dollars (\$329,840)**, and technical support service agreement for a five (5) year bundled term in an amount of **Fifty Thousand Nine Hundred Dollars (\$50,900)**, for use in the City's emergency services vehicles; authorizing the execution of any and all documents by the City Manager or his designee; and providing an effective date.

Section II. The City Council hereby finds and determines that the purchase of Lifepak 15 defibrillators and related services and accessories is necessary to preserve and protect the public health and safety and is exempt from competitive bidding pursuant to Section 252.022(a)(2) of the Local Government Code.

Section III. The City Council hereby authorizes the City Manager or his designee to execute any and all documents in connection with the above expenditure.

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

DULY PASSED AND APPROVED this the 12th day of April, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

RES-APPROVAL



Physio-Control, Inc.
 11811 Willows Road NE
 P.O. Box 97023
 Redmond, WA 98073-9723 U.S.A
 www.physio-control.com
 www.medtronic.com
 tel 800.442.1142
 fax 800.732.0956

To: Ken Klein
 Plano Fire Rescue
 1901 Ave "K"
 Plano, TX 75074
 Phone: (972) 941-7158
 Fax: (972) 941-7291
 kenk@plano.gov

Quote#: 1-144325580
Rev#: 5
Quote Date: 03/11/2010
Sales Consultant: Elizabeth Roberts
 800-442-1142 x 72438
FOB: Redmond, WA

Terms: Net 30, all quotes subject to credit approval and the following terms & conditions

Contract: ROC

Exp Date: 05/10/2010

Line	Catalog # / Description	Qty	Price	Unit Disc	Trade-In	Unit Price	Ext Total
1	99577-000056 - LP15 MONITOR/DEFIB, CPR, Pace, to 360J, SPO2/CO/MetHb, 12L GL, NIBP, CO2, Trend	10	\$35,395.00	\$7,079.00	\$0.00	\$28,316.00	\$283,160.00
2	41577-000007 - LP15 SHIP KIT	10	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3	11996-000091 - EDGE SYSTEM ELECTRODES WITH QUIK-COMBO CONNECTOR ACCESSORY 11996-000091OEM ELCTD 14 LANG	20	\$37.00	\$37.00	\$0.00	\$0.00	\$0.00
4	11998-000022 - TEST LOAD ACCESSORY 11998-000022 LP12 TEST LOAD	10	\$84.00	\$84.00	\$0.00	\$0.00	\$0.00
5	11577-000004 - STATION BATTERY CHARGER AC OPERATION FOR STATIONARY APPLICATIONS, FOR USE WITH THE LI-ION 5.7 AMP BATTERY. INCLUDES AC POWER CORD, MOUNTING BRACKET AND OPERATING INSTRUCTIONS	10	\$1,495.00	\$299.00	\$0.00	\$1,196.00	\$11,960.00
6	21330-001176 - LI-ION BATTERY 5.7 AMP HOUR CAPACITY RECHARGEABLE LITHIUM-ION, WITH FUEL GAUGE	60	\$379.00	\$75.80	\$0.00	\$303.20	\$18,192.00
7	11577-000002 - KIT - CARRY BAG, MAIN BAG ACCESSORY 11577-000002 LP15 KIT CRY BAG	10	\$250.00	\$50.00	\$0.00	\$200.00	\$2,000.00
8	11260-000039 - KIT - CARRY BAG, REAR POUCH KIT - CARRY BAG, REAR POUCH	10	\$65.00	\$13.00	\$0.00	\$52.00	\$520.00
9	11577-000001 - KIT - CARRY BAG, SHOULDER STRAP ACCESSORY 11577-000001 LP15 KIT CRY BAG	10	\$28.00	\$28.00	\$0.00	\$0.00	\$0.00
10	11996-000323 - MASIMO SET RED LNCS PATIENT CABLE - 4 FEET RED LNC-04,PATIENT CABLE,4FT,REF 2055	10	\$147.00	\$29.40	\$0.00	\$117.60	\$1,176.00
11	11171-000032 - RAINBOW DCI-DC8,ADULT REUSE SENSOR,8FT,REF 2407 RAINBOW DCI-DC8,ADULT REUSE SENSOR,8FT,REF 2407	10	\$695.00	\$139.00	\$0.00	\$556.00	\$5,560.00

Quote#: 1-144325580
 Rev#: 5
 Quote Date: 03/11/2010

Quote Products (continued)

Line	Catalog # / Description	Qty	Price	Unit Disc	Trade-In	Unit Price	Ext Total
12	11171-000033 - RAINBOW DCIP-DC8,PED REUSE SENSOR,8FT,REF 2640 RAINBOW DCIP-DC8,PED REUSE SENSOR,8FT,REF 2640	10	\$795.00	\$159.00	\$0.00	\$636.00	\$6,360.00
13	11996-000020 - Infant Cuff, 6x18cm Reusable	10	\$18.00	\$3.60	\$0.00	\$14.40	\$144.00
14	11996-000021 - Small Child Cuff, 7x21cm Reusable	10	\$21.00	\$4.20	\$0.00	\$16.80	\$168.00
15	11996-000022 - Child Cuff (Pediatric), 9x27cm Reusable	10	\$21.00	\$4.20	\$0.00	\$16.80	\$168.00
16	11996-000023 - SMALL ADULT CUFF, 12X30CM REUSABLE ACCESSORY 11996-000023 OEM LP12	10	\$25.00	\$5.00	\$0.00	\$20.00	\$200.00
17	11996-000025 - Large Adult Cuff, 16x42cm Reusable	10	\$29.00	\$5.80	\$0.00	\$23.20	\$232.00

GRAND TOTAL \$329,840.00

Pricing Summary Totals	
List Price:	\$414,160.00
ROC Contract Discount:	-\$82,869.00
Cash Discounts:	-\$1,451.00

GRAND TOTAL FOR THIS QUOTE \$329,840.00

**TO PLACE AN ORDER, PLEASE FAX A COPY OF THE QUOTE AND PURCHASE ORDER
TO: # 800-732-0956, ATTN: REP SUPPORT "Ask your sales representative how to get 25% or more off
list price on your LIFEPAK disposables by signing up for a disposables agreement"**

PHYSIO-CONTROL, INC. REQUIRES WRITTEN
VERIFICATION OF THIS ORDER. A PURCHASE ORDER IS
REQUIRED ON ALL ORDERS \$10,000 OR GREATER BEFORE
APPLICABLE FREIGHT AND TAXES. THE UNDERSIGNED IS
AUTHORIZED TO ACCEPT THIS ORDER IN ACCORDANCE
WITH THE TERMS AND PRICES DENOTED HEREIN. SIGN TO
THE RIGHT:

CUSTOMER APPROVAL (AUTHORIZED SIGNATURE)

NAME

TITLE

DATE

Ref. Code: JE//1-27PC82

Notes:

TAXES, FREIGHT AND HANDLING FEES WILL BE ADDED AT TIME OF SHIPMENT, IF APPLICABLE.

ABOVE PRICING VALID ONLY IF QUOTE IS PURCHASED IN ITS ENTIRETY. (OPTIONAL ITEMS NOT REQUIRED).
IF QUOTE REFLECTS TRADE-IN VALUES, CUSTOMER ASSUMES RESPONSIBILITY FOR SHIPMENT OF TRADE-IN UNITS TO
PHYSIO-CONTROL, INC.

ITEMS LISTED ABOVE AT NO CHARGE ARE INCLUDED AS PART OF A PACKAGE DISCOUNT THAT INVOLVES THE PURCHASE OF A
BUNDLE OF ITEMS. CUSTOMER IS SOLELY RESPONSIBLE FOR APPROPRIATELY ALLOCATING THE DISCOUNT EXTENDED ON
THE BUNDLE WHEN FULFILLING ANY REPORTING OBLIGATIONS IT MIGHT HAVE.

**PRICES INDICATED ON THIS QUOTE ARE OFFERED SOLELY TO COMMITTED ROC STUDY PARTICIPANTS PENDING
AGREEMENTS TO, AND FULFILLMENT OF, THE ROC PARTICIPANT CONTRACT TERMS AND CONDITIONS.**

EXHIBIT A
PAGE 3 OF 6

Updated TERMS OF SALE for Plano, TX Quote # 1-144325580

Terms of Sale have been negotiated by and between The City of Plano, TX ("Buyer") and Physio-Control, Inc. ("Contractor")

General Terms

Physio-Control, Inc.'s acceptance of the Buyer's order is expressly conditioned on the Buyer's assent to the terms set forth in this document and its attachments. Physio-Control, Inc. agrees to furnish the goods and services ordered by the Buyer only on these terms, and the Buyer's acceptance of any portion of the goods and services covered by this document shall confirm their acceptance by the Buyer. These terms constitute the complete agreement between the parties and they shall govern any conflicting or ambiguous terms on the Buyer's purchase order or on other documents submitted to Physio-Control, Inc. by the Buyer. These terms may only be revised or amended by a written agreement signed by an authorized representative of both parties.

Pricing

Unless otherwise indicated in this document, prices of goods and services covered by this document shall be Physio-Control, Inc. standard prices in effect at the time of delivery. Prices do not include freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services covered by this document. Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services covered by this document unless Physio-Control, Inc. received a copy of a valid exemption certificate prior to delivery. Please forward your tax exemption certificate to the Physio-Control, Inc. Tax Department, P.O. Box 97006, Redmond, Washington 98073-9706.

Payment

Unless otherwise indicated in this document or otherwise confirmed by Physio-Control, Inc. in writing, payment for goods and services supplied by Physio-Control, Inc. shall be subject to the following terms:

Domestic (USA) Sales – Upon approval of credit by Physio-Control, Inc., 100% of invoice due thirty (30) days after receipt of invoice.

International Sales – Sight draft or acceptable (confirmed) irrevocable letter of credit.

Physio-Control, Inc. may change the terms of payment at any time prior to delivery by providing written notice to the Buyer. Physio-Control, Inc. reserves the right to charge a 15% restocking fee for returns excluding defects or mis-shipments.

Delivery

Unless otherwise indicated in this document, delivery shall be FOB destination, with freight charges prepaid and added. Partial deliveries may be made and partial invoices shall be permitted and shall become due in accordance with the payment terms. In the absence of shipping instructions from the Buyer, Physio-Control, Inc. will obtain transportation on Buyer's behalf and for the Buyer's account.

Delays

Delivery dates are approximate. Physio-Control, Inc. will not be liable for any loss or damage of any kind due to delays in delivery or non-delivery resulting from any cause beyond its reasonable control, including but not limited to, acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit and Physio-Control, Inc.'s inability to obtain goods from its usual sources. Any such delay shall not be considered a breach by Physio-Control, Inc. and the Buyer's agreement and the delivery dates shall be extended for the length of such delay.

Inspections

Claims by the buyer for damage to or shortages of goods delivered shall be made within thirty (30) DAYS AFTER SHIPMENT BY PROVIDING Physio-Control, Inc. with written notice of any deficiency.

Warranty

Physio-Control, Inc. warrants its products in accordance with the terms of the standard Physio-Control, Inc. product warranty applicable to the product to be supplied, and the remedies provided under such warranty shall be the Buyer's sole and exclusive remedies. Physio-Control, Inc. makes no other warranties, express or implied, including, without limitation, NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO-CONTROL, INC. BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.

Patent & Indemnity

Upon receipt of prompt notice from the Buyer and with the Buyer's authority and assistance, Physio-Control, Inc. agrees to defend, indemnify and hold the Buyer harmless against any claim that the Physio-Control, Inc. products covered by this document directly infringe any United States of America patent.

Miscellaneous

- a) The Buyer agrees that products purchased hereunder will not be reshipped or resold to any persons or places prohibited by the laws of the United States of America.
- b) Through the purchase of Physio-Control, Inc. products, the Buyer does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products, and the Buyer expressly agrees not to reverse engineer or decompile such products or related software and information.
- c) The rights and obligations of Physio-Control, Inc. and the Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the state of Texas, United States of America.

Terms of Sale for Quote 1-144325580

As negotiated by The City of Plano, TX and Physio-Control, Inc.

March 2010

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EXHIBIT A
PAGE 4 OF 6

INDEMNIFICATION

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUBSUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

AFFIDAVIT OF 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 "**.



TECHNICAL SERVICE SUPPORT AGREEMENT

Contract Number:
End User # 07173101
CITY OF PLANO FIRE DEPT
FIRE ADMINISTRATION
1901 AVENUE K
PLANO, TX 75074

Bill To # 00397801
CITY OF PLANO
PO BOX 860358
PLANO, TX 75086

This Technical Service Support Agreement begins on 5/1/2010 and expires on 4/30/2015.

The designated Covered Equipment and/or Software is listed on Schedule A. This Technical Service Agreement is subject to the Terms and Conditions on the reverse side of this document and any Schedule B, if attached. If any Data Management Support and Upgrade Service is included on Schedule A then this Technical Service Support Agreement is also subject to Physio-Control's Data Management Support and Upgrade Service Terms and Conditions, rev 7/99-1.

Price of coverage specified on Schedule A is \$50,900.00 per term, payable in Annual installments. Contractor ("Physio-Control, Inc") recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provision. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder, *other than to pay for service previously rendered.*

Special Terms

*This agreement also provides repair coverage on (10) Lifepak 15 Battery Charging Stations.
10% DISCOUNT ON ACCESSORIES
15% DISCOUNT ON ALL ELECTRODES

Accepted: Physio-Control, Inc.

Customer: _____ City of Plano Fire Dept _____

By: _____

By: _____

Title: _____

Print: _____

Date: _____

Title: _____

Date: _____

Purchase Order Number: _____

Territory Rep: WECC56
Radford, Mark
Phone: 800-442-1142 x2848
FAX: 800-772-3340

Customer Contact:
KEN KLEIN
Phone: 972-816-8180
FAX:

Reference Number: C56-1671
Printed: 4/1/2010

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EXHIBIT B
PAGE 1 OF 10

PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT TERMS AND CONDITIONS

RENEWAL TERMS

Physio-Control, Inc.'s ("Physio-Control") acceptance of Customer's Technical Service Support Agreement is expressly conditioned on Customer's assent to the terms set forth in this document and its attachments. Physio-Control agrees to furnish the services ordered by Customer only on these terms, and Customer's acceptance of any portion of the goods and services covered by this document shall confirm their acceptance by Customer. These terms constitute the complete agreement between the parties and they shall govern any conflicting or ambiguous terms on Customer's purchase order or on other documents submitted to Physio-Control by Customer. These terms may not be revised in any manner without the prior written consent of an officer of Physio-Control.

REPAIR SERVICES

If "Repair" services are designated, subject to the Exclusions identified below, they shall include, for the designated Covered Equipment, all repair parts and materials required, all required Physio-Control service technician labor, and all related travel expenses. For offsite (ship-in) services, units will be returned to Customer by Physio-Control freight prepaid.

INSPECTION SERVICES

If "Inspection" services are designated, subject to the Exclusions identified below, they shall include, for the designated Covered Equipment, verification of proper instrument calibration, verification that instrument mechanical operations and output measurements are consistent with applicable product specifications, performance of an electrical safety check in accordance with National Fire and Protection Guidelines, all required Physio-Control service technician labor and all related travel expenses. For offsite (ship-in) services, units will be returned to Customer by Physio-Control freight prepaid.

DOCUMENTATION

Following each Repair and/or Inspection, Physio-Control will provide Customer with a written report of actions taken or recommended and identification of any materials replaced or recommended for replacement.

LOANERS

If a Physio-Control product is designated as a unit of Covered Equipment for Repair Services and needs to be removed from service to complete repairs, an appropriate Loaner unit will be provided, if available, until the removed unit is returned. Customer assumes complete responsibility for the Loaner and shall return the Loaner to Physio-Control in the same condition as received, at Customer's expense, upon the earlier of the return of the removed unit or Physio-Control's request.

EXCLUSIONS

This Technical Service Support Agreement does not include: supply or repair of accessories or disposables (e.g., patient cables, recorder paper, etc.); repair of damage caused by misuse, abuse, abnormal operating conditions, operator errors, and/or acts of God; repairs to return an instrument to normal operating equipment at the time of initial service by Physio-Control under this Technical Service Support Agreement; case changes; repair or replacement of items not originally distributed or installed by Physio-Control; and exclusions on Schedule B to this Technical Service Support Agreement, if any, which apply to Covered Equipment.

SCHEDULE SERVICES

Designated Repair and Inspections Services will be performed at the designated service frequency and during designated service hours except where service technicians are rendered unavailable due to mandatory training commitments, in which case Physio-Control will provide alternate coverage. Customer is to ensure Covered Equipment is available for Repair and/or Inspection at scheduled times. If Covered Equipment is not available as scheduled and Customer requests additional services to be performed or if Physio-Control is requested to perform Repair or Inspection services not designated in this Technical Service Support Agreement (due to the nature of services selected, instruments involved not being Covered Equipment, request being outside of designated service frequency or hours, or application of the Exclusions); Customer shall reimburse Physio-Control at Physio-Control's standard labor rates less 10% (including overtime, if appropriate), plus standard list prices for related parts and materials less 15%. Physio-Control will attempt to return all service calls within 2 hours and have a resolution within 24 hours. That resolution could be either a repaired device or loaner until Customer's device is repaired. It could also mean that Physio-Control contacted Customer and set up a time to do the repair.

PAYMENT

The cost of services performed by Physio-Control shall be payable by Customer with the Texas Prompt Payment Act. If the number or configuration of Covered Equipment is altered during the Term of this Technical Service Support Agreement, the price of Services shall be adjusted accordingly.

Reference Number: C56-1671

Printed: 4/1/2010

New

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EXHIBIT B
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WARRANTY

Physio-Control warrants Services performed under this Technical Service Support Agreement and replacement parts provided in performing such Services against defects in material and workmanship for ninety (90) days from the date a Service was performed or a part was provided. Customer's sole remedy shall be reservicing the affected unit and/or replacement of any part determined to be defective, without any additional Customer charge, provided Customer notifies Physio-Control of any allegedly defective condition within ten (10) calendar days of its discovery by Customer. Physio-Control makes no other warranties, express or implied, including, without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO-CONTROL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES.**

TERMINATION

Customer may terminate this Technical Service Support Agreement at any time upon thirty (30) days prior written notice to Physio-Control. Physio-Control may terminate this Technical Service Support Agreement immediately upon Customer's failure to make timely payments for services rendered under this Technical Service Support Agreement. In the event of termination, Customer shall be obligated to reimburse Physio-Control for that portion of the designated price which corresponds to that portion of the Term and the scope of Services provided prior to the effective date of termination. In the case of pre-payments, Physio-Control will reimburse the customer on a pro-rated basis any payment that corresponds to the unused period of the service year.

DELAYS

Physio-Control will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from any cause beyond its reasonable control, including, but not limited to, acts of God, labor disputes, labor shortages, the requirements of any governmental authority, war, civil unrest, delays in manufacture, obtaining any required license or permit, and Physio-Control's inability to obtain goods from its usual sources. Any such delay shall not be considered a breach of Physio-Control's obligations and the performance dates shall be extended for the length of such delay.

MISCELLANEOUS

- a) Customer agrees to not employ or offer employment to Mark Radford, who is performing Services on Physio-Control's behalf, during the Term of this Technical Service Support Agreement or for one (1) year following its expiration without Physio-Control's prior written consent.
- b) This Technical Service Support Agreement, and any related obligation of other party, may not be assigned in whole or in part without the prior written consent of the other party.
- c) The rights and obligations of Physio-Control and Customer under this Technical Service Support Agreement shall be governed by the laws of the State in which the service is provided.

INSURANCE

Physio-Control shall procure and maintain, for the duration of the contract, insurance coverage as set forth in the Insurance Requirements marked "Schedule C" attached hereto and incorporated herein by reference. Physio-Control shall provide a signed insurance certificate verifying that they have obtained the required insurance coverage prior to the effective date of this contract.

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 **Schedule D**.

INDEMNIFICATION

The contractor agrees to defend, indemnify and hold the city and its respective officers, agents and employees, harmless against any and all claims, lawsuits, judgments, fines, penalties, costs and expenses for personal injury (including death), property damage or other harm or violations for which the recovery of damages, fines, or penalties is sought, suffered by any person or persons, that may arise out of or be occasioned by contractor's breach of any of the terms or provisions of this contract, violations of law, or by any negligent, grossly negligent, intentional, or strictly liable act or omission of the contractor, its officers, agents, employees, invitees, subcontractors, or sub-subcontractors and their respective officers, agents, or representatives, or any other persons or entities for which the contractor is legally responsible in the performance of this contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the city, and its officers, agents, employees or separate contractors. The city does not waive any governmental immunity or other defenses available to it under Texas or Federal Law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Contractor at its own expense is expressly required to defend city against all such claims. City reserves the right to provide a portion or all of it's own defense; however, city is under no obligation to do so. Any such action by City is not to be construed as a waiver of contractor's obligation to indemnify city pursuant to this agreement. Contractor shall retain defense counsel within seven (7) business days of City's written notice that the City is invoking its right to indemnification under this agreement. If contractor fails to retain counsel within the required time period, city shall have the right to retain defense counsel on its own behalf and contractor shall be liable for all costs incurred by the City.

.....
.....END.....

PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE A

Contract Number:

Servicing Rep: Radford, Mark, WECC56
 District: SOUTHWEST
 Phone: 800-442-1142 x2848
 FAX: 800-772-3340

Equipment Location: CITY OF PLANO FIRE DEPT, 07173101
 FIRE ADMINISTRATION
 1901 AVENUE K
 PLANO, TX 75074

Scope Of Service POS LP15 5 Year On Site Repair and 1 Insp per Year:M-F/8-5

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 15	V15-2-000052	38166465	1	5/1/2010	4/30/2015	5
LIFEPAK® 15	V15-2-000052	38166627	2	5/1/2010	4/30/2015	5
LIFEPAK® 15	V15-2-000052	38166682	3	5/1/2010	4/30/2015	5
LIFEPAK® 15	V15-2-000051	38200473	4	5/1/2010	4/30/2015	5
LIFEPAK® 15	V15-2-000051	38205404	5	5/1/2010	4/30/2015	5
LIFEPAK® 15	V15-2-000051	38205407	6	5/1/2010	4/30/2015	5
LIFEPAK® 15	V15-2-000051	38205409	7	5/1/2010	4/30/2015	5
LIFEPAK® 15	V15-2-000042	38341856	8	5/1/2010	4/30/2015	5
LIFEPAK® 15	V15-2-000042	38341857	9	5/1/2010	4/30/2015	5
LIFEPAK® 15	V15-2-000052	38166465	10	5/1/2010	4/30/2015	5

** Denotes an inventory line that has changed since the last contract revision or addendum.

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 EXHIBIT B
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PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE B

LIFEPAK® 15 (LP 15) Defibrillator/Monitor Includes:

Standard detachable hard paddle repairs

LP15 upgrade installed by Physio-Control Technical Services Representative at a rate of 17% less than the then current field-installed list price

When listed in Equipment Inventory, Schedule A, LP 15 Defibrillator/Monitor Includes:

Power Adapter

LP 15 Defibrillator/Monitor Excludes:

Internal, sterilizable and pediatric paddles

Communications cables

Therapy cables

Patient cables

SpO2 sensors

Case changes

Discounts may not be combined with other special terms, discounts and/or promotions.

Physio-Control LIFEPAK® 15 Battery

Battery maintenance, performance testing, evaluation, removal, recycling, and replacement are the responsibility of the Customer, and should be performed in accordance with the LP 15 Series Operating Instructions section entitled Discarding/Recycling Batteries.

Battery replacement is available on a one-for-one basis, up to the number of devices listed in Equipment Inventory, Schedule A, upon the earlier of either (i) reported battery failure as determined by Customer's performance testing and evaluation in accordance with the LP 15 Operating Instructions section entitled Discarding/Recycling Batteries, or (ii) upon completion of the second year of use. Replacement Battery Pak shall be like for like, i.e. Li-ion Battery for Li-ion Battery. During the Term of this Agreement replacement shall occur no more than three times per two year period, notwithstanding prior Support Plans.

Battery replacement is dependent upon Customer's notice to Physio-Control of the existence of either of the conditions referenced in (i) and (ii) above. At the discretion of Physio-Control, battery replacement shall be effected by shipment to Customer and replacement by Customer, or by on-site delivery and replacement by a Physio-Control Service Technician. Upon Customer's receipt of replacement battery, the affected battery referenced above shall become the property of Physio-Control, and must be returned to Physio-Control for proper disposal. In the event that Physio-Control does not receive the affected battery referenced above, Customer will be charged at the then current rate for the replacement battery.

Only batteries manufactured by Physio-Control are covered under this Service Agreement. Batteries not manufactured by Physio-Control are expressly excluded from coverage under this Service Agreement. Physio-Control does not guarantee the operation, safety, and/or performance of our product when operating with a battery not manufactured by Physio-Control. Repairs and inspections performed under this Agreement meet original equipment manufacturer's product specifications only when operating with a battery manufactured by Physio-Control. Any repairs, as determined by a Physio-Control Service Representative, resulting from the use of a battery not manufactured by Physio-Control, will be billed at Physio-Control's then current standard list prices for parts and labor, including actual travel costs incurred.

LIFEPAK® 15 Software Updates

If combined Repair and Inspection services are designated for LP 15 units listed in Schedule A, a Physio-Control Technical Services Representative will install LP 15 software updates at no additional cost, provided it is installed at the time of a regularly scheduled inspection. In addition, during the Term of this Agreement, where an assembly, i.e., printed circuit board, must be replaced to accommodate installation of new software, such assembly may be purchased by the Customer at a rate of 50% less than the then current list price. Software updates, when installed at a time other than the regularly scheduled inspection, will be billed at a rate of \$205.00 per unit per software update. The cost of such software update will be billed in a separate invoice. Dependent upon availability of Customer software loading tool, and at Customer's request, Technical Services Representative shall provide Customer

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EXHIBIT B
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PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE B

access to software loading tool at no additional charge.

If Repair-Only services are designated for LP 15 units listed in Schedule A, a Physio-Control Technical Services Representative will install a LP 15 software update at the rate of \$205.00 per unit per software update. In addition, during the Term of this Agreement, where an assembly, i.e., printed circuit board, must be replaced to accommodate installation of new software, such assembly may be purchased by the Customer at a rate of 50% less than the then current list price. The cost of such software update will be billed in a separate invoice. Dependent upon availability of Customer software loading tool, and at Customer's request, Technical Services Representative shall provide Customer access to software loading tool at no additional charge.

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EXHIBIT B
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PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE C



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/23/2010

PRODUCER Marsh USA Inc. 333 South 7th Street, Suite 1600 Minneapolis, MN 55402-2400	THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
	43840 -MEDTR-GAWAI-09/10	INSURERS AFFORDING COVERAGE	NAIC #
INSURED MEDTRONIC, INC. 710 MEDTRONIC PARKWAY M.S. LC310 MINNEAPOLIS, MN 55432-5604	INSURER A: ACE American Insurance Company		22667
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES

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

NSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GENERAL AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	HDC G24930786	05/01/2009	05/01/2010	EACH OCCURRENCE \$ 10,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMPIOP AGG \$ 10,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	ISA H08577419	05/01/2009	05/01/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
A A A A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE Y/N OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	WLR C45697502 (AOS) SCF C4 5897514 (WI) WLR C45697526 (MO, NC, NE, OK) SCF C45697538 (NJ)	05/01/2009 05/01/2009 05/01/2009 05/01/2009	05/01/2010 05/01/2010 05/01/2010 05/01/2010	<input checked="" type="checkbox"/> WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 Additional Insured status applies only if it is reflected in your written contract. Medtronic includes but is not limited to the following entities: Physio-Control, Inc., Medtronic Sofamor Danek, Inc., Medtronic Spine, LLC (including former Kyphon, Inc) and Minimed Distribution Corporation.

CERTIFICATE HOLDER CHI-002810219-01	CANCELLATION
City of Plano, Texas Attn: Ken Klein 1901 Avenue K Plano, TX	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. <i>Mary Radaszewski</i> Mary Radaszewski

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IMPORTANT

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

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

DISCLAIMER

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

Acord 25 (2009/01)

ADDITIONAL INFORMATION		CHI-002810219-01	DATE (MM/DD/YY) 03/23/2010
PRODUCER Marsh USA Inc. 333 South 7th Street, Suite 1600 Minneapolis, MN 55402-2400			
43840 -MEDTR-GAWAL-09/10	INSURERS AFFORDING COVERAGE	NAIC #	
INSURED MEDTRONIC, INC. 710 MEDTRONIC PARKWAY M.S. LC310 MINNEAPOLIS, MN 55432-5604	INSURER F:		
	INSURER G:		
	INSURER H:		
	INSURER I:		

TEXT

CITY OF PLANO IS INCLUDED AS ADDITIONAL INSURED UNDER GENERAL LIABILITY AS REQUIRED BY WRITTEN CONTRACT.

CERTIFICATE HOLDER

City of Plano, Texas Attn: Ken Klein 1901 Avenue K Plano, TX	AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Mary Radaszawski <i>Mary Radaszawski</i>
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Page 2



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	4/12/10
Department:	Technology Services
Department Head	David Stephens
Agenda Coordinator (include phone #): Amy Powell X7342	

CAPTION

A Resolution of the City Council of the City of Plano, Texas approving the renewal of an agreement with Oracle USA, Inc., a sole source vendor, for an amount not to exceed \$179,942, for maintenance and support of Peoplesoft Enterprise Software; authorizing the City Manager or his designee to execute any and all documents in connection therewith; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2009-10, 2010-11, 2011-12, 2012-13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	2,815,114	359,884	3,174,998
Encumbered/Expended Amount	0	-2,355,558	-359,884	-2,715,442
This Item	0	-179,942	0	-179,942
BALANCE	0	279,614	0	279,614

FUND(s): TECHNOLOGY SERVICES FUND (066.395)

COMMENTS: Funding for the Peoplesoft software support agreement is included in the adopted 2009-10 Budget. The remaining amount will be used for other maintenance agreements and renewals. Subsequent annual support agreements are not to exceed the fee in effect at the time of renewal, or 10 percent (10%) in each subsequent 12 month period, subject to the availability and appropriation of funds after the first year.

STRATEGIC PLAN GOAL: Software maintenance agreements relate to the City's Goal of "Financially Strong City with Service Excellence".

SUMMARY OF ITEM

Technology Services recommends Council approve renewal of the software support agreement with Oracle USA, Inc. for maintenance and support of Peoplesoft Enterprise Software for three (3) years for a sum of \$179,942 for the first year and a sum not to exceed (a) the fee in effect at the time of renewal or (b) ten percent (10%) in each subsequent twelve (12) month period subject to the availability and appropriation of funds after the first year. Peoplesoft software applications are integral to the human resources, payroll, and finance business processes of the City of Plano; therefore, continuation of maintenance and support of these software



CITY OF PLANO COUNCIL AGENDA ITEM

applications is critical to the operations of the City. Maintenance and support of Peoplesoft software applications is only available from one vendor, Oracle USA, Inc., and therefore, is exempt from competitive bid as provided for in Section 252.022(a) (7) of the Texas Local Government Code.

List of Supporting Documents:
Staff memo and Resolution

Other Departments, Boards, Commissions or Agencies

Memorandum

Date: February 23, 2010

To: David Stephens, Director of Technology Services

From: Danny Housewright, Systems and Programming Manager

Subject: Approval of Annual Maintenance for Oracle PeopleSoft Enterprise Applications

We have received invoices for the annual renewal of maintenance and support for the PeopleSoft software applications. These applications are integral to the human resources, payroll, and finance business processes of the City of Plano. Therefore, the continuation of the maintenance and support of these software applications is critical to the operations of the City.

Oracle is the only company that provides enhancements, upgrades and support for their products. Annual maintenance and support with Oracle is necessary in order to receive help in resolving issues with the PeopleSoft Enterprise software applications and to continue to receive upgrades and enhancements to these products.

A Resolution of the City Council of the City of Plano, Texas approving the renewal of an agreement with Oracle USA, Inc., a sole source vendor, for an amount not to exceed \$179,942, for maintenance and support of Peoplesoft Enterprise Software; authorizing the City Manager or his designee to execute any and all documents in connection therewith; and providing an effective date.

WHEREAS, the City Council of the City of Plano has been presented a proposed renewal from Oracle USA, Inc. for maintenance and support of Enterprise (formerly known as PeopleSoft, Inc.) software applications in an amount not to exceed \$179,942.40, a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereinafter called “Renewal”); and

WHEREAS, the City Council approved a master Agreement with Peoplesoft, Inc. (now known as Oracle USA, Inc.) in March of 1998; and

WHEREAS, the City Council finds that the maintenance and support for the PeopleSoft Enterprise software applications is only available from one source, Oracle USA, Inc., and, therefore, is exempt from competitive bid as provided for in Section 252.022(a)(7) of the Texas Local Government Code; and

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

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

Section I. The City Council of the City of Plano, Texas, hereby finds and determines that maintenance and support for the PeopleSoft Enterprise software applications are available from only one source, and, therefore, exempt from competitive bid or proposal as provided for in Section 252.022(a)(7) of the Texas Local Government Code.

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

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

DULY PASSED AND APPROVED this the 12th day of April, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



29-Jan-10

Amy Powell
City Of Plano
IS Department
1117 E 15th St
PLANO
TX 75074
United States

Dear Amy Powell,

The technical support services and benefits provided under service contract number P-98-83-00-000--15 will expire, or have expired, on 23-May-10. Please find attached an ordering document for the renewal of this service contract. If applicable, the attached ordering document may also include incremental technical support services newly acquired.

To ensure that there is no interruption to the technical support services and benefits provided under service contract number P-98-83-00-000--15, please order the technical support services on this ordering document by issuing a form of payment acceptable to Oracle in accordance with the attached Order Processing Details section on or before 24-Apr-10.

If further information is required, please contact me at the e-mail address or telephone number provided below.

Regards,

Derek Bishop
Oracle Support Services
E-mail: derek.bishop@oracle.com
Tel.: 1512-671-5163
Fax: 1719-757-4291



Ordering Document

Service Contract #: P-98-83-00-000--15 Offer Expires: 23-May-10 Payment Terms: 30 NET from date of invoice Billing Terms: Quarterly in Arrears	Renewal Contact: Derek Bishop Telephone: 1512-671-5163 Fax: 1719-757-4291 E-mail: derek.bishop@oracle.com
CUSTOMER: City Of Plano	
QUOTE TO Account Contact: Amy Powell Account Name: City Of Plano Address: IS Department 1117 E 15th St PLANO TX 75074 United States Telephone: 972 941-7342 Fax: E-mail: amyp@plano.gov	BILL TO Account Contact Accounts Payable Account Name: City Of Plano Address: PO Box 860279 PLANO TX 75086 United States Telephone: Fax: E-mail:

Oracle may provide certain information and notices about technical support via e-mail. Accordingly, please verify and update the Quote To and Bill To information above to ensure that such communications and notices are received from Oracle. If changes are required, please e-mail or fax the updated information to Derek Bishop at derek.bishop@oracle.com or 1719-757-4291. Please also include service contract number P-98-83-00-000--15 on such reply.

Service Details

Service Level: Software Update License & Support					End Date: 23-May-11	
Product Description	CSI #	Qty	License Metric	License Level / Type	Start Date	Final Price
Powerplay	14483572	1700	VALUE		24-May-10	0.00
PeopleSoft Enterprise Benefits Admin. For Public Sec - Employee Count Perpetual	14483572	1700	VALUE		24-May-10	28,987.33
PeopleSoft Enterprise Human Resources For Public Sec - Employee Count Perpetual	14483572	1700	VALUE		24-May-10	33,121.80
PeopleSoft Enterprise Payroll For Public Sector - Employee Count Perpetual	14483572	1700	VALUE		24-May-10	33,121.80
PeopleSoft Enterprise Talent Acquisition Manager - Employee Count Perpetual	14480754	2653	VALUE		24-May-10	18,301.00
Conversion Only - Ibm Was - Employee Count Perpetual	14480754	2653	VALUE		24-May-10	0.00
PeopleSoft Enterprise Talent Acquisition Manager - Employee Count Perpetual	14483572	1		RESTRICTED USE	24-May-10	0.00
PeopleSoft Enterprise Absence Management - Employee Count Perpetual	14483572	1		RESTRICTED USE	24-May-10	0.00
PeopleSoft Enterprise Time And Labor Reporting - Employee Count Perpetual	14483574	2700	VALUE		24-May-10	33,239.63
Fms Expansion - Employee Count Perpetual	14483575	2700	VALUE		24-May-10	0.00
HCM Expansion - Employee Count Perpetual	14483575	2700	VALUE		24-May-10	0.00
Merant Net Express V3 Win/Nt	14481019	1	USER		24-May-10	2,430.96
PeopleSoft Enterprise Edevelopment - Employee Count Perpetual	14483573	1700	VALUE		24-May-10	5,123.31
PeopleSoft Enterprise Ecompensation - Employee Count Perpetual	14483573	1700	VALUE		24-May-10	5,123.31
PeopleSoft Enterprise Ebenefits - Employee Count Perpetual	14483573	1700	VALUE		24-May-10	5,123.31
PeopleSoft Enterprise Epay - Employee Count Perpetual	14483573	1700	VALUE		24-May-10	5,123.31
PeopleSoft Enterprise Eprofile - Employee Count Perpetual	14483573	1700	VALUE		24-May-10	5,123.31
PeopleSoft Enterprise Erecruit - Employee Count Perpetual	14483573	1700	VALUE		24-May-10	5,123.33

Subtotal: USD 179,942.40

Total Amount: USD 179,942.40

plus applicable tax

Notes:

1. If any of the fields listed above are blank, the program licenses were acquired under a separate license model in which such field(s) does not apply.
2. If a change to the Service Details provided above is required, please contact Derek Bishop at 1512-671-5163 or at derek.bishop@oracle.com and an updated ordering document will be provided to you in accordance with Oracle's technical support policies.

GENERAL TERMS

"You" and "your" refers to the Customer provided above.

In the event that the Customer and the Quote To Account Name provided above are not the same, City Of Plano acknowledges that Customer has authorized City Of Plano to execute this ordering document on Customer's behalf and to bind Customer to the terms described herein. City Of Plano agrees that the ordered services shall be used solely by the Customer and shall advise Customer of the terms of this ordering document as well as information and notices about technical support that Oracle provides to City Of Plano during the term of service.

The technical support services acquired under this ordering document are governed by the terms and conditions of the STATE-28905-21-APR-03. However, any use of the programs, which includes by definition the updates and other materials provided or made available by Oracle under technical support, is subject to the rights granted for the programs set forth in the order in which the programs were acquired.

Technical support is provided under Oracle's technical support policies in effect at the time the services are provided. The technical support policies are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of services provided for supported programs during the period for which fees for technical support have been paid. You should review the technical support policies prior to entering into this ordering document. The current version of the technical support policies, including Oracle's reinstatement policy, may be accessed at <http://www.oracle.com/support/policies.html>. Customers who allow technical support to lapse and later wish to reactivate it will be subject to Oracle's reinstatement policy in effect at the time of reinstatement. Applicable reinstatement fees may apply in addition to the annual technical support fees.

In the event that Priority Service is acquired under this ordering document, you acknowledge you must maintain a current Software Update License & Support contract for all licenses in a license set for which Priority Service has been purchased. By accepting this ordering document, you also acknowledge that Software Update License & Support for program licenses listed under the Priority Service level may be renewed under separate contract(s). Upon renewal, Priority Service fees will be based on the Priority Service pricing policies in effect at the time of renewal and such fees will be adjusted to account for any acquisition of additional licenses in a license set. Contractual caps on annual technical support fees for Software Update License & Support do not apply to Priority Service, unless stated otherwise in your contract.

Order Processing Details

Your order is subject to Oracle's acceptance. An order consists of the following: (i) this ordering document, which incorporates by reference the STATE-28905-21-APR-03, and (ii) a form of payment acceptable to Oracle. Oracle normally accepts orders after receipt of a purchase order, check or credit card issued in accordance with the Purchase Order, Check, Credit Card Confirmation section below. If Oracle accepts your order, the service start date is the effective date of such order and also serves as the commencement date of the technical support services.

Please note that if the pre-tax value of this ordering document is USD2,000 or less, the technical support services on this ordering document must be paid either by credit card or electronic upload of a PO to the Online site.

Once ordered, technical support for the support period defined above is non-cancelable and the related fees are non-refundable.

An invoice will only be issued upon receipt of a form of payment acceptable to Oracle. Regardless of the form of payment, Oracle's invoice includes applicable sales tax, GST, or VAT (collectively referred to as "tax"). If City Of Plano is a tax exempt organization, a copy of City Of Plano's tax exemption certificate must be submitted with City Of Plano's purchase order, check, credit card or other acceptable form of payment.

PURCHASE ORDER, CHECK, CREDIT CARD CONFIRMATION

Purchase Order

If the technical support services on this ordering document will be ordered and paid under a purchase order, the purchase order must include the following information:

- Service Contract #: P-98-83-00-000--15
- Term of Service: 24-May-10 to 23-May-11
- Final Total: USD 179,942.40 (excluding applicable tax)
- Local Tax, if applicable
- Agreement: STATE-28905-21-APR-03

In issuing a purchase order, City Of Plano agrees that the terms of this ordering document and the terms of STATE-28905-21-APR-03 supersede the terms in the purchase order or any other non-Oracle document, and no terms included in any such purchase order or other non-Oracle document shall apply to the technical support services ordered.

Please e-mail or fax the purchase order to Oracle per the Remittance Details provided below.

Check

If the technical support services on this ordering document will be ordered and paid by check, the check must include the following information:

- Service Contract #: P-98-83-00-000--15
- Term of Service: 24-May-10 to 23-May-11
- Final Total: USD 179,942.40 (excluding applicable tax)
- Local Tax, if applicable
- Agreement: STATE-28905-21-APR-03

In issuing a check, City Of Plano agrees that only the terms of this ordering document and the terms of STATE-28905-21-APR-03 shall apply to the technical support services ordered. No terms attached or submitted with the check shall apply.

Please mail check payments per the Remittance Details provided below.

Credit Card Confirmation

If the technical support services on this ordering document will be ordered and paid under a credit card, please complete the section below and return it to Oracle per the Remittance Details provided below. Please note that Oracle is unable to process credit card transactions of USD100,000 or greater.

Service Contract #: P-98-83-00-000--15
Term of Service: 24-May-10 to 23-May-11
Final Total: USD 179,942.40 (excluding applicable tax)
Agreement: STATE-28905-21-APR-03

Credit Card Number

Expiration Date

Billing Address (associated with Credit Card)

City, State, and Zip (associated with Credit Card)

Authorized Signature

Name

The credit card must be valid for the entire Term of Service above. In issuing this credit card confirmation, City Of Plano agrees that only the terms of this ordering document and the terms of STATE-28905-21-APR-03 shall apply to the technical support services ordered. No terms attached or submitted with the credit card confirmation shall apply.

REMITTANCE DETAILS

Purchase orders or credit card details for the technical support services ordered hereto should be sent to:

Attn: Derek Bishop
Oracle Support Services
Fax: 1719-757-4291
E-mail: derek.bishop@oracle.com

Checks for the technical support services ordered hereto should be sent to:

AK, AZ, CA, HI, ID, NV, OR, UT, WA:

Oracle USA, Inc.
PO Box 44471
San Francisco, CA 94144-4471

All other States:

Oracle USA, Inc.
PO Box 71028
Chicago, IL 60694-1028



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		April 12, 2010		
Department:		Public Information		
Department Head		Dana Conklin - 7321		
Agenda Coordinator (include phone #): Kimberly Simmons - 7307				
CAPTION				
An Ordinance of the City of Plano, Texas repealing Ordinance No. 2005-4-18 concerning the Plano Public Art Program and various matters related thereto; providing for the termination of the Public Art Program; providing for the completion of existing public art projects and the maintenance of completed public art; 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 repeals the ordinance concerning the Public Art Program and is associated with the dissolution of the Plano Public Art Committee. Funding for existing projects has been fully allocated. This will not affect the maintenance of public art projects approved or completed to date.				
List of Supporting Documents: Ordinance			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas repealing Ordinance No. 2005-4-18 concerning the Plano Public Art Program and various matters related thereto; providing for the termination of the Public Art Program; providing for the completion of existing public art projects and the maintenance of completed public art; and providing an effective date.

WHEREAS, the City Council set forth policies and procedures concerning the Plano Public Art Program as well as other matters related thereto as contained in Ordinance No. 2005-4-18, passed on April 11, 2005; and

WHEREAS, the City Council has not appropriated or authorized any funds for public art projects since 2006 and all existing public art funding has been fully allocated; and

WHEREAS, the City Council has dissolved the Public Art Committee; and

WHEREAS, the City Council intends that the termination of the Public Art Program shall not affect the funding or maintenance of public art projects approved or completed prior to the effective date of this ordinance.

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

Section I. The City Council hereby repeals in its entirety Ordinance No. 2005-4-18 and terminates the City of Plano Public Art Program.

Section II. All public art projects which have been funded or which have been completed shall continue to be funded and maintained but that no new art projects shall be approved.

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

DULY PASSED AND APPROVED this the 12th day of April, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x-7479				
CAPTION				
Public hearing and consideration of an ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 122 for tax abatement consisting of a 16.5852 acre tract of land located at the northeast corner of the intersection of Technology Drive and Klein Road in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: Notice of public hearing published on April 1, 2010, to create reinvestment zone 122. The real property improvements amount is \$750,000 while the business personal property amount to be maintained is \$4,000,000.				
SUMMARY OF ITEM				
This is related to Kracker Enterprises LLC, a Texas limited liability company, request for tax abatement on reinvestment zone 122 and creation of the zone.				
List of Supporting Documents: Ordinance			Other Departments, Boards, Commissions or Agencies	

An ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 122 for tax abatement consisting of a 16.5852 acre tract of land located at the northeast corner of the intersection of Technology Drive and Klein Road in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.

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

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 12th day of April, 2010, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

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

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

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

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

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

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

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

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

- a) That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone; and
- b) That the boundaries of the reinvestment zone should be the area as described in the metes and bounds description attached hereto as Exhibit "A"; and
- c) That creation of the reinvestment zone for commercial/industrial tax abatement with boundaries as described in Exhibit "A" will result in benefits to the City and to the land included in the zone and the improvements sought are feasible and practical; and
- d) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Act in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City"; and

- e) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in the City of Plano Revised Policy Statement for Tax Abatement.

Section IV. Pursuant to Section 312.201 of the Act, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by metes and bounds in Exhibit "A" attached hereto and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. 122, City of Plano, Texas.

Section V. The zone shall be effective as of January 1, 2011.

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

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

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

- a) Duration of Exemption – ten (10) consecutive tax years beginning with and including the January 1, 2011 assessment date.
- b) Share of taxes abated – thirty percent (30%) percentage of taxes on total value of appraised Real Property Improvements and fifty percent (50%) of taxes on total value of Business Personal Property for the years 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020.

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

- a) Listing the kind, number and location of all proposed improvements of the property;

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

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

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

DULY PASSED AND APPROVED this 12th day of April, 2010.

Phil Dyer, Mayor

Attested:

Diane Zucco, City Secretary

Approved as to form:

Diane C. Wetherbee, City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 122
Real Property
Metes and Bounds

Beings Lots 2, 3 and 7 in Block 1, of PLANO TECH CENTER, an Addition to the City of Plano, Collin County, Texas, according to the Map thereof recorded in Volume N, Page 578, of the Map Records of Collin County, Texas, and being more particularly described below:

TRACT 1:

BEING a tract of land situated in the J.B. Roundtree Survey, Abstract No. 759 and the J.T. McCollough Survey, Abstract No. 633, in Collin County, Texas, and being a part of a tract of land described by instrument to Argent Plano Realty, L.P., as recorded in File #99-0011425, Deed Records, Collin County, Texas (D.R.C.C.T.), and being all of Lot 2, Block 1 of the final plat of Plano Tech Center, an addition to the City to Plano, Texas as recorded in Volume N, Page 578-581, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") found at the Southeast end of a corner clip located at the intersection of the North line of Plano Parkway (105 feet wide) and the East line of Klein Road (60 feet wide), being the Southwest corner of Lot 1 of said Block 1;

THENCE South 89 degrees 47 minutes 30 seconds East, along said North line, a distance of 48.72 feet to a 1/2-inch iron rod with cap found for the point of curvature of a circular curve to the left having a radius of 661.21 feet;

THENCE Northeasterly, continuing along said North line and along said curve, through a central angle of 47 degrees 12 minutes 09 seconds, an arc distance of 544.73 feet to an "X" in concrete found for THE POINT OF BEGINNING of the herein described tract, said point being the Southwest corner of Lot 2 of said Plano Tech Center;

THENCE North 46 degrees 59 minutes 16 seconds West, departing said North line and along the common line between said Lots 1 and 2, a distance of 91.36 feet to an "X" in concrete found for corner;

THENCE North 54 degrees 21 minutes 28 seconds West, continuing along said common line, a distance of 200.48 feet to an "X" in concrete found for corner, said point being a common corner for Lots 1, 2 and 4 of said Block 1;

THENCE North 00 degrees 12 minutes 30 seconds East, along the common line between said Lots 4 and 2, a distance of 124.33 feet to an "X" in concrete found for the beginning of a non-tangent curve to the right having a radius of 1136.28 feet and whose chord bears North 35 degrees 15 minutes 17 seconds East, 230.78 feet;

THENCE Northerly continuing along said common line and along said curve to the right, through a central angle of 11 degrees 39 minutes 25 seconds, an arc distance of 231.18 feet to an "X" in concrete found for corner;

THENCE North 52 degrees 07 minutes 16 seconds East, continuing along said common line, a distance of 299.70 feet to an "X" in concrete found for corner, said point being a common corner for Lots 2, 4, 5 and 3 of said Block 1;

THENCE South 33 degrees 40 minutes 27 seconds East, along the common line between said Lots 2 and 3, a distance of 349.28 feet to an Aluminum disk in concrete found for corner on the aforementioned northerly line of said Plano Parkway, said point being on a non-tangent circular curve to the left having a radius of 769.00 feet and whose chord bears South 42 degrees 57 minutes 14 seconds West, 356.02 feet;

THENCE Southwesterly, along said northerly line and along said curve, through a central angle of 26 degrees 46 minutes 07 seconds, an arc distance of 359.28 feet to a 1/2-inch iron rod with cap found for the point of reverse curvature of a circular curve to the right having a radius of 661.21 feet;

THENCE Southwesterly, continuing along said North line and along said curve, through a central angle of 13 degrees 26 minutes 11 seconds, an arc distance of 155.06 feet to the POINT OF BEGINNING AND CONTAINING 201,062 square feet or 4.616 acres of land, more or less.

TRACT 2:

BEING a tract of land situated in the J.B. Roundtree Survey, Abstract No. 759 and the J.T. McCollough Survey, Abstract No. 633, in Collin County, Texas, and being part of a tract of land described by instrument to Argent Plano Realty, L.P., as recorded in File #99-0011425, Deed Records, Collin County, Texas (D.R.C.C.T.), and being all of Lot 3, Block 1 of the final plat of Plano Tech Center, an addition to the City of Plano, Texas as recorded in Volume N, Page 578-581, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") found at the Southeast end of a corner clip located at the intersection of the North line of Plano Parkway (105 feet wide) and the East line of Klein Road (60 feet wide), being the Southwest corner of Lot 1 of said Block 1;

THENCE South 89 degrees 47 minutes 30 seconds East, along said North line, a distance of 48.72 feet to a 1/2-inch iron rod with cap found for the point of curvature of a circular curve to the left having a radius of 661.21 feet;

THENCE Northeasterly, continuing along said North line and along said curve, through a central angle of 60 degrees 38 minutes 20 seconds, an arc distance of 699.79 feet to a 1/2-inch iron rod with cap found for the point of reverse curvature of a circular curve to the right having a radius of 769.00 feet;

THENCE Northeasterly, continuing along said North line and along said curve, through a central angle of 26 degrees 46 minutes 07 seconds, an arc distance of 359.28 feet to an Aluminum Monument found for THE POINT OF BEGINNING of the herein described tract, said point being the Southeast corner of Lot 2 of said Block 1 and the Southwest corner of said Lot 3;

THENCE North 33 degrees 40 minutes 27 seconds West, departing said North line and along the common line between said Lots 2 and 3, a distance of 349.28 feet to an "X" in concrete found for corner, said point being a common corner for Lots 2, 3, 4 and 5 of said Block 1, said point also being the beginning of a non-tangent curve to the right having a radius of 1118.28 feet and whose chord bears North 59 degrees 23 minutes 45 seconds East, 119.47 feet;

THENCE Northerly, along the common line between said Lots 3 and 5 and along said curve to the right, through a central angle of 06 degrees 07 minutes 27 seconds, an arc distance of 119.53 feet to a "crow's foot" in concrete found for the point of reverse curvature of a circular curve to the left having a radius of 72.00 feet;

THENCE Northerly, continuing along said common line and along said curve to the left, through a central angle of 62 degrees 14 minutes 45 seconds, an arc distance of 78.22 feet to an "X" in concrete found for the point of tangency;

THENCE North 00 degrees 12 minutes 30 seconds East, continuing along said common line, a distance of 70.76 feet to an "X" in concrete found for corner, said point being a common corner with Lot 8 of said Block 1;

THENCE South 87 degrees 48 minutes 36 seconds East, along the common line between said Lots 3 and 8, a distance of 368.10 feet to an "X" in concrete found for the point of curvature of a circular curve to the left having a radius of 88.00 feet;

THENCE Northeasterly, continuing along said common line and along said curve, through a central angle of 42 degrees 57 minutes 08 seconds, an arc distance of 65.97 feet to an "X" in concrete found for the point of reverse curvature of a circular curve to the right having a radius of 88.00 feet;

THENCE Northeasterly, continuing along said common line and along said curve, through a central angle of 46 degrees 37 minutes 28 seconds, an arc distance of 71.61 feet to an "X" in concrete found for the point of tangency;

THENCE South 87 degrees 50 minutes 54 seconds East, continuing along said common line, a distance of 20.43 feet to an "X" in concrete found for corner on the West line of a tract of land described by deed to Texas Power & Light Company as recorded in Volume 874, Page 566, Deed Records of Collin County, Texas;

THENCE South 02 degrees 11 minutes 24 seconds West, along the common line between said Texas Power & Light Company tract and said Lot 3, a distance of 349.40 feet to a 1/2-inch iron rod with cap found for corner at the Northeast end of a corner clip at the intersection of the North line of Plano Parkway (variable width) with the West line of said Texas Power & Light Company tract;

THENCE South 45 degrees 59 minutes 27 seconds West, departing said West line and along said North line, a distance of 36.09 feet to a 1/2-inch iron rod with cap found for corner on the North line of said Plano Parkway;

THENCE South 89 degrees 47 minutes 30 seconds West, along said North line, a distance of 0.91 feet to a 1/2-inch iron rod with cap found for the point of curvature of a circular curve to the left having a radius of 779.00 feet;

THENCE Southwesterly, continuing along said North line and along said curve, through a central angle of 12 degrees 51 minutes 04 seconds, an arc distance of 174.73 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 67 degrees 35 minutes 45 seconds West, continuing along said North line, a distance of 149.13 feet to a 1/2-inch iron rod with cap found for the beginning of a non-tangent circular curve to the left having a radius of 769.00 feet;

THENCE Southwesterly, continuing along said North line and along said curve, through a central angle of 9 degrees 34 minutes 12 seconds, an arc distance of 128.44 feet to the POINT OF BEGINNING AND CONTAINING 221,248 square feet or 5.0792 acres of land, more or less.

TRACT 3:

BEING a tract of land situated in the Eli Murphy Survey, Abstract No. 597, D. Yeamans Survey, Abstract No. 1043, in Collin County, Texas, and being a part of a tract of land described by instrument to Argent Plano Realty, L.P. as recorded in File #99-0011425, Deed Records, Collin County, Texas (D.R.C.C.T.), and being all of Lot 7 Block 1 of the final plat of Plano Tech Center, an addition to the City of Plano, Texas as recorded in Volume N, Page 578-581 Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") found for the most westerly Southwest corner of said Lot 7, said point also being the Southeast corner of Block 21, a Replat of Blocks 16, 17, 20 and 21, Central Plano Industrial Park Phase III as recorded in Cabinet 'F', Page 145, Deed Records of Collin County, Texas, said point also being on the North line of Technology Drive (60 feet wide);

THENCE North 00 degrees 12 minutes 30 seconds East, departing said North line and along the East line of Block 21, a distance of 330.27 feet to a 1/2-inch iron rod with cap found at the Northeast corner of said Block 21, said corner being on the South line of a Dallas Area Rapid Transit Property Acquisition Corporation tract (variable width);

THENCE South 79 degrees 32 minutes 25 seconds East, departing said Block line and along said South line, a distance of 114.68 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 86 degrees 20 minutes 07 seconds East, continuing along said South line, a distance of 544.82 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 79 degrees 32 minutes 43 seconds East, continuing along said South line, a distance of 238.72 feet to a 1/2-inch iron rod with cap found for corner, said corner being the Northwest corner of a tract of land described by deed to Texas Utilities Electric Company as recorded in Volume 3409, Page 17, Deed Records of Collin County, Texas;

THENCE South 10 degrees 27 minutes 17 seconds West, departing said South line and along the West line of said Texas Utilities Electric Company tract, a distance of 275.00 feet to a 1/2-inch iron rod with cap found for corner, said point being a common corner with Lot 8 of said Block 1;

THENCE South 39 degrees 26 minutes 15 seconds West, departing said West line and along the common line between said Lots 7 and 8, a distance of 37.48 feet to an "X" in concrete found for corner, said point being a common corner for Lot 6 of said Block 1;

THENCE North 89 degrees 47 minutes 30 seconds West, along the common line between said Lots 6 and 7, a distance of 729.45 feet to a "crow's foot" found for corner on the East line of Klein Road;

THENCE North 10 degrees 27 minutes 35 seconds East, along said East line of Klein Road, a distance of 48.12 feet to an "X" in concrete found at the intersection of said East line and the said North line of Technology Drive;

THENCE North 79 degrees 32 minutes 25 seconds West, along said North line, a distance of 99.67 feet to the POINT OF BEGINNING AND CONTAINING 300,130 square feet or 6.89 acres of land, more or less.

TRACT 4:

Non-Exclusive easement created by Amended and Restated Declaration of Common Access Easement, Sign Easement and Restrictions for Plano Tech Center I, dated --/--/2005, filed 08/10/2004 recorded in Volume 5728, Page 2417, Land Records, Collin County, Texas.

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, Kracker Enterprises LLC, a Texas limited liability company, and various Tenants in Common Owners acting by and through their authorized agent Rainier Asset Management LLC, a Texas limited liability company; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager, or in his absence, his authorized designee; 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: The real property improvements is \$750,000 while the business personal property amount to be maintained is \$4,000,000.				
SUMMARY OF ITEM				
This is related to Kracker Enterprises LLC, a Texas limited liability company, request for tax abatement on reinvestment zone 122 and creation of the zone.				
List of Supporting Documents: Tax Abatement Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, Kracker Enterprises LLC, a Texas limited liability company, and various Tenants in Common Owners acting by and through their authorized agent Rainier Asset Management LLC, a Texas limited liability company; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager, or in his absence, his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, Kracker Enterprises LLC, a Texas limited liability company and various Tenants in Common Owners acting by and through their authorized agent Rainier Asset Management LLC, a Texas limited liability company, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano, Texas, 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 his authorized designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

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

DULY PASSED AND APPROVED this the 12th day of April, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Representative” attached hereto as **EXHIBIT “B”**. This Agreement shall be terminated should the Real Property not be leased by Lessee, its successors or affiliates, or should such lease be terminated during the term of this Agreement.

1. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No.122, which shall be hereinafter referred to as the “Personalty.” The Personalty is presently estimated to have an assessed taxable value as determined by the Collin County Appraisal District of not less than Four Million Dollars (\$4,000,000.00) on the Property by December 31, 2010 and is or will be owned by Lessee or its affiliates. Lessee shall timely render its personal property value each year to the Central Appraisal District

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

JOBS

3. Lessee estimates the proposed occupancy of the Real Property as shown in **EXHIBIT “C”** (the “Development”) will result in the retention, creation or transfer of approximately 30 full time jobs (“Job Equivalents”) at the Development in Plano by October 31, 2010 and an additional 15 Job Equivalents at the Development in Plano by December 31, 2012. “Job Equivalent” shall mean one or more Company job positions located at the Development which individually or when combined total 2080 hours annually

IMPROVEMENTS

4. The Lessee shall occupy not less than 60,500 gross square feet of commercial space on the Real Property by July 1, 2010. The Lessee or Owner shall make real property improvements to the Real Property with an approximate taxable value of not less than Seven Hundred and Fifty Thousand Dollars (\$750,000.00) by December 31, 2010.

DEFAULT

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

(a) Lessee or Owner, respectively, allow their personal property taxes located on the Real Property or real property improvement taxes owed the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes;

(b) Lessee fails to occupy the Improvements for the Purposes set forth in paragraph 5 above on or before July 1, 2010; or

(c) The value of Personalty placed on the Real Property on or before December 31, 2010 or the value of real property improvements on the Property is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(d) The assessed value of the Improvements or Personalty falls below the minimum amounts set forth in paragraph 2 and 5 above as the result of the Lessee or Owner filing a protest or as a result of the removal of the Improvements or Personalty from the Development.

(e) Lessee fails to employ at least 75% of its employee commitment as provided in paragraph 4 above; or

(f) Lessee or Owner fail to provide annual certification as required in paragraph 9 below.

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

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

8. Upon the occurrence of an event of default under Paragraph 6(a) above and after Lessee or Owner fails to cure same in accordance herewith or upon the occurrence of an event of default under Paragraph 6(g), this Agreement shall immediately terminate with respect to the tax abatements attributable to the Personalty for Lessee and for real property improvements for Owner and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07. A default under this section by the Lessee shall not constitute a default by the Owner nor shall the Owner be responsible for repayment of taxes or any other amounts resulting from the default that would have been paid but for this Agreement where the default is caused solely by the Lessee.

ANNUAL CERTIFICATION

9. On or before the 1st day of November of each calendar year during the term of this Agreement, the Lessee and Owner , or their successors or assigns, must provide annual certification

(substantially in the form attached as **EXHIBIT “D”** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

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

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

(b) A transfer or assignment of this Agreement by Lessee or Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Lessee and Owner shall continue to conduct business on the subject premises, and shall remain the primary tenant and landlords.

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

ABATEMENT PROVISIONS

11. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City, a portion of ad valorem personal property taxes and real property improvements belonging to Lessee and/or Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to Personalty and real property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2011, through December 31, 2020.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty percent (50%) of the value of the Personalty and thirty percent (30%) real property improvements for each tax year from January 1, 2011, through December 31, 2020.

(c) The Lessee and Owner shall have the right to protest and/or contest any assessment of the Personalty, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this agreement if assessed values fall below those in paragraphs 2 and 5 as a result of a Lessee or Owner filed protest and/or contest or removal of property from the Development.

NOTICE

12. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed

to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

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

With copy to:

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

For Lessee by notice to:

Kracker Enterprises, LLC dba Dr. Kracker
10490 Miller Road
Dallas, TX 75238

For Owner by notice to:

Rainier Asset Management LLC
Attention: Andrew Tompson
Title: Senior Asset Manager
13760 Noel Road Suite 800
Dallas, TX 75240

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

MISCELLANEOUS PROVISIONS

13. The Lessee and Owner further agree that the City, its agents and employees, shall have reasonable right (upon reasonable prior notice to Lessee and Owner) to access the Real Property to inspect the Personalty and real property improvements in order to insure that the location of the Personalty and real property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. During the term of this Agreement City shall have the continuing right (upon reasonable prior notice to Lessee and Owner) to inspect the Real Property and Personalty to insure that the Personalty and real property improvements are thereafter maintained in accordance with this Agreement.

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

15. The City represents and warrants that the Personalty or Property do not include any property that is owned by it or its council or boards, agencies, commissions, or other entities approving, or having responsibility for the approval of this Agreement.

16. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 14th day of December 2009, authorizing the City Manager to execute the Agreement on behalf of the City.

17. This Agreement was entered into by Lessee pursuant to its duly authorized representative.

18. This Agreement was entered into by Owner pursuant to its duly authorized representative.

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

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

This Agreement is performable in Collin County, Texas. Signed this 12th day of April, 2010.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

ATTEST:

KRACKER ENTERPRISES, LLC, a Texas
limited liability company,
dba DR. KRACKER

Name:
Title:

ATTEST:

RAINIER ASSET MANAGEMENT LLC, a
Texas limited liability company

By: _____
Name:
Title:

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 122

Real Property
Metes and Bounds

Beings Lots 2, 3 and 7 in Block 1, of PLANO TECH CENTER, an Addition to the City of Plano, Collin County, Texas, according to the Map thereof recorded in Volume N, Page 578, of the Map Records of Collin County, Texas, and being more particularly described below:

TRACT 1:

BEING a tract of land situated in the J.B. Roundtree Survey, Abstract No. 759 and the J.T. McCollough Survey, Abstract No. 633, in Collin County, Texas, and being a part of a tract of land described by instrument to Argent Plano Realty, L.P., as recorded in File #99-0011425, Deed Records, Collin County, Texas (D.R.C.C.T.), and being all of Lot 2, Block 1 of the final plat of Plano Tech Center, an addition to the City to Plano, Texas as recorded in Volume N, Page 578-581, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") found at the Southeast end of a corner clip located at the intersection of the North line of Plano Parkway (105 feet wide) and the East line of Klein Road (60 feet wide), being the Southwest corner of Lot 1 of said Block 1;

THENCE South 89 degrees 47 minutes 30 seconds East, along said North line, a distance of 48.72 feet to a 1/2-inch iron rod with cap found for the point of curvature of a circular curve to the left having a radius of 661.21 feet;

THENCE Northeasterly, continuing along said North line and along said curve, through a central angle of 47 degrees 12 minutes 09 seconds, an arc distance of 544.73 feet to an "X" in concrete found for THE POINT OF BEGINNING of the herein described tract, said point being the Southwest corner of Lot 2 of said Plano Tech Center;

THENCE North 46 degrees 59 minutes 16 seconds West, departing said North line and along the common line between said Lots 1 and 2, a distance of 91.36 feet to an "X" in concrete found for corner;

THENCE North 54 degrees 21 minutes 28 seconds West, continuing along said common line, a distance of 200.48 feet to an "X" in concrete found for corner, said point being a common corner for Lots 1, 2 and 4 of said Block 1;

THENCE North 00 degrees 12 minutes 30 seconds East, along the common line between said Lots 4 and 2, a distance of 124.33 feet to an "X" in concrete found for the beginning of a non-

tangent curve to the right having a radius of 1136.28 feet and whose chord bears North 35 degrees 15 minutes 17 seconds East, 230.78 feet;

THENCE Northerly continuing along said common line and along said curve to the right, through a central angle of 11 degrees 39 minutes 25 seconds, an arc distance of 231.18 feet to an "X" in concrete found for corner;

THENCE North 52 degrees 07 minutes 16 seconds East, continuing along said common line, a distance of 299.70 feet to an "X" in concrete found for corner, said point being a common corner for Lots 2, 4, 5 and 3 of said Block 1;

THENCE South 33 degrees 40 minutes 27 seconds East, along the common line between said Lots 2 and 3, a distance of 349.28 feet to an Aluminum disk in concrete found for corner on the aforementioned northerly line of said Plano Parkway, said point being on a non-tangent circular curve to the left having a radius of 769.00 feet and whose chord bears South 42 degrees 57 minutes 14 seconds West, 356.02 feet;

THENCE Southwesterly, along said northerly line and along said curve, through a central angle of 26 degrees 46 minutes 07 seconds, an arc distance of 359.28 feet to a 1/2-inch iron rod with cap found for the point of reverse curvature of a circular curve to the right having a radius of 661.21 feet;

THENCE Southwesterly, continuing along said North line and along said curve, through a central angle of 13 degrees 26 minutes 11 seconds, an arc distance of 155.06 feet to the POINT OF BEGINNING AND CONTAINING 201,062 square feet or 4.616 acres of land, more or less.

TRACT 2:

BEING a tract of land situated in the J.B. Roundtree Survey, Abstract No. 759 and the J.T. McCollough Survey, Abstract No. 633, in Collin County, Texas, and being part of a tract of land described by instrument to Argent Plano Realty, L.P., as recorded in File #99-0011425, Deed Records, Collin County, Texas (D.R.C.C.T.), and being all of Lot 3, Block 1 of the final plat of Plano Tech Center, an addition to the City of Plano, Texas as recorded in Volume N, Page 578-581, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") found at the Southeast end of a corner clip located at the intersection of the North line of Plano Parkway (105 feet wide) and the East line of Klein Road (60 feet wide), being the Southwest corner of Lot 1 of said Block 1;

THENCE South 89 degrees 47 minutes 30 seconds East, along said North line, a distance of 48.72 feet to a 1/2-inch iron rod with cap found for the point of curvature of a circular curve to the left having a radius of 661.21 feet;

THENCE Northeasterly, continuing along said North line and along said curve, through a central angle of 60 degrees 38 minutes 20 seconds, an arc distance of 699.79 feet to a 1/2-inch iron rod

with cap found for the point of reverse curvature of a circular curve to the right having a radius of 769.00 feet;

THENCE Northeasterly, continuing along said North line and along said curve, through a central angle of 26 degrees 46 minutes 07 seconds, an arc distance of 359.28 feet to an Aluminum Monument found for THE POINT OF BEGINNING of the herein described tract, said point being the Southeast corner of Lot 2 of said Block 1 and the Southwest corner of said Lot 3;

THENCE North 33 degrees 40 minutes 27 seconds West, departing said North line and along the common line between said Lots 2 and 3, a distance of 349.28 feet to an "X" in concrete found for corner, said point being a common corner for Lots 2, 3, 4 and 5 of said Block 1, said point also being the beginning of a non-tangent curve to the right having a radius of 1118.28 feet and whose chord bears North 59 degrees 23 minutes 45 seconds East, 119.47 feet;

THENCE Northerly, along the common line between said Lots 3 and 5 and along said curve to the right, through a central angle of 06 degrees 07 minutes 27 seconds, an arc distance of 119.53 feet to a "crow's foot" in concrete found for the point of reverse curvature of a circular curve to the left having a radius of 72.00 feet;

THENCE Northerly, continuing along said common line and along said curve to the left, through a central angle of 62 degrees 14 minutes 45 seconds, an arc distance of 78.22 feet to an "X" in concrete found for the point of tangency;

THENCE North 00 degrees 12 minutes 30 seconds East, continuing along said common line, a distance of 70.76 feet to an "X" in concrete found for corner, said point being a common corner with Lot 8 of said Block 1;

THENCE South 87 degrees 48 minutes 36 seconds East, along the common line between said Lots 3 and 8, a distance of 368.10 feet to an "X" in concrete found for the point of curvature of a circular curve to the left having a radius of 88.00 feet;

THENCE Northeasterly, continuing along said common line and along said curve, through a central angle of 42 degrees 57 minutes 08 seconds, an arc distance of 65.97 feet to an "X" in concrete found for the point of reverse curvature of a circular curve to the right having a radius of 88.00 feet;

THENCE Northeasterly, continuing along said common line and along said curve, through a central angle of 46 degrees 37 minutes 28 seconds, an arc distance of 71.61 feet to an "X" in concrete found for the point of tangency;

THENCE South 87 degrees 50 minutes 54 seconds East, continuing along said common line, a distance of 20.43 feet to an "X" in concrete found for corner on the West line of a tract of land described by deed to Texas Power & Light Company as recorded in Volume 874, Page 566, Deed Records of Collin County, Texas;

THENCE South 02 degrees 11 minutes 24 seconds West, along the common line between said Texas Power & Light Company tract and said Lot 3, a distance of 349.40 feet to a 1/2-inch iron

rod with cap found for corner at the Northeast end of a corner clip at the intersection of the North line of Plano Parkway (variable width) with the West line of said Texas Power & Light Company tract;

THENCE South 45 degrees 59 minutes 27 seconds West, departing said West line and along said North line, a distance of 36.09 feet to a 1/2-inch iron rod with cap found for corner on the North line of said Plano Parkway;

THENCE South 89 degrees 47 minutes 30 seconds West, along said North line, a distance of 0.91 feet to a 1/2-inch iron rod with cap found for the point of curvature of a circular curve to the left having a radius of 779.00 feet;

THENCE Southwesterly, continuing along said North line and along said curve, through a central angle of 12 degrees 51 minutes 04 seconds, an arc distance of 174.73 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 67 degrees 35 minutes 45 seconds West, continuing along said North line, a distance of 149.13 feet to a 1/2-inch iron rod with cap found for the beginning of a non-tangent circular curve to the left having a radius of 769.00 feet;

THENCE Southwesterly, continuing along said North line and along said curve, through a central angle of 9 degrees 34 minutes 12 seconds, an arc distance of 128.44 feet to the POINT OF BEGINNING AND CONTAINING 221,248 square feet or 5.0792 acres of land, more or less.

TRACT 3:

BEING a tract of land situated in the Eli Murphy Survey, Abstract No. 597, D. Yeamans Survey, Abstract No. 1043, in Collin County, Texas, and being a part of a tract of land described by instrument to Argent Plano Realty, L.P. as recorded in File #99-0011425, Deed Records, Collin County, Texas (D.R.C.C.T.), and being all of Lot 7 Block 1 of the final plat of Plano Tech Center, an addition to the City of Plano, Texas as recorded in Volume N, Page 578-581 Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") found for the most westerly Southwest corner of said Lot 7, said point also being the Southeast corner of Block 21, a Replat of Blocks 16, 17, 20 and 21, Central Plano Industrial Park Phase III as recorded in Cabinet 'F', Page 145, Deed Records of Collin County, Texas, said point also being on the North line of Technology Drive (60 feet wide);

THENCE North 00 degrees 12 minutes 30 seconds East, departing said North line and along the East line of Block 21, a distance of 330.27 feet to a 1/2-inch iron rod with cap found at the Northeast corner of said Block 21, said corner being on the South line of a Dallas Area Rapid Transit Property Acquisition Corporation tract (variable width);

THENCE South 79 degrees 32 minutes 25 seconds East, departing said Block line and along said South line, a distance of 114.68 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 86 degrees 20 minutes 07 seconds East, continuing along said South line, a distance of 544.82 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 79 degrees 32 minutes 43 seconds East, continuing along said South line, a distance of 238.72 feet to a 1/2-inch iron rod with cap found for corner, said corner being the Northwest corner of a tract of land described by deed to Texas Utilities Electric Company as recorded in Volume 3409, Page 17, Deed Records of Collin County, Texas;

THENCE South 10 degrees 27 minutes 17 seconds West, departing said South line and along the West line of said Texas Utilities Electric Company tract, a distance of 275.00 feet to a 1/2-inch iron rod with cap found for corner, said point being a common corner with Lot 8 of said Block 1;

THENCE South 39 degrees 26 minutes 15 seconds West, departing said West line and along the common line between said Lots 7 and 8, a distance of 37.48 feet to an "X" in concrete found for corner, said point being a common corner for Lot 6 of said Block 1;

THENCE North 89 degrees 47 minutes 30 seconds West, along the common line between said Lots 6 and 7, a distance of 729.45 feet to a "crow's foot" found for corner on the East line of Klein Road;

THENCE North 10 degrees 27 minutes 35 seconds East, along said East line of Klein Road, a distance of 48.12 feet to an "X" in concrete found at the intersection of said East line and the said North line of Technology Drive;

THENCE North 79 degrees 32 minutes 25 seconds West, along said North line, a distance of 99.67 feet to the POINT OF BEGINNING AND CONTAINING 300,130 square feet or 6.89 acres of land, more or less.

TRACT 4:

Non-Exclusive easement created by Amended and Restated Declaration of Common Access Easement, Sign Easement and Restrictions for Plano Tech Center I, dated --/--/2005, filed 08/10/2004 recorded in Volume 5728, Page 2417, Land Records, Collin County, Texas.

**APPOINTMENT AND AUTHORIZATION
OF
REPRESENTATIVE**

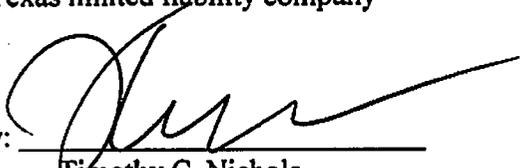
The undersigned, being all of the tenant-in-common owners (collectively, the "Owners") of that certain property identified on Exhibit A hereto (the "Property"), appoint Rainier Asset Management Company, LLC, ("Rainier") as its agent and authorize Rainier, acting through its authorized representatives, in the name of, and on behalf of, the Owners, to enter into negotiations with the City of Plano, Texas for property tax abatements with respect to the improvements to be made to the Property in connection with the lease to Kracker Enterprises, LLC, a Texas limited liability company, d/b/a Dr. Kracker, on such terms and conditions as Rainier shall deem necessary, advisable or appropriate and to execute and deliver any agreements, certificates, instruments or documents that may be necessary in order to obtain such property tax abatements for the Property.

This appointment and authorization may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Amendment. The delivery of a signed facsimile or .pdf copy hereof by an undersigned party shall be deemed to be the execution and delivery by such party of an original of this document.

EXECUTED effective as of February 10, 2010.

RAINIER ASSET MANAGEMENT COMPANY, LLC,
a Texas limited liability company

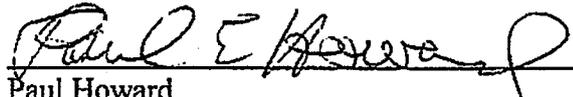
By: _____


Timothy C. Nichols

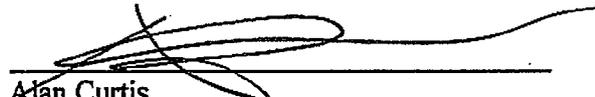
Its: Vice President.

[Signatures of Co-Owners on the following pages]

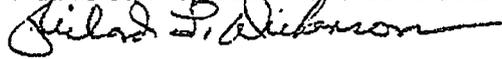
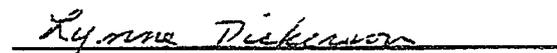
By: Howard-Plano Tech Center LLC


Paul Howard
Munke

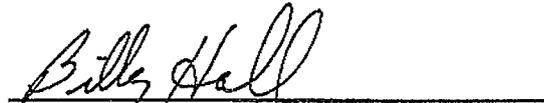
By: A. Curtis-Plano Tech Center LLC


Alan Curtis

By: Adams St. Properties-Plano Tech Center LLC



Richard & Lynne Dickerson
Adams Street Properties, LLC

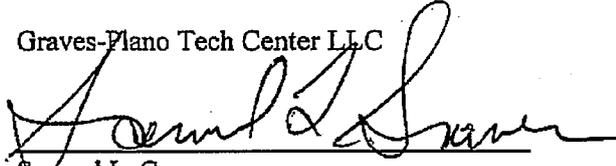
By: Blackwater-Plano Tech Center LLC


Bill Hall
Blackwater Properties LTD

By: J. Curtis-Plano Tech Center LLC


Jane Curtis

By: Graves-Plano Tech Center LLC


Samuel L. Graves

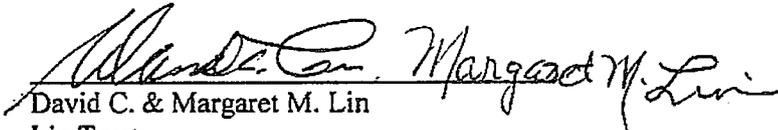
By: Harris-Plano Tech Center LLC


Robert Harris

By: Jack Trust-Plano Tech Center LLC


Samantha Logan, Co-Trustee
Jack Trust

By: Lin Trust-Plano Tech Center LLC


David C. & Margaret M. Lin
Lin Trust

By: McKinney Trust-Plano Tech Center LLC


Blaine McKinney
McKinney Farms, LLC

By: Noto Trust-Plano Tech Center LLC

James Noto - Trustee
James & Patricia Noto
The Noto Trust dated 12/7/2002

*For Appointment and Authorization
of Representative*

By: Pierce-Plano Tech Center LLC

Robert L. Pierce and Anne-Marie Pierce
Robert L. Pierce and Anne-Marie Pierce
12/10/09

By: Swann Trust-Plano Tech Center LLC

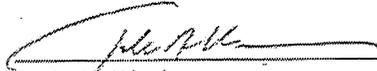
Raymond & Joyce L. Swann
Raymond & Joyce Swann
The Raymond A. Swann & Joyce L. Swann Rev Trust dtd 10/14/1992

By: Tozzolina-Plano Tech Center LLC

Frank Tozzolina, Jr.
Frank Tozzolina, Jr.

Kathleen A. Tozzolina
Kathleen A. Tozzolina

By: TIC Plano Tech Center, LLC


Josh A. Workman
TIC Retained Interest, LLC

By: Noto Trust-Plano Tech Center LLC

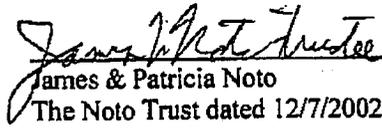
 
James & Patricia Noto
The Noto Trust dated 12/7/2002

EXHIBIT "C" THE DEVELOPMENT REINVESTMENT ZONE NO. 122

(site plan showing location of improvements)

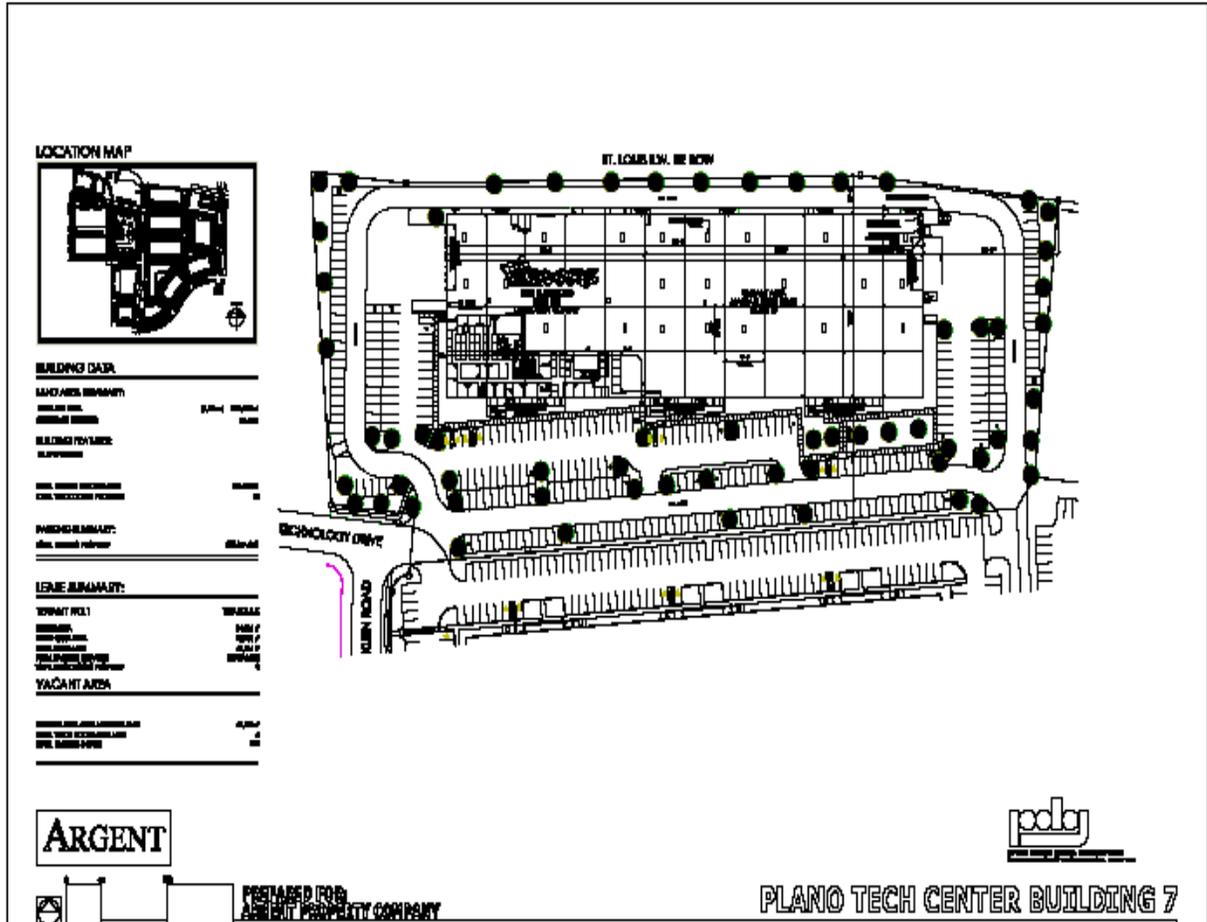


EXHIBIT "D"
CERTIFICATION FORM
REINVESTMENT ZONE NO. 122

This letter certifies that (Dr. Kracker)/(Rainier Asset Management LLC) is in compliance with each applicable term as set forth in the Agreement to Resolution No. _____(R) as of _____. The term of this agreement is January 1, 2011, through December 31, 2020. This form is due on November 1 of each year this tax abatement is in force.

ATTEST:

KRACKER ENTERPRISES, LLC, a Texas
limited liability company,
dba DR. KRACKER

Name:
Title:

ATTEST:

RAINIER ASSET MANAGEMENT LLC, a
Texas limited liability company

By: _____
Name:
Title:

**NOTE: This certification form should be mailed to: City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358**

EXHIBIT "C"
THE DEVELOPMENT
REINVESTMENT ZONE NO. 122

(site plan showing location of improvements)

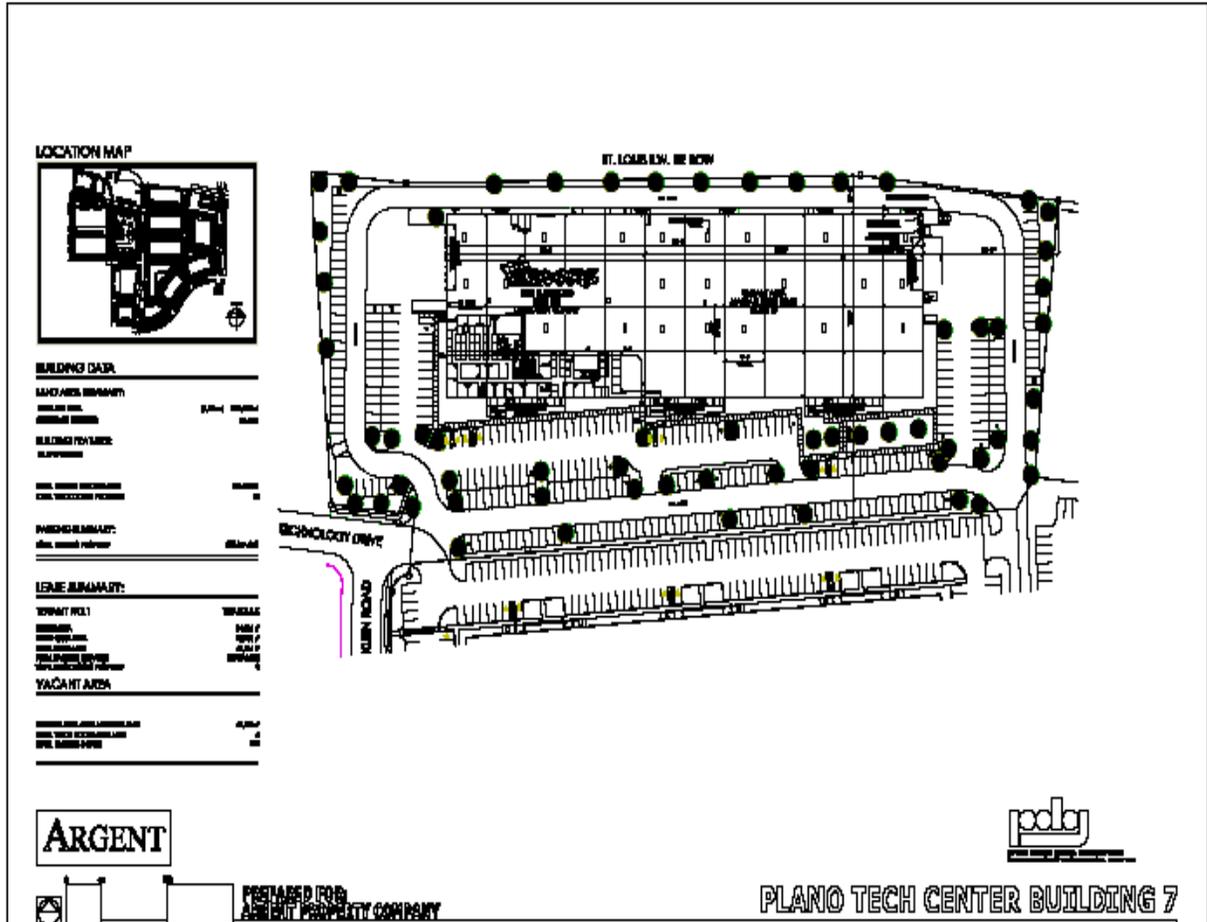


EXHIBIT "D"
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ATTEST:

KRACKER ENTERPRISES, LLC, a Texas
limited liability company,
dba DR. KRACKER

Name:
Title:

ATTEST:

RAINIER ASSET MANAGEMENT LLC, a
Texas limited liability company

By: _____
Name:
Title:

**NOTE: This certification form should be mailed to: City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358**



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x-7479				
CAPTION				
Public hearing and consideration of an ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 121 for tax abatement consisting of a 10.087 acre tract of land located north of the intersection of Mapleshade Lane and Silverglen Drive in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: Notice of public hearing published on April 1, 2010, to create reinvestment zone 121. The real property improvements amount is \$6,250,000 while the business personal property amount to be maintained is \$1,350,000.				
SUMMARY OF ITEM				
This is related to Atmos Energy Corporation, a Texas and Virginia corporation, request for tax abatement on reinvestment zone 121 and creation of the zone.				
List of Supporting Documents: Ordinance			Other Departments, Boards, Commissions or Agencies	

An ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 121 for tax abatement consisting of a 10.087 acre tract of land located north of the intersection of Mapleshade Lane and Silverglen Drive in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.

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

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 12th day of April, 2010, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

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

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

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

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

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

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

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

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

- a) That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone; and
- b) That the boundaries of the reinvestment zone should be the area as described in the metes and bounds description attached hereto as Exhibit "A"; and
- c) That creation of the reinvestment zone for commercial/industrial tax abatement with boundaries as described in Exhibit "A" will result in benefits to the City and to the land included in the zone and the improvements sought are feasible and practical; and
- d) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Act in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City"; and

- e) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in the City of Plano Revised Policy Statement for Tax Abatement.

Section IV. Pursuant to Section 312.201 of the Act, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by metes and bounds in Exhibit "A" attached hereto and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. 121, City of Plano, Texas.

Section V. The zone shall be effective as of January 1, 2011.

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

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

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

- a) Duration of Exemption – ten (10) consecutive tax years beginning with and including the January 1, 2011 assessment date.
- b) Share of taxes abated - percentage of taxes on total value of appraised Real and Business Personal Property and Improvements at the rate of: 50% for the years 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020.

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

- a) Listing the kind, number and location of all proposed improvements of the property;

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

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

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

DULY PASSED AND APPROVED this 12th day of April, 2010.

Phil Dyer, Mayor

Attested:

Diane Zucco, City Secretary

Approved as to form:

Diane C. Wetherbee, City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 121
Real Property
Metes and Bounds

BEING a tract of land situated in the Martha McBride Survey Abstract No. 553, Collin County, Texas and being a portion of the land described in a deed to The Board of Regents of the University of Texas System as recorded in Volume 976, Page 517 and a portion of the land described as Exhibit R in a Quick Claim Deed to The Board of Regents of the University of Texas System as recorded in cc#94-0062867 of the Real Property Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at an x-cut in concrete found in the northerly right of way line of Mapleshade Lane (a 92 feet wide right of way), said x-cut being the southeasterly corner of Lot 5, Block A of Coit Center an addition to the City of Plano according to the plat recorded in Clerks File No. 2006-100 of the Plat Records of Collin County, Texas;

THENCE along the easterly line of said Lot 5 as follows:

North 00 degrees 13 minutes 59 seconds West a distance of 114.89 feet to a 1/2 inch iron rod found for corner;

South 89 degrees 40 minutes 57 seconds West a distance of 130.00 feet to a 1/2 inch iron rod set for corner;

North 00 degrees 19 minutes 11 seconds West passing at a distance of 315.14 feet a 1/2 inch iron rod found for the northeasterly corner of said Lot 5 and continuing along the easterly line of Lot 6, Block A of Coit Center an addition to the City of Plano according to the plat recorded in County Clerks File No. 2006-99 of the Plat Records of Collin County, Texas passing at a distance of 693.87 feet the southeasterly corner of Lot 2R, Block A of Coit Center Addition an addition to the City of Plano according to the plat recorded in County Clerks File No. 2007-97 of the Plat Records of Collin County, Texas, passing at a distance of 846.93 feet a capped iron rod stamped "CARTER/BURG" found for the northeasterly corner of said Lot 2R in all a total distance of 874.36 feet to a capped iron rod stamped "CARTER/BURG" found for the northwesterly corner of said Exhibit R tract and the southerly right of way line of the Atchison, Topeka and Santa Fe Railroad (a 125 feet right of way at this point);

THENCE along the northerly line of said Exhibit R tract and the southerly right of way line of said Atchison, Topeka and Santa Fe Railroad South 67 degrees 44 minutes 07 seconds East a distance of 557.77 feet to a 1/2 inch iron rod set for corner;

THENCE departing the northerly line of said Exhibit R tract and the southerly right of way line of said Atchison, Topeka and Santa Fe Railroad South 00 degrees 19 minutes 11 seconds East a distance of 867.05 feet to a 1/2 inch iron rod set for corner in the southerly right of way line of the proposed extension of Mapleshade Lane (a 92 feet wide right of way);

THENCE along the southerly right of way line of the proposed extension of Mapleshade Lane South 89 degrees 40 minutes 49 seconds West a distance of 350.84 feet to a 1/2 inch iron rod found for corner in the southerly right of way line of Mapleshade Lane;

THENCE North 02 degrees 05 minutes 56 seconds East a distance of 90.14 feet to an aluminum monument found in the northerly right of way line of Mapleshade Lane;

THENCE along the northerly line of said Mapleshade Lane North 87 degrees 24 minutes 03 seconds West a distance of 38.19 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 10.825 acres of land more or less.

SAVE AND EXCEPT THE FOLLOWING:

BEING a tract of land situated in the Martha McBride Survey Abstract No. 553, Collin County, Texas and being a portion of the land described in a deed to The Board of Regents of the University of Texas System as recorded in Volume 976, Page 517 and a portion of the land described as Exhibit R in a Quick Claim Deed to The Board of Regents of the University of Texas System as recorded in cc#94-0062867 of the Real Property Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at an x-cut in concrete found in the northerly right of way line of Mapleshade Lane (a 92 feet wide right of way), said x-cut being the southeasterly corner of Lot 5, Block A of Coit Center an addition to the City of Plano according to the plat recorded in Clerks File No. 2006-100 of the Plat Records of Collin County, Texas;

THENCE along the proposed northerly right of way line of Mapleshade Lane (proposed 92 feet wide right of way) North 89 degrees 40 minutes 49 seconds East a distance of 385.17 feet to a 1/2 inch iron rod with blue plastic cap stamped ElamPack Surveyors set for corner;

THENCE South 00 degrees 19 minutes 11 seconds East a distance of 92.00 feet to a 1/2 inch iron rod with blue plastic cap stamped ElamPack Surveyors set for corner in the proposed southerly right of way line of said Mapleshade Lane (proposed 92 feet wide right of way);

THENCE along the proposed southerly right of way line of said Mapleshade Lane (proposed 92 feet wide right of way) South 89 degrees 40 minutes 49 seconds West a distance of 350.84 feet to a 1/2 inch iron rod with blue plastic cap stamped ElamPack Surveyors set for corner in the easterly line of the existing Mapleshade Lane right of way;

THENCE along the easterly line of the existing Mapleshade Lane right of way North 02 degrees 05 minutes 56 seconds East a distance of 90.14 feet to an aluminum monument found for corner in the existing northerly right of way line of Mapleshade Lane;

THENCE along the existing northerly right of way line of said Mapleshade Lane North 87 degrees 24 minutes 03 seconds West a distance of 38.19 feet to the POINT OF BEGINNING;

Containing within these metes and bounds 0.738 acres or 32,135 square feet of land more or less.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x-7479				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between the City of Plano, Texas, and Atmos Energy Corporation, a Texas and Virginia corporation; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager, or in his absence, his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: Notice of public hearing published on April 1, 2010, to create reinvestment zone 121. The real property improvements amount is \$6,250,000 while the business personal property amount to be maintained is \$1,350,000.				
SUMMARY OF ITEM				
This is related to Atmos Energy Corporation, a Texas and Virginia corporation, request for tax abatement on reinvestment zone 121 and creation of the zone.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Tax Abatement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between the City of Plano, Texas, and Atmos Energy Corporation, a Texas and Virginia corporation; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager, or in his absence, his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, and Atmos Energy Corporation, a Texas and Virginia corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano, Texas, 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 his authorized designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

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

DULY PASSED AND APPROVED this the 12th day of April, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

hereinafter referred to as the "Personalty." The Personalty is to have an assessed taxable value as determined by the Collin County Appraisal District of not less than One Million Three Hundred and Fifty Thousand Dollars (\$1,350,000.00) on the Property by January 1, 2011, and is or will be owned by Owner or its affiliates. Owner shall timely render its personal property value each year to the Central Appraisal District

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

JOBS

4. Owner estimates the proposed occupancy of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in the retention, creation or transfer of 78 full time jobs ("Job Equivalents") at the Development in Plano by December 31, 2010, and an additional 11 Job Equivalents at the Development in Plano by December 31, 2012. "Job Equivalent" shall mean one or more Company job positions located at the Development which individually or when combined total 2080 hours on an annual basis (inclusive of holidays, vacation and sick leave).

IMPROVEMENTS

5. The Owner shall occupy not less than 48,000 gross square feet of commercial/industrial space on the Real Property by December 31, 2010, subject to Event of Force Majeure. The Owner shall make real property improvements to the Real Property with a taxable value of not less than Six Million Two Hundred and Fifty Thousand Dollars (\$6,250,000.00) by January 1, 2011, subject to Event of Force Majeure. The term "Event of Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Owner's operations in the City.

DEFAULT

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

(a) Owner allows its personal property taxes located on the Real Property or real property improvement taxes owed the City to become delinquent and fails to either (1) timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes, or (2) cure such delinquency within 30 days of receipt of notice of such delinquency; or

(b) Owner fails to occupy the Improvements for the Purposes set forth in paragraphs 2 and 5 above on or before December 31, 2010, subject to Event of Force Majeure; or

(c) The value of Personalty placed on the Real Property on or before January 1, 2011, subject to Event of Force Majeure, or the value of real property improvements on the Property is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(d) The assessed value of the Improvements or Personalty falls below the minimum amounts set forth in paragraph 2 and 5 above as the result of the Owner filing a protest or as a result of the removal of the Personalty from the Development.

(e) Owner fails to employ at least 75% of its employee commitment as provided in paragraph 4 above, subject to Event of Force Majeure; or

(f) Owner fails to provide annual certification as required in paragraph 9 below;
or

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

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

8. Upon the occurrence of an event of default under Paragraph 6(a) above and after Owner fails to cure same in accordance herewith or upon the occurrence of an event of default under Paragraph 6(g), this Agreement shall terminate upon delivery of written notice by the City to Owner with respect to the tax abatement attributable to the Personalty and real property improvements and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

9. Beginning November 1, 2011 and on or before the 1st day of November of each calendar year thereafter during the term of this Agreement, the Owner, or its successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

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

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

(b) A transfer or assignment of this Agreement by Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Owner shall continue to conduct business on the subject premises, and shall remain the primary tenant or landlord.

Assignment under either (a) or (b) above may be made without consent of the City; however, Owner agrees to give written notice to the City of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

If (A) Owner desires to assign this Agreement and the City's consent is required to such assignment, and (B) the City does not consent to such assignment, then the Owner may terminate this Agreement by delivering written notice to the City, and upon such termination, the Owner and the City shall have no further rights, duties or obligations under this Agreement.

ABATEMENT PROVISIONS

11. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City, a portion of ad valorem personal property taxes and real property improvement taxes belonging to Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to Personalty and real property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2011, through December 31, 2020.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty (50%) of the taxable value of the Personalty and real property improvements for each tax year from January 1, 2011, through December 31, 2020.

(c) The Owner shall have the right to protest and/or contest any assessment of the Personalty or real property improvements, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those in paragraphs 2 and 5 as a result of an Owner filed protest and/or contest or removal of property from the Development.

NOTICE

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

For City by notice to:

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

With copy to:

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

For Owner by notice to:

Atmos Energy Corporation
Attention: Real Estate
5430 LBJ Freeway
Suite 500
Dallas, Texas 75240

With a copy to:

Atmos Energy Corporation
Attention: Legal Department
5430 LBJ Freeway
Suite 500
Dallas, Texas 75240

and

Munsch Hardt Kopf & Harr, P.C.
Attention: David Coligado
3800 Lincoln Plaza
500 N. Akard St.
Dallas, Texas 75201

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

MISCELLANEOUS PROVISIONS

13. The Owner further agrees that the City, its agents and employees, shall have reasonable right (with no less than 5 business days prior written notice to Owner) to access the Real Property during regular business hours to inspect the Personalty and real property improvements in order to insure that the location of the Personalty and real property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. During the term of this Agreement City shall have the continuing right (with no less than 5 business days prior written notice to Owner) to inspect the Real Property and Personalty during regular business hours to insure that the Personalty and real property improvements are thereafter maintained in accordance with this Agreement.

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

15. The City represents and warrants that the Personalty or Property do not include any property that is owned by it or its council or boards, agencies, commissions, or other entities approving, or having responsibility for the approval of this Agreement.

16. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 12th day of April, 2010, authorizing the City Manager to execute the Agreement on behalf of the City.

17. This Agreement was entered into by Owner pursuant to its duly authorized representative.

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

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

This Agreement is performable in Collin County, Texas. Signed this 12th day of April, 2010.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

ATMOS ENERGY CORPORATION, a
Texas and Virginia corporation

By: _____
Name: _____
Title: _____

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 121

Real Property
Metes and Bounds

Description of Land

BEING a tract of land situated in the Martha McBride Survey Abstract No. 553, Collin County, Texas and being a portion of the land described in a deed to The Board of Regents of the University of Texas System as recorded in Volume 976, Page 517 and a portion of the land described as Exhibit R in a Quick Claim Deed to The Board of Regents of the University of Texas System as recorded in cc#94-0062867 of the Real Property Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at an x-cut in concrete found in the northerly right of way line of Mapleshade Lane (a 92 foot wide right of way), said x-cut being the southeasterly corner of Lot 5, Block A of Coit Center an addition to the City of Plano according to the plat recorded in Clerks File No. 2006-100 of the Plat Records of Collin County, Texas;

THENCE along the easterly line of said Lot 5 as follows:

North 00 degrees 13 minutes 59 seconds West a distance of 114.89 feet to a 1/2 inch iron rod found for corner;

South 89 degrees 40 minutes 57 seconds West a distance of 130.00 feet to a 1/2 inch iron rod set for corner;

North 00 degrees 19 minutes 11 seconds West passing at a distance of 315.14 feet a 1/2 inch iron rod found for the northeasterly corner of said Lot 5 and continuing along the easterly line of Lot 6, Block A of Coit Center an addition to the City of Plano according to the plat recorded in County Clerks File No. 2006-99 of the Plat Records of Collin County, Texas passing at a distance of 693.87 feet the southeasterly corner of Lot 2R, Block A of Coit Center Addition an addition to the City of Plano according to the plat recorded in County Clerks File No. 2007-97 of the Plat Records of Collin County, Texas, passing at a distance of 846.93 feet a capped iron rod stamped "CARTER/BURG" found for the northeasterly corner of said Lot 2R in all a total distance of 874.36 feet to a capped iron rod stamped "CARTER/BURG" found for the northwesterly corner of said Exhibit R tract and the southerly right of way line of the Atchison, Topeka and Santa Fe Railroad (a 125 feet right of way at this point);

THENCE along the northerly line of said Exhibit R tract and the southerly right of way line of said Atchison, Topeka and Santa Fe Railroad South 67 degrees 44 minutes 07 seconds East a distance of 557.77 feet to a 1/2 inch iron rod set for corner;

THENCE departing the northerly line of said Exhibit R tract and the southerly right of way line of said Atchison, Topeka and Santa Fe Railroad South 00 degrees 19 minutes 11 seconds East a distance of 867.05 feet to a 1/2 inch iron rod set for corner in the southerly right of way line of the proposed extension of Mapleshade Lane (a 92 feet wide right of way);

THENCE along the southerly right of way line of the proposed extension of Mapleshade Lane South 89 degrees 40 minutes 49 seconds West a distance of 350.84 feet to a 1/2 inch iron rod found for corner in the southerly right of way line of Mapleshade Lane;

THENCE North 02 degrees 05 minutes 56 seconds East a distance of 90.14 feet to an aluminum monument found in the northerly right of way line of Mapleshade Lane;

THENCE along the northerly line of said Mapleshade Lane North 87 degrees 24 minutes 03 seconds West a distance of 38.19 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 10.825 acres of land more or less.

SAVE AND EXCEPT THE FOLLOWING:

BEING a tract of land situated in the Martha McBride Survey Abstract No. 553, Collin County, Texas and being a portion of the land described in a deed to The Board of Regents of the University of Texas System as recorded in Volume 976, Page 517 and a portion of the land described as Exhibit R in a Quick Claim Deed to The Board of Regents of the University of Texas System as recorded in cc#94-0062867 of the Real Property Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at an x-cut in concrete found in the northerly right of way line of Mapleshade Lane (a 92 feet wide right of way), said x-cut being the southeasterly corner of Lot 5, Block A of Coit Center an addition to the City of Plano according to the plat recorded in Clerks File No. 2006-100 of the Plat Records of Collin County, Texas;

THENCE along the proposed northerly right of way line of Mapleshade Lane (proposed 92 feet wide right of way) North 89 degrees 40 minutes 49 seconds East a distance of 385.17 feet to a 1/2 inch iron rod with blue plastic cap stamped ElamPack Surveyors set for corner;

THENCE South 00 degrees 19 minutes 11 seconds East a distance of 92.00 feet to a 1/2 inch iron rod with blue plastic cap stamped ElamPack Surveyors set for corner in the proposed southerly right of way line of said Mapleshade Lane (proposed 92 feet wide right of way);

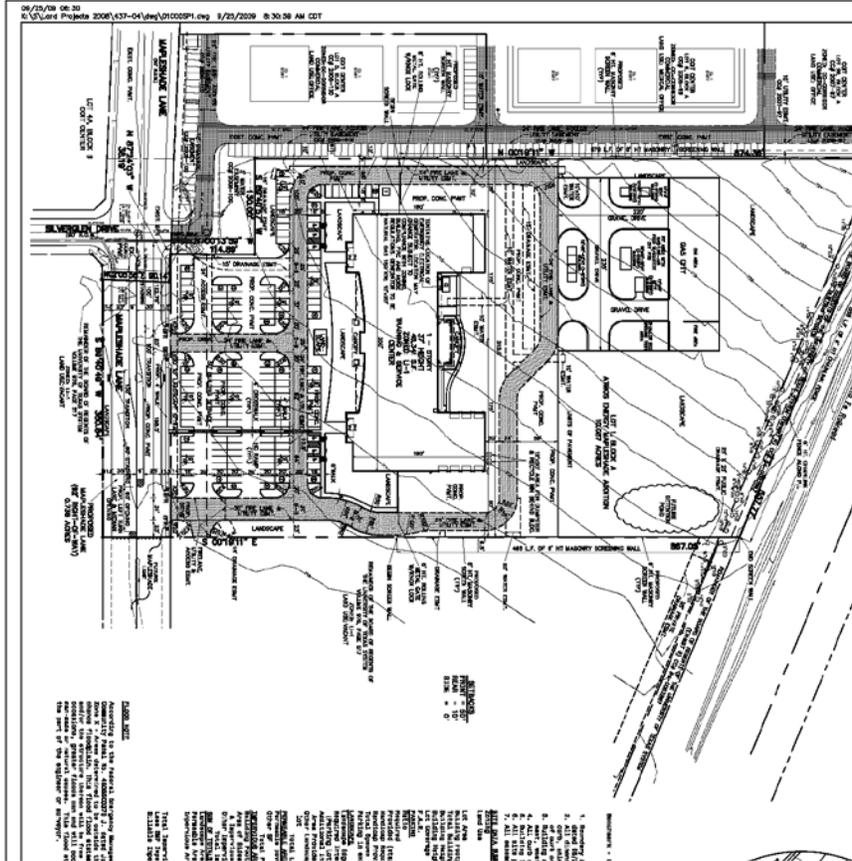
THENCE along the proposed southerly right of way line of said Mapleshade Lane (proposed 92 feet wide right of way) South 89 degrees 40 minutes 49 seconds West a distance of 350.84 feet to a 1/2 inch iron rod with blue plastic cap stamped ElamPack Surveyors set for corner in the easterly line of the existing Mapleshade Lane right of way;

THENCE along the easterly line of the existing Mapleshade Lane right of way North 02 degrees 05 minutes 56 seconds East a distance of 90.14 feet to an aluminum monument found for corner in the existing northerly right of way line of Mapleshade Lane;

THENCE along the existing northerly right of way line of said Mapleshade Lane North 87 degrees 24 minutes 03 seconds West a distance of 38.19 feet to the POINT OF BEGINNING;

Containing within these metes and bounds 0.738 acres or 32,135 square feet of land more or less.

EXHIBIT "B" SITE PLAN REINVESTMENT ZONE NO. 121



**EXHIBIT “C”
CERTIFICATION FORM
REINVESTMENT ZONE NO. 121**

[DATE]

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

RE: Certification Form – Reinvestment Zone No. 121
Tax Abatement Agreement (the “Agreement”) between Atmos Energy Corporation
 (“Atmos”) and the City of Plano, dated as of April 12, 2010

This letter certifies that Atmos is in compliance with each applicable term as set forth in the Agreement. The term of the Agreement is January 1, 2011, through December 31, 2020. This form is due on November 1 of each year the Agreement is in force.

ATMOS ENERGY CORPORATION,
a Texas and Virginia corporation

By: _____
Name: _____
Title: _____



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		4/12/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x-7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Atmos Energy Corporation, a Texas and Virginia corporation; authorizing its execution by the City Manager or, in his absence, his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	13,750,725	0	13,750,725
Encumbered/Expended Amount	0	-3,817,150	-4,350,350	-8,167,500
This Item	0	-70,200	-9,900	-80,100
BALANCE	0	9,863,375	-4,360,250	5,503,125
FUND(S): ECONOMIC DEVELOPMENT FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy.				
SUMMARY OF ITEM				
A request from Atmos Energy Corporation for an Economic Development incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Atmos Energy agrees to occupy not less than 48,000 sq. ft by 12/31/10 and create or transfer 78 jobs by 12/31/10 with the possibility of an additional 11 jobs by 12/31/12.				
List of Supporting Documents: Economic Development Incentive Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Atmos Energy Corporation, a Texas and Virginia corporation; authorizing its execution by the City Manager or, in his absence, his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement by and between the City of Plano, Texas and Atmos Energy Corporation, a Texas and Virginia corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

DULY PASSED AND APPROVED this the 12th day of April, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City") and Atmos Energy Corporation, a Texas and Virginia corporation ("Company"), acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is a natural gas transmission and distribution company with anticipated taxable real property improvements of not less than Six Million Two Hundred and Fifty Thousand Dollars (\$6,250,000.00) and anticipated taxable business personal property of not less than One Million Three Hundred and Fifty Thousand Dollars (\$1,350,000.00) located on the Property as defined herein; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate and maintain certain of its business and commercial activities in and to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company agrees to occupy not less than a total of 48,000 square feet of commercial/industrial space located at 3697 Mapleshade Lane, Plano, Texas 75075 (the "Property") and retain, transfer or create approximately 89 Job Equivalents on the Property and maintain those positions for the remainder of the term of this Agreement; and

WHEREAS, the real and personal property improvements to the Property and the retention, creation or transfer of approximately 89 Job Equivalents at the Property within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article 1 Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Commencement Date" shall mean the earlier of the date of occupancy of the Property by the Company or December 31, 2010, whichever occurs first.

"Effective Date" shall mean the last date on which all of the parties hereto have executed this Agreement.

"Event of Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

"Job Equivalent" shall mean one or more Company job positions located at the Property, individually or when combined, total 2080 hours (inclusive of holidays, vacation and sick leave) annually.

Article 2 Term

The term of this Agreement shall begin on the Commencement Date and continue until December 31, 2020, unless sooner terminated as provided herein.

Article 3 Obligations of Company

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

(a) Occupy not less than 48,000 square feet of commercial/industrial space on the Property on or before December 31, 2010, subject to Event of Force Majeure;

(b) Create or transfer at least 78 Job Equivalents to the Property on or before December 31, 2010, subject to Event of Force Majeure;

(c) May create or transfer approximately 11 additional Job Equivalents (total of 89 including the initial Job Equivalents created or transferred as of December 31, 2010) to the Property on or before December 31, 2012, subject to Event of Force Majeure; and

(d) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities related to or being conducted within the Property, at facilities located in the City of Plano.

Article 4 **Economic Development Grant**

4.01 **Grant.** The City agrees to provide the Company a cash grant of up to Eighty Thousand One Hundred Dollars (\$80,100.00) for the occupancy of 48,000 square feet of commercial/industrial space on the Property and the transfer or creation of up to 89 Job Equivalent positions on the Property in accordance with Article 3 above. The Company agrees to maintain the transferred or created Job Equivalents for which a cash grant has been paid by the City to the Company throughout the term of this Agreement as provided in Section 4.03 below.

4.02 **Grant Payments.** Except as otherwise indicated, the Company shall be entitled to a payment of Seventy Thousand Two Hundred Dollars (\$70,200.00) from the City under this Agreement within thirty (30) days after the Company verifies to the City, using the Initial Certification form attached hereto as Exhibit "A", that the Company has met its obligations as set forth in Article 3 (a) and (b) above (such payment referred to as the "Initial Grant Payment"). **IN ORDER TO RECEIVE PAYMENT UNDER THIS AGREEMENT, COMPANY'S INITIAL CERTIFICATION VERIFYING COMPLIANCE WITH ARTICLE 3 (A) AND (B) ABOVE MUST BE FILED WITH THE CITY ON OR BEFORE APRIL 1, 2011.** The Company shall be entitled to a second payment of \$900 for each additional Job Equivalent created at the Property after December 31, 2010, subject to a maximum total grant payment, inclusive of the Seventy Thousand Two Hundred Dollars (\$70,200.00) Initial Grant Payment, of Eighty Thousand One Hundred Dollars (\$80,100.00) from the City under this Agreement within thirty (30) days after the Company verifies to the City, using the Initial Certification form attached hereto as Exhibit "A", that the Company has met the conditions set forth in Article 3(c) above. In order to receive payment, Company's initial certification verifying compliance with Article 3(c) above must be filed with the City on or before April 1, 2013.

4.03 **Refunds.**

(a) In the event the Company allows Job Equivalents at the Property to fall below the number of Job Equivalents for which it has received a grant payment for more than one hundred eighty (180) consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Nine Hundred Dollars (\$900.00) for each lost Job Equivalent. For purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer shall certify to the City by January 31, 2012, and by January 31st of each year thereafter during the term of this Agreement the actual number of Job Equivalents at the Property for the preceding calendar year, using the Certification form attached as Exhibit "B". All refunds under this Agreement shall be due within thirty (30) days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01 but without the addition of penalty. Repayment of grant funds and interest shall be due not later than one hundred twenty (120) days after the date the City notifies the Company of the conviction.

Article 5 Termination

5.01 This Agreement terminates upon any one or more of the following:

(a) By mutual written agreement of the parties;

(b) Upon expiration of the term of this Agreement;

(c) By either party upon written notice to the other, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30-day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30-day period and further provided that the remedy is being diligently pursued); and

(d) By either party upon written notice to the other if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above in this Section 5.02 shall survive the termination of this Agreement.

Article 6 Miscellaneous

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, (b) to its parent or (c) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

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

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Time is of the Essence.** Time is of the essence in this Agreement.

[Signature page follows.]

EXECUTED on this 12th day of April, 2010.

ATTEST:

CITY OF PLANO, TEXAS, a home rule municipal
corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATMOS ENERGY CORPORATION,
a Texas and Virginia corporation

By: _____
Name
Title

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE*

[DATE]

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

RE: Initial Certificate of Compliance by Atmos Energy Corporation ("Atmos")
Economic Development Incentive Agreement between Atmos and the City of Plano
dated as of _____ (the "Agreement")

I hereby certify that Atmos has occupied not less than 48,000 square feet of commercial/industrial space located at 3697 Mapleshade, Plano, Texas (the "Property") and has retained, transferred or added ____ new Job Equivalent (as defined in the Agreement) positions to the Property. Atmos is in compliance with subsections ((a) and (b)/(c)) of Article 3 of the Agreement and is entitled to receive payment under the terms of the Agreement.

Atmos Energy Corporation,
a Texas and Virginia corporation

By: _____
Name:
Title:

NOTE:

*This form may be modified and used for the initial certification of the additional jobs as specified in Article 3(c) above.

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

[DATE]

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

RE: Annual Certificate of Compliance by Atmos Energy Corporation ("Atmos")
Economic Development Incentive Agreement between Atmos and the City of Plano
dated as of _____ (the "Agreement")

I hereby certify that Atmos is in compliance with each applicable term as set forth in Article 3 of the Agreement. The term of the Agreement is December 31, 2010 through December 31, 2020. The number of new, transferred or retained Job Equivalents, calculated as set forth in the Agreement and maintained pursuant to the Agreement since its inception, has not fallen below _____ for more than one hundred eighty (180) consecutive days and is _____ as of the date of this Certificate of Compliance. If the number herein reported is below the number required to be maintained pursuant to the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on April 1st of each year the Agreement is in force.

Atmos Energy Corporation,
a Texas and Virginia corporation

By: _____
Name: _____
Title: _____